Circuit Court for Baltimore County
Case No.: 03-K-18-001977

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1709

September Term, 2019

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RAYMOND LUNN

v.

STATE OF MARYLAND

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Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: December 18, 2020

Following a bench trial in the Circuit Court for Baltimore County, the court found Raymond Lunn, appellant, guilty of attempted second-degree rape, second-degree assault, false imprisonment, and fourth-degree sexual offense. The court sentenced appellant to an aggregate term of thirty years' imprisonment with all but eight years suspended in favor of five years' probation.[1]

On appeal, appellant contends that the evidence was legally insufficient to support second-degree rape. For the reasons explained below, we shall affirm.

## BACKGROUND

At trial, the victim testified that, on April 12, 2018, appellant entered the FedEx retail store where she worked, acted "a little strange," and asked her if she was alone. After appellant asked her for assistance, and she complied, "he touched [her] butt twice." After both times, she smacked his hand away. She walked behind the counter with the intention of calling a co-worker or the police because she thought things were "getting a little too far. Like he was touching me. So, that is like sexual." She never made a phone call because appellant, against her directions to the contrary, followed her behind the counter and tried to grab her. The two fought briefly before appellant picked her up and carried her into the back room.

Once in the back room, the two fought intensely, and appellant threw her to the ground. Eventually, appellant stepped back and started "messing with his pants and stuff

[1] Specifically, the court imposed the following sentences: twenty years with all but eight years suspended for attempted second-degree rape; ten years consecutive all suspended for second-degree assault; eight years concurrent for false imprisonment, and one year concurrent for fourth-degree sexual offense.

and attempting to unbuckle his pants and then smiling and looking at [her] while he was doing it." The victim became even more afraid than she had been, and when she tried to get up, appellant kept hitting her and threw her back down on the ground. All the while, appellant was telling her to stop resisting while he was smiling and laughing "like it was a game and like a joke." The victim tried dialing a desk phone during the attack, but appellant hung it up. She also tried to get the store's alarm system to activate by pressing "too many numbers."

After some time, the victim realized that, the only way she was going to be able to stop the attack was if she calmed down and outsmarted appellant. She told appellant that she anticipated people coming in, and if they did not see her, they would think something was wrong. She noticed that her shoe was off, and she asked appellant to go get it, and when he did, she ran out of the back door, called 9-1-1, and reported the attack to an off-duty police officer who worked at a nearby grocery store.

Surveillance video footage captured the entire attack and was played in court. When the police arrested appellant the following morning, he was wearing the same clothing that he had worn during the attack. A video recording of appellant's interview with the police was played for the court. In it, appellant described the attack as "horseplay" and acknowledged that the victim tried to stop the attack.

Appellant did not testify, and he called no witnesses.

## DISCUSSION

As noted above, appellant contends that the evidence is insufficient to support a guilty finding for second-degree rape.

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 *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Appellate review of the sufficiency of the evidence at a court trial is of both the law and the evidence. *Elias v. State*, 339 Md. 169, 185 (1995); Maryland Rule 8-131.

Section 3-304(a)(1) of the Criminal Law Article[2] provides that "[a] person may not engage in vaginal intercourse or a sexual act with another … by force, or the threat of force, without the consent of the other[.]" A "sexual act" is defined in Section 3-301(d)(1) as

> (i) analingus;
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> (ii) cunnilingus;
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> (iii) fellatio;
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> (iv) anal intercourse, including penetration, however slight, of the anus; or
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> (v) an act:
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> 1. in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus; and
>
> 2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

Section 3-301(g) states that "[v]aginal intercourse" means genital copulation, whether or not semen is emitted … "[v]aginal intercourse" includes penetration, however

[2] All references to the Code are to the Criminal Law Article.

slight, of the vagina." The common-law crime of "attempt" is "generally defined as the intent to commit a crime coupled with some overt act beyond mere preparation in furtherance of the crime." *Hardy v. State*, 301 Md. 124, 128 (1984) (citations omitted).

Appellant claims that there was no evidence that appellant attempted forcible vaginal intercourse, or any one of the sexual acts listed in Section 3-301(d). As a result, according to appellant, it requires speculation to determine that he had the requisite *mens rea* when he attacked the victim. We disagree.

In our view, when taken as a whole, the circumstantial evidence adduced at trial supported the inference that appellant intended to force the victim to engage in a sexual act or vaginal intercourse. Appellant acted strangely as soon as he came in the store, and he asked the victim right away whether she was alone. He then touched her inappropriately on her buttocks in a way she characterized as "sexual." Appellant touched her a second time even though the victim smacked his hand away and told him to stop after the first time. The victim, who clearly was frightened by appellant's behavior, fought him, and he picked her up and carried her to the back room while she was kicking and punching him. Appellant kept telling the victim to stop, and given that the only thing she was doing at the time was fighting off the attack, that could only have meant to stop resisting. Appellant paused the attack and stepped back, trying to unbuckle his belt while smiling and looking at the victim. Appellant never tried to take anything from the victim or did anything consistent with an attempt to rob the store or the victim.

"Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which

permit a proper inference of its existence." *Spencer v. State*, 450 Md. 530, 568 (2016) (quoting *Davis v. State*, 204 Md. 44, 51 (1954)). We think that, in viewing the evidence in the light most favorable to the State, a rational juror could draw the inference that appellant had the intent to force the victim to engage in a sexual act or vaginal intercourse. That the evidence may have also supported some other inference is of no moment. "Choosing between competing inferences is classic grist for the jury mill." *Cerrato-Molina v. State*, 223 Md. App. 329, 337 (2015). Therefore, we find the evidence legally sufficient to support appellant's conviction for attempted second-degree rape.

Consequently, we shall affirm the judgment of the circuit court.

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