

Circuit Court for Baltimore City  
Case No. 118298006

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 831

September Term, 2019

---

LAMAR KEY

v.

STATE OF MARYLAND

---

Shaw Geter,  
Friedman,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Raker, J.

---

Filed: July 10, 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.

Appellant Lamar Key was convicted by a jury in the Circuit Court for Baltimore City of second-degree assault, reckless endangerment, and carrying a concealed dangerous or deadly weapon. Appellant presents the following questions for our review:

- “1. Was the evidence legally insufficient to sustain the convictions?
2. Should second degree assault have been merged into reckless endangerment; or, alternatively, should reckless endangerment have been merged into second degree assault?”

We shall hold that the evidence was legally sufficient to sustain appellant’s convictions. The State agrees that the assault and reckless endangerment convictions merge. Therefore, we shall vacate the sentence for reckless endangerment.

#### I.

Appellant was indicted by the Grand Jury for Baltimore City of first and second-degree assault, reckless endangerment, and carrying a concealed dangerous or deadly weapon. The jury convicted him of second-degree assault, reckless endangerment, and the weapon charge. The court sentenced appellant to a term of incarceration of ten years for second-degree assault, five years for reckless endangerment to be served concurrently, and three years for carrying a concealed dangerous or deadly weapon, to be served consecutive to his sentences for second-degree assault and reckless endangerment.

We glean the following from the evidence presented at trial. On the night of October 7, 2018, Thomas Hobbs and his wife, Joann Hobbs, went to Julius Coffman’s house to celebrate Mr. Coffman’s birthday. After drinking beer at the back of the house, Mr. Hobbs

moved to the front porch around one o'clock in the morning to smoke a cigarette with his beer bottle<sup>1</sup> in hand. While Mr. Hobbs sat on the front porch, appellant's girlfriend arrived, spoke with Mr. Coffman's wife, Latarsha Booce, on the porch, and then left. Shortly thereafter, appellant and his girlfriend returned to Mr. Coffman's house. Once on the porch, appellant started stabbing Mr. Hobbs in the face with a large "Rambo" style knife. To defend himself, Mr. Hobbs grabbed the knife with his hands and flipped appellant over against a wall. They continued to struggle.

Hearing the commotion, Mr. Coffman came to the porch and found blood all over it and Mr. Hobbs pressed against a window in a headlock by appellant. Mrs. Hobbs then came out and saw appellant with a knife to her husband's throat and her husband's hands on the knife. Ms. Booce also saw Mr. Hobbs's neck bleeding and something silver in appellant's hand. Subsequently, Mr. Coffman ran back into his house to grab his gun, pointed it at appellant, and told him to leave; appellant left. A Baltimore City Patrol Officer arrested appellant at his mother's house and recovered a knife with blood on it. Mr. Hobbs sustained stab wounds on his face and neck and received stitches at the hospital.

Appellant testified at trial. He testified that he went to Mr. Coffman's house alone that night to wish him a happy birthday. But when he arrived, Mr. Hobbs blocked the doorway, preventing him from entering, and attempted to strike him with a beer bottle. Appellant blocked the bottle with his hand and grabbed a knife that was "out already" at

---

<sup>1</sup> Mr. Hobbs testified on direct examination that he left the beer bottle at the back of the house. On cross-examination, he admitted to bringing the bottle with him to the front porch.

his hip to merely scare Mr. Hobbs. He put Mr. Hobbs in a headlock to protect himself, and Mr. Hobbs was injured in the struggle that followed.

At the conclusion of all of the evidence, appellant moved for judgment of acquittal on all counts. The trial judge denied the motion, ruling as follows:

“Motion considered and denied. . . . [T]here’s more evidence after the Defendant testified of concealment than there was before. And by his own demonstration, . . . you asked where it was and it was in—on his pants. And the way he demonstrated to the jury, I’m satisfied the jury could find that it was concealed. So the question is whether or not there’s enough evidence to allow the jury to consider that charge. I’m satisfied that there is.”

Appellant was convicted and sentenced as noted, and this timely appeal followed.

## II.

Before this Court, appellant argues that the evidence was insufficient to sustain his convictions of second-degree assault, reckless endangerment, and carrying a concealed dangerous or deadly weapon. First, as to second-degree assault, appellant argues that the State failed to prove beyond a reasonable doubt that appellant was not defending himself or that Mr. Hobbs and appellant did not engage in a mutual affray. Because the jury acquitted him of first-degree assault, appellant contends that the jury must have either rejected his use of the knife as a basis for the charge of first-degree assault or found that he did not cause a serious injury. Appellant argues that this leads to the conclusion that the jury accepted his self-defense claim “in some measure.”

Second, as to reckless endangerment, appellant argues that the State failed to prove the element of creating a substantial risk of death or serious physical injury because Mr. Hobbs only sustained superficial cuts. Also, appellant contends that the *mens rea* for reckless endangerment is negated by the fact that he engaged in self-defense.

Third, as to carrying a concealed dangerous or deadly weapon, appellant contends that there was no evidence that appellant had *concealed* the knife. Claiming that his knife was “out already” before the altercation, appellant points out that Mr. Hobbs did not specify that the knife was concealed and that Ms. Booce stated merely that she saw “something silver” in appellant’s hand.

Finally, appellant argues that the court should have merged second-degree assault into reckless endangerment or vice versa. Appellant contends that second-degree assault should merge into reckless endangerment based on the “required evidence” test because both convictions were based on the same act and only reckless endangerment contains an additional element of risk of death or serious physical injury. Appellant also relies on the rule of lenity and fundamental fairness as a basis for merger. In the alternative, appellant contends that reckless endangerment should have merged into second-degree assault under “the doctrine of merger” because second-degree assault contains the greater possible penalty.

In response, the State argues that the evidence was legally sufficient to sustain all convictions. As to second-degree assault, the State maintains that the evidence was sufficient because a reasonable juror could have concluded that appellant stabbed Mr.

Hobbs in the head and neck. The State points out that the court instructed the jury on appellant’s defense of self-defense, which the jury rejected in finding appellant guilty of second-degree assault.

As to appellant’s contention that the State did not prove reckless endangerment because Mr. Hobbs’s wounds were superficial, the State points out that reckless endangerment does not require substantial harm. Because the jury did not find that appellant acted in self-defense, the State contends that the *mens rea* of reckless endangerment was not negated.

On the concealed weapon conviction, the State argues that evidence was sufficient to permit a rational juror to conclude that appellant concealed the knife. The evidence at trial included Mr. Hobbs’s testimony that he “[did not] know where the knife came from,” appellant’s testimony that he “pulled [the knife] out,” and appellant’s reenactment in front of the jury of grabbing the knife from his hip.

On the issue of merger, the State concedes that reckless endangerment should merge, for sentencing purposes, into second-degree assault under the rule of lenity because they are both based on appellant’s act of stabbing Mr. Hobbs. The State concedes that the Court should vacate appellant’s sentence for reckless endangerment.

### III.

We hold that the evidence was sufficient beyond a reasonable doubt to sustain the judgments of convictions of second-degree assault, reckless endangerment, and carrying a

concealed dangerous or deadly weapon. We review a challenge to the 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.” *Grimm v. State*, 447 Md. 482, 494–95 (2016). When appellant challenges the sufficiency of the evidence, our concern is “only with whether the verdict[] [was] supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479 (1994); *see also Bible v. State*, 411 Md. 138, 156 (2009). The jury, as fact-finder, may “choose among differing inferences that might possibly be made from a factual situation,” and we must give deference to all of its reasonable inferences, regardless of whether we would have chosen a different one. *Bible*, 411 Md. at 156.

In Maryland, first-degree assault appears in the statute as follows:

- “(1) A person may not intentionally cause or attempt to cause serious physical injury to another.
- (2) A person may not commit an assault with a firearm . . . .”

Md. Code, Criminal Law Article (“C.R.”), § 3-202(a)(1), (2); *see also Snyder v. State*, 210 Md. App. 370, 385–86 (2013) (noting that to raise a second-degree assault charge to first-degree assault, the State must prove assault plus the additional requirement “that the defendant committed the assault with a firearm or with the intent to cause serious physical injury”). “Serious physical injury” is defined as an injury that “creates a substantial risk

of death” or “causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ.” C.R. § 3-201(d). The statute provides that “the crimes of assault, battery, and assault and battery, retain their judicially determined meanings.” *Id.* § 3-201(b). Statutory second-degree assault consists of three varieties: intent-to-frighten assault, attempted battery, and battery. *Snyder*, 210 Md. App. at 380. The battery variety requires offensive physical contact with the victim, an intentional or reckless and not accidental contact, and lack of consent or legal justification for the contact. *Pryor v. State*, 195 Md. App. 311, 335 (2010).

The State offered sufficient evidence for a rational trier of fact to find that appellant committed a second-degree assault—intentional or reckless offensive physical contact with a victim without legal justification—when he stabbed Mr. Hobbs with a knife. A reasonable juror could have believed Mr. Hobbs’s testimony, finding that appellant intentionally stabbed him three times in the face and neck, and rejected appellant’s claim of self-defense. Appellant argues that the jury must have accepted his self-defense claim<sup>2</sup> to some degree because it found him guilty of second-degree, rather than first-degree assault, which requires serious physical injury. We do not speculate as to the reasons for a jury’s verdict but point out that a guilty finding of second-degree assault is not consistent

---

<sup>2</sup> To establish self-defense, a defendant must: (1) “have had reasonable grounds to believe himself . . . in apparent imminent or immediate danger of death or serious bodily harm;” (2) “have in fact believed himself . . . [to be] in this danger;” (3) “not have been the aggressor or provoked the conflict;” and (4) not have used unreasonable or excessive force. *Johnson v. State*, 223 Md. App. 128, 149 (2015).



with a jury’s acceptance of a perfect self-defense; a perfect self-defense should result in a jury verdict of not guilty.

We turn to the reckless endangerment conviction. The statute provides in relevant part as follows:

- “(a) A person may not recklessly:
  - (1) engage in conduct that creates a substantial risk of death or serious physical injury to another[.]”

C.R. § 3-204(a). To prove reckless endangerment, the State must establish beyond a reasonable doubt “1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly.” *Perry v. State*, 229 Md. App. 687, 697–98 (2016) (internal citation omitted).

The evidence was sufficient to sustain the judgment of conviction for reckless endangerment. In using the knife to inflict wounds on the victim, particularly on the face and neck, appellant engaged in conduct that created a substantial risk of death or serious physical injury to another person. Although appellant argues that the victim’s wounds were superficial cuts and, therefore, did not meet the substantial injury prong of the offense, serious physical injury is not required under the statute to sustain a conviction. *See Albrecht*, 336 Md. at 500–01. The crime of reckless endangerment does not require that the defendant actually cause harm to another individual. *Id.* The statute is aimed at deterring the commission of potentially harmful conduct before an injury or death occurs. *See Minor v. State*, 326 Md. 436, 442 (1992). Stabbing a person with a knife in the neck

creates a substantial risk of death or serious physical injury. A reasonable jury could have believed Mr. Hobbs’s testimony and found that (1) appellant created a substantial risk of death or physical injury when he stabbed Mr. Hobbs in his face and neck with a knife; (2) no reasonable person would stab Mr. Hobbs with a knife in a similar situation; and (3) appellant acted recklessly when he attacked Mr. Hobbs. Appellant’s argument that he lacked the requisite *mens rea* for reckless endangerment because he acted in self-defense is not persuasive because the jury rejected his defense of self-defense.

Turning to the conviction for carrying a concealed dangerous or deadly weapon, we hold that a rational trier of fact could have found that appellant *concealed* the knife before stabbing Mr. Hobbs. Appellant was convicted of carrying a concealed weapon in violation of C.R. § 4-101(c)(1), which provides that “[a] person may not wear or carry a dangerous weapon of any kind concealed on or about the person.” Appellant does not dispute that the knife was a “dangerous weapon” nor that he was carrying the knife “on or about his person.” Rather, he contends that no witness testified and there was no other competent evidence offered that the knife was *concealed* upon his person.

The standard by which to determine whether a weapon is concealed within the meaning of C.R. § 4-101(c)(1) (previously Md. Code, Art. 27, § 36 (1957)) was set forth in *Shipley v. State*, 243 Md. 262 (1966) by the Court of Appeals as follows:

“By a recognized test a weapon is concealed if it is so situated as not to be discernible by ordinary observation by those near enough to see it if it were not concealed who would come into contact with the possessor in the usual associations of life, but absolute invisibility is not required; since ordinary observation does not extend to a search unusually careful, thorough or

detailed, made because of suspicion that contraband which is not visible by ordinary observation may in actuality be present.”

*Id.* at 269.

Appellant’s argument that the evidence was insufficient because there was insufficient evidence to establish that the knife was a concealed weapon is unavailing. Mr. Hobbs testified, “I couldn’t see a knife, nothing. All I know when I looked[,] the man was on me.” Mr. Hobbs also testified, “I don’t know if he pulled it out of his sock, out of his hair. I don’t know where the knife came from.” Appellant testified that he was not brandishing the knife when he first approached but that he subsequently “pulled it out” from his “hip.” Most significantly, appellant demonstrated in court before the jury, stating, “The knife was, like, right here (indicating [to his hip])” and “I just pulled it out.” In denying the motion for judgment of acquittal at the close of all of the evidence, the trial court ruled as follows:

“Motion considered and denied. . . . [T]here’s more evidence after the Defendant testified of concealment than there was before. And by his own demonstration, . . . you asked where it was and it was in—on his pants. And the way he demonstrated to the jury, I’m satisfied the jury could find that it was concealed. So the question is whether or not there’s enough evidence to allow the jury to consider that charge. I’m satisfied that there is.”

We hold that the evidence, viewed in the light most favorable to the State, along with reasonable inferences drawn therefrom, was sufficient to permit a rational jury to conclude that appellant carried the knife in a concealed manner. The victim said he did not see it; appellant said he pulled it out; and most importantly, the court commented that based

on appellant’s in-court demonstration, there was sufficient evidence to support a judgment that the weapon had been concealed upon appellant.

We turn to the issue of merger. The State concedes that appellant’s sentences for reckless endangerment and second-degree assault should have merged based on the rule of lenity. The State maintains that reckless endangerment merges into second-degree assault because second-degree assault is the greater offense. When merging sentences under the rule of lenity, “the offense carrying the lesser maximum penalty ordinarily merges into the offense carrying the greater maximum penalty.” *Abeokuto v. State*, 391 Md. 289, 356 (2006); *see also Moore v. State*, 198 Md. App. 655, 692 n. 10 (2011). Appellant also stated that “the trial court should not have given [appellant] a separate (although concurrent) sentence for reckless endangerment.” We agree that reckless endangerment and second-degree assault merge for sentencing purposes because the same conduct formed the basis of both convictions and there is no indication that the Legislature intended separate penalties. Accordingly, we hold that the trial court erred, merge for sentencing purposes the reckless endangerment conviction into the second-degree assault conviction, and vacate appellant’s sentence for reckless endangerment.

**SENTENCE IMPOSED PURSUANT TO  
C.R. § 3-204 VACATED. JUDGMENT OF  
THE CIRCUIT COURT FOR BALTIMORE  
CITY OTHERWISE AFFIRMED. COSTS  
TO BE DIVIDED EQUALLY BETWEEN  
APPELLANT AND THE MAYOR AND  
CITY COUNCIL OF BALTIMORE.**