Circuit Court for Charles County
Case No. 08-K-16-000283

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1370

September Term, 2017

STEPHEN PAYSINGER

v.

STATE OF MARYLAND

Friedman,
Beachley,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: October 4, 2018

* 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.

In August 2017, a jury in the Circuit Court for Charles County convicted appellant Stephen Paysinger ("Paysinger") of second-degree assault, violation of a protective order, and malicious destruction of property. Paysinger contends there was insufficient evidence to convict, and that the trial court erred in excluding a portion of a relevant transcript. We disagree, and so affirm.

BACKGROUND & PROCEDURAL HISTORY

At a March 2016 proceeding, Paysinger's ex-girlfriend obtained a protective order against him from the same court that tried the present case. When granting the order, the court acknowledged the ex-girlfriend's right to obtain certain property from the house in Waldorf where she, her daughter, and her two sons had lived with Paysinger.[1] Paysinger indicated at the hearing that he would not be home afterwards, so while the ex-girlfriend headed to work in Washington, D.C. once the proceeding was over, her parents and three children—who had been with her at the hearing—tried to retrieve property from the house.[2]

Within minutes after the parents and children arrived at the house, Paysinger, along with his own mother, also arrived. Heated words led to a "really rowdy" tussle inside and outside the house.[3] The physical altercation involved Paysinger punching, choking, and

[1] The protective order also stated that "petitioner [the ex-girlfriend] may return to the home to obtain the petitioner's and the children's clothing, property, including furniture in the garage." Because the home was Paysinger's, the circuit court had not granted the ex-girlfriend use and possession.

[2] When asked at trial why they went back to the house while the mother headed to work, the daughter testified: "The Judge gave us permission to get ou[r] things."

[3] The ex-girlfriend's mother testified that Paysinger shouted, "Get the 'F' out of my house." The daughter stated that Paysinger yelled, "This my mother f'n house. Y'all have

biting the ex-girlfriend's 65 year-old father, and allegedly hitting the 17 year-old daughter in the back with a wooden bar stool. After declaring "I got something for all of y'all," Paysinger ran upstairs, got a clothes iron, and used it to repeatedly strike the car in which the ex-girlfriend's two sons (ages six and 11) were sitting.[4] Afraid of the banging from the iron and scared that glass would shatter into the car, the two boys jumped out of the car. When police arrived at the scene, the daughter was having an asthma attack, and the two sons were "very upset and crying."[5] As the police officer attempted to speak with Paysinger, he was still "yelling and making threats" to the grandfather. In response to a call from the daughter, the ex-girlfriend arrived at the house in time to see police already there.

At trial, Paysinger argued that he arrived at the home to find his ex-girlfriend's family taking his belongings, and that he only struck the car with the iron in self-defense after the ex-girlfriend's mother tried to hit him with the car, and not to scare the two boys. As will be discussed further below, Paysinger additionally sought to introduce into evidence a certain brief portion of the transcript from the protective order hearing that had occurred the same day as the altercation. Though Paysinger claimed it demonstrated his

to get out," and aggressively told the grandfather that "he was gonna beat his mother f'n ass."

[4] The ex-girlfriend's mother testified that while "swinging the iron by the cord," Paysinger hit the car's windshield twice, broke a headlight, hit the driver's window about three times, and hit the backseat window twice, causing $3,000 in damage.

[5] An ambulance had also been called for Paysinger's mother, who thought she might be having a stroke during the encounter.

desire not to be around the ex-girlfriend's father, buttressing his claims of self-defense and the defense of property, the trial court excluded that portion of the transcript.

The jury found Paysinger guilty of two counts of second-degree assault (one count for each son in the car), three counts of violation of a protective order (one count each for the two boys and the daughter), and one count of malicious destruction of property.[6] At sentencing, Paysinger received ten years for each count of second-degree assault, each to run concurrent with the other.[7] Paysinger filed a motion for reconsideration which was denied. Paysinger timely appealed.

DISCUSSION

Paysinger argues that the evidence was insufficient to prove that he acted with criminal intent regarding the second-degree assault against the two boys in the car, as well as the violation of a protective order. Additionally, Paysinger claims that the trial court erred in excluding the portion of the transcript from the earlier protective order hearing because it would have supported his assertions that he acted in self-defense and the defense of his property.

In reviewing for sufficiency of the evidence, we ask "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

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[6] The jury found Paysinger not guilty of first-degree assault of the father, second-degree assault of the father, and second-degree assault of the daughter.

[7] Paysinger also received 90 days for each count of violating a protective order and 209 days for the malicious destruction of property, but for these he was given credit for time served.

Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)). In doing so, we give due regard to the trial court's factual findings and do not "re-weigh" the evidence. *Spencer v. State*, 422 Md. 422, 434 (2011). Deferring "to any possible reasonable inferences [that] the trier of fact could have drawn from the . . . evidence," *Grimm*, 447 Md. at 495 (quoting *Jones v. State*, 440 Md. 450, 455 (2014)), appellate courts "need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Grimm*, 447 Md. at 495 (quoting *State v. Mayers*, 417 Md. 449, 466 (2010)). "In short, the question is not whether we might have reached a different conclusion from that of the trial court, but whether the trial court had before it sufficient evidence upon which it could fairly be convinced beyond a reasonable doubt of the defendant's guilt of the offense charged," *Spencer*, 422 Md. at 434 (quoting *Dixon v. State*, 302 Md. 447, 455 (1985)) (Internal quotation marks and emphasis omitted).

When reviewing the admissibility of evidence, the "threshold determination of whether evidence is relevant is a legal conclusion that is reviewed *de novo*." *Fuentes v. State*, 454 Md. 296, 325 n. 13 (2017). If the evidence is relevant, the trial court's decision to admit or exclude it is then reviewed for an abuse of discretion. *State v. Simms*, 420 Md. 705, 725 (2011). The trial court's decision regarding admissibility "will not be reversed simply because the appellate court would not have made the same ruling," *King v. State*, 407 Md. 682, 697 (2009), but if "no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. 551, 563 (2018). "The decision under

consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King*, 407 Md. at 697.

I. There Was Sufficient Evidence to Find Paysinger Intended to Frighten the Children.

The State could convict Paysinger of second-degree assault if it proved, among other elements, that he intended to place the two boys in fear of immediate offensive physical contact. *See Watts v. State*, 457 Md. 419, 440 (2018) ("under Maryland common law, battery, attempted battery, and intent to frighten each constitute second degree assault"); Md. Code. Ann., Crim. Law. § 3-203. When "determining a defendant's intent, the trier of fact 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) (quoting *Smallwood v. State*, 343 Md. 97, 104 (1996)) (Internal quotation marks omitted). Paysinger acknowledges that multiple witnesses testified that he repeatedly struck the car with a clothes iron while the two sons were sitting inside it, but he claims that he did so in self-defense, and not to frighten the boys. Despite Paysinger's assertion that his testimony offered the only direct evidence of his intent, the jury was free to disbelieve his testimony and find the other witnesses more credible. *See Longshore v. State*, 399 Md. 486, 499-500 (2007) ("[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder") (Citation omitted). The jury also heard that Paysinger declared "I got something for all of y'all" before going to get the clothes iron; that after he struck the car with the iron multiple times, the boys jumped out of the car afraid that the

glass would shatter; and that when the police arrived, the boys were "very upset and crying." Viewing this evidence in the light most favorable to the State, the jury could reasonably believe that Paysinger intended to make the boys fearful of immediate offensive physical contact.

II. There Was Sufficient Evidence to Find Paysinger Violated a Protective Order.

Paysinger contends that he should not have been convicted of violating the protective order, which prohibited harassing his ex-girlfriend's three children, because he only struck the car in self-defense and because he only tussled with the daughter to protect his own property. For the same reasons as discussed above, there was sufficient evidence to find that Paysinger violated the protective order. The jury heard from the ex-girlfriend's parents, her three children, and a police officer (as well as from Paysinger and his mother) about the events in question and saw photos and a video that were taken contemporaneously to the encounter. There was more than sufficient evidence in the record—the accounts of the physical altercation with the daughter inside the house, Paysinger's striking the car with the iron while the sons were inside it, his menacing shouting toward the family throughout—to reasonably lead the jury to find that Paysinger harassed each of the children.

III. The Trial Court Did Not Abuse its Discretion in Excluding a Portion of the Transcript from the Protective Order Hearing.

"Maryland Rule 5-403 codifies the inherent powers of trial judges to exercise discretion to exclude relevant, probative evidence that is unduly prejudicial, confusing, or time-consuming." *Crane v. Dunn*, 382 Md. 83, 100 (2004). Despite Rule 5-403's

requirement that the trial court's assessment "produce a substantial tilt toward unfair prejudice in order to justify inadmissibility," *Newman v. State*, 236 Md. App. 533, 549 (2018) (Internal quotation marks omitted), we will not reverse the trial court's decision as an abuse of discretion simply because we may have made a different ruling. *King*, 407 Md. at 697. Nor does a trial judge need to state on the record why he or she decides to exclude relevant evidence. *Crane*, 382 Md. at 100.

Here, the parties agreed to enter a redacted transcript from the hearing that had granted the ex-girlfriend a protective order earlier on the same day as the events in question. When deciding which portions of the transcript to admit or redact, the trial court excluded one section requested by Paysinger in which he had stated that he did not want the ex-girlfriend's father around the house: "I don't want him around . . . I do not want him there either. I don't want him there." The trial court determined the statement's context concerned a matter (the theoretical transfer of real property at some point in the future) that was not relevant to the actual issue before the jury (the dispute that occurred at the house when the family came to retrieve their personal property).

Paysinger argues that the excluded statement showed the ex-girlfriend's father did not have permission to access or enter the home. Even were we to assume that it was therefore relevant to Paysinger's claims of self-defense and the defense of property, the trial court's decision to exclude the statement from the redacted transcript was not so "removed from any center mark," *King*, 407 Md. at 697, that "no reasonable person would take the view adopted by the circuit court." *Williams*, 457 Md. at 563. As the trial court

noted when excluding it, the context in which the statement was made during the protective order hearing could have needlessly confused the jury. And as the State argued when deciding which portions of the transcript to redact, the statement could have prejudicially called attention to a prior bad act involving Paysinger and the family.

Furthermore, even were we to assume that the statement's probative value outweighed any confusion or other prejudice, any error in excluding the sentence was harmless. The jury heard first-hand testimony from Paysinger detailing at length his antagonistic views toward the father, and his contention that the father was restricted from accessing the house. This testimony from Paysinger, in which he repeatedly emphasized the same sentiments conveyed by the excluded statement, allowed the jury to ascertain his views and weigh the merits of his self-defense and defense of property claims. The court's decision to exclude one brief portion ("I don't want him around . . . I don't want him there") from the redacted transcript was negligible as to "the cumulative effect of [any error] on the ability of a jury to render a fair and impartial verdict," *Donaldson v. State*, 416 Md. 467, 497 (2010) (quoting *Lawson v. State*, 389 Md. 570, 604-05 (2005)); *see Poole v. State*, 295 Md. 167, 175 (1983) (no prejudice when an error "did not add to or subtract from" the jury's ability to assess a witness's credibility).

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.