

Circuit Court for Baltimore County
Case No. 03-K-17-005283

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 768

September Term, 2019

BRIAN ROBERT SPEARS, JR.

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 7, 2020

*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 jury trial in the Circuit Court for Baltimore County, Brian Robert Spears, Jr., appellant, was convicted of second-degree assault. He raises two issues on appeal: (1) whether there was sufficient evidence to sustain his conviction, and (2) whether the court abused its discretion in restricting defense counsel’s cross-examination of one of the State’s witnesses. For the reasons that follow, we shall affirm.

I.

Mr. Spears first contends that there was insufficient evidence to sustain his conviction. In reviewing the sufficiency of the evidence, we ask “whether, after reviewing 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.” *Ross v. State*, 232 Md. App. 72, 81 (2017) (citation omitted). Furthermore, we “view[] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the” State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, “[w]e give ‘due regard to the [fact-finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)).

At trial, the State presented evidence that the victim worked as a chef at Slate Lounge and was struck in the head with a glass mug during an altercation involving both customers and staff members. The victim testified that she came out of the kitchen and observed one of her co-workers lying on the ground and being kicked by several patrons. The victim grabbed her co-worker and attempted to drag her back into the kitchen. As she

was doing so, she looked up and saw Mr. Spears pick up his beer mug and throw it at her, striking her in the head and putting her into a coma for five days. A bartender at Slate Lounge also testified that she saw Mr. Spears pick up and throw a glass mug and, although she did not see where it hit, when she turned around, she observed the victim on the ground bleeding from her head. This evidence, if believed by the jury, was sufficient to establish all of the elements of second-degree assault beyond a reasonable doubt. *See Reeves v. State*, 192 Md. App. 277, 306, 372 (2010) (“It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction.”)

In claiming that the evidence was insufficient, Mr. Spears asserts that: (1) the “situation in the Slate Lounge was chaotic”; (2) there was more than one person at the bar fighting; and (3) the victim originally described her assailant as having dreadlocks, which he did not have. These arguments, however, go to the weight of the evidence, not its sufficiency, and were for the jury to resolve. Mr. Spears also notes that he called two witnesses who testified that he never picked up a glass and threw it at the victim. However, the jury, as the finder of fact, was “free to believe some, all, or none of the evidence [he] presented[.]” *Sifrit v. State*, 383 Md. 116, 135 (2004). And on appeal we will not second-guess the jury’s credibility findings as to those witnesses.

II.

Mr. Spears also claims that the court abused its discretion in limiting defense counsel’s cross-examination of Detective John Trenary, the lead investigator in the case. Prior to Detective Trenary being called as a witness, Officer Romario Orella, the first

officer who responded to the 911 call, testified that there was a video surveillance system in the Slate Lounge, but that the owner was not very cooperative and had told him that the video system was not working. When cross-examining Detective Trenary, defense counsel established that Detective Trenary had also spoken to the owner and attempted to get the video on multiple occasions but that he had learned that “there was no video.” Defense counsel then asked Detective Trenary if he knew why there was no video, at which point the State objected on hearsay grounds.

Following a bench conference, the Court informed defense counsel that he only could ask Detective Trenary “if he has any firsthand knowledge about why the video doesn’t exist.” Defense counsel responded, “Ok, that’s all I want to do.” During further questioning, Detective Trenary testified that he never “saw a video system operational” and that he was not able to get the video because the owner had told him there was a technical problem and that the video didn’t exist. He also indicated that the owner had not allowed him to enter the area where the video system was located and that, based on the owner’s representations about the existence of a video, he had never sought a warrant or subpoena to obtain it. Following the bench conference, the State only objected to defense counsel’s questions on two occasions, once when defense counsel asked Detective Trenary if he “believe[d] there was no video from that night” and once when defense counsel asked Detective Trenary if he thought the owner’s explanation was “credible.” The court sustained both objections and defense counsel did not make an offer of proof.

Mr. Spears contends that, because of the trial court’s rulings, defense counsel was prohibited from “fully exploring the details of Detective Trenary’s interactions with the

owner of Slate Lounge” and “denied his opportunity to fully explore the unavailability of the video from the time in question[.]” We disagree. As an initial matter, when the court ruled on the State’s hearsay objection and indicated that defense counsel could only ask Detective Trenary about whether he had “any firsthand knowledge about why the video didn’t exist,” defense counsel acquiesced to the court’s ruling, stating “Ok, that’s all I want to do.” Consequently, any claim that the court erred in limiting defense counsel’s questioning in this respect is waived. *See Parker v. State*, 402 Md. 372, 405 (2007) (“A litigant who acquiesces in a ruling is completely deprived of the right to complain about that ruling[.]”) (citation and internal quotation marks omitted).

After that ruling, the court only sustained the State’s objections to two questions, both of which sought to elicit testimony from Detective Trenary about whether he believed the owner’s explanation about the video was credible. However, during the bench conference, defense counsel had informed the court that he did not know what Detective Trenary’s answers would be when asked about why there was no video. And defense counsel did not make an offer of proof as to how Detective Trenary would have answered the questions about the owner’s credibility. Therefore, the issue of whether the court erred in limiting defense counsel’s questioning in this regard is not preserved for appellate review. *See Merzbacher v. State*, 346 Md. 391, 416 (1997) (holding that where the witness did not answer the question after the trial court sustained the State’s objection, a proffer was required to preserve for review the propriety of the trial court’s decision to exclude the evidence because the witness “could have answered the question in any number of ways,”

and the Court of Appeals was “in no position . . . to discern what that answer may have been, whether favorable or unfavorable to the defense”).

Moreover, even if preserved, the court did not improperly limit defense counsel’s cross-examination of Detective Trenary. The record reveals that defense counsel questioned Detective Trenary extensively about the existence of a video and that his knowledge about why video was unavailable based on what he had been told by the owner. A trial court may make judgment calls and control the scope and mode of cross-examination. *Peterson v. State*, 444 Md. 105, 124 (2015). And because a court in a criminal trial “may not permit a witness to express an opinion about another person’s credibility,” *Walter v. State*, 239 Md. App. 168, 184 (2018), we perceive no abuse of discretion in prohibiting Detective Trenary from speculating about the owner’s credibility.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**