UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1455

September Term, 2014

FRITZ JOSEPH

v.

STATE OF MARYLAND

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

JJ.

Opinion by Alpert, J.

Filed: June 8, 2015

Fritz Joseph, appellant, was convicted by a jury sitting in the Circuit Court for Wicomico County of second-degree assault. Following his conviction, the court sentenced appellant to thirteen months of imprisonment, all suspended but three days already served, followed by twelve months of supervised probation. Appellant asks one question on appeal: Was the evidence sufficient to support his conviction? For the following reasons, we shall affirm the judgment.

FACTS

During the daylight hours of November 25, 2013, Officer Jay Miller of the Salisbury Police Department was dispatched to a house at 718 Roger Street in Salisbury for a domestic disturbance. When he arrived, he observed appellant standing about five feet from a woman who was sitting on the front steps, crying and trembling. The woman was identified as appellant's wife, Rachelle Joseph. Appellant had a bloody abrasion on the right side of his cheek. Rachelle had a bloody abrasion between her nose and upper lip and bloody cuts on the inside of her upper lip. The officer photographed their injuries. The photographs were admitted into evidence at trial.

Officer Miller testified that appellant said he had called the police, explaining that he and his wife were arguing about fidelity when she "overreacted." Appellant told the officer that "he covered her mouth and took her cell phone" to "prevent[] her from leaving the residence and causing a scene." When the officer attempted to take a statement from Rachelle, who was still trembling and crying on the front steps, she made eye contact with

appellant, who then said something to her in a language the officer could not understand. Immediately after appellant spoke to his wife, she urinated on herself. Because the victim would not make any statements in appellant's presence, the officer called the victim witness coordinator with the Salisbury Police Department and took Mrs. Joseph inside the house while a second officer stayed with appellant. Officer Miller testified that Mrs. Joseph said very little until the coordinator arrived.

An investigator for the Wicomico County State's Attorney's Office testified that roughly five months after the incident, he went to the house where the incident had occurred in an attempt to locate Rachelle. He found the house unoccupied. The investigator contacted several governmental organizations in an attempt to find her, but he was unsuccessful in locating her.

DISCUSSION

Appellant argues on appeal that there was insufficient evidence to sustain his conviction for assault. He makes a two pronged attack. First, appellant argues that the State failed to establish that he caused any injury to his wife. Second, he argues that the State failed to provide any corroboration for his out-of-court statement, and without corroboration, his statement to the police officer was insufficient to prove his guilt. The State disagrees as do we. We shall address each argument in turn.

When reviewing the sufficiency of the evidence, our task is 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.'" *Taylor v. State*, 346 Md. 452, 457 (1997)(quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))(emphasis in original). The appellate court does not weigh the evidence or judge the credibility of the witnesses, as that is the responsibility of the trier of fact. *Bryant v. State*, 142 Md. App. 604, 622, *cert. denied*, 369 Md. 179 (2002). *See also Jones v. State*, 343 Md. 448, 465 (1996). Instead, "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." *Bryant*, 142 Md. App. at 622-23 (quotation marks and citation omitted). *See also State v. Suddith*, 379 Md. 425, 430 (2004).

As with direct evidence, circumstantial evidence will sustain a conviction when all the facts taken together do not require that the fact-finder resort to speculation or conjecture. *Taylor*, 346 Md. at 458. Several cases have recited the litany that "a conviction upon circumstantial evidence alone will not be sustained unless the circumstances, taken together, are inconsistent with any reasonable hypothesis of innocence." *Hebron v. State*, 331 Md. 219, 224 (1993). *See also Wilson v. State*, 319 Md. 530, 536-37 (1990). The Court of Appeals has explained:

> [c]ircumstantial evidence is not like a chain which falls when its weakest link is broken, but is like a cable. The strength of the cable . . . does not depend upon one strand, but is made up of a union and combination of the strength of all its strands. No one wire in the cable that supports the suspension bridge across Niagara Falls could stand much weight, but when these different strands are all combined together, they support a structure which is capable of sustaining the weight of the heaviest engines and trains. We therefore think it is erroneous to speak of circumstantial evidence as depending on links, for the truth is that in cases of circumstantial evidence each fact relied upon is simply considered as one of the strands and all of the facts relied upon should be treated as a cable.

Hebron, 331 Md. at 227-28 (quotation marks and citations omitted). Where it is reasonable for a trier of fact "to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *Suddith*, 379 Md. at 447 (quotation marks and citation omitted)(brackets in original).

A. Did appellant cause physical harm to the victim?

Second-degree assault, codified at Md. Code Ann., Crim. Law Art., § 3-203(a), is a common law crime that can be committed in three different ways: a battery, an attempted battery, or an intent to frighten. *Cruz v. State*, 407 Md. 202, 209 n.3 (2009)(citing *Lamb v. State*, 93 Md. App. 422, 428 (1992)). The State proceeded against appellant on a battery type of assault. To sustain a conviction for that type of crime, the State must prove: 1) appellant caused physical contact to the victim; 2) the contact was the result of an intentional or reckless act, it was not accidental; and 3) the victim did not consent to the act nor was the act

legally justified. *Robinson v. State*, 209 Md. App. 174, 196. *See* also MPJI-Cr 4:01C. Appellant argues that the State failed to prove the first element, that although the victim had an abrasion and cut on her lip, there was no evidence that he caused the abrasion or cut. We disagree.

Appellant admitted that he and his wife were arguing, she "overreacted," and in response he put his hand over her mouth in an attempt to stop her screams from alarming the neighbors. The contextual circumstantial evidence included: she was crying and upset when the police arrived, photographs which showed fresh cuts and abrasions to her lip both on the outside and inside; and that she was unwilling to discuss what happened in appellant's presence. Under the circumstances, we are persuaded that a rational juror could infer from the direct and circumstantial evidence that appellant had physical contact with the victim and that he caused the injuries to her face and lip. Accordingly, we find no error by the trial court in denying appellant's motion for judgment of acquittal.

B. Was appellant's confession corroborated?

In Maryland, it is "'well settled that an extrajudicial confession of guilt by a person accused of crime, unsupported by other evidence, is not sufficient to warrant a conviction.'" *Woods v. State*, 315 Md. 591, 615 (1989)(quoting *Bradbury v. State*, 233 Md. 421, 424 (1964)). Rather, "the extrajudicial confession must be supported by evidence, independent of the confession, which relates to and tends to establish the *corpus delicti*, *i.e.*, the facts that are necessary to show that a crime has been committed." *Id*. at 615-16 (internal quotation

marks and citation omitted). The reason for this rule is to both "protect the administration of the criminal laws against errors based upon untrue confessions alone" and "to prevent mentally unstable persons from confessing to, and being convicted of, crimes that never occurred." *Lemons v. State*, 49 Md. App. 467, 469 (1981)(internal quotation marks and citation omitted).

Quantitatively, "it is not necessary that the evidence independent of the confession be full and complete or that it establish the truth of the *corpus delicti* beyond a reasonable doubt or by a preponderance of proof." *Cox v. State*, 421 Md. 630, 657 (2011)(internal quotation marks and citations omitted). Rather, "[t]he supporting evidence . . . may be small in amount[.]" *Miller v. State*, 380 Md. 1, 46 (2004)(internal quotation marks and citations omitted)). "The *quantum* of [] proof . . . is to be determined by the circumstances of each particular case." *Woods*, 315 Md. at 616 (internal quotation marks and citation omitted). Additionally, "[n]othing in [the case law] requires corroboration of each element of the *corpus delecti*[.]" *Ellison v. State*, 56 Md. App. 567, 581 (1983)(brackets added). Rather, corroboration must tend to prove only the major or essential harm involved in the charged offense. *Ballard v. State*, 333 Md. 567, 577 (1994)(citing 1 *McCormick on Evidence* § 145 (Strong 4th ed. 1992)). Thus, "[t]he accused's identity or criminal agency is not a necessary element of the corroboration required to make a confession admissible." *Woods*, 315 Md. at 616 (citation omitted). Qualitatively, the corroborative evidence must be independent of the confession, and it must "fortify" the confession by relating to or tending to establish the

corpus delicti. *Lemons*, 49 Md. App. at 472. "The *corpus delicti* may be proved by circumstantial evidence." *Woods*, 315 Md. at 616 (citation omitted).

Appellant argues that we must reverse his convictions because the only evidence that he committed a second-degree assault came from his own out-of-court statement to Officer Miller that was not corroborated. We disagree. As related above, there were several strands of circumstantial evidence corroborating appellant's statement – the photographs of the injuries; Rachelle's refusal to speak to the officer in appellant's presence; her response of urinating on herself after the officer asked her what happened and appellant said something to her in a language the officer did not understand; and that the State's investigator could not locate the victim several months after the incident. We are mindful that only slight corroboration is needed. *Cf. Miller v. State*, 380 Md. 1, 46 (2004)(first-degree sexual offense confession sufficiently corroborated by independent forensic evidence that appellant had ejaculated on the victim, plus contusions and abrasions on the victim's body and head suggesting that the sexual activity was violent and non-consensual). Under the circumstances, we shall affirm the judgment.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.