UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0726

September Term, 2015

JASON KENNETH ROLLINS

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Arthur, J.

Filed: June 30, 2016

Following a trial in the Circuit Court for Montgomery County, a jury convicted appellant Jason Kenneth Rollins of second-degree assault, but acquitted him of attempted robbery and attempted theft of less than $1000. The trial court sentenced Rollins to eight years in prison, suspending all but 18 months. Rollins noted this timely appeal.

Rollins presents the following question for our consideration: Was the evidence sufficient to support the conviction for second-degree assault?

For the reasons that follow, we shall affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

On the afternoon of December 12, 2014, Hanaly Valle was at work as an assistant manager in the first-floor leasing office at The Seasons Apartments in Bethesda, Maryland. A tall, African-American man, carrying a messenger bag and wearing all-black clothing, a beanie with a red pompom, and bright blue headphones, entered the office, asking about the possibility of a job. Ms. Valle informed him that there were no job openings at that time. The man raised his voice and complained that he had submitted his résumé online and had spent all his money to take a bus to get a job.

As the man proceeded farther into Ms. Valle's office, she became uncomfortable and tried to use the telephone to alert Mary McCann, an office manager on the second floor of the apartment building.[1] When the man became aware of Ms. Valle's attempt at communicating with someone else, he screamed at her, grabbed the telephone from her

[1] A portion of that attempted phone call was recorded. The recording was played for the jury. It evidenced Ms. Valle's call for help.

hand, and closed the office door. Afraid, Ms. Valle screamed for help. The man yelled at her to stop screaming, came around her desk, rummaged through the desk drawers, and demanded her purse, which she said was in another desk.

Ms. Valle was able to get around the man. When she reached the office door, she threw the pair of scissors at him. He screamed, "No!" In an apparent attempt to keep her from leaving the office, he grabbed her by the left arm, causing her arm to become red and bruised.[2] Ms. Valle kicked the man and ran upstairs, where she, appearing hysterical and distraught, asked Ms. McCann to call 911.The police responded to her location within minutes. Ms. Valle gave the officers a description of her assailant and showed them his image from the apartment building's video-surveillance camera aimed at the front door.[3] The responding officers issued a lookout for the assailant, which included a still photograph taken from the surveillance video.

A short time later, a few blocks away from the apartment building, the police located a man matching the description given by Ms. Valle. Officers transported Ms. Valle to that location, and she identified the man as her assailant. That man, later identified as Rollins, was arrested at the scene without incident.

[2] A photograph of her arm was admitted into evidence and published to the jury.

[3] The time stamp on the still photograph showed Rollins arriving at the building approximately 15 minutes after Valle called 911. Ms. Valle explained, however, that the building's video-surveillance time stamp was inaccurate by about 20 minutes and had been so since it had been installed. Otherwise, she stated, the surveillance equipment was in working order.

At the close of the State's case-in-chief, Rollins moved for judgment of acquittal. On the attempted robbery charge, Rollins argued that the State had presented no evidence that he had used force or threatened to use force in attempting to obtain Ms. Valle's purse. On the second-degree assault charge, Rollins argued only "that there's insufficient evidence to show an assault in the second degree."

The court took the matter under advisement, intending to rule at the outset of trial the next morning. At the start of trial the next morning, the court denied Rollins's motion.

Rollins did not put on any evidence. At the close of the entire case, Rollins renewed his motion for judgment of acquittal, with "nothing in addition to add." The court again denied the motion. The jury acquitted him of theft and attempted robbery, but convicted him of second-degree assault.

DISCUSSION

Rollins argues that the evidence adduced at trial was insufficient to sustain the conviction for second-degree assault because the police recovered no DNA or fingerprints from Ms. Valle's office. In addition, he argues that based on a photograph entered into evidence, Ms. Valle's injury looked "simply like a rash and not a bruise or other indication of an assault," and that she did not seek medical attention for injuries from the alleged assault. For those reasons, he concludes, there is nothing, other than Ms. Valle's testimony, to connect him to an assault at the apartment building.

Although the State does not argue lack of preservation, we conclude that Rollins has failed to preserve this issue for appellate review. When, as here, a jury is the trier of

fact, appellate review of the sufficiency of the evidence is available "'only when the defendant moves for judgment of acquittal at the close of all the evidence and argues precisely the ways in which the evidence is lacking.'" *Walker v. State*, 144 Md. App. 505, 545 (2002) (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997)), *rev'd on other grounds*, 373 Md. 360 (2003); *accord Tetso v. State*, 205 Md. App. 334, 383 (2012). A criminal defendant who moves for judgment of acquittal "is required by Md. Rule 4-324(a) to 'state with particularity all reasons why the motion should be granted[,]' and is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *State v. Lyles*, 308 Md. 129, 135-36 (1986)).

The language of Rule 4-324(a) is mandatory. *Whiting v. State*, 160 Md. App. 285, 308 (2004), *aff'd*, 389 Md. 334 (2005). "'[A] motion which merely asserts that the evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with [Maryland] Rule [4-324(a),] and thus does not preserve the issue of sufficiency for appellate review.'" *Montgomery v. State*, 206 Md. App. 357, 385-86 (2012) (quoting *Brooks v. State*, 68 Md. App. 604, 611 (1986)).

At the close of the State's case-in-chief, Rollins moved for judgment of acquittal, asserting the following grounds:

> In terms of the attempted robbery, we would argue that there's been no evidence of force or threat of force at the time of the request or alleged request of the purse in the light most favorable to the State.
>
> When questioned about it, she says that the demand for the purse and the searching of the drawers was prior to any kind of contact with her. She says the grabbing of the arm that she alleges, happened after both the

> demand and the searching of the drawers. She further says that there were no words said during the actual physical contact to further an attempted robbery or whatever the State is alleging.
>
> So, at best, there is testimony of an attempted theft, not an attempted robbery. There's also no proof of the intent to rob, and *as to the second-degree assault, the second count, we would argue that there's insufficient evidence to show an assault in the second degree.*

(Emphasis added)

The court denied the motion.

At the close of all the evidence, Rollins renewed his motion for judgment of acquittal, stating only:

> Your Honor, I would make a motion for judgment of acquittal on both counts. I would just renew my argument previously, there's nothing in addition to add. I would just remind you that now the burden has shifted a little bit because the defense has rested.

The court again denied the motion.

In arguing that the evidence was insufficient to prove a second-degree assault, Rollins never stated with specificity any grounds in support of his motions for judgment of acquittal. Consequently, he has failed to preserve the issue of sufficiency of the evidence for appellate review.

Even had Rollins preserved the issue of the sufficiency of the evidence to support the conviction of second-degree assault, he would not prevail.

Evidence is sufficient if, viewing it "in the light most favorable to the State, '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Riggins v. State*, 223 Md. App. 40, 60 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). 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.'" *Harrison v. State*, 382 Md. 477, 487-88 (2004) (quoting *Moye v. State*, 369 Md. 2, 12-13 (2002). The testimony of even a single eyewitness, if believed, is sufficient evidence to support a conviction." *Marlin v. State*, 192 Md. App. 134, 153 (2010).

Second-degree assault is a statutory crime that encompasses the common-law crimes of assault, battery, and assault and battery. *See* Md. Code (2002, 2012 Repl. Vol.), § 3-203(a) of the Criminal Law Article ("CL") ("A person may not commit an assault"); CL § 3-201(b) (defining "assault" to mean "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings"). A battery is a touching that is either harmful, unlawful, or offensive.[4] *Quansah v. State*, 207 Md. App. 636, 647 (2012). Battery includes offensive touching, as well as more violent force, and "'any unlawful force used against the person of another, no matter how slight, will constitute a battery.'" *Lamb v. State*, 93 Md. App. 422, 447 (1992) (quoting *Kellum v. State*, 223 Md. 80, 85 (1960)).

Rollins claims that "absent the testimony of Ms. Valle there was nothing to connect [him] to any assault in the Seasons Apartment building." He conveniently

[4] The jury was instructed only as to the battery form of assault:

> The defendant is charged with the crime of assault. Assault is causing offensive physical contact to another person. In order to convict the defendant of assault, the State must prove that the defendant caused offensive physical contact with Hanaly Valle. That the contact was the result of an intentional or reckless act of the defendant, and was not accidental, and that the contact was not consented to by Hanaly Valle.

disregards Ms. Valle's testimony. Yet that testimony, which the trial court and the jury found credible, indicated that Rollins, whom she positively identified as her assailant at a show-up, entered her office and, after a discussion about the possibility of a job in the building, frightened her by shutting the office door, coming around her desk, rummaging through the items in her desk, demanding her purse, and grabbing her arm hard enough to leave red marks that bruised the next day. The jury heard a recording of Ms. Valle's telephone call to Ms. McCann, in which Ms. Valle called for help in response to Rollins's actions, as well as her own testimony that she screamed for help. The jury also heard Ms. McCann's testimony that, immediately following the encounter with Rollins, Ms. Valle was hysterical and distraught.

All the evidence, if believed by the jury, was sufficient to prove that Rollins touched Ms. Valle in a harmful, unlawful, or offensive manner without her consent. The lack of fingerprints or DNA at the scene, the alleged lack of seriousness of Ms. Valle's injury, and her decision not to seek medical attention all go to the weight of the evidence, for the jury to determine, not its sufficiency.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. ALL COSTS TO BE PAID BY APPELLANT.