

Circuit Court for Worcester County
Case No. 23-K-16-000336

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 588

September Term, 2017

ANTHONY DEWAYNE HARMON

v.

STATE OF MARYLAND

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 6, 2019

*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 separate jury trials in the Circuit Court for Worcester County, Anthony Dewayne Harmon, appellant, was convicted of second-degree assault, second-degree sexual offense, and third-degree sexual offense.¹ His sole contention on appeal is that there was insufficient evidence to support his convictions. However, when making his motions for judgment of acquittal in the trial court, defense counsel submitted on the evidence and did not raise any of the claims that Mr. Harmon now raises on appeal. Consequently, the issue is not preserved for appellate review. *See Peters v. State*, 224 Md. App. 306, 354 (2015) (“[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal.” (citation omitted)).

Moreover, even if preserved, we would find no error. Viewed in a light most favorable to the State, there was sufficient evidence to sustain Mr. Harmon’s conviction for second-degree assault based on the victim’s testimony that he “knocked [her] down on the floor” and then “dropped his full body weight on [her] like a body slam.” The State also presented sufficient evidence to sustain Mr. Harmon’s convictions for second-degree sexual offense and third-degree sexual offense based on the victim’s testimony that, after knocking her to the ground, Mr. Harmon choked her; unsuccessfully tried to penetrate her vagina with his penis; and then put his penis into her mouth, making contact with her teeth. *See generally* Md. Code Ann., Crim. Law Art. § 3-306 (a)(1) (providing that a person

¹ After a trial on February 13 and 14, 2017, a jury convicted Mr. Harmon of second-degree assault but deadlocked on the charges of second-degree sexual offense and third-degree sexual offense. Mr. Harmon was then convicted of those offenses following a retrial on May 16, 2017. He was sentenced for all three offenses on May 24, 2017.

commits a second-degree sexual offense when he or she engages in a sexual act with another by force, or the threat of force, without the consent of the other); Md. Code Ann., Crim. Law Art. § 3-307 (a)(1)(ii)(2) (providing that a person commits a second-degree sexual offense when he or she engages in sexual contact with another without the consent of the other and suffocates or strangles the victim in the course of committing the crime).

Although Mr. Harmon asserts that the State failed to prove that he engaged in the sexual act of fellatio, as was required to sustain his conviction for second-degree sexual offense, for a defendant “to place his penis inside the lips and in contact with the teeth of the victim qualifies as oral-genital contact within the contemplation of the term ‘fellatio.’” *Travis v. State*, 218 Md. App. 410, 421-22 (2014). Mr. Harmon also contends that, because of a stroke, he was too injured to have assaulted the victim and that any sexual contact between himself and the victim was consensual. However, those claims are based on his trial testimony, which the jury was free to disbelieve.

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