Circuit Court for Howard County
Case No. C-13-CR-19-000644

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0975

September Term, 2020

MELODY MITCHELL

v.

STATE OF MARYLAND

Kehoe,
Reed,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: December 23, 2021

Helisa Smith petitioned for and received a peace order against Melody Mitchell ("Mitchell" or "Appellant") pursuant to Maryland Code, Courts and Judicial Proceedings ("CJP"), § 3-1505. The final peace order prohibited Appellant, *inter alia*, from entering the residence of Smith. CJP § 3-1501 provides that the term "residence" "includes the yard, grounds, outbuildings, and common areas surrounding the residence." The complaint alleged that Mitchell was standing outside Smith's fenced-in yard and had a verbal altercation with Smith's adult son, Hayden Ford. Based on this alleged incident, Mitchell was charged with failing to comply with a peace order by entering the residence of Smith.

At trial, the State presented testimony from Ford regarding this alleged incident. Ford stated that he believed a portion of the sidewalk and grass that Mitchell entered was part of Smith's yard. Based on this testimony, Mitchell was convicted for failure to comply with a peace order by entering the residence of Smith.

Mitchell initially presents us with one question on appeal:

1. Is the evidence insufficient to sustain Ms. Mitchell's conviction for failure to comply with a peace order by entering the residence of Ms. Smith?

Mitchell also asks this Court to consider whether CJP § 3-1501, defining the term "residence" for purposes of peace orders, is unconstitutionally vague.

For the foregoing reasons we reverse Mitchell's conviction and remand for entry of a judgment of acquittal.

FACTS AND PROCEDURAL HISTORY.

In May 2019, Smith and Mitchell both worked at the Homewood Suites in Columbia, Maryland. Smith and a manager at Homewood Suites had a disciplinary meeting with Mitchell. As a result of this meeting, Mitchell became upset and walked out. After the meeting, Smith alleged she received text messages from Mitchell, which led her to apply for a peace order on May 21, 2019. A temporary peace order was granted that same day. Smith testified at trial that she attended the court hearing on May 28, 2019, but Mitchell did not appear at the hearing.[1] A final peace order was granted against Mitchell.[2]

The final peace order, in relevant part, is as follows:

> Based on the foregoing, the Court hereby ORDERS:
>
> 1. Unless stated otherwise below, this Order is effective until 11/28/2019 at 11:59 P.M.
>
> * * *
>
> 3. The respondent SHALL NOT contact (in person, by telephone, in writing, or by any other means), attempt to contact, or harass the petitioner.
>
> 4. The respondent SHALL NOT enter the residence of the petitioner at An undisclosed location for reasons of safety.[3]

[1] Deputy Tracy Best of the Howard County Sheriff's Office testified that she served Mitchell with the temporary peace order on May 22, 2019 and she went over the conditions of the order with Mitchell. Deputy Best also informed Mitchell of the scheduled court hearing on the final peace order that was to occur on May 28, 2019.

[2] Mitchell was provided with a notice on the temporary order which stated that "[i]f you fail to appear in court and a Final Peace Order is issued against you, you may be served by first class mail at your last known address with the Final Peace Order and all other notices concerning the Peace Order. The Peace Order will be valid and enforceable whether you are or are not in court and whether you do or do not actually receive it."

[3] The final peace order refers to Mitchell as respondent and Smith as petitioner.

Ford testified that while the final peace order was in effect, on June 9, 2019, there was an incident involving him and Mitchell outside Smith's home.[4] Ford testified that, after his brother alerted him to something happening outside, he went outside and looked over the top of the gate to the fenced-in yard. Ford said he could see Mitchell standing on the far sidewalk, close to the street. Ford opened the gate and stood on the patch of sidewalk right outside it. Ford testified that he and Mitchell exchanged words and that Mitchell started walking towards him.

Ford testified that he went inside to get his cousin and when he and his cousin returned outside, Mitchell was standing on the sidewalk that leads to Smith's gate. According to Ford, Mitchell then backed up onto the grass. Mitchell testified that she only took one step off the sidewalk and onto the grass. On cross examination, Ford was asked about this precise moment.

> [DEFENSE COUNSEL]: You walk in the house to get your cousin?
>
> [FORD]: Yeah.
>
> [DEFENSE COUNSEL]: Okay. And then what happened?
>
> [FORD]: Then by the time I came back out she was standing near my yard.
>
> [DEFENSE COUNSEL]: On the upper side?
>
> [FORD]: Yes.
>
> [DEFENSE COUNSEL]: But not in your yard?

[4] Ford resides at Smith's residence.

> [FORD]: To me it's in my yard, but I don't know what you guys consider my yard.
>
> [DEFENSE COUNSEL]: It's outside the fence though right?
>
> [FORD]: Yeah, yeah.
>
> [DEFENSE COUNSEL]: And she never did come inside the fence?
>
> [FORD]: To me she came inside of my yard, but I don't – like I said I don't know what you guys consider yard but that's – that's my yard.

Ford testified that after Mitchell backed up, that she began yelling at him. He stated that his cousin tried to diffuse the situation and eventually, Mitchell walked back down to the lower sidewalk and walked away.

Mitchell was later arrested and charged. The State presented its case-in-chief, and Mitchell's motion for judgment of acquittal was, in relevant part, denied. The defense presented its evidence and the jury considered the following charges against Mitchell: (1) failing to comply with a peace order by contacting or attempting to contact Helisa Smith; (2) failing to comply with a peace order by entering the residence of Helisa Smith; and (3) resisting arrest. The jury found Mitchell not guilty of failing to comply with a peace order by contacting or attempting to contact Smith and found Mitchell guilty of failing to comply with a peace order by entering the residence of Smith. The jury was unable to reach a unanimous verdict on the charge of resisting arrest and the State entered a *nolle prosequi* on this count at sentencing.

For the conviction of failing to comply with a peace order by entering the residence of Smith, Mitchell was sentenced to 90 days incarceration with all but 10 days suspended and one year of probation. Mitchell's timely appeal followed.

DISCUSSION

I.

Appellant argues that CJP § 3-1501, especially subsection (i) thereof, is void for vagueness. CJP § 3-501(i) provides that the term "residence" "includes the yard, grounds, outbuildings, and common areas surrounding the residence." Appellant asserts that she was not put on notice as to the meaning of the statutory term "residence," that the meaning could not be reasonably determined, and therefore her right to due process was violated.

Although Appellant preserved the due process issue when she brought it during her motion for judgment of acquittal at trial, we do not reach it here. "Even when a constitutional issue is properly raised at trial and on appeal, . . . this Court will not reach the constitutional issue unless it is necessary to do so." *Robinson v. State*, 404 Md. 208, 218 (2008) (quoting *Burch v. United Cable Television of Baltimore Ltd. P'ship*, 391 Md. 687, 695 (2006). Because we can resolve this case in Appellant's favor on her challenge to the sufficiency of evidence, there is no necessity to reach the constitutional issue.

II.

In reviewing sufficiency of the evidence, we ask whether, "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.*" *Roes v. State*, 236 Md. App. 569, 582 (2018) (emphasis added) (quoting *Grimm v. State*, 447 Md. 482, 494–95 (2016)). In other words, we "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." *State v. Smith*, 374 Md. 527, 534 (2003) (quoting *White v. State*, 363 Md 150, 162 (2001)). The Court is not tasked with weighing the credibility of the witnesses or conflicting evidence, as that is left to the trier of fact. *See Smith*, 374 Md. at 533–34 (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)).

"Generally, our standard of review has two basic components: (1) the "essential elements" of the crime; and, (2) whether the State has met its burden of production." *Roes*, 236 Md. App. at 583. We must determine whether the lower court's conclusions, as to the essential elements of the crime, were legally correct. *Id.* (quoting *Rodriguez v. State*, 221 Md. App. 26, 35 (2015)). Regarding the burden of production, we have explained as follows:

> In a criminal case, no issue is more important than whether the State has satisfied its burden of production. The concern is with production, as a matter of law, and not with persuasion, as a matter of fact. The appellate assessment of the burden of production is made by measuring the evidence that has been admitted into the trial objectively and then determining whether that body of evidence is legally sufficient to permit a verdict of guilty. In a jury trial, a motion for a judgment of acquittal at the end of the entire case initiates the examination of the satisfaction of the burden of production. If that burden of production is not satisfied, the trial judge is wrong, as a matter of law, for denying the motion and for allowing the case even to go to the jury.

Roes, 236 Md. App. at 583–84 (quoting *Chisum v. State*, 227 Md. App. 118, 130 (2016)).

The prosecution must satisfy its burden of production by presenting evidence to establish all elements of the charged crime. But the trier of fact—in this case the jury—is entitled to deference regarding inferences they may draw based on the evidence. *See Smith*, 374 Md. at 534–35 (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This is so because they are charged with weighing the evidence and assessing the credibility of the witnesses. *See State v. Raines*, 326 Md. 582, 590 (1992). Nevertheless, the jury cannot draw a factual inference without evidence to support it. *See Grimm*, 447 Md. at 506–10 (holding that scienter may not be inferred solely from the fact finder's disbelief of the witness testimony; the prosecution must present evidence consistent with the disbelief).

The requisite fact to be proven is that Appellant entered Smith's residence. Under CJP § 3-1501, "residence" "includes the yard, grounds, outbuildings, and common areas surrounding the residence." The State's sole evidence on this point is Ford's testimony that *he thinks* the place where Appellant stood is part of his mother's yard. Even in Ford's eyes, the legitimacy of his statement is questionable—he twice acknowledged "I don't know what you guys consider yard but that's – that's my yard." More importantly, there was no evidence showing the basis for his opinion—such as that he was the tenant or homeowner who had studied his boundary lines. This Court defers to any possible "*reasonable*" inference the jury could have drawn. *Grimm*, 447 Md. at 495 (emphasis added) (quoting *Jones v. State*, 440 Md. 450, 455 (2014)). It would be reasonable to infer

that Appellant was in Smith's yard if Ford had testified that she was inside the fenced-in area—the fence itself is sufficient evidence of what constitutes a "yard" or "grounds".

But land outside the fence is materially different and proving that was within Smith's yard or grounds required testimony of someone with demonstrated knowledge of pertinent boundary lines. Such would include the landowner or tenant, or a surveyor or other expert who had reviewed the pertinent title documents. *Cf. Raines*, 326 Md. at 592 (quoting *State v. Earp*, 319 Md. 156, 167 (1990)) (holding that the jury's reasonable inferences drawn from presented facts may establish *subjective* elements of the crime that cannot be objectively and directly proven) (emphasis added).

As an alternative argument, the State asserts that a rational finder of fact could conclude that if not actually the "yard", the sidewalk portion and patch of grass on which Appellant stood are part of the "common areas surrounding the residence." When interpreting a statute, if the language is clear, the Court will give effect to the plain meaning of the words as written. *Alston v. State*, 433 Md. 275, 295–96 (2013) (quoting *Pak v. Hoang*, 378 Md. 315, 323 (2003)). Common areas can mean portions of property which a landlord designed for the common use of all tenants, including passageways and stairways. *See Shields v. Wagman*, 350 Md. 666, 673–74 (1998) (quoting *Langley Park Apartments, Sec. H., Inc. v. Lund*, 234 Md. 402, 407 (1964)). Here, however, Smith lived in a townhome community, and the State introduced no evidence to establish that there existed any common areas. It is not reasonable to infer that the patch of grass or sidewalk portion in which Appellant stood is a common area when, as here, there is no direct

evidence that the areas are owned and maintained by Smith's landlord rather than being publicly owned. The only evidence that exists as to the status of the sidewalk portion and grassy area in which Appellant stood is Ford's testimony stating that he believes the areas to be part of his yard. This statement was insufficient.

The area on which Appellant stood does not surround the residence; it surrounds the yard. CJP § 3-1501, in its definitions section, states that "residence" "*includes* the yard, grounds, outbuildings, and common areas surrounding the residence." (emphasis added). Residence is not defined *as* the yard, grounds, outbuildings, and common areas, it *includes* them. Thus, when defining the phrase "common areas surrounding the residence," the word "residence" retains its plain meaning — the house itself. *See David A. v. Karen S.*, 242 Md. App. 1, 25 (2019) (quoting *Phillips v. State*, 451 Md. 180, 196 (2017)) (holding that statutory interpretation begins with the plain language of the statute). To hold otherwise, would unreasonably expand the definition of "residence" to include all publicly used areas adjacent to a yard, grounds, outbuilding, or common area.

The State's final argument is that even if the meaning of "common area[]" is not clear, the legislative intent supports finding that the area in which Appellant stood is indeed a common area surrounding Smith's residence. The State (and Appellant) asks us to consider the legislative history pertaining to the statutory definition of "residence" under Maryland Code, Family Law Article, § 4-501, which is identical to the definition we interpret here. *See* CJP § 3-1501. In the Family Law Article, the definition of residence was expanded to include "yard, grounds, outbuildings, and common areas

surrounding the residence"—the same language used in CJP § 3-1501— in order to provide increased protection to victims and prevent legal opportunity "for abusers to harass or threaten their victims from lobbies of apartment houses, from porches, stoops, barns, garages, and other out-buildings which are part of the residential area occupied by the victim." *Package of Domestic Violence Bills from the Family Violence Council Regarding Senate Bills 157, 158, 159, 160, and 161 Before S. Jud. Proc. Comm*., 1997 Leg., 411th Sess. 2 (Md. 1997) (statement of Sen. Delores G. Kelley, Chair, S. Jud. Proc. Comm.). The same legislative intent can be inferred with respect to the peace order legislation. Yet, the expanded definition of residence does not help the State prove its case here. We discern no legislative intent to expand the definition of residence to include all areas adjacent to a protected person's yard, such as streets, sidewalks, or even a neighboring lawn.

CONCLUSION

No reasonable trier of fact can find, based on the evidence presented at trial, Mitchell guilty for failing to comply with a peace order by entering Smith's residence. Because the State failed to meet its burden of production, the jury verdict cannot be sustained.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED; CASE REMANDED WITH INSTRUCTIONS FOR ENTRY OF A JUDGMENT OF ACQUITTAL. COSTS TO BE PAID BY HOWARD COUNTY.