Circuit Court for Anne Arundel County
Case No.: C-02-CR-20-000618

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1656

September Term, 2021

NHUT DANIEL FRAWLEY

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: September 1, 2022

Following trial in the Circuit Court for Anne Arundel County, a jury found Nhut Daniel Frawley, appellant, guilty of attempted voluntary manslaughter,[1] second-degree assault, and reckless endangerment.[2] Thereafter, the court sentenced him to 10 years' imprisonment with all but 8 years suspended for attempted voluntary manslaughter.[3]

Appellant noted an appeal. In it, he claims that the evidence is legally insufficient to support his convictions and that the court erred when imposing sentence. We disagree and shall affirm.

BACKGROUND

The undisputed evidence adduced at trial revealed the following events. While driving home, Jerry Ray Smith, Jr., the victim in this case, anticipating that he would lose cell-phone coverage, stopped his car on the side of the road to complete a telephone call. Shortly thereafter, appellant emerged with a flashlight walking towards Smith's vehicle. Apparently, appellant was upset that Smith's headlights were pointed toward his home. In any event, after an exchange of angry words, the two got into a roadside physical

[1] The court instructed appellant's jury on two distinct theories of criminal liability that could result in a verdict of guilty of attempted voluntary manslaughter: imperfect self-defense to attempted first-degree murder; and the mitigating defense of hot-blooded response to legal adequate provocation (in this case mutual affray). The record does not make clear which theory the jury relied upon in finding appellant guilty of attempted voluntary manslaughter.

[2] The jury acquitted appellant of attempted first-degree murder, attempted second-degree murder, first-degree assault, and a weapons offense.

[3] The court merged the remaining convictions for sentencing.

altercation. Ultimately, appellant stabbed Smith after Smith re-entered his car and began to drive away.

Smith and appellant testified to different versions of the precise details of the events leading to the stabbing. Smith admitted that he got out of his car and shoved appellant to the ground before getting back into his car and attempting to drive away. He said that after he re-entered his car, appellant approached him and said "I'm killing you" in response to Smith asking him what he was doing. Smith testified that he did not know he had been stabbed until after he had driven away.

Appellant claimed that he acted in self-defense. He said that, after Smith got out of his car, "[he] slammed me to the ground, and he punched me twice in the face as he was straddling me and I just tried to block his blows and he left back into his vehicle to leave." Appellant said that, after the roadside physical altercation and after Smith had re-entered his car, he reached into the car in an attempt to get Smith's keys, and, when Smith began to drive away, he stabbed him with his Leatherman tool out of fear that his feet would be driven over. Appellant admitted that he disposed of his Leatherman by throwing it into a body of water the next morning.

DISCUSSION

I.

As noted above, appellant contends that the evidence is legally insufficient to support his convictions.

In reviewing the sufficiency of the evidence, we review the record 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.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Titus v. State*, 423 Md. 548, 557 (2011), in turn quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In doing so, we defer to the fact-finder's evaluations of witness credibility, resolution of evidentiary conflicts, and discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *Grimm v. State*, 447 Md. 482, 495 (2016).

All of appellant's arguments concerning the sufficiency, *vel non*, of the evidence concern the credibility of the witnesses and the reliability of the evidence used to convict him. None of his arguments concern the State's failure to meet its burden of production.

In weighing the evidence at trial, a jury is free to believe all, some, or none of the evidence. *Correll v. State*, 215 Md. App. 483, 502 (2013). In this case, apparently the jury did not credit appellant's version of the evidence. As a result, the evidence is legally sufficient.

II.

Next, appellant claims that the Court "may have" relied on impermissible considerations when imposing appellant's sentence. Appellant claims that two comments of the sentencing court "have caused [him] concern." Those two comments are:

> Ten years ago, and a few years before that, [appellant] saw the inside of a jail cell and it didn't seem to have a lot of [e]ffect on him.
>
> * * *

> I have thought about this a lot. I was concerned that if I locked you up that at the end of the day I would be giving you a death sentence. I don't believe that to be the case. I don't believe that to be the case for two reasons.

Appellant acknowledges that he did not object to the sentencing court's conduct as he was required to do to preserve his claim for appellate review. Moreover, he does not claim that the court plainly erred in imposing sentence. Thus, there is nothing preserved for us to review on appeal. *Reiger v. State*, 170 Md. App. 693, 700 (2006).

Nevertheless, our review of the entire record of the sentencing proceeding reveals no abuse of the broad discretion on the part of the sentencing court in deciding what factors to consider when imposing sentence. *Poe v. State*, 341 Md. 523, 532 (1996). Quite to the contrary, the record reflects that the sentencing court thoughtfully and carefully engaged with the parties and considered their respective presentations before imposing sentence.

Consequently, we affirm the judgments of the circuit court.

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