

Circuit Court for Anne Arundel County
Case No. C-02-CR-19-001818

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 793

September Term, 2020

MATTHEW RICHARD JOHNSON

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 5, 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 Anne Arundel County, Matthew Richard Johnson, appellant, was convicted of first-degree assault, second-degree assault, and reckless endangerment. On appeal, he contends that there was insufficient evidence to sustain his conviction for first-degree assault. 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).

Section 3-202(a)(1) of the Criminal Law Article governs first-degree assault and provides, in part, that “[a] person may not intentionally cause or attempt to cause serious physical injury to another.” The statute defines “serious physical injury” as “physical injury that: (1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ.” Crim. Law § 3-201(d). To sustain a conviction for first-degree assault, the State must prove a defendant’s “specific intent to cause, or attempt to cause, serious physical injury.” *Dixon v. State*, 364 Md. 209, 239 (2001).

Mr. Johnson contends that the State failed to prove that he had the specific intent to cause serious physical injury to the victim. In support of this contention, he distinguishes

the facts in this case from *Chilcoat v. State*, 155 Md. App. 394 (2004), where the defendant struck his victim with a beer stein with enough force to cause two depressed skull fractures that required surgery, and *Cathcart v. State*, 169 Md. App. 379, 383 (2006), *vacated on other grounds*, 397 Md. 320 (2007), where the defendant punched a woman in the face and choked her until she lost consciousness, causing bilateral jaw fractures, a broken nose, and dislocated chin.

Mr. Johnson asserts that a rational jury could not find that he intended to cause serious physical injury because, unlike the victims' injuries in *Chilcoat* and *Cathcart*, the victim's injuries in this case were "not life threatening." We disagree. Even if we assume that the victim's injury did not rise to the level of "serious physical injury," this Court recognized in *Brown v. State*, 182 Md. App. 138, 179 (2008), that "an attempt to cause 'serious physical injury,' not merely a completed injury" is sufficient to sustain a conviction for first-degree assault. And "a jury may infer the necessary intent [to cause serious physical injury] from an individual's conduct and the surrounding circumstances, whether or not the victim suffers such an injury." *Chilcoat*, 155 Md. App. at 403.

Viewed in a light most favorable to the State, the evidence at trial established that, following an argument outside of a bar, Mr. Johnson and another man hit and jumped on the victim until he fell to the ground. Mr. Johnson then got on top of the victim and began to punch him in the back, ribs, and head. At no point did the victim attempt to defend himself or strike back at Mr. Johnson. After he stopped punching the victim, Mr. Johnson stood up. However, one witness testified that, instead of walking away, he "took two steps back and kicked a 60-yard field goal with [the victim's face]." The assault was captured

on a surveillance video which showed Mr. Johnson kicking the victim in the head with significant force. At the time, the victim was lying on the ground unconscious.

After Mr. Johnson kicked the victim, an onlooker ran over to stabilize the victim's neck. The onlooker testified that the victim "proceeded to choke on his blood" and that he had to turn the victim to the side to prevent him from choking. After the police arrived, the victim was taken to the hospital, where the doctor ordered a CT scan of his maxillofacial area and head to "evaluate the extent of the injury and to rule out other injuries that could be present that were not visible." The doctor testified that possible injuries from the assault included "a fracture of the skull, swelling of the brain, or bleeding in the brain that can cause significant morbidity and mortality to a patient." Such injuries were ultimately ruled out; however, the victim was diagnosed with a fractured jaw and nose which required a referral to a facial surgeon. The victim ultimately had to have his jaw wired shut for 5 weeks and testified that he continued to have headaches after the assault.

Based on this evidence, the court could find, beyond a reasonable doubt, that Mr. Johnson's kicking the victim in the head created a substantial risk of death. The victim was defenseless at the time of the assault and Mr. Johnson's kick was sufficiently forceful that it fractured the victim's jaw and nose. Moreover, there was a very real potential for death as the result of such head trauma, as evidenced by the treating physician's testimony that he had to order a CT scan to rule out a more serious injury that "could cause significant morbidity and mortality." That Mr. Johnson did not succeed in causing such an injury is

not dispositive of his intent. Consequently, we hold that the State presented sufficient evidence to sustain his first-degree assault conviction.

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