

Circuit Court for Howard County
Case No. C-13-CR-19-000609

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 585

September Term, 2020

JOSEPH E. FLETCHER

v.

STATE OF MARYLAND

Fader, C.J.,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 14, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Howard County, Joseph E. Fletcher, appellant, was convicted of second-degree assault and malicious destruction of property. He raises two issues on appeal: (1) whether there was sufficient evidence to sustain his convictions and (2) whether the court abused its discretion in denying his motion for a new trial. For the reasons that follow, we shall affirm.

In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant’s convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgment . . . on the evidence unless clearly erroneous.” Maryland Rule 8–131(c). “We review sufficiency of the evidence to determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

Mr. Fletcher first claims that the evidence was insufficient at trial because the victim recanted her allegations about the assault. However, this claim is essentially an invitation for this Court to reweigh the evidence, which we will not do. It is “not a proper sufficiency argument to maintain that the [fact-finder] should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses.” *Correll v. State*, 215 Md. App. 483, 502 (2013). That is because “it is the [trier of fact’s] task . . . to measure the weight of the evidence and to judge the credibility of the witnesses.” *State v. Manion*, 442 Md. 419, 431 (2015) (citation omitted).

At trial, the State presented evidence that: (1) the victim called 911 and told the operator that Mr. Fletcher had kicked in her door and threatened her with a BB gun; (2) the officers who responded to the scene observed the victim hiding in the bushes when they arrived and stated that she was “extremely upset,” “frantic,” and “fear[ful]”; (3) the victim told one of the responding officers that Mr. Fletcher had a knife in his waistband and had pointed a gun at her that looked real but could have been a BB gun; and (4) the officers recovered several BB guns on the counter in the victim’s apartment. Moreover, although the victim denied at trial that the assault had occurred, she testified that Mr. Fletcher had entered her apartment and destroyed her personal property, including popping her air mattress and breaking her picture frames and mirrors. That evidence, if believed, was legally sufficient to support a finding of each element of the second-degree assault and malicious destruction of property charges beyond a reasonable doubt. The fact that the victim later recanted her testimony does not affect the sufficiency of the evidence because, in weighing the evidence, the fact-finder “can accept all, some, or none of the testimony of a particular witness.” *Correll v. State*, 215 Md. App. 483, 502 (2013).

Mr. Fletcher also contends that the possession of a knife in his waistband would not have been legally sufficient to sustain his second-degree assault conviction, but that in rendering its verdict, the trial court stated that it was finding him guilty of second-degree assault based on the victim having “described in the 911 call that this BB gun was pointed at her *and* that he had a knife in his pants area.” He thus asserts that the court may have relied on legally insufficient evidence to convict him. However, “the issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the

evidence or the adequacy of the factfindings to support a verdict.” *Chisum v. State*, 227 Md. App. 118, 129 (2016). Rather, “[i]t is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place.” *Id.* at 129-30. As previously set forth, Mr. Fletcher’s pointing a BB gun at the victim was sufficient to constitute an assault. And, although there can be errors in the rendering of the verdict in a bench trial, those errors are “different from a challenge to the legal insufficiency of the evidence” and thus must be “timely preserved.” *Id.* at 131 n.2. Because Mr. Fletcher did not object to the trial court’s findings, this issue is not properly before the Court. *See* Maryland Rule 8-131(a).

Finally, Mr. Fletcher asserts that the court abused its discretion in denying his motion for a new trial. A trial court’s decision to grant or deny a motion for a new trial is generally reviewed under the abuse of discretion standard. *Williams v. State*, 462 Md. 335, 344 (2019). “Generally, abuse of discretion is the appropriate standard because the decision to grant or deny a motion for new trial under Md. Rule 4-331(a) depends so heavily upon the unique opportunity the trial judge has to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record[.]” *Id.* at 344-45 (internal quotation and citation omitted). “To reverse the denial of a new trial on appeal, when utilizing the abuse of discretion standard, the reviewing court must find that the ‘degree of probable prejudice [was] so great that it was an abuse of discretion to deny a new trial.’” *Id.* at 345 (citation omitted).

The only evidence presented at the hearing on the motion for a new trial was the testimony of the victim, who essentially reiterated her trial testimony that she had not

been assaulted and that she had “not been telling the truth during the 911 call.” During cross-examination the victim acknowledged that she “said the same thing [today] as I did [at trial].” She also acknowledged that she had spoken with appellant approximately eight times on the phone after he was convicted and that she wanted to help him “so he wouldn’t go to jail for 10 years.” The court ultimately denied the motion, finding that the victim’s testimony was cumulative and “not new evidence.” The motion’s court further found that the victim’s testimony was “not very credible” and that she had “remorse” because “she’d played a role in getting her former partner convicted of a crime,” and that “she’d do whatever she can to help him out.”

We agree that the victim’s testimony did not constitute newly discovered evidence and was merely cumulative of her trial testimony. Moreover, a trial court “has the authority to weigh the evidence and to consider the credibility of witnesses in deciding a motion for a new trial.” *Argyrou v. State*, 349 Md. 587, 599 (1998). As was the case with the victim’s trial testimony, the court did not find her attempts to disavow her statements to the police and the 911 operator credible. And based on our review of the record, we cannot say that the court’s credibility determination was clearly erroneous. Consequently, the trial court did not abuse its discretion in denying appellant’s motion for a new trial.

**JUDGMENTS OF THE CIRCUIT
COURT FOR HOWARD COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**