

Circuit Court for Baltimore City
Case No. 116299008

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 411

September Term, 2017

ELENORA MARSHALL

v.

STATE OF MARYLAND

Woodward C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: December 11, 2017

*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, Elenora Marshall, was charged with first-degree assault, conspiracy to commit first-degree assault, second-degree assault, conspiracy to commit second-degree assault, and reckless endangerment. After a court trial, the Circuit Court for Baltimore City convicted appellant of second-degree assault on Charnise D. Kesler. Appellant was sentenced to two years of confinement, all but sixty days of which was suspended, and ordered to complete one year of supervised probation. She appeals and argues that the evidence was insufficient to sustain the conviction for second-degree assault.

BACKGROUND

On July 5, 2016, appellant held a birthday party for her minor child at her home at 1629 North Smallwood Street in Baltimore. Charnise Kesler attended the party with her mother Michelle Connors and several children. A number of other adults also attended the party. Kesler testified at trial that, after about two hours, her mother, who had been drinking, got into an argument with another woman at the party. Kesler then took her intoxicated mother home.

Later, Kesler returned to the party so that she could apologize for her mother's behavior. When she apologized to appellant, however, appellant started "flippin' out" and demanded that she leave the party. She and appellant then bickered, but she eventually began to leave. As she left the house, appellant followed her, and pushed her down a set of steps leading from the front porch. She then got up, put the children who had come to the party with her in a car, and entered the car herself. She then got pulled out of the car by her hair and multiple people from the party and the neighborhood started assaulting her.

Kesler testified that appellant started the assault by “swingin’ first.” When asked how many times appellant struck her, Kesler testified that it was “a whole buncha times.”

Kesler was eventually able to get into the car and leave the area. The police responded to Kesler’s home that evening and observed that she had injuries to her head. Kesler refused medical treatment at that time. The next day she sought medical treatment at a hospital and was diagnosed with “abrasion, contusion of nose, contusion of right eyelid, hematuria, subconjunctival hemorrhage.”

A number of witnesses, including appellant’s mother, Doletha Kennedy, testified for appellant at trial. Kennedy testified that when Kesler returned to the party, appellant told her to leave. When Kesler refused to leave, Kennedy and others physically lead her to the door. When Kesler got to the porch, she fell down the porch steps and got into an altercation with appellant during which time appellant and Kesler pulled each other’s hair. Another witness, Shirley Davis, testified that appellant and Kesler never got into a physical altercation, and that no fighting occurred. She could not remember if anyone else at the party got physical with Kesler.

Appellant testified that after Kesler refused to leave her home, Kennedy and another guest physically removed Kesler from the house and that Kesler began screaming while outside on the porch. She testified that after talking with Kesler outside, she grabbed Kesler’s daughter and another child to put them into the car. Kesler then became angry and began pulling her hair. She estimated that it took onlookers approximately 15-20 minutes to release Kesler’s grip from her hair. Kesler also began spitting blood at other

people in her immediate vicinity, but that there was no other altercation between herself and Kesler.

Before issuing the verdict, the court indicated that it did not find any witness wholly credible. The court found that the testimony of appellant, and appellant’s witnesses did not corroborate each other. Further, it did not find that these witnesses’ testimony was corroborated by the medical records. While doubting that Kesler had fallen down the steps, the court stated that even if true, “it still doesn’t give rise to the kind of evidence that would result in the medical injuries confirmed by [the medical records].” The court ultimately found appellant guilty of second-degree assault and explained:

So, I think that what’s happened here is that there was a fight. I also think that no one’s really telling the truth about the extent of the beating that Ms. Kesler took. I do think that she took a beating.

DISCUSSION

Appellant argues that Kesler’s “testimony was equivocal as to whether [appellant] was the person, or one of the people who hit her in the face, causing the injuries documented in the hospital.” Therefore, “[w]hile there is sufficient evidence that someone hit Ms. Kesler in the face, there is insufficient evidence that [appellant] caused those injuries.” The State responds that Kesler’s testimony that appellant “hit” her a “whole buncha times” was “sufficient to support the trial judge’s verdict.” We agree.

To review for sufficiency of evidence “we review the evidence in the light most favorable to the prosecution and determine whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). “It is not the

function of the appellate court to determine the credibility of witnesses or the weight of the evidence.” *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finders, “task to resolve any conflicts in the evidence and assess the credibility of witnesses.” *Id.* A verdict may rest upon the testimony of a single witness. *Hourie v. State*, 53 Md. App. 62, 73 (1982).

In the instant case, Kesler testified that appellant pushed her down the stairs, hit her a “whole buncha times” and started the assault by “swingin’ first.” In addition, Kesler’s medical records indicated that, when she was treated the next day, she was diagnosed with “abrasion, contusion of nose, contusion of right eyelid, hematuria, subconjunctival hemorrhage.” Kesler’s testimony, if believed, is sufficient to support the verdict. Kesler’s testimony that other individuals also assaulted and thus could have caused or contributed to the injuries for which Kesler was treated the following day, does not invalidate the verdict against appellant. Although the court referenced the injuries in issuing the verdict, it did not indicate that it believed that appellant had caused any or all of the injuries. The court noted that the degree of injury did not corroborate the testimony of appellant and her witnesses. The court noted that this lack of corroboration weighed against the credibility of appellant and her witnesses. We hold that a rational trier of fact could have found that appellant assaulted Kesler.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**