

Circuit Court for Worcester County
Case No. C-23-CR-17-000154

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1971

September Term, 2017

GLENN ALLEN CARMEAN

v.

STATE OF MARYLAND

Fader, C.J.
Meredith,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 1, 2019

*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.

On January 1, 2017, Deputy Kyle Hayes witnessed Glenn Allen Carmean (“Appellant”) driving erratically and at an extremely high rate of speed on Route 50 in Berlin, Maryland. When Deputy Hayes tried to pull him over, Appellant accelerated his vehicle and initiated a high-speed police chase. In attempting to evade several police officers, Appellant veered toward Deputy Hayes’ vehicle, nearly causing a collision. Following Appellant’s arrest, the State of Maryland (“the State”) charged Appellant by indictment in the Circuit Court for Worchester County with first degree assault, second degree assault, obstructing or hindering a police officer, failure to obey a reasonable and lawful order, driving at an excessive speed, driving without a license, driving on a suspended license, driving on a revoked license, driving under the influence of alcohol, driving while impaired by alcohol, attempting to elude police, and reckless driving.

Following a bench trial, the Honorable Donald C. Davis found Appellant guilty of all charges and later sentenced him to ten years’ imprisonment. It is from this conviction that Appellant files this timely appeal. In doing so, he brings one question for our review:

- I. Was the evidence sufficient to sustain the conviction for first degree assault against Appellant?

For the following reasons, we affirm the decision of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

On January 1, 2017, Deputy Kyle Hayes observed Appellant’s vehicle come out of the parking lot of a gas station “at an extremely high rate of speed, fail[] to stop before entering the intersection[] and continue[] westbound on Route 50.” After watching Appellant drift across lanes and increase his speed, Deputy Hayes tried to initiate a traffic

stop. Upon doing so, Deputy Hayes witnessed Appellant increase his speed to over 80 miles per hour and nearly strike oncoming traffic while attempting a U-turn on Route 50. As Appellant attempted to evade police, he ran approximately 15 vehicles off the road.

In attempting to end the chase, several officers now pursuing Appellant positioned themselves in a way as to “force [Appellant] to slow down to a safer speed and successfully end the chase.” Deputy Hayes positioned himself “four to six feet” to the right of Appellant, while Trooper Connor Willey drove in front of Appellant. Deputy Hayes testified that Appellant had nowhere to go on his left side other than into a forested area separating the east and westbound sides of Route 50. The vehicles involved in the chase were traveling over 100 miles per hour.

Deputy Hayes stated that Appellant then made eye contact with him and moved his hand positioning on the steering wheel as if he were going to strike Deputy Hayes’ vehicle. Applying the brakes,¹ Deputy Hayes narrowly avoided a collision when Appellant jerked his vehicle into Deputy Hayes’ lane of travel. At the time, Deputy Hayes “was in fear that [Appellant] was going to ram [his] vehicle and run [him] off the roadway.” As the pursuit continued into Wicomico County, Appellant swerved to avoid stop sticks set up to deflate his tires and crashed into some trees. After the accident, Appellant was transported to a nearby hospital via ambulance.

At trial, both Deputy Hayes and Trooper Willey testified that Appellant swerved towards Deputy Hayes’ vehicle. The defense did not call any witnesses. At the conclusion

¹ Deputy Hayes referred to his application of braking as “threshold braking.”

of the evidence, the trial court denied all motions for judgment of acquittal and found Appellant guilty on all counts, including first degree assault. It is from the conviction for first degree assault that Appellant files this timely appeal.

STANDARD OF REVIEW

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Md. Rule 8-131(c).

In *Hobby v. State*, 436 Md. 526 (2014), the Court of Appeals explained the standard of review for the sufficiency of evidence to sustain a conviction, stating:

When determining whether the State has presented sufficient evidence to sustain a conviction, we have adopted the Supreme Court’s standard articulated in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original) (citation omitted), namely, 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.

Id. at 537-38 (quoting *Derr v. State*, 434 Md. 88, 129 (2013), cert. denied, 134 S. Ct. 2723 (2014)) (citations and internal quotation marks omitted) (emphasis in original).

In *Derr*, 434 Md. at 129, the Court of Appeals described the application of the standard, explaining:

The purpose is not to undertake a review of the record that would amount to, in essence, a retrial of the case. Rather, because the finder of fact has the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. We recognize that the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation, and we therefore defer to any possible reasonable

inferences the trier of fact could have drawn from the admitted evidence and need not decide whether the trier of fact could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.

(Citations and internal quotation marks omitted).

DISCUSSION

A. Parties' Contentions

Appellant contends that the evidence presented was not sufficient to sustain his conviction for first degree assault. Appellant argues that he was seeking to elude police rather than cause serious physical injury, and that any inference that he had the specific intent to cause serious injury to Deputy Hayes rests on mere speculation. Appellant states that the evidence simply did not allow the trial court to determine Appellant's "fully formed and conscious purpose."

Appellant also claims that the record does not support a reasonable inference that Appellant actually tried to cause serious physical harm to Deputy Hayes as required to establish an attempted battery. In doing so, Appellant argues that a collision with Deputy Hayes would have frustrated Appellant's goal of evading capture. As such, any inference that Appellant intended to cause a collision would have been unreasonable.

The State contends that the trial court's decision was supported by substantial evidence. The State asserts that while the evidence may show that Appellant was attempting to evade the police, the evidence was also sufficient to show an intent to cause serious physical injury to Deputy Hayes. The State also argues that the trial court is permitted to rely on an inference that Appellant intended to cause a collision. The State

discusses that while Deputy Hayes was not injured by Appellant, actual injury is irrelevant to determining whether Appellant is guilty of first degree assault. Finally, the State contends the trial court was entitled to rely on common sense when reviewing the evidence and reaching its decision. We agree.

B. Analysis

“[T]he term of art ‘assault’ may connote any of three distinct areas: (1) A consummated battery or the combination of a consummated battery and its antecedent assault; (2) an attempted battery; and (3) *a placing of a victim in a reasonable apprehension of an imminent battery.*” *Lamb v. State*, 93 Md. App. 422, 428 (1992) (emphasis added). The intent to frighten requires that the defendant commit an act with the intent to place another in fear of immediate physical harm, and the defendant had the apparent ability, at that time, to bring about the physical harm. The victim must be aware of the impending battery and there must be an apparent present ability to commit the battery. *See Snyder v. State*, 210 Md. App. 370, 382 (2013); *see also Dixon v. State*, 302 Md. 447, 456-64 (1985).

The Maryland Code proscribes first degree assault, stating that “[a] person may not intentionally cause or attempt to cause serious physical injury to another.” MD. CODE, CRIM. LAW § 3-202(a). “Serious physical injury” is defined as a physical injury that, among other things, “creates a substantial risk of death.” MD. CODE, CRIM. LAW § 3-201(d)(1). Although the State in prosecuting for first-degree assault must prove that an individual had a specific intent to cause a serious physical injury, a jury may infer the necessary intent from an individual’s conduct and the surrounding circumstances, whether or not the victim suffers such an injury. *See Dixon v. State*, 364 Md. 209, 239 (2001). In addition, a jury may

“infer that ‘one intends the natural and probable consequences of his act.’” *Chilcoat v. State*, 155 Md. App. 394 (2004) (citing *Ford v. State*, 330 Md. 682, 704 (1993)). Because a fact-finder “may infer that one intends the natural and probable consequences of his act[,]” we are persuaded that there was sufficient evidence from which a rational fact-finder could find that Appellant placed Deputy Hayes in fear and intended to cause Deputy Hayes serious physical injury.

In determining whether the State presented sufficient evidence to sustain a conviction for first-degree assault, this Court must decide 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. *Hobby v. State*, 436 Md. 526, 537-38 (2014) (quoting *Derr v. State*, 434 Md. 88, 129 (2013), cert. denied, 134 S. Ct. 2723 (2014)) (citations and internal quotation marks omitted) (emphasis in original). In this case, the only evidence presented at trial was the testimony of two witnesses: Deputy Hayes and Trooper Willey. In attempting to capture Appellant, Deputy Hayes testified that he observed Appellant shift his hand location on the steering wheel and feared that Appellant would attempt to ram Deputy Hayes’ vehicle. As both Appellant and Deputy Hayes were traveling at speeds in excess of 100 miles per hour, a collision surely had the potential of causing those involved serious injury. In order to avoid a potential collision, Deputy Hayes applied threshold braking. Shortly thereafter, Appellant’s vehicle veered towards Deputy Hayes’ lane of travel, missing Deputy Hayes’ vehicle by “less than six inches.” Trooper Willey also testified that Appellant’s vehicle veered into Deputy Hayes’ lane and narrowly avoided a collision.

Appellant contends that because he did not cause any injury to Deputy Hayes, the question is whether a rational trier of fact could have concluded that he “intentionally ... attempted to cause serious physical injury” by swerving into the officer’s lane. “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.” *Davis v. State*, 204 Md. 44, 51 (1954). As such, the required *mens rea* of intent to harm may be proved by circumstantial evidence. *See Earp*, 319 Md. at 167. “[T]he trier of fact may infer the existence of the required intent from surrounding circumstances such as ‘the accused’s acts, conduct and words.’” *Smallwood v. State*, 343 Md. 97, 104 (1996) (quoting *State v. Raines*, 326 Md. 582, 591 (1992) (finding that Raines’ actions in directing a gun at truck window, knowing the driver was on the other side, permits the inference that he intended to shoot with the intent to kill as it is reasonable to assume that Raines intended the victim’s death as a natural and probable consequence of his actions)). Additionally, the intent to harm may be inferred from the use of a deadly weapon directed at a vital part of the human body. *Smallwood*, 343 Md. at 104.

Appellant relies on *Spencer v. State*, 450 Md. 530 (2016), to argue that his actions were solely to avoid capture by the police. In that case, Spencer contended that he could not be convicted of attempted murder because he did not have the specific intent to kill a cyclist he struck while attempting to evade capture. There, the Court of Appeals held that the death of the cyclist was not a probable consequence of Spencer’s recklessly driving away from the police. *See Spencer*, 450 Md. at 569–70.

However, the facts of this case are different from those in *Spencer*. In *Spencer*, the Court discussed that while a vehicle can be used as a deadly weapon, there was “no evidence that Spencer's goal was to harm” the victim and that “[h]is goal was to avoid apprehension by the police.” As such, the Court concluded that the accused actions were “wholly explained” by the accused’s desire to evade the police. *Id.*

While this Court recognizes the possibility that Appellant may have been attempting to avoid capture,² it also recognizes that Appellant may have had the intention to cause a collision with Deputy Hayes’ vehicle in pursuit of that goal. Here, Deputy Hayes provided testimony that Appellant made eye contact with him while shifting his hand location on the steering wheel. Both Deputy Hayes and Trooper Wiley testified that had Deputy Hayes not braked when he did, Appellant would have struck Deputy Hayes’ vehicle. As such, Appellant’s actions were not “wholly explained” by Appellant’s desire to allude capture. In fact, the trial court explicitly concluded that “by doing the maneuver, [Appellant] intended to cause serious physical injury to Deputy Hayes.”

The mere fact that a collision did not occur or that Deputy Hayes did not sustain any injury is irrelevant. Here, the trial court determined that both Deputy Hayes and Trooper Willey were credible and concluded that their testimony effectively proved each element necessary to sustain a first-degree assault conviction. As such, there was sufficient evidence for the trial court to find Appellant guilty of first degree assault.

² Appellant made numerous statements after his capture expressing his intent to get away from the police, including: “I’ll never stop for the police”; “I needed one more minute, and I would have lost you”; and “I just needed to get to Salisbury, and I was good. You all wouldn’t have caught me”.

Accordingly, the judgment of the Circuit Court for Worcester County is affirmed.

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