

Circuit Court for Prince George's County
Case No. CT190256X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1980

September Term, 2019

STEPHEN DOWNEY

v.

STATE OF MARYLAND

Berger,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: December 14, 2020

*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.

Appellant Stephen Downey was convicted following a bench trial in the Circuit Court for Prince George’s County of second-degree assault and misconduct in office. He presents a single issue for our review:

“Was the judgment of the trial court clearly erroneous insofar as the judgment was based upon a finding that all of the State’s fact witnesses were credible despite inconsistent testimony as to material issues?”

Finding no error, we shall affirm.

I.

Following appellant’s indictment by the Grand Jury for Prince George’s County, he waived a jury trial and proceeded to a trial before the circuit court. The judge found him guilty as charged of second-degree assault and misconduct in office. The court sentenced appellant on both counts to a term of incarceration of five years, all but six months suspended, to be served concurrently, followed by three years’ probation.

Appellant is a former Prince George’s County police officer. At the time of this event, he was serving as a corporal; he and several other officers were dispatched for an alarm call at the CVS pharmacy located on Branch Avenue. The officers discovered the victim, Andre Verdier, sleeping in a storage container located in the pharmacy parking lot. Mr. Verdier was handcuffed and arrested for burglary. The officers placed him in the front seat of Officer Carl Harper’s police cruiser, and began driving him to Upper Marlboro for processing. While en route to the jailhouse, Officer Harper received instructions to make contact with detectives from the robbery unit and to meet them at the scene, outside the

CVS. Officer Harper drove the car back to the CVS, while Mr. Verdier remained in the front passenger seat. Upon arrival back at the scene, Officer Harper exited the police cruiser and took a phone call with a police detective, leaving Mr. Verdier handcuffed in the same position where he had been.

The essence of this case is a resolution of what happened to Mr. Verdier while he was sitting in the front passenger seat of the police cruiser, and whether appellant's use of force was reasonable and justified. The State called as witnesses Officer Harper, Officer Milner, and Mr. Verdier. The defense called Detective Pettus. The testimony is consistent that, during Officer Harper's phone call, Mr. Verdier complained that the handcuffs were too tight. When Verdier complained a second time, appellant walked towards the cruiser, asked Officer Harper if his cruiser was equipped with a mobile video system, and heard a response that it was not. Appellant then put on gloves, opened the front passenger door, grabbed the constrained and helpless Mr. Verdier, and punched him five or six times with great force, bloodying Mr. Verdier badly enough that Officer Milner promptly called an ambulance.

At resolution of the bench trial, the judge delivered her verdicts of guilty, stating as follows:

“After reviewing the evidence, listening to the testimony, and assessing the credibility of the witnesses, the Court makes the following findings.

The Court finds the testimony of Officer Harper, Officer Milner, and Andre Verdier credible.

The Court finds that, on October 29th, 2018, the suspect, Andre Verdier, was cooperative, handcuffed, and seat-belted in the front passenger seat of Officer Harper's cruiser, and Corporal Downey struck the suspect multiple times with a closed fist.

The Court finds that Corporal Downey did not do what a reasonable police officer would do in light of the facts and circumstances confronting him on the scene.

Therefore, the Court finds that Corporal Downey is guilty of Count 1, second-degree assault, and Count 2, misconduct in office.”

Following the imposition of sentence and consideration of several post-hearing motions, appellant noted this timely appeal.

II.

Although in his brief appellant asks this Court to reverse the judgments of convictions or, in the alternative, remand the matter to the circuit court “with instructions consistent with this Honorable Court’s Order and Opinion,” at oral argument counsel made clear that his prayer for relief was limited to a remand for further findings and consideration by the trial judge. We shall consider this appeal in that context.

Before this Court, appellant presents a single argument: “that if the trial court’s findings were based upon the determination that Officer Harper, Officer Milner, and Mr. Verdier were credible witnesses, then the trial court’s judgment was clearly erroneous.” Appellant Brief at 27. He bases his argument on the premise that the three witnesses’ versions of the events are so substantially divergent that it was not possible for the trier-of-fact to believe all of them. He concedes two salient points: first, that the trial judge was not required to provide a basis for her ruling; second, that a rational trier of fact could have found the essential elements of assault and misconduct in office. His argument is that the

judge either ignored the conflicts in the witnesses' testimony or failed to resolve those conflicts.

In response, the State, appellee, argues that the trial court's judgment was not clearly erroneous, and that it is not for the appellate court to review a trial court's determinations concerning witness credibility. The State emphasizes that appellant has conceded that there was sufficient evidence for his conviction. Building upon the premise of appellant's concession, the State argues that ample case law stands for the proposition that the phrase "clearly erroneous" in the Maryland Rules refers only to whether there was legally sufficient evidence to support the verdict.

III.

Maryland Rule 8-131(c) provides as follows:

"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."

As set out in the Rule, the standard of review is "clearly erroneous," which refers to "whether the verdict is supported by legally sufficient evidence and not to peripheral incidents in its rendition." *Chisum v. State*, 227 Md. App. 118, 128 (2016). We give due regard to the unique opportunity of the trial judge to assess the credibility of the witnesses. *Id.* If there is any competent evidence to support the factual findings of the trial court, those findings cannot be found to be clearly erroneous. *Id.* We do not undertake a review

of the trial record that would amount to a retrial of the case but instead review the evidence in the light most favorable to the prevailing party. *State v. Albrecht*, 336 Md. 475, 478 (1994).

To be clear, appellant does not maintain that the evidence was insufficient to support the judgments of conviction. In fact, he concedes that point. Hence, as the State argues, that should end our inquiry. In *Williams v. State*, 5 Md. App. 450, 459–60 (1968), Judge Charles Orth, writing for this Court, explained the clearly erroneous standard and the standard of review for sufficiency of the evidence:

“We think that when the question comes before us that the trial court was clearly wrong in reaching a verdict of guilty on the evidence or as a contention that the evidence was insufficient in law so as to preclude it from being submitted to the jury, the test is whether the evidence either shows directly or supports a rational inference of the facts to be proved, from which the trier of fact could fairly be convinced, beyond a reasonable doubt, of the defendant's guilt of the offense charged. If there was such evidence, the lower court would neither be clearly erroneous, in a trial without a jury, in finding a verdict of guilty, nor in error, in a jury trial, in denying a motion for judgment of acquittal.”

The State is correct. Appellant, conceding that the evidence was sufficient to support the guilty verdicts, cannot now contend that the trial court was clearly erroneous.

Even if we were to consider appellant’s argument that the trial court was clearly erroneous because the judge stated that she found the three witnesses credible, and those witnesses’ testimony contained inconsistencies which the court did not explain away, we would hold that the trial court was not clearly erroneous. The judge stated that she made credibility determinations; the trier of fact can believe all, part, or none of any particular

witness' testimony; and the trial judge is not required to state the reasons for her determinations. Again, appellant's counsel conceded at oral argument that if the trial judge had stated merely "guilty," appellant would have no argument before this Court. That the trial court added *some* explanations does not convert this judgment to "clearly erroneous," particularly where the evidence is legally sufficient to support the verdicts beyond a reasonable doubt.

**JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED; COSTS TO
BE PAID BY APPELLANT.**