UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0241

September Term, 2015

JEROME WEST

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: January 11, 2016

Convicted, after a jury trial in the Circuit Court for Prince George's County, of first-degree assault, Jerome West, appellant, noted this appeal, presenting a single question for our review: "Did the State fail to present sufficient evidence of first degree assault?" We conclude that the State presented sufficient evidence and affirm.

BACKGROUND

On the evening of March 19, 2014, Leanne Pringle was visiting appellant, her ex-boyfriend, at his home, when he began to "badger" her about a photo on her cell phone. Then, when, in response to his behavior, Ms. Pringle attempted to leave, appellant intercepted her and said, "You're not going anywhere." He then shoved her onto a bed, where he choked her with one hand, pulled her pants down with the other, and then forced her legs open. Placing his penis inside her vagina, he told her "you know you want this" and "you know you like it." When appellant was finished, Ms. Pringle ran out of the room. But, as she fled, appellant grabbed her by the hair and dragged her back inside the room, warning her, "You try that shit again . . . I'm going to fucking kill you."

Appellant then struck Ms. Pringle hard enough to send her "flying over the bed" whereupon her head hit the floor "hard," causing her vision to blur and hindering her ability to stand. As she attempted to crawl around the bed to get to the door, appellant bent down and began to choke her again. "Losing strength" and feeling like her "heart was going to stop," Ms. Pringle begged appellant not to kill her. Appellant then stopped choking her and let her get up, saying: "Just go." Upon leaving appellant's residence, Ms. Pringle did not seek help or call "911," later explaining that her failure to do so was because appellant had made "lots of threats," including that he was going to shoot her.

While Ms. Pringle was driving home from appellant's residence, appellant called her several times. When she answered one of these calls, appellant said, "I'm sorry" and "I didn't mean to do that." Text messages from appellant followed in which he repeatedly stated he was "sorry."

Upon waking the next morning, Ms. Pringle found that she had "drenched" her pillow with blood, that she could not open her now swollen mouth, and that she had bruises all over her face and neck. With some difficulty, Ms. Pringle was able to inform her sister that appellant had assaulted her, whereupon her sister called "911."

Ms. Pringle was thereafter transported to the Prince George's County Hospital Center, where she received treatment for her injuries and reported that appellant had sexually assaulted her. While at the Hospital Center, she told Detective Joshua Malinowski of the Prince George's County Police Department, that appellant had assaulted and raped her. When the Detective later met with appellant, he admitted having struck Ms. Pringle but denied having raped her.

At the Hospital Center, Nurse Helen Thomas conducted a forensic examination of Ms. Pringle, during which she observed that Ms. Pringle's neck was tender and swollen and that she had pain on the right and left sides of her neck. She further noted that Ms. Pringle had a mark on the back of her head (which was tender to the touch), abrasions on her upper and lower lips, a laceration on her gums, and a swollen lingual frenulum,[1] as well as bruises on her arms and two small vaginal lacerations.

[1] Nurse Thomas described the lingual frenulum "as the little notch under the tongue."

Ultimately, appellant was charged with first- and second-degree rape, as well as first and second-degree assault. A jury subsequently acquitted him of first- and second-degree rape but convicted him of the assault charges. The circuit court thereafter merged appellant's two assault convictions and sentenced him to a term of ten years' imprisonment, with all but two years suspended, to be followed by a three-year period of probation.

STANDARD OF REVIEW

"The standard we apply, in reviewing the sufficiency of the evidence, 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.'" *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)), *cert. denied*, 443 Md. 736 (2015). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Id.* (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)).

"'The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence but rather is only with whether the verdicts were supported with sufficient evidence – that is, evidence that either showed directly or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt.'" *DeGrange v. State*, 221 Md. App. 415, 420 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 718 (2014), *cert. denied*, 438 Md. 143 (2014)). "'We must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen

a different reasonable inference. Further we do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.'" *Id.* at 420-21 (quoting *Donati*, *supra*, 215 Md. App. at 718).

DISCUSSION

Appellant contends that the State failed to adduce sufficient evidence from which the jury could find that he committed first-degree assault. Specifically, he claims that the State failed to show either that he intended to cause serious physical injury to Ms. Pringle or that Ms. Pringle actually suffered serious physical injury as a result of the alleged assault. As to the former of the two issues, the State points out that appellant failed to raise this issue in his motion for a judgment of acquittal, thus it was not preserved for review. We agree.

Rule 4-324(a) provides that in making a motion for a judgment of acquittal, "[t]he defendant shall state with particularity all reasons why the motion should be granted." What is more, "'[t]he issue of the sufficiency of the evidence is not preserved when [the defendant]'s motion for judgment of acquittal is on a ground different than that set forth on appeal.'" *Hobby v. State*, 436 Md. 526, 540 (2014) (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997)). In other words, "'[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal.'" *Id.* (quoting *Tetso v. State*, 205 Md. App. 334, 384 (2012)).

In moving for a judgment of acquittal on the assault charges, defense counsel asserted the following:

> As to Count 3, which is first-degree assault, first-degree assault is an assault which is the unconcentual [sic] touching of another without consent or permission and without any legal justification. But the first-degree assault version requires that [appellant] intended to cause serious physical injury, and ***this is not serious physical injury because this isn't a case in which there was a weapon brandished that he intended to cause serious physical injury***. Says physical injury or a substantial risk of death or creates serious or permanently serious disfigurement or loss or impairment of function of bodily member or organ. I don't believe that was even in this position, in at [sic] light most favorable to the State, established, so as to those two counts, Count 1 and 3. I respectfully request you grant my motion for judgment of acquittal.

(Emphasis added).

The court denied the motion, stating:

> Both a jury question in terms of serious injury. [Ms. Pringle] talked about her tooth issue, how it had to be pulled, she couldn't eat and that she still at this time talks about permanency, cannot comfortably eat on the left side of her mouth as a result of the jaw injury. So your motions are denied for both counts.

Thus, appellant's contention that the State failed to show that he had the *intent* to cause serious physical injury to Ms. Pringle was clearly not raised below and hence, not preserved for our review. Consequently, we shall not address it. *See Hobby*, *supra*, 436 Md. at 540 (quoting *Anthony*, *supra*, 117 Md. App. at 126).

That leaves only the issue of whether Ms. Pringle's injuries amounted to a "serious physical injury," as section 3-202(a)(1) of the Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("C.L."), defines first-degree assault as "intentionally caus[ing] or attempt[ing] to cause serious physical injury to another." "Serious physical injury" is

defined in C.L. § 3-201(d) as an injury that "creates a substantial risk of death" or "causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ."

What constitutes a serious physical injury has rarely been addressed by our appellate courts. But, in *Chilcoat v. State*, 155 Md. App. 394 (2004), we observed that "'[s]erious physical injury' may be proved, *inter alia*, by evidence establishing that the defendant inflicted physical injury by 'an act performed under circumstances that create a substantial risk of death.'" *Id.* at 403 (quoting *Konrad v. State*, 763 P.2d 1369, 1376 (Alaska Ct. App. 1988)). Chilcoat had hit the victim four or five times over the head with a beer stein, fracturing his skull in two places. *Id.* at 398-99. The neurosurgeon, who thereafter treated the victim for those injuries, testified that, if left untreated, the fractures would have led to abscesses, which, in turn, could have led to his death. *Id.* at 401. Consequently, we held that the victim's injuries created a substantial risk of death and, therefore, satisfied the "serious physical injury" element of first-degree assault. *Id.* at 403. And, as first-degree assault may be established by demonstrating an attempt to cause serious physical injury, the jury, we stated, "may 'infer that one intends the natural and probable consequences of his act.'" *Id.* (quoting *Ford v. State*, 330 Md. 682, 704 (1993)).

As in *Chilcoat*, there was sufficient evidence adduced that appellant attempted to cause a serious physical injury. Ms. Pringle testified that appellant choked her so forcibly that she was "losing strength" and thought her "heart was going to stop." He also hit her and threw her across the room, causing her to hit her head so "hard" that her vision blurred. He then choked her again. And, while he was beating and choking her, he repeatedly

declared that he was going to kill her. *See State v. Hallihan*, 224 Md. App. 590, 594-96, 609-10) (2015) (noting that choking creates a substantial risk of death); *Kackley v. State*, 63 Md. App. 532, 543 (1985) (finding that the jury could determine if defendant attempted to cause serious physical injury by choking the victim).

Moreover "serious physical injury" can also be a "permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ." C.L. § 3-201(d)(2). As the Missouri Court of Appeals has observed in interpreting a similar definition of "serious physical injury," "'[p]rotracted means something short of permanent but more than of short duration[.]'" *State v. Daniel*, 103 S.W.3d 822, 827 (Mo. Ct. App. 2003) (quoting *State v. Ross*, 939 S.W.2d 15, 18 (Mo. Ct. App. 1997)). "'There is no minimum degree of trauma that must be inflicted,'" that court observed, "'to satisfy the portion of the statutory definition dealing with protracted loss or impairment. Rather, the 'protracted impairment' portion of the definition of 'serious physical injury' is concerned with the temporal aspect of the injury.'" *Id.* at 827-28 (quoting *Ross*, *supra*, 939 S.W.2d at 18). The Missouri Court therefore concluded that "[t]he fact that a person recovers from an injury without residual damage does not eliminate the possibility that the person suffered 'serious physical injury.'" *Id.* at 828 (quoting *Ross*, *supra*, 939 S.W.2d at 18). *See also People v. Everett*, 973 N.Y.S.2d 207, 207-08 (N.Y. App. Div. 2013) (finding serious physical injury in permanent loss of four teeth); *State v. Roberts*, 235 S.E.2d 203, 212-13 (N.C. 1977) (finding serious physical injury where victim's teeth were knocked out of alignment and deadened).

Ms. Pringle described the injuries to her mouth as follows:

> Underneath here my tooth felt like it was out of place, like my jaw was just pushed up this way. I couldn't clinch down. I couldn't open my jaw. I couldn't talk. I couldn't even lift my tongue. I had bruising all underneath my tongue. I couldn't talk. Nobody could understand me.

Because of these injuries, Ms. Pringle ate pureed foods through a straw for a month and a half after the attack. By the time of trial, her tooth had to be extracted. Based on this evidence, we conclude that a jury could have found that Ms. Pringle had suffered a serious physical injury to her jaw and teeth, which, if not permanent, was at least protracted.

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