

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1852

September Term, 2015

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IN RE: GORDON T.

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Graeff,  
Friedman,  
Thieme, Raymond G., Jr.  
(Retired, Specially Assigned),

JJ.

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Opinion by Thieme, J.

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Filed: June 3, 2016

\*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.

The Circuit Court for Cecil County, sitting as a juvenile court, found Gordon T., appellant, “involved” in committing the delinquent act of second-degree assault.<sup>1</sup> Subsequently, the court placed Gordon on supervised probation and ordered him to serve community service. In this appeal, Gordon presents the following question for our review:

Was the evidence legally sufficient to sustain the finding of involved?

Finding the evidence sufficient, we affirm.

### **BACKGROUND**

On the evening of March 18, 2015, Delaney Green, Nick Airey, Jaren Neal, Gordon T., and several other kids from their neighborhood were outside playing with Airsoft guns. Gordon had borrowed an Airsoft gun from his friend Jaren. The juveniles had divided up into teams and were shooting at each other with the Airsoft guns, aiming for the torso or below, not each other’s heads.

When Delaney went inside to get something to eat, the other boys were still “hanging” outside. Delaney’s sister, Emerald, who had not been outside playing with the Airsoft guns on that day or on any previous occasion, was inside getting ready to go to dance class. She heard a knock on the front door. When she opened the door Gordon, looked at her, lifted his Airsoft gun, and shot her in the neck. Gordon’s actions were observed by

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<sup>1</sup>“In juvenile proceedings the more precise term to use when referring to the plea of the respondent is ‘not involved’ [or involved] as opposed to ‘not guilty’ [or guilty].” *In re Christian A.*, 219 Md. App. 56, 62 n. 6 (2014) (quoting *In re Kevin Eugene C.*, 90 Md. App. 85, 87–88 n. 2 (1992)) (alterations in original).

Nick. After shooting Emerald, Gordon gave the gun back to Jaren and then walked down the street toward his home.

Gordon later denied any involvement in the shooting. Gordon and his mother both said that Gordon was with his mother on the night in question, picking up his older sister and then shopping. Gordon and his mother further explained that Gordon was not allowed to play with Airsoft guns.

### **DISCUSSION**

Gordon contends that the juvenile court erred in finding him to have been involved in a second-degree assault, because the evidence was insufficient to demonstrate that he was present on the evening in question. Alternately, Gordon contends that the evidence shows that any contact he had with the victim was “accidental and not criminal” because it took place “in the course of what amounted to otherwise mutually consented to contact by way of ‘playing Airsoft[.]’”

A “delinquent act” is defined as “an act which would be a crime if committed by an adult.” Md. Code (2013 Repl. Vol., 2015 Supp.) §3–8A–01(1) of the Courts and Judicial Proceedings (“C&JP”) Article. An allegation that a juvenile has committed a delinquent act must be proven beyond a reasonable doubt. C&JP §3–8A–18(c)(1); Md. Rule 11-113.e.1. The standard of review of evidentiary sufficiency that applies in a juvenile delinquency case is the same standard that applies in a criminal case. *In re Timothy F.*, 343 Md. 371, 380

(1996). *See also In re James R.*, 220 Md. App. 132, 137 (2014). That standard, summarized by the Court of Appeals in *State v. Smith*, 374 Md. 527 (2003),

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. Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder. 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. We do not re-weigh the evidence, but we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.

*Id.* at 533–34 (internal citations, quotations, and brackets omitted).

The only offense for which Gordon was found to have been involved was second-degree assault. “[T]he term of art ‘assault’ may connote any of three distinct ideas: (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 reasonable apprehension of an imminent battery.” *Lamb v. State*, 93 Md. App. 422, 428 (1992) (indentation omitted); *Cruz v. State*, 407 Md. 202, 209 n. 3 (2009). In this case, the assault alleged was a consummated battery, which requires: (1) that the defendant caused offensive physical contact with the victim; (2) that the contact was the result of an intentional or reckless act of the defendant and was not accidental; and (3) that the contact was not consented to or legally justified. *Pryor v. State*, 195 Md. App. 311, 335 (2010). In determining a defendant’s intent, the trier of fact can infer the requisite 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)). A finder of fact may “infer that ‘one intends the natural and probable consequences of his act.’” *Ford v. State*, 330 Md. 682, 704 (1993) (citation omitted).

In the instant case, Emerald testified that Gordon shot her in the neck with the Airsoft gun. Nick also testified that Gordon shot at Emerald when she opened the door. Emerald was not part of the group that was playing Airsoft, nor did she otherwise consent to being shot at with the guns. We conclude that a rational trier of fact, viewing this evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that Gordon fired an Airsoft gun at Emerald, and that the shooting was not accidental. The natural and probable consequences of Gordon’s act of firing the Airsoft gun was that an individual would get hit with the Airsoft pellet. Thus, a rational trier of fact would not err in finding that Gordon possessed the requisite intent to cause an offensive touching. The evidence, therefore, was sufficient to find Gordon to have been involved in the second degree assault.

To the extent Gordon and his mother both testified that Gordon was not present and could not have fired the Airsoft gun at Emerald, we note that the court did not find Gordon’s alibi to be credible. The court observed that Gordon’s mother was trying to protect Gordon from “outside influences,” and that Gordon may have been afraid of admitting that he did something wrong. It is the responsibility of the trier of fact to assess the credibility of

witnesses and to resolve contradictory testimony. *State v. Stanley*, 351 Md. 733, 750 (1998).

The circuit court's findings regarding the credibility of the witnesses in this case were not clearly erroneous.

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