

Circuit Court for Worcester County  
Case No. C-23-CR-21-000214

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1957

September Term, 2021

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KENNETH K. SHARP

v.

STATE OF MARYLAND

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Kehoe,  
Ripken,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: February 6, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*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.

Following a trial in the Circuit Court for Worcester County, a jury convicted Kenneth K. Sharp, appellant, of second-degree assault.<sup>1</sup> The trial court sentenced Sharp to ten years in prison, suspending all but seven years. Sharp noted this timely appeal asking us to consider whether the evidence adduced at trial was legally sufficient to support his assault conviction. For the reasons that follow, we conclude that the evidence was sufficient, and we will affirm the trial court’s judgment.

### **FACTUAL AND PROCECURAL BACKGROUND**

Bethanni Stafford was the alleged victim of an assault. In May 2021, she and Sharp, her boyfriend, took their infant daughter on vacation to the Park Place Hotel in Ocean City, Maryland. Stafford testified that, on May 23, 2021, she put the baby down for a nap and left the hotel room to go to the pool. Stafford later woke up at Tidal Health Peninsula Regional Hospital in severe pain, with facial fractures of her cheek and nose, swelling around her neck, and bleeding from her eye. Testifying as a reluctant witness for the State, she said she did not remember anything that had happened after she left the hotel room. Stafford acknowledged having sent a letter to the State’s Attorney’s Office asking that the charges against Sharp be dropped because she did not want her “baby’s dad to go to jail and to be taken out of our daughter’s life.” And, upon direct examination at trial, Stafford stated that she did not want to testify against Sharp. The trial court permitted the prosecutor to treat her as a hostile witness.

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<sup>1</sup> The jury acquitted Sharp of first-degree assault.

Although Stafford professed she could not remember the source of the injuries she incurred at the Park Place Hotel, other witnesses provided pertinent information.

On the morning of May 23, 2021, Shanna Mitchell and Daysa Law, employees of the Park Place Hotel, were directed by the front desk manager to respond to someone yelling for help on the fourth floor of the hotel. Mitchell, Law, and the office manager (Kasey Taylor) all arrived on the fourth floor to find Stafford lying prone on the floor in the hallway near the elevator. Stafford was covered in blood and gasping for air. She was wearing only a tee shirt and underpants.

When the hotel employees arrived on the scene, Sharp was kneeling over Stafford and he was trying to get her to stand up, but Stafford appeared to be unable to move. Taylor told Sharp to leave Stafford on the floor, and he complied. According to Law, Sharp appeared to be nervous or scared, and he was not cooperative in answering questions from hotel staff.

Sharp told Law that Stafford had fallen. He then went back to their hotel room, retrieved the baby, and promptly exited the hotel, leaving Stafford behind. When the police later checked the hotel room, they discovered that, when Sharp departed, he had left behind his shoes and the baby's stroller, diapers, and formula.

PFC Brian Nieto responded to a report of an apparent assault at the Park Place Hotel at 8:53 a.m. Upon the officer's arrival at the hotel, Stafford was already on a gurney in the back of an ambulance, with facial bruising, her eye swollen almost entirely closed, and blood coming from her eye socket. Stafford told Nieto she could not remember how she

received the injuries, but she affirmed that she had been staying at the hotel with Sharp and their daughter.

Nieto put out an alert for Sharp and the couple's vehicle. The vehicle was identified leaving Ocean City at 9:06 a.m., approximately ten minutes after Nieto's arrival at the hotel.

Nieto testified that he had also gone to the hospital to speak further with Stafford, but she did not give him a definitive response regarding who had assaulted her or what had happened. She did, however, report that she and Sharp had argued, after which she had locked herself in their hotel room bathroom.

Nurse examiner Kari Abubakker performed a forensic nursing evaluation upon Stafford. Nurse Abubakker immediately noticed that Stafford's left eye was bleeding and had sustained "a large area of bruising[.]" Stafford was also making "stridorous breath sounds[.]" a high-pitched noise usually caused by a decrease in the diameter of the airway from injury to the neck. Stafford advised Abubakker that she was in excruciating pain and having trouble breathing, but she did not want to speak of the cause of her injuries and claimed lack of memory. Stafford did, however, become tearful and say to Abubakker: "I cannot do this anymore[.]"

At the close of the State's case-in-chief, Sharp moved for judgment of acquittal, arguing that, to the extent any assault had been proved, no one had identified him as the assailant, there had been no witnesses to an assault, and Stafford herself had no memory of how she was injured. The prosecutor countered that witnesses had identified Sharp, appearing nervous, as being the only person on the scene. And, the prosecutor continued,

Stafford’s report that she had argued with Sharp that morning provided motive for an assault. The trial court denied Sharp’s motion.

Sharp did not testify, and the defense put on no evidence. At the close of the entire case, Sharp renewed his motion for judgment of acquittal, which the court again denied.

As noted above, the jury acquitted Sharp of first-degree assault, but found him guilty of assault in the second degree.

### DISCUSSION

The test for evidentiary sufficiency 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. *State v. Albrecht*, 336 Md. 475, 478-79 (1994). In other words, “the limited question before us is not ‘whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” *Washington v. State*, 179 Md. App. 32, 70 (emphasis in *Washington*) (quoting *Jenkins v. State*, 146 Md. App. 83, 137 (2002)), *rev’d on other grounds*, 406 Md. 642 (2008).

This standard “applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone.” *Smith v. State*, 415 Md. 174, 185 (2010). Indeed, “[a] conviction may be based on circumstantial evidence alone.” *Jensen v. State*, 127 Md. App. 103, 117 (1999).

An appellate court does not re-weigh the evidence. *Spencer v. State*, 422 Md. 422, 434 (2011). Rather, the reviewing court will give “due regard to the [factfinder’s] finding

of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.” *Albrecht*, 336 Md. at 478.

Section 3-203(a) of the Criminal Law Article (“CR”) of the Maryland Code provides: “A person may not commit an assault.” “‘Assault’ means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings.” CR § 3-201(b). “Under Maryland common law, an assault of the battery variety is committed by causing offensive physical contact with another person.” *Nicolas v. State*, 426 Md. 385, 403 (2012).

Sharp contends that there is no evidence of his criminal agency—*i.e.*, that he was the person who injured Stafford.<sup>2</sup> He asserts that there was no eyewitness to the alleged assault, and the only possible evidence of his guilt is his mere presence on the scene when the hotel employees arrived. We disagree that the evidence was insufficient to support the jury’s verdict.

Although the evidence of Sharp’s assault upon Stafford was circumstantial, if believed by the jury, which it apparently was, it was sufficient to support the jury’s finding that Sharp was the person who assaulted Stafford. The evidence showed that Sharp and Stafford were in a romantic relationship and they had argued before Stafford was injured, prompting her to lock herself in their hotel room bathroom. Shortly thereafter, Stafford was found near the elevator down the hall from the hotel room, yelling for help. At the time she

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<sup>2</sup> *See State v. Simms*, 420 Md. 705, 722 (2011) (“In criminal cases, the State must prove ‘criminal agency (including [the defendant’s] presence at the scene where pertinent)’ beyond a reasonable doubt.” (quoting *Schmitt v. State*, 140 Md. App. 1, 30 (2001))).

was wearing only a tee shirt and underpants, supporting an inference that she had fled the room hastily and without regard to her state of undress. Stafford suffered severe facial and tracheal injuries, which the forensic nurse examiner opined were inconsistent with a fall, the manner in which Sharp had told the hotel employees Stafford had been injured.

When hotel staff arrived, Sharp, the only other person present, was kneeling over Stafford, trying to get her to stand up. He appeared nervous and was uncooperative in answering their questions.

Then, minutes after the arrival of the police, instead of remaining with his injured girlfriend (who is the mother of his child), Sharp fled the hotel—and the city—with the couple’s baby in such a hurry that he left behind his shoes and necessities, including the baby’s stroller, diapers, and formula. Rather than staying near Stafford to comfort her as she was being transported to the hospital, Sharp distanced himself from the scene where he told people she had simply fallen. The jury was entitled to consider Sharp’s flight as consciousness of his guilt. *See Thomas v. State*, 372 Md. 342, 351 (2002) (“Conduct typically argued to show consciousness of guilt includes flight after a crime[.]”).

Finally, the jury heard Stafford acknowledge that she did not want to testify against Sharp and that she had written a letter to the State’s Attorney’s Office asking the State to drop the charges against him because she worried that he would be convicted and not be able to be part of their daughter’s life. The jury could have inferred that had Sharp not been her assailant, Stafford would have had no reason to take that action.

Viewed in the light most favorable to the State, the evidence presented at trial was sufficient to support Sharp’s conviction of second-degree assault.

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