

Circuit Court for Anne Arundel County
Case No. C-02-CR-17-002089

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0853

September Term, 2018

ROBERT EUGENE BOOTH, Jr.,

v.

STATE OF MARYLAND

Friedman
Beachley
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: June 5, 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.

Appellant, Robert Eugene Booth, Jr., was convicted in the Circuit Court of Anne Arundel County of two counts of first degree assault, two counts of second degree assault, two counts of reckless endangerment, one count of use of a firearm in the commission of a crime of violence (FCOV), one count of firearm on a person, and one count of firearm in a vehicle. Appellant was sentenced to five years without the possibility of parole for the FCOV count. For the two first degree assault counts appellant was sentenced to five years each, consecutive to the FCOV count, concurrent with one another, suspended, and three years supervised probation was ordered. The remaining convictions were merged. Appellant presents the following questions for our review:

1. Whether the trier of fact erred by finding appellant possessed the necessary criminal intent to warrant a guilty finding of any of the crimes charged?
2. Whether the trial court erred by finding appellant guilty of firearm use in commission of a crime of violence when no handgun was recovered?
3. Whether the trial court should have considered appellant's habitation and use of force to combat a wanton trespass before making a decision on any of the charges.?

For the reasons discussed below we conclude there was no error and shall affirm.

BACKGROUND

Beginning in 2015 appellant and Keisha Gwinn were in a romantic relationship and resided together in a home located in Arnold, Maryland. In July 2017, they decided to end their relationship but continued to reside at the same residence. During “the spring or early summer of 2017,” Gwinn began a romantic relationship with another individual, James Ott. One evening in mid-July, appellant observed Ott at the home he shared with Gwinn.

Approximately a week later appellant contacted Ott, and according to Ott's testimony, appellant inquired "how long [he] and [Gwinn] had been seeing each other." Ott testified that during the phone conversation appellant threatened him saying "[Ott] was lucky, one, [appellant] did not come out swinging on [him], and two, [appellant] did not have his guns on him."

On August 9, 2017, Ott accompanied Gwinn to her home and stayed the night. They both fell asleep naked in the same bed. Around 4:30 a.m. on August 10, Ott was awakened by appellant's hand on his face. When Ott removed appellant's hand he saw appellant holding a handgun, which Ott described as a "real black pistol," near his face. As this occurred, "Gwinn crawled from the bed to the floor [and] holler[ed] Rob, no, no." Ott quickly attempted to gather his clothes as he was being rushed out of the house.

Once outside the home, Ott hid in bushes near the home and called 911. He recounted the incident to the operator and described the handgun as "a nine-millimeter." Appellant then walked outside of the house, entered his car, and drove away. Ott ran back to the house to check on Gwinn.

Corporal Lawrence Adams, the responding officer, arrived on the scene and spoke to both Gwinn and Ott. He described Gwinn as "visually upset . . . and scared to the point where I observed something that must have just occurred and something traumatic had occurred." He stated that Ott was "in [a] state of shock."

Appellant was charged with multiple counts. He entered a plea of not guilty and elected for a court trial. Appellant was found guilty of first degree and second degree assault on Gwinn, first degree and second degree assault on Ott, "reckless endangerment

of both creating a risk of serious physical injury and death to Ms. Gwinn as well as to Mr. Ott.” The court found appellant “guilty of use of a firearm in a felony or violent crime . . . [and] guilty of wear, carry and transport a handgun upon their person as well as carrying a handgun in a vehicle on the public roads.”

Appellant was sentenced to five years without the possibility of parole for the FCOV count. For each of the first degree assault counts he received five years “concurrent to each other consecutive, all suspended, to the firearm charge.” The second degree assault counts and the reckless endangerment counts were merged with the first degree assault counts. The firearm on a person and firearm in a vehicle counts were merged with the FCOV count.

Appellant filed this timely appeal.

We will incorporate additional facts in our discussion as they become necessary.

DISCUSSION

I. The trier of fact did not err when it found appellant possessed the necessary criminal intent to warrant a guilty finding on all of the crimes charged.

Appellant contends that the State did not prove the criminal intent element necessary for a first-degree assault conviction. He contends that the first degree assault conviction should be reversed because the lights in the room were off and he “was well within his rights to brandish the air soft gun” to investigate who was in the room. Appellant claims the lights being off inhibited his ability to know who was in the room and therefore negated “any specific intent/mens rea” to harm anyone. The State argues that the evidence was sufficient to convict appellant, and that his claims are rooted “on the incorrect premise that the trial judge was obliged to credit the witnesses called by the defense.”

Appellate courts review insufficiency of evidence claims by examining “the evidence in the light most favorable to the prosecution, [to determine if] any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Titus v. State*, 423 Md. 548, 557 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Our goal is not to determine if the lower court’s ruling “was in accord with the weight of the evidence, but rather, whether there was sufficient evidence at trial ‘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. Stanley*, 351 Md. 733, 750 (1998) (quoting *State v. Albrecht*, 336 Md. 475, 479 (1994)).

“First degree assault prohibits the commission of an assault with the specific intent to cause serious physical injury to another.” *Christian v. State*, 405 Md. 306, 344 (2008) (quoting *Shuck v. State*, 29 Md. App. 33 (1975), *cert. denied*, 278 Md. 735 (1976)). A specific intent crime “requires not simply the general intent to do the immediate act with no particular, clear or undifferentiated end in mind, but the additional deliberate and conscious purpose or design of accomplishing a very specific and more remote result.” *Thornton v. State*, 397 Md. 704, 738 (2007) (quoting *Shell v. State*, 307 Md. 46, 61 (1986), *abrogated by Price v. State*, 405 Md. 10, 949 (2008)). When determining the intent of the accused, the court “can infer the requisite intent from surrounding circumstances such as the accused’s acts, conduct and words.” *Jones v. State*, 213 Md. App. 208, 218 (2013), *aff’d*, 440 Md. 450 (2014) (citations and internal quotations omitted).

Appellant claims that his purpose in going to Gwinn's home was to check on her well-being and that because the lights were off he lacked the specific intent required to commit an assault. In rendering her verdict, the judge announced her fact findings stating:

At approximately 4:30-ish in the morning, [appellant] returned to the property. He entered the bedroom, Ms. Gwinn's bedroom. He turned on the light. He put his hand across Mr. Ott's face and he pointed a handgun at Mr. Ott. In addition, he pointed, he yanked Ms. Gwinn and he pointed the handgun at her as well.

[Appellant] directed Mr. Ott to get out. He ran out, called 9-1-1. He described on the 9-1-1 tape that a gun had been put in his face. The police came, they took a statement from both Mr. Ott and Ms. Gwinn and both identified that a weapon was pointed at them.

The Court finds there's overwhelming evidence that this was in fact a handgun. We know that [appellant] purchased handguns in Michigan. We know that he had a permit in Michigan for handguns. We also know that he put the handguns in his vehicle when he traveled. We also know that he separated the ammunition from the handgun when he stored the guns in his trunk.

We further know from Ms. Gwinn's testimony that she described the three guns that were in the house prior to Mr. Booth moving out of the house. We also have the testimony of Mr. Ott who said it was a black gun. There was no orange tip on it. We also had the testimony of the corporal who indicated that if it had been a toy gun it would have had a tip on it, and Mr. Ott who was in an excellent position to see a handgun pointed at his face did not see any evidence of an orange tip.

The 9-1-1 tape, on the 9-1-1 tape you can hear how shaky Mr. Ott is, how afraid that he was in [sic] and afraid for Ms. Gwinn because he asks [appellant] what was going to happen to Ms. Gwinn and he was concerned about her safety on the 9-1-1 tape.

The judge then stated:

The Court finds beyond a reasonable doubt and to a moral certainty that [appellant] committed a first degree assault on Keisha Gwinn, a first degree assault on James Victor Ott, a second degree assault on Ms. Gwinn and Mr.

Ott, conducted—acted in a reckless manner and is convicted of reckless endangerment of both creating a risk of serious physical injury and death to Ms. Gwinn as well as to Mr. Ott.

On this record, it is clear that the court simply did not find appellant’s version of events credible. Viewing the evidence in the light most favorable to the prosecution, we hold the judge was presented with sufficient evidence to support a rational inference of facts that could have firmly convinced the court of appellant’s guilt.

Furthermore, a first degree assault may also be accomplished when a person commits an assault with a firearm. Md. Code Ann., Crim. Law, § 3-202. Here, the court made factual findings that appellant committed an assault on Ott and Gwinn with a firearm. As such, there was sufficient evidence to support the court’s verdict under either section of the statute.

II. The trial court did not err when it found appellant guilty of use a firearm in the commission of a crime of violence when no handgun was recovered.

Appellant next argues the evidence was insufficient to find him guilty of the firearm charges because there was no proof he had a handgun or traveled with one. He maintains he possessed an airsoft gun and that the court’s reasoning that it was an actual handgun rather than a toy gun, because it lacked an orange tip, was flawed. The State contends appellant’s arguments should be rejected because there is no requirement that a weapon be recovered. The State also argues that the court did not have to find appellant’s defense credible.

As stated above, this court views sufficiency of evidence claims “in the light most favorable to the prosecution [and determines if] any rational trier of fact could have found

the essential elements of the crime beyond a reasonable doubt.” *Titus v. State*, 423 Md. 548, 557 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “We do not reweigh the evidence, but we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.” *Jones v. State*, 213 Md. App. 208, 216 (2013), *aff'd*, 440 Md. 450 (2014) (citations and internal quotations omitted). “In our review of the court's ruling, we extend great deference to the court's findings of fact and determinations of credibility.” *Cox v. State*, 161 Md. App. 654, 666 (2005).

In Maryland, “[a] person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony, whether the firearm is operable or inoperable at the time of the crime.” Md. Code Ann., Crim. Law § 4-204. In order for a conviction to be upheld, “tangible evidence in the form of the weapon is not necessary to sustain a conviction; the weapon's identity as a handgun can be established by testimony or by inference.” *Brown v. State*, 182 Md. App. 138, 166 (2008). Courts have held eyewitness testimony is sufficient to establish that a handgun was used in the commission of a crime. *Id.* at 168.

Appellant claims he was not in possession of an actual handgun on the morning of the incident since all of his guns were locked away in a friend's gun safe, and he did not enter the room with anything other than his keys and cellphone. Appellant did testify that he was in possession of an airsoft gun that morning because he retrieved it from the kitchen as he left the home. Here again, appellant's testimony was simply not believed by the

court. The trial judge, who was in the best position to assess the credibility of the witnesses, determined “there's overwhelming evidence that this was in a fact handgun.” We hold that determination was not clearly erroneous.

III. The trial court did not have to consider appellant’s defense of habitation and use of force to combat a wanton trespass before making a decision on any of the charges.

Appellant argues that the court did not consider his trespass defense before reaching its verdict. “The scope of this Court's review is delineated in Maryland Rule 8–131, with (a) stating in part: ‘Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.’” *Conyers v. State*, 354 Md. 132, 148 (1999). The record does not support appellant’s assertion that this issue was raised at the trial level. As such, this issue is not properly before us.

Even if the issue was properly preserved, the defense of private property would not be applicable because the appellant did not have a property interest in the room. In Maryland, a wanton trespasser is considered a person who “enter[ed] or cross[ed] over private property . . . after having been notified by the owner [not to enter] . . . unless entering or crossing under a good faith claim of right or ownership.” Md. Code Ann., Crim. Law § 6-403. One may use reasonable force to defend their property against a wanton trespasser under the following:

- (a) the intrusion is not privileged or the other intentionally or negligently causes the actor to believe that it is not privileged, and
- (b) the actor reasonably believes that the intrusion can be prevented or terminated only by the force used, and
- (c) the actor has first requested the other to desist, and the other has disregarded the request, or the actor reasonably believes that a request

will be useless, or that substantial harm will be done before it can be made.

Dashiell v. State, 214 Md. App. 684, 701 (2013) (quoting *Vancherie v. Siperly*, 243 Md. 366, 371 (1966)).

Here, the court made a finding that appellant no longer had a property interest in the room when it stated, “because . . . of the breakdown of the relationship with Ms. Gwinn, [appellant] moved out of the home and [then] moved into his stepfather's home.” Thus, appellant no longer had a property interest in the room nor a right to protect the room. Further, if he did have a right to protect the room, reasonable force would have been the standard. *Id.* There is no testimony that appellant asked Ott to leave prior to pointing the gun at him nor that appellant was in fear of danger when he pointed the handgun at Ott. Lastly, the court was not required to announce in its verdict every possible defense to the charges.

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