UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0711

September Term, 2014

MICHAEL A. JONES

v.

STATE OF MARYLAND

Woodward,
Friedman,
Zarnoch, Robert, A.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: January 19, 2016

A jury in the Circuit Court for Frederick County convicted Michael Jones, appellant, of first-degree burglary, first and second-degree assault, and reckless endangerment. Appellant was sentenced to a term of 25 years' incarceration for first-degree assault, with four years and six months suspended, and a term of 20 years' incarceration for first-degree burglary, to run consecutively, all of which was suspended. Appellant appealed and presents the following questions for our review:

1. Was Appellant denied his constitutional right to be present at all critical stages at his trial?

2. Was Appellant improperly tried on the wrong statement of charges?

3. Was the evidence sufficient to support Appellant's convictions?

For the reasons to be discussed, we affirm.

BACKGROUND

On July 11, 2013, Susan Slaughter was watering her plants outside of her apartment, when she walked inside of her apartment and shut the door behind her. While Slaughter was at her kitchen sink refilling her watering can, appellant "slammed the door open" and entered the apartment. Slaughter grabbed her phone, but appellant took it from her. Appellant then stated: "[B]itch, you won't be needing this phone. You're not sending me to jail." Appellant then kicked the front door closed and locked it. Appellant grabbed Slaughter, picked her up off the floor, and slammed her into the corner of the bathroom door. Appellant then choked Slaughter until she lost consciousness.

When Slaughter awoke, she was lying on the kitchen floor with the straps of her purse wrapped around her neck. There was blood on the floor and on her clothes, and her ear had been detached. Slaughter left the apartment and walked to a neighbor's house. The neighbor called 911, and Slaughter was transported to the hospital. In addition to a detached ear and serious facial injuries, Slaughter suffered a broken cheekbone. At trial, appellant denied assaulting Slaughter.

Additional facts will be supplied below.

DISCUSSION

I.

Appellant's removal from the courtroom

Throughout the course of his trial, appellant engaged in a pattern of disruptive behavior, which began when he refused to enter the courtroom at the start of the trial, because he was unhappy with the clothes provided to him by the Public Defender's Office.[1] After finally deciding to appear, appellant informed the trial court that he was also unhappy with defense counsel, stating multiple times: "I don't want this piece of shit representing me." The court then informed appellant that he could proceed *pro se*, at which time appellant stated: "[H]ow am I gonna represent myself?...You can't force me to go to trial[.]" Finally, after the court informed appellant that he could either go forward *pro se* or go forward with defense counsel, appellant stated: "Fuck, man, take me back…take me back, take me back." Sheriffs then escorted appellant out of the courtroom, but appellant

[1] Appellant was in custody at the time and was dressed in prison garb.

returned shortly thereafter, stating: "[L]et's get this shit on the road." The court asked appellant to take a seat, at which time he said: "You have a seat too, bitch."

Later that afternoon, the trial court took a brief recess following the testimony of Slaughter. Before the jury was brought back into the courtroom, the court addressed appellant: "You have whistled twice in this court now and you've directed that whistle towards the witness. If you whistle again I will cite you for contempt, do you understand that?" Appellant responded: "How do you know it was directed at the witness?" After refusing to respond to appellant's question, the court again asked appellant if he understood, and appellant stated: "I'm not gonna answer your question."

At another point, the trial court made an evidentiary ruling that upset appellant, and appellant started to verbally protest. The court asked appellant to be quiet, but appellant refused. Finally, the court told appellant: "You are to remain quiet during the course of this trial ….If you do not I will cite you with contempt *and I will require you to remain outside the courtroom through the rest of the trial.* Do you understand?" (Emphasis added). Appellant then indicated that he understood.

Appellant's disruptive behavior continued on the last day of trial, when appellant started making inappropriate comments during the State's closing argument. After two of appellant's comments, the court addressed appellant directly by saying "Mr. Jones" immediately after appellant made each remark. Despite the court's admonishment, appellant continued to interrupt the State's closing argument with inappropriate comments.

Finally, the court stopped the proceedings, apparently to remove the jury from the courtroom so that it could address appellant's behavior.

Before the trial court could do anything, however, appellant stood up and threw his water cup in the direction of the bench, striking the prosecutor in the back of the head. Appellant then screamed: "[L]ying ass bitch. Tell the truth…Tell the truth, bitch. Fucking lying bitch. Tell the truth. Little skinny bitch." Appellant was immediately restrained by the bailiffs and removed from the courtroom. The court then questioned each juror to ensure that they could remain impartial despite appellant's outburst. The trial concluded without appellant in the courtroom.

In the instant appeal, appellant asserts that the trial court violated his constitutional right to be present at every stage of his trial. We review the trial court's decision to remove appellant from the courtroom for abuse of discretion. *See Biglari v. State,* 156 Md. App. 657, 674 (2004) ("[T]he trial judge has broad discretion to control the conduct in his or her courtroom[.]").

The Confrontation Clause of the Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. "One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial." *Illinois v. Allen,* 397 U.S. 337, 338 (1970) (citing *Lewis v. United States*, 146 U.S. 370 (1892)). This right, however, is not absolute – a defendant's right to be present may be waived if he "engages in conduct that justifies exclusion from the courtroom[.]"

Md. Rule 4-231(c)(2); *see also Allen,* 397 U.S. at 343 ("[A] defendant can lose his right to be present at trial if [he]...insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom."). In such instances, the trial court may "bind and gag" the defendant, cite him for contempt, or have him removed from courtroom. *Allen,* 397 U.S. at 344.

In the present case, there is little doubt, and appellant does not contend otherwise, that appellant's behavior was so disruptive and disrespectful that the trial court had little choice but to remove him from the courtroom. Not only did appellant engage in insolent behavior throughout his trial, but he eventually became a serious threat to the safety of the people in the courtroom when he threw his water cup at the bench and the prosecutor. In fact, the trial court showed tremendous restraint in not sanctioning appellant sooner.

Rather than make the futile argument that his behavior did not warrant removal, appellant contends that the trial court erred by not properly warning him before having him removed. Relying on *Allen* and our opinion in *Biglari*, appellant asserts that, before a trial court removes a disruptive defendant, it must expressly warn the defendant that continued disruption will be punished by removal. Appellant claims that "at no time during the proceedings did the trial court tell [appellant] that he could be removed for disruptive behavior."

We must reject appellant's argument, because the factual predicate to appellant's legal conclusion is not supported by the record. As noted above, the trial court expressly informed appellant that, if his disruptive behavior continued, the trial court would "require

[him] to remain outside the courtroom through the rest of the trial." Appellant then acknowledged that he understood the court's warning. Therefore, without a factual basis for his argument, appellant's claim must fail. *See Bradley v. Hazard Tech. Co., Inc.,* 340 Md. 202, 206 (1995) ("It is well-settled that, on appeal, the burden of establishing error in the lower court rests squarely on the appellant.").

II.

The statement of charges

Appellant also claims that he was tried on the "wrong" statement of charges. Pursuant to Maryland Rule 4-201, appellant was charged and tried on a Statement of Charges, which listed the charges as first-degree assault, second-degree assault, burglary, and reckless endangerment. According to appellant, such Statement of Charges was not the statement of charges that was introduced into evidence. Appellant claims that the statement of charges that was introduced into evidence was a different document, titled "Incident Information," which described the charges as assault and second-degree assault. Appellant concludes that he should have been tried on the charges listed on the Incident Information, because the Incident Information was the statement of charges that was introduced into evidence.

Appellant's contentions are without merit both in fact and in law. As appellant admits, he was tried on a Statement of Charges pursuant to Maryland Rule 4-201. At no time was such Statement of Charges, or any statement of charges, introduced into evidence. The Incident Information, which appellant erroneously refers to as "the statement of

charges," was introduced into evidence by appellant, not as a statement of charges, but for impeachment purposes. Once introduced, the Incident Information was never referred to as "a statement of charges." Appellant's assertion that he was tried on the "wrong" statement of charges is factually specious. Appellant was charged and tried on a proper Statement of Charges, which was never introduced into evidence, in accordance with the Maryland Rules.

III.

Sufficiency of the evidence

Lastly, appellant claims that the evidence was insufficient to support his convictions for first-degree burglary and first-degree assault. Appellant asserts that burglary requires a "breaking," which was absent in the present case, because there was no evidence that the door to the victim's apartment was broken or that appellant was otherwise barred from entering the unlocked residence. As to the first-degree assault, appellant claims that the evidence was insufficient because the only evidence implicating him was the testimony of the victim, who had mental health issues and had been subject to auditory and visual hallucinations. Both of appellant's claims lack merit.

When reviewing the sufficiency of evidence in a criminal case, it is our duty to determine, in a light most favorable to the prosecution, "whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt…beyond a reasonable doubt." *Taylor v. State,* 346 Md. 452, 457 (1997) (citing *State v. Albrecht*, 336 Md. 475, 478-79 (1994)). This does not mean that we

should weigh the evidence or undertake "a review of the record that would amount to a retrial of the case." *Winder v. State,* 362 Md. 275, 325 (2001) (citing *Albrecht*, 336 Md. at 478). Instead, the sole issue is whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979) (emphasis in original) (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)). Moreover, we do not require that there be any direct evidence of the defendant's guilt. Verdicts founded on circumstantial evidence alone are sufficient, "provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Hall v. State,* 119 Md. App. 377, 393 (1998) (citing *Finke v. State*, 56 Md. App. 450, 468-78 (1983)).

Under Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("C.L.") § 6-202(a)-(b), a person commits first-degree burglary when he or she "break[s] and enter[s] the dwelling of another with the intent" to commit theft or a crime of violence. Although appellant is correct that a "breaking" is required, proof of an actual breaking does not demand evidence that an entryway was physically damaged. Instead, such a breaking can occur by someone "'lifting a latch, drawing a bolt, raising an unfastened window, *turning a key or knob, [or] pushing open a door kept closed merely by its own weight*.'" *Dorsey v. State,* 231 Md. 278, 280 (1963) (emphasis added) (quoting HOCHHEIMER, CRIMINAL LAW, § 277, p. 310 (2d ed.)). As a result, the "breaking" element was more than satisfied when Slaughter testified that she closed her apartment door prior to the assault and that appellant "slammed the door open."

In addition, even though Slaughter testified that appellant had previously been given permission to enter her apartment, there was no evidence that appellant was entitled to enter Slaughter's residence at the time of the assault. *See Reagan v. State,* 2 Md. App. 262, 268 (1967) (citing *Dorsey*, 231 Md. at 278) (noting that there is no breaking "if the one entering had authority to do so *at that particular time*") (emphasis added). Slaughter stated that, although she and appellant had a prior romantic relationship, at the time of the assault the relationship had deteriorated and was "very unfriendly." In fact, Slaughter testified that, just a few days prior to the assault, she and appellant had an altercation, during which appellant verbally threatened her.[2] Given these circumstances, and given the fact that Slaughter tried to call the police immediately upon appellant's entrance into her apartment at the time of the assault, a reasonable inference could be drawn that appellant did not have any authority to enter the apartment at that particular time. *See State v Suddith,* 379 Md. 425, 447 (2004) (citing *State v. Smith*, 374 Md. 527, 557 (2003)) ("Where it is reasonable for a trier of fact to make an inference, we must let them do so[.]").

Finally, appellant's assertion that Slaughter had health issues and suffered auditory hallucinations is not material, nor does it matter that there was an alleged dearth of additional evidence in support of the burglary and assault charges. As we have already indicated, our review of the sufficiency of the evidence is not an assessment of the weight or credibility of the evidence. *See Pryor v. State,* 195 Md. App. 311, 329 (2010) ("[W]e do

[2] Appellant had been charged with malicious destruction of Slaughter's property (stemming from a previous incident). At the time of the alleged threat, Slaughter was set to testify against appellant in that case.

not weigh the evidence or judge the credibility of witnesses, as that is the responsibility of the trier of fact."). The only issue before this Court is whether there was *some* evidence to support the crimes charged, which there was by way of Slaughter's testimony. That the jury decided to believe Slaughter's testimony despite the alleged issues with her credibility is not our concern. *Id.* (citing *Muir v. State*, 64 Md. App. 648, 654 (1985), *aff'd*, 308 Md. 208 (1986)) ("A fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony.") Therefore, the evidence was sufficient to sustain appellant's convictions for both first-degree burglary and first-degree assault.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.