

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1081

September Term, 2014

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JUSTIN SHARP

v.

STATE OF MARYLAND

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Wright,  
Reed,  
Alpert, Paul E.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: June 29, 2015

\*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, Justin Sharp, was tried before a jury in the Circuit Court for Baltimore County. On May 5, 2014, Sharp was found guilty of first-degree assault and wearing and carrying of a dangerous weapon with intent to injure. On July 9, 2014, the court sentenced Sharp to twenty-five years in prison for first-degree assault with three years concurrent for wearing and carrying of a dangerous weapon. This appeal followed.

Sharp asks the following questions, which we have redrafted:<sup>1</sup>

- 1) Did the trial court properly exercise its discretion in sentencing Sharp?
- 2) Was the evidence sufficient to sustain Sharp's convictions?

We answer “yes” to both questions and explain the reasons, below.

### **FACTS**

On March 17, 2013, Raymond Evianiak went to the shared house of Brian Mast and Kristopher Summers to hang out for St. Patrick's Day. Sharp was also present at the party. At the time, Evianiak was dating a woman with whom Sharp had fathered a child.

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<sup>1</sup> In his brief, Sharp asked:

1. Whether Mr. Sharp is entitled to a new sentencing hearing inasmuch as the sentencing judge took into account Mr. Sharp's refusal to plead guilty in fashioning a lengthy prison sentence?
2. Whether the evidence was insufficient to sustain Mr. Sharp's convictions for the crimes that were charged?

At the party, Evianiak became intoxicated, smoked marijuana, and took Klonopin.<sup>2</sup> He passed out on the toilet. Later, Evianiak woke up on the couch; he was in poor physical shape – he was “covered in blood and had rips on his face.”

Mast testified that he was also drinking and taking Klonopin at the party. He stated that he went to sleep, but he was awakened at about 4:00 a.m. to the sound of bottles breaking and people fighting. Mast said that he saw a large amount of broken glass in his house and blood everywhere. He testified that he saw Sharp on top of Evianiak, hitting Evianiak with a bottle. Mast stated that he calmed Sharp, placed Evianiak on the couch, and then went back to bed. Mast testified that he woke up later and began to panic after realizing how bad Evianiak appeared. Mast then told Sharp to leave and told Evianiak that he needed to call someone and go to a hospital. Mast began to clean the house and threw out a large amount of glass. Approximately three days later, Mast testified that the police approached him, and that he did not tell the police what he knew about the incident. Instead, he stated that he only told the police about Sharp’s involvement after the police accused him and Summers of the crime.

Summers testified that Evianiak was “belligerent and drunk” and that he insulted Sharp at the house. Summers stated that Sharp then said that he wanted to kill Evianiak and had hit Evianiak a couple times by punching and slapping him. Summers said that he

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<sup>2</sup> Klonopin (a/k/a Clonazepam) is prescribed to prevent and control seizures. This medication is known as an anticonvulsant or antiepileptic drug, and is also prescribed to treat panic attacks, by calming the brain and nerves. It belongs to a class of drugs called benzodiazepines. <http://www.medicinenet.com/clonazepam-oral/article.htm> (last visited on June 17, 2015).

separated Evianiak and Sharp and the fighting stopped momentarily. According to Summers, Evianiak did not have a problem with anybody else at that party. Summers went to bed, and upon awaking the next morning, he saw Evianiak passed out on the couch bleeding.

Jennifer Evianiak (“Jennifer”), Evianiak’s younger sister, testified that, on March 18, 2013, her brother called her to tell her that he was in the hospital. Jennifer went to the hospital and asked Evianiak who had injured him. He told her “Justin Sharp and Bob Owens.”

Deoxyribonucleic acid (“DNA”) analysis revealed that Evianiak’s blood was on the ceiling of the home. Sharp’s blood was found on the hallway ceiling of the home and on the bedroom doorway. Both Evianiak’s and Sharp’s blood were found on a jacket belonging to Evianiak. DNA of Mast and Summers was not obtained for comparison purposes.

Detective William Burton investigated the incident. Evianiak told him that Sharp and another unidentified person were responsible for his injuries. Det. Burton discovered that Mast and Summers had spent over 15 hours cleaning the house before the police examined it. Det. Burton believed that both Mast and Summers were actively concealing their knowledge of the crime; however, he did not have any other information that suggested they were responsible.

While Sharp was detained in the detention center, he made incriminating statements in his recorded telephone calls. During a call, Sharp asked his mother to provide a false alibi for him. He suggested to her that he alone was responsible for assaulting Evianiak.

He also told his mother that he knew Evianiak had no idea who assaulted him because Evianiak had told police that two people had assaulted him. Sharp claimed, in the jail calls, that Evianiak was unconscious when he assaulted Evianiak, who, therefore, had no idea who had attacked him.

Sharp testified in his defense about how Evianiak came to be injured. Sharp admitted that he went to the party at the house. According to Sharp, Evianiak was very belligerent and drunk, and he began harassing Sharp when Sharp, Evianiak, and Summers were in the living room. Sharp stated that he felt threatened. Sharp testified that he and Evianiak then began to wrestle and knocked glass onto the ground. Sharp stated that Summers started yelling and hit Evianiak over the head with a glass bottle, which shattered and cut Sharp on the hand. At that time, Mast woke up and indicated that he did not want any part of the argument. Sharp followed Mast to Mast's bedroom while holding his bleeding hand. Sharp tried to stop the bleeding in the bathroom and realized that he had sustained a serious cut to the inside of his hand. Sharp went to the hospital for treatment but admitted to lying to medical personnel about how he had injured his hand. Sharp testified that he did not attack Evianiak, and that Mast and Summers were both lying about the incident.

## **Discussion**

### **I. Sufficiency of Evidence**

#### **A. Standard of Review**

The standard for reviewing the sufficiency of the evidence is “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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citation omitted); *see also Allen v. State*, 402 Md. 59, 71 (2007); *Rivers v. State*, 393 Md. 569, 580 (2006); *Moye v. State*, 369 Md. 2, 12 (2002). We 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.” *Harrison v. State*, 382 Md. 477, 487-88 (2004) (citing *McDonald v. State*, 347 Md. 452, 474 (1997)). In performing its function, the jury is free to accept the evidence it believes and reject that which it does not believe. *Muir v. State*, 64 Md. App. 648, 654 (1985). When reviewing a challenge to the sufficiency of the evidence, we “view the evidence, and all inferences fairly deductible from the evidence, in a light most favorable to the State.” *Hackley v. State*, 389 Md. 387, 389 (2005) (citation omitted).

## **B. Analysis**

Sharp argues that the evidence was insufficient to sustain his convictions. Specifically, Sharp contends that “at the very least, Summers and Mast were clearly accomplices in the assault” because “they were present in the house during the assault; they did not seek help for Evianiak following the assault; they actively tried to conceal evidence regarding the incident; and they lied to the police repeatedly about their actions immediately following the assault which suggest that they were participants in the crime.” Sharp avers that reversal is required because there was not sufficient corroboration of the testimony of the alleged accomplices, Mast and Summers.

Preliminarily, Sharp’s sufficiency claim is not preserved for appellate review. Md. Rule 4-324(a), governing motions for judgment of acquittal, requires, *inter alia*, that “[t]he

defendant shall state with particularity *all* reasons why the motion should be granted.” (Emphasis added). It is firmly settled that merely moving for judgment of acquittal, then “submitting” without argument, does not satisfy the particularity requirement of Md. Rule 4-324(a). *Tarry v. State*, 410 Md. 594, 613 (2009) (failure to articulate particularized ground renders claim unpreserved); *Byrd v. State*, 140 Md. App. 488, 494 (2001) (rule requires defendant to “state with particularity” why motion for judgment of acquittal should be granted; mere assertion that evidence was insufficient will not preserve claim). Nor is it sufficient to argue at trial that the evidence was insufficient for one reason and then urge a different reason for the insufficiency for the first time on appeal. *See Poole v. State*, 207 Md. App. 614, 632-33 (2012) (insufficiency claims are not preserved where the arguments raised on appeal differ from those raised before the trial court); *Wilder v. State*, 191 Md. App. 319, 336 (2010).

In this case, Sharp submitted a motion for a judgment of acquittal with respect to second-degree assault and carrying a dangerous weapon without arguments. Although he made a specific argument with respect to the charge of first-degree assault at trial, the argument he made there is different from the argument he now advances on appeal. Before the circuit court, Sharp argued that the evidence was insufficient to sustain the first-degree assault charge because he was more credible than the State’s witnesses at trial, not that Mast and Summers were accomplices, and that Mast’s and Summers’s testimonies were not sufficiently corroborated. In fact, Sharp’s claim on appeal that Mast and Summers were accomplices is inconsistent with Sharp’s own testimony at trial.

Sharp testified that Mast was asleep when the assault on Evianiak began; then, Mast woke up and indicated that he did not want any part of the argument which corroborated Mast's testimony. Although Sharp testified that Summers hit Evianiak over the head with a glass bottle, Sharp did not suggest that he was Summers's accomplice or vice versa. According to Sharp's own testimony, Mast and Summers were not accomplices. Regardless, because Sharp's claim was not raised at trial, it need not be considered on appeal.

Even if Sharp's sufficiency argument was preserved as to accomplice testimony, and if Mast or/and Summers were accomplices, we decline to reverse Sharp's convictions because there was sufficient corroboration that Sharp assaulted Evianiak. To be legally sufficient, the independent corroborative evidence "must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself." *Brown v. State*, 281 Md. 241, 244 (1977) (citation omitted).

Mast's and Summers's testimonies were sufficiently corroborated by Sharp. Sharp admitted that he was with Mast and Summers in their house when Evianiak was attacked. Sharp's statements in recorded telephone calls from jail suggested that he alone was responsible for assaulting Evianiak. During the calls, Sharp said: "There is no other person. That's why [Evianiak] has no idea what he's talking about"; "[Evianiak] was passed out drunk"; "[Evianiak] don't know what happened to him. He's just guessing . . . he can't prove it." Mast's and Summers's testimonies were also corroborated by DNA evidence



that Sharp alone assaulted Evianiak. Of the five blood samples that were collected from the house, all were matched to either Evianiak or Sharp.

Sharp's participation in the assault was also corroborated by other evidence. Evianiak told his sister, Jennifer, and Det. Burton that Sharp assaulted him. Sharp sustained a serious cut to his hand. Sharp admitted that he lied to medical personnel about how he injured his hand. Thus, even if preserved, there was sufficient evidence to sustain Sharp's convictions.

## **II. Sentencing**

### **A. Standard of Review**

The discretion of the sentencing court to consider a variety of factors in imposing sentence is virtually boundless. *Douglas v. State*, 130 Md. App. 666, 677 (2000). It is equally well-established that there are only three grounds for appellate review of sentences recognized in this state, which the Court of Appeals set forth in *Gary v. State*, 341 Md. 513, 516-17 (1996): “(1) whether the sentences constitute cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence was within statutory limits.” (Citation omitted). In *Ridenour v. State*, 142 Md. App. 1, 11 (2001), we reiterated the trial judge's broad power over sentencing and the appellate courts' scope of review, stating:

Trial judges are vested with broad discretion in sentencing. In exercising this discretion, the sentencing judge should consider “the facts and circumstances of the crime committed and the background of the defendant, including his or her reputation, prior offenses, health, habits, mental and moral

propensities, and social background.” The judge’s consideration should be undertaken with the aim of furthering the goals of the criminal justice system: punishment, deterrence, and rehabilitation.

(Internal citations omitted).

### **B. Analysis**

Sharp contends that the circuit court improperly considered Sharp’s refusal to plead guilty in imposing sentence upon him. Prior to trial, Sharp was offered a plea deal by the State, whereupon he would be sentenced to twenty years’ incarceration, with all but ten years suspended. Immediately prior to trial, the trial judge offered the same term, but with all but eight years suspended. Sharp complains that the court’s comments at sentencing evidenced a clear intent to punish Sharp, not just for the crime that was committed, but also for his refusal to accept a plea.

The State responds that Sharp’s argument was not preserved for appellate review because defense counsel failed to object to the circuit court’s sentence. In addition, the State contends that the circuit court did not impose a more severe sentence because Sharp refused to plead guilty -- it merely declined to impose the same lenient sentence it offered during plea negotiations. We agree with the State.

A contemporaneous objection is required to preserve appellate review of a complaint that a trial court was motivated by impermissible considerations in imposing a sentence. *Reiger v. State*, 170 Md. App. 693, 700-01 (2006). There is no basis for appeal from a trial court’s ruling if the party acquiesces in that ruling. *Watkins v. State*, 328 Md. 95, 99-100 (1992), *overruled on other grounds*, *Calloway v. State*, 414 Md. 616 (2010).

The record demonstrates that Sharp never objected to the circuit court’s sentence or

claimed that the court improperly considered his failure to plead guilty in imposing a sentence. The following is pertinent:

[Defense Counsel]: I'm going to ask Your Honor to consider not incarcerating Mr. Sharp outside the guidelines and, in fact, Your Honor offered, if Mr. Sharp wanted to take a plea to twenty years, suspend all but a cap of eight.

[The Court]: Um hm.

[Defense Counsel]: So that Your Honor would have heard the same facts from the State in the plea. You would have heard about the injuries, you would have theoretically seen Mr. Evianiak, you would, I mean, nothing is anything different because we went to trial, other than Mr. Sharp wanted the opportunity to speak and to defend himself in what he believed was a situation that was more than just himself and mutual as well. So –

[The Court]: So you don't believe that putting State's witnesses, the victim through, reliving that and testifying in Court is no different than if he would have admitted what he did and pled guilty in front of me? You're saying that, that's all the same?

[Defense Counsel]: Your Honor, I'm not saying, I'm not saying it's no different but I also don't –

[The Court]: That's what you, you just, you just said there's no difference.

[Defense Counsel]: No, I don't believe in punishing someone for wanting to go to trial. So, -

[The Court]: Well, but the whole idea of an offer of a plea is to give something in exchange for sparing the State and the witnesses and the victims the trauma, the risk of a trial. I mean, that's –

[Defense Counsel]: Right.

[The Court]: Would you agree?

[Defense Counsel]: I would agree –

[The Court]: That there's a give and take when it comes to a plea negotiation.

Nothing in this colloquy between defense counsel and the circuit court could be construed as an objection by Sharp to the alleged improper consideration of Sharp's refusal to plead guilty in imposing sentence. Defense counsel's agreement with the judge at the conclusion of the discussion demonstrated acquiescence to the court's ruling. *See Watkins*, 328 Md. at 99-100.

Even if Sharp had objected to the circuit court's sentence, this Court has made clear that there is a significant difference between punishing someone for the exercise of a constitutional right and withdrawing the favorable treatment afforded by a guilty plea: "It is one thing to punish; it is quite another to deny a reward which has no longer been earned." *Sweetwine v. State*, 42 Md. App. 1, 10 n.4 (1979). The court in clear language explained to Sharp that he was not entitled to a reduced penalty because it was only an offered aspect of a plea agreement. The court also explained the reasons of its sentencing decision, as follows:

I am going to exceed the sentencing guidelines in this case. I find this attack to be one of the most brutal and heinous that I have seen in almost thirty years of [the] practice of law. It is amazing that this individual was able to live after having been brutally attacked . . . . This was not a fight. This was a massacre. This was a victim who was unconscious when he was attacked by this Defendant, who consistently beat him about his face with bottles, fracturing his eye socket, leaving him . . . I do not find anything in the presentence report or his allocution or mitigation which would persuade me that his individual has any redeeming qualities whatsoever . . . .

There is nothing above that would indicate that the sentencing of Sharp was in any way influenced or enhanced by his refusal to plead guilty. Therefore, we hold that the

circuit court properly exercised its discretion in sentencing Sharp. For all of the foregoing reasons, we affirm the court's judgment.

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