UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 616

September Term, 2016

LAVON DEWAYNE CHISLEY

v.

STATE OF MARYLAND

Leahy,
Friedman,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: April 24, 2017

Appellant, Lavon Dewayne Chisley, was convicted by a jury in the Circuit Court for Charles County (Bragnuier, J.) of first-degree burglary, fourth-degree burglary, malicious destruction of property, first-degree assault and two counts of second-degree assault. At sentencing, on May 23, 2016, the court merged the convictions for malicious destruction of property and fourth-degree burglary into the first-degree burglary conviction and merged one of the second-degree assault convictions into the conviction for first-degree assault. The court then imposed consecutive sentences of ten years' imprisonment for the remaining conviction of second degree assault, a suspended sentence of twenty-five years' imprisonment for first-degree assault and 306 days for first-degree burglary with credit for 306 days served. A term of five years' probation, upon release, was also imposed.

Appellant filed the instant appeal, in which he asks our review of the following questions:

> 1. Was it error to refuse to admit into evidence the medical records of appellant's treatment at the hospital, showing his extreme intoxication?
>
> 2. Was the evidence sufficient to sustain the convictions?

FACTS AND LEGAL PROCEEDINGS

At appellant's trial, held February 8–11, 2016, the State presented testimony concerning what occurred on the summer evening of July 22, 2015, in and around the home located at 3016 Charleton Court, in Waldorf, Charles County, Maryland. Complainant Joyce Sweetney lived at the residence along with her daughter, Geisha Bowie, age fourteen at the time of the incident, her granddaughter, Myniah Sweetney, her grandson, Bernard

Holmes and her great-granddaughter, Brooklyn.

Sweetney testified for the State that, for fifteen years, appellant has been her boyfriend. Although his name was not on Sweetney's lease and, although he had been living elsewhere with his mother, appellant spent the night with Sweetney, at her house, "all the time." He was "very welcome" in her home, "to stay as long as he likes." He kept some of his clothes and personal items there. Occasionally, appellant received mail at the address. The night before the affray, appellant had spent the night with Sweetney at the house.

On the morning of the incident, appellant and Sweetney left the house to do some yardwork with a neighbor and they returned home at approximately between noon and 1:30 p.m. They subsequently went to the liquor store down the street and returned to the residence afterward. According to Sweetney, appellant had been drinking a pint of vodka, sharing "two to three sips" with her, when he asked to borrow her car. Normally, appellant was "welcome to use [her] car," but this time, she refused because he had been drinking. He "kept asking" and they began to argue about it.

According to Sweetney, they were "probably intoxicated" and it was a "loud" argument. Because "arguing leads to fighting," Sweetney and Bowie assert that Bowie called the police three times, with three to four minutes between calls. Appellant walked out of the house into the woods "to cool off" and the children closed the front door behind him. When appellant returned to the house, Bowie would not let him in. Appellant banged loudly on the door, which Sweetney characterized as "bumping" against the door to open

it. Sweetney and Bowie both testified that Sweetney told Bowie "to move," which she did, and "let him in." The door had been "broken" approximately two months earlier and Sweetney and Bowie's testimony differed regarding further damage, *vel non*, that appellant caused upon an attempted re-entry. Sweetney testified that appellant did not kick the door, only attempted to turn the door knob and, because the door was already damaged the door and frame were further damaged. Bowie testified that, although the door had been previously damaged, appellant did kick the door and that it sustained additional damage when he "forced" his way inside. Bowie also testified that she "let him in" as well.

Both Sweetney and Bowie testified that appellant went into the kitchen after entering the home. Sweetney did not recall seeing a knife in appellant's hand, whereas Bowie testified that appellant had a knife. Both Sweetney and Bowie testified that appellant did not threaten anyone with a knife in the home and that appellant first left the residence with Sweetney and the children following him outside, where appellant sat down on the curb until the police arrived. Both Sweetney and Bowie testified that appellant stated several times that he was going to "hurt" himself and that, when the police arrived, although appellant's arms were raised with a knife, he did not move them or take any steps toward the officers.

Charles County Sheriff, Officer Jose Marti, was one of the officers to respond in uniform and in a marked police car. He testified that he was responding to a domestic dispute at Charleton Court on the day of the incident and that, as he turned down the street, some people waved him down and one individual informed him that "there's a man with a

knife over there chasing a woman." Officer Marti said that he tried to turn on the video-recorder ("ICOP") in the police car, but he pushed the "stop button" instead. According to Officer Marti, he then witnessed appellant "chasing behind a woman with a knife in his hand" and that appellant continued to do so after Officer Marti parked the police vehicle and approached Sweetney and appellant. Sweetney ran towards another responding officer, Officer Jeffrey Bryant. After Officer Marti ordered appellant to stop and drop the knife, appellant began to walk towards the officers, with the knife still in his hand, "yelling and screaming" at them to "shoot me, kill me, shoot me."

Appellant yelled at the officers, "kill me" and "move[d] closer and closer." Officer Marti testified that he attempted to create distance between himself and appellant, but that appellant closed the distance from 25 feet to 10 feet away by moving closer and taking a "sudden step forward" still holding the knife and not responding to the officers' commands. Officer Marti further testified that, feeling that he "had no choice," he shot appellant, who collapsed on the ground. Officer Marti disarmed appellant and rendered assistance until appellant was taken by ambulance and helicopter to the Prince George's Hospital Center.

Trasean Mason, 18 years old at the time of the incident, was also at Sweetney's home on July 22, 2015. Mason testified that Sweetney and appellant "got into an argument" and that Sweetney refused to let appellant take her daughter, Bowie, with him somewhere. Appellant left the house angry and said something "negative" to Mason that he said he could not recall. Mason then testified that he left the house because he did not want to argue with appellant and that he sat on the green "electric box thing" in the neighbor's yard.

According to Mason, appellant left the house, walked to the woods and, after approximately twenty seconds, walked back to the house and "went to the front of the house and start[ed] kicking the door." Appellant kicked the door "hard" twice, with his "whole foot" and eventually "kick[ed] in" the door, entering the house. Mason also testified that he was outside and could not actually see appellant enter the home, but that he heard the kicking on the door and he heard screaming and a female voice, which he believed to be Bowie, say "Call the cops."

Mason further testified that, after a few minutes, appellant emerged from the house with a knife and threatened to kill himself. He was followed by Sweetney and Bowie. As appellant argued with Sweetney, he "seemed angry" and they were standing "close" to one another as if "almost kind of touching." Mason stated that it "looked like he was trying to hurt her" and that appellant "still had the knife up" when the police arrived.

Robert J. Krotendorfer, a neighbor of Sweetney, was working outside on his car when the incident occurred. He testified that he heard people yelling and screaming and, when he looked over from across the street, he witnessed appellant "chasing" Sweetney. Appellant followed Sweetney and her children across another neighbor's front yard. Krotendorfer testified that Sweetney appeared "afraid," the children appeared "kinda upset" and appellant appeared "kind of angry." Krotendorfer further testified that appellant disappeared from his view until the police arrived. Although he could not see if there was anything in appellant's hand, he did see the police draw their guns and repeatedly yell, "Get on the ground, drop it, get on the ground." Krotendorfer stated that he saw appellant fail to

comply and was "walking towards the officers" when a gun was fired.

Detective Brion Buchanan of the Charles County Criminal Investigations Division, Major Crimes Unit, interviewed Sweetney at the scene after the incident. Detective Buchanan testified that Sweetney stated that appellant had "[g]rabbed her by the arm like he was getting ready to hit her." The Detective also testified that Sweetney stated that they had locked the door to prevent appellant from re-entering the house and that appellant had "broke the door down . . . or broke the door open." Part of the interview was read aloud when the audio recording did not work at trial and, according to the interview, Sweetney stated that appellant "grabbed" her arm but that he did not threaten her. Detective Buchanan testified: "Correct. She did tell me that he did not threaten her."

On cross examination of Sweetney, appellant's trial counsel showed her appellant's hospital records, marked as Defense Exhibit No. 9 for identification. In response to the State's objection, defense counsel explained that these are "self-authenticating" records, bearing the required "certification," and that "the State's Attorney has obtained them." The State objected on the basis that they were not relevant. The Court added: "It doesn't mean they're relevant or admissible and this witness has no frame of knowledge on that." Defense counsel explained further, "They are relevant because it goes towards his voluntary intoxication," because "they took a toxicology result." The Court replied, "Pull that out," adding, "This might be something that you could stipulate to later. But that's not with this witness." The Assistant State's Attorney, however, immediately refused to so "stipulate," saying: "I can tell you right now we're not because you need an expert witness to tell the

jury what a toxicology report is; . . . whether it was . . . taken from urine or blood; what the results mean." The prosecutor suggested there might be ambiguity that the "Ethanol" reading might have been taken from "urine," instead of "blood." The Court declared, "[T]hat's an issue we'll take up after the break."

When the issue was raised again, on the following day, which was the last day of the trial, the defense reiterated the part of Appellant's medical records that was relevant to the defense of voluntary intoxication: "'Ethanol 253 milligrams per deciliter.' It speaks for itself." The Court replied, "No it does not." The Court noted that it had "no doubt" that the medical records were, as proffered, "self-authenticating," but that they were still not admissible:

> The problem is, what you showed me that was highlighted is not going to go before the jury. That's not something common knowledge to all people, it's got to be explained by somebody that can explain what that means. So I'm not . . . at this point, I'm not going to just allow you to put the records in.

Later, the defense requested and the Court gave instructions on the defense of voluntary intoxication, as to the offenses where "specific intent" is an element, including first-degree burglary, first-degree assault and second-degree assault with intent to frighten.

DISCUSSION

I.

Standard of Review

"[T]he admission or exclusion of evidence is a function of the trial court which, on appeal, is traditionally viewed with great latitude." *Angelakis v. Teimourian*, 150 Md. App.

507, 525 (2003) (citation omitted). We review a court's evidentiary rulings for abuse of discretion, *Gordon v. State*, 431 Md. 527, 533 (2013). A court abuses its discretion when a decision is so "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011).

> Thus, a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. Whether there has been an abuse of discretion depends on the particular circumstances of each individual case.

Id. (citations omitted) (internal quotation marks omitted).

Relevancy to Defense of Voluntary Intoxication

The parties agree that the medical records at issue were self-authenticating; therefore, we need not engage in that analysis. However, the parties' initial disagreement is to the relevancy of the medical records in support of appellant's assertion of the defense of voluntary intoxication. Appellant contends that the medical records clearly illustrate that he was not "merely drinking alcohol, but was extremely drunk at the time he was allegedly forming 'specific intent.'"

The State responds that appellant's reliance upon portions of the Maryland Code, pertaining to transportation-related offenses, is "misplaced" and have no application in the instant case. The State maintains that, if any error did occur, it was "entirely harmless" because of "an abundance of other evidence regarding [appellant's] intoxication." According to the State, the report appellant sought to admit only established the fact of his

intoxication, while an accused, in asserting a voluntary intoxication defense, must establish more and, therefore, the report was not relevant to his defense.

"The general rule is that voluntary drunkenness is not a defense to crime." *Hook v. State*, 315 Md. 25, 28 (1989) (citing *Breeding v. State*, 220 Md. 193, 199 (1959)). However, Maryland law has made clear that voluntary intoxication may be a defense to some criminal charges and is relevant regarding specific intent crimes. *Id*. at 30.

"[M]ere consumption of alcohol, 'with no evidence as to the [effect] of that alcohol on the defendant, would not permit a jury reasonably to conclude that he had lost control of his mental faculties to such an extent as to render him unable to form the intent[.]'" *Bazzle v. State*, 426 Md. 541, 555 (2012) (quoting *Lewis v. State*, 79 Md. App. 1, 13 n. 4 (1989)). In examining the degree of intoxication required to negate specific intent, the Court of Appeals, in *State v. Glover*, 267 Md. 602 (1973), noted that it would require a "substantial" degree of intoxication.

> Evidence of drunkenness which falls short of a proven incapacity in the accused to form the intent necessary to constitute the crime merely establishes that the mind was affected by drink so that he more readily gave way to some violent passion and does not rebut the presumption that a man intends the natural consequence of his act.

Hook, 315 Md. at 31, n.9 (quoting *Glover*, 267 Md. at 607–08).

In the instant case, the court granted appellant's request for a jury instruction on the defense of voluntary intoxication; consequently, the trial court found that there was enough evidence, without the admission of the medical records, to warrant instruction to the jury. A toxicology report establishing the level of alcohol in an individual's system would make

it more or less probable that appellant possessed the degree of intoxication required to support a voluntary intoxication defense. Therefore, we hold that the records were relevant. However, the inquiry does not end there. All relevant information is not admissible.

Requirement of Expert Testimony

The parties' next disagreement concerns the necessity of adducing the testimony of an expert witness in order to introduce appellant's medical records. Appellant contends that it would be "perfectly obvious to any layperson" that the medical records are referencing a urine test, not a blood test, and the "conversion of 'Ethanol 253 milligrams per deciliter' into Blood Alcohol Concentration (BAC) is set out in Maryland law, in plain English, easily understood by ordinary laypersons on a jury[.]" According to appellant, the trial court erred in denying admission of the report.

The State's response is that the trial court did not abuse its discretion in requiring an expert to explain the self-authenticating medical records because the records, particularly as they were indicia of the extent of appellant's intoxication, "was not obvious to a nonmedical professional from the medical records offered." The State asserts that, without expert testimony, "a layperson would not readily recognize that the document pertained to the results of a toxicology screening or make the connection between the ethanol referred to in the report and the concentration of alcohol in [appellant's] blood." The State maintains that the report does not indicate if it was testing appellant's breath, blood or urine and did not include any formula needed to interpret the results. Furthermore, the State notes that the report references another intoxicating substance, benzodiazepine

and, "[w]ithout an expert, the jury would have had to resort to speculation in order to interpret the significance of the toxicology results and what they suggested about [appellant's] state of mind when he committed the underlying offenses."

"It is well established that expert testimony is not required 'on matters of which the jurors would be aware by virtue of common knowledge.'" *Exxon Mobil Corp. v. Ford*, 433 Md. 426 (2013) (quoting *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs.*, 109 Md. App. 217, 257 (1996)). *See e.g. Barnes v. Greater Baltimore Med. Ctr., Inc*., 210 Md. App. 457, 481 (2013) (noting that, because of their complex natures, medical malpractice cases often require expert testimony). However, even in instances when expert testimony is regularly required, whether an expert is necessary is determined on a case-by-case basis. *Greater Metro. Orthopaedics, P.A. v. Ward*, 147 Md. App. 686, 691 (2002). *See e.g. Wilhelm v. State Traffic Safety Comm'n*, 230 Md. 91, 104 (1962) (holding that, although it was a medical malpractice case, the "common experience, knowledge and observation of lay jury" would permit a jury to make a rational inference that depigmentation, confined to one area of the face without prior history of pigmentation loss, was the result of a bruise). "The inquiry turns on whether the trier of fact will receive appreciable help from the expert testimony in order to understand the evidence or to determine a fact in issue." *Bryant v. State*, 163 Md. App. 451, 473 (2005).

In *Clarke v. State*, 97 Md. App. 425, 430–31 (1993), we held that expert testimony was required for the admission of medical records "to explain the meaning of the term 'presumptive positive,' or the actual results of the test." In reaching this conclusion, we

noted that the judge did not abuse his discretion in denying the admission of the medical records because "[t]o have done otherwise would have possibly confused the jury and unnecessarily distracted its attention from the issues in the case."

In the instant case, we are confronted with the lower court requiring expert testimony for the admission of appellant's medical records. The court and the State subscribe to the notion that a lay jury could not interpret the medical records without confusion and speculation. The record illustrates that the two-page medical record is titled "Surgical Documentation" only and does not indicate that it is a toxicology report. Furthermore, there are a number of items tested, *e.g.*, glucose, protein, etc., in addition to intoxicants. The intoxicants are not labeled, however, they are grouped together at the end of the analysis, beginning with "Ethanol Lvl 253 mg/dL NA." There is also another intoxicant for which appellant tested positive, "U Benzodia Scr," but again, it is not labeled on the record as an intoxicant. The record also does not indicate whether it is a blood or urine test, but, as appellant points out in his brief, under "Lab results," there are two categories, "UA Appear" and "UA Color," which list results as "CLEAR" and "YELLOW," respectively.

In reviewing for abuse of discretion, we do not review the decision as a fact-finder; we engage in a review of the lower court's decision and determine whether it is so "well removed from any center mark imagined . . . and beyond the fringe of what [we] deem[] minimally acceptable." *Consol. Waste Indus., Inc.*, *supra*. Even if we were to rule differently, based on the facts, we are bound by the standard of review. Accordingly, we

hold that the circuit court did not abuse its discretion in requiring an expert witness in order to admit the medical records. Based on our review of the record, the court's decision was not "beyond the fringe" of what is "minimally acceptable." It is very plausible that a lay jury would struggle, without the benefit of expert testimony, with review of the medical record as it stands.

Finally, we note that the State raises the issue that appellant's reliance upon the Transportation Article for the conversion of urinalysis alcohol levels to a BAC is misplaced. Because it was unnecessary to decide the case on that issue, we decline to address that issue.

II

Standard of Review

In reviewing the sufficiency of the evidence supporting a criminal conviction, we must determine "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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1972)). Reversal is the only remedy available for a determination of insufficiency of the evidence upon appeal. *Plummer v. State*, 118 Md. App. 244, 253 (1997).

First-Degree Burglary

Appellant contends that there was insufficient evidence to sustain his conviction for first-degree burglary because the evidence presented failed to support the premise that he

intended to commit theft. Appellant notes that the statute differentiates between breaking and entering with the intent to commit a theft, which is first-degree burglary, and breaking and entering with the intent to commit a crime of violence, which is home invasion. According to appellant, due process prohibits his conviction of first-degree burglary when the intended crime to be committed was one of violence, *i.e.*, assault.

The State asserts that appellant's claims are without merit, arguing that the appellant "did not possess a reasonable belief that he was lawfully permitted to enter the house" when he encountered a locked door and when Bowie, both an occupant and leasehold, refused to allow him to enter. Furthermore, the State alleges that appellant entered the house with the intent to commit first-degree assault, a crime of violence, which satisfies the statutory elements of first-degree burglary.

Md. Code Ann., Crim. Law (C.L.) § 6–202 governs burglary in the first-degree or home invasion and provides the following:

> Intent to commit theft
>
> (a) A person may not break and enter the dwelling of another with the intent to commit theft.
>
> Intent to commit crime of violence
>
> (b) A person may not break and enter the dwelling of another with the intent to commit a crime of violence.
>
> Burglary in the first degree
>
> (c) A person who violates subsection (a) of this section is guilty of the felony of burglary in the first degree and, on conviction, is subject to imprisonment not exceeding 20 years.

Felony of home invasion

> (d) A person who violates subsection (b) of this section is guilty of the felony of home invasion and on conviction is subject to imprisonment not exceeding 25 years.

The first element of the crime of burglary that we examine concerns "breaking and entry."

> The breaking of a dwelling house or other structure, within the meaning of that term as applied to burglary and related statutory crimes, may be actual, as where physical force is applied, or constructive, as where entry is gained through fraud or trickery.
>
> ***
>
> There is no 'breaking' if a person has a right to enter or if he enters with the consent of the owner.

Holland v. State, 154 Md. App. 351, 367 (2003) (quoting *Finke v. State*, 56 Md. App. 450, 467 (1983)).

In the instant case, there is no evidence to support an actual or constructive breaking by appellant. Although there was testimony that appellant "banged" and "kicked" at the door, there is no evidence that he gained entry through physical force. Likewise, there is no evidence that he employed force to gain entry to the home through "fraud or trickery." To the contrary, there is evidence that the owner of the home, Sweetney, allowed appellant entry. There can be no "breaking" with the owner's consent. *Holland, supra*. "The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State to prove every element of an offense charged beyond a reasonable doubt." *Savoy v. State*, 420 Md. 232, 246 (2011) (citing *In re Winship*, 397 U.S. 358, 364 (1970)).

Therefore, we hold that the evidence presented was insufficient to support the "breaking and entry" element of burglary.

The State argues that Sweetney's fifteen-year-old daughter refused entry to appellant. As a resident and person with a name on the lease, the State maintains that she had the right to refuse entry. This may very well be true; however, it mistakenly ignores the fact that the actual owner, Sweetney, and the mother of the minor, Bowie, expressly consented to appellant's entry into the home. It would be unreasonable to conclude that a minor-child's wishes about entry, *vel non*, into the family home trump those of the parent who is also the lawful lessee.

Appellant also raises, for our review, a question concerning the explicit statutory language of C.L. § 6–202. Appellant notes that statute expressly separates the intent to commit theft into first-degree burglary and the intent to commit a crime of violence into home invasion. We note that the statute, recently amended in 2014, departs from prior iterations of the statute[1] which did not separate the criminal intents of theft and crimes of violence. However, because the State is unable to present evidence that supports the

[1] MD Code, Crim. Law, § 6-202, Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

Burglary in the first-degree

Prohibited

(a) A person may not break and enter the dwelling of another with the intent to commit theft or a crime of violence.

Penalty

(b) A person who violates this section is guilty of the felony of burglary in the first degree and on conviction is subject to imprisonment not exceeding 20 years.

element of "breaking and entry" to establish the crime of burglary, we decline to engage in the analysis as to whether appellant's intent to commit a crime of violence, under the current version of C.L. § 6–202, would support a conviction for first-degree burglary.

Finally, we note that appellant's conviction for fourth-degree burglary[2] was merged with his first-degree burglary conviction for the purposes of sentencing. "Fourth-degree burglary . . . is a lesser included offense of both third-degree and first-degree burglary, the *actus reus* of each crime being identical and the only distinction between the crimes being the progressively less culpable *mentes reae*." *Bass v. State*, 206 Md. App. 1, 7–8 (2012). As we discussed, *supra*, the element of "breaking and entry" has not been sufficiently supported by the evidence presented and, therefore, appellant's burglary convictions must be vacated. *Plummer*, *supra*.

First-Degree and Second-Degree Assault Against Sweetney

Additionally, regarding the first and fourth-degree burglary convictions, appellant asserts that the evidence was insufficient to prove that he did not honestly and reasonably believe that he had the right or invitation to enter the home owned by Sweetney. Regarding the first-degree assault conviction, appellant argues that the evidence is insufficient because it does not illustrate that he intended to physically harm Sweetney. Finally, regarding the two counts of second-degree assault, appellant maintains that neither Sweetney nor Officer Marti were injured; therefore, the evidence presented was

[2] Md. Code Ann., Crim. Law §6–205.

insufficient to support those convictions.

The State responds that appellant's claims of insufficiency of the evidence, as it pertains to the second-degree assault conviction regarding Officer Marti, are not preserved because no argument was made during the initial motion for judgment of acquittal. Finally, the State maintains that the evidence was sufficient to support appellant's assault convictions because several witnesses testified that appellant was attempting to "intentionally frighten" Sweetney and Officer Marti.

Under the Maryland Code, the crime of "'assault' means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." C.L. § 3–201(b). Although originally a common law crime, the 1996 assault statute abrogated the common law offense in Maryland and codified new offenses and penalties. *Robinson v. State*, 353 Md. 683, 696 (1999).

C.L. § 3–202(a)(1) governs assault in the first degree and provides, in part, that "[a] person may not intentionally cause or attempt to cause serious physical injury to another[.]" The statute defines "serious physical injury" as "physical injury that: (1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." C.L. § 3–201(d).

Furthermore, "a 'serious physical injury' is not necessary for a conviction for first-degree assault . . . . C.L. § 3–202(a) permits conviction for first-degree assault based on an *attempt* to cause 'serious physical injury,' not merely a completed injury." *Brown v. State*,

182 Md. App. 138, 178–79 (2008) (Emphasis supplied) (noting that the "crime of 'assault' includes attempted battery).

Finally, first-degree assault is a specific intent crime. *Dixon v. State*, 364 Md. 209, 239 (2001). However,

> [a]lthough the State must prove that an individual had a specific intent to cause a serious physical injury, a jury may infer the necessary intent from an individual's conduct and the surrounding circumstances, whether or not the victim suffers such an injury. Also, the jury may infer that one intends the natural and probable consequences of his act.

Chilcoat v. State, 155 Md. App. 394, 403 (2004) (citations omitted).

C.L. § 3–203(a) governs assault in the second degree and prohibits a person from committing assault. As the Court of Appeals noted, in *Christian v. State*, 405 Md. 306, 320 (2008), while first-degree assault "covers the most serious assaults," second-degree assault "encompasses all other assaults and batteries." There are three types of second-degree assault: "(1) intent to frighten, (2) attempted battery, and (3) battery." *Jones v. State*, 440 Md. 450, 455 (2014) (citations omitted).

> A defendant commits second-degree assault of the intent-to-frighten type where: (1) the defendant commits an act with the intent to place a victim in fear of immediate physical harm; (2) the defendant has the apparent ability, at the time, to bring about the physical harm; and (3) the victim is aware of the impending physical harm.

(citations omitted) (internal quotation marks omitted).

"An assault of the intentional frightening variety . . . requires a specific intent to place the victim in reasonable apprehension of an imminent battery." *Wieland v. State*, 101 Md. App. 1, 38 (1994) (quoting *Lamb v. State*, 93 Md. App. 422, 445 (1992)).

> [T]he defendant must possess the general intent to make the threatening gesture (the raising of the fist, the pointing of the gun). The threatening gesture is the immediate act generally intended. In addition, however, there must be the specific intent for that immediate act to bring about a more remote consequence, to wit, the engendering of the apprehension or fear of imminent bodily harm in the mind of the apparent victim. That second mental element is quintessentially a specific intent.

Id. However, "an assault of the attempted battery variety does not require any specific intent." *Id.*

In the instant case, appellant was convicted of one count of first-degree assault against Sweetney and two counts of second-degree assault against Sweetney and Officer Marti; however, the second-degree assault conviction against Sweetney merged with the first-degree assault conviction. The evidence presented supports appellant's convictions. We explain.

Regarding the first-degree assault conviction, the evidence supported the premise that appellant intended to cause or attempt to cause serious physical injury to Sweetney. There were several witnesses who testified that appellant, with a butcher knife in hand, chased Sweetney and appeared as though he was "trying to hurt" her. Appellant chased Sweetney through the house, the yard and into a neighbor's yard before he encountered the police. Before he grabbed the butcher knife, he was beating and kicking against the front door. He was screaming and behaving aggressively. Accordingly, the evidence supports the inference that appellant intended to cause Sweetney serious physical injury.

Regarding the second-degree assault convictions against Sweetney, the evidence presented also supports those convictions. Although appellant asserts that "[t]here was no

evidence of the slightest injury to either complainant," as discussed, *supra*, actual injury is not required to support a conviction for second-degree assault. *Chilcoat, Brown, supra.* Several witnesses testified that Sweetney appeared "frightened" and that appellant had a knife and was chasing her.

Rather than dispute the testimony concerning his behavior, appellant asserts that the testimony supports his intention to engage in "suicide by cop." Appellant directs our attention to testimony that he stated several times that he was going to hurt himself, that he refused to return to jail again and that he yelled at the police to shoot him. Appellant asserts that, because the State failed to prove "that his picking up the knife was for the purpose of harming anyone else," rather than himself, that the evidence does not support his conviction for assault. We disagree. Appellant requests that we overlook the "natural and probable consequences" of his actions, *i.e.*, chasing Sweetney with a kitchen knife, indicia of an attempt to cause serious physical injury to Sweetney and, instead, view appellant's actions as an attempt to provoke the police to engage in police-assisted suicide. We decline to do so.

Second Degree Assault Against Officer Marti

The State asserts that appellant failed to preserve his complaint against the count of second-degree assault committed against Officer Marti because appellant's trial counsel failed to provide a precise argument in his initial motion for judgment of acquittal regarding the legal adequacy of the evidence in supporting his conviction for the count. Despite the fact that appellant provided such an argument in the renewed motion for judgment of

acquittal, the State urges this Court not to consider the sufficiency of the evidence to sustain the second-degree assault conviction for intentionally frightening Officer Marti.

Md. Rule 4–324 governs Motions for Judgment of Acquittal and provides, in part, that, "[t]he defendant shall state with particularity all reasons why the motion should be granted." This is mandatory in order to preserve our review. *Berry v. State*, 155 Md. App. 144, 180 (2004).

> The general purpose of the statute and the rule is patent. It is to implement, by means of a motion for judgment of acquittal, the constitutional authority given an appellate court to pass on the sufficiency of the evidence. The specific purpose of the mandate of the rule to particularize the reasons for the motion is to enable the trial judge to be aware of the precise basis for the defendant's belief that the evidence is insufficient. Then the judge in determining the motion may fully appreciate the position of the defendant.

Warfield v. State, 315 Md. 474, 487 (1989).

In the instant case, it is clear that appellant's trial counsel did not discuss the second-degree assault against Officer Marti in the initial motion for judgment of acquittal, but did assert, during the renewed motion, that the "previous arguments" would be submitted regarding the sufficiency of the evidence for the second-degree assault against Officer Marti. Because there were no "previous arguments" to submit, appellant has failed to satisfy the mandate of Rule 4–324 and, therefore, we are precluded from review of this issue.

CONVICTION FOR FIRST-DEGREE BURLGARY AND FOURTH-DEGREE BURGLARY REVERSED. SENTENCE FOR THE FIRST-DEGREE BURGLARY CONVICTION VACATED. ALL OTHER JUDGMENTS AND SENTENCES OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED.

COSTS TO BE PAID ¾ BY APPELLANT AND ¼ BY CHARLES COUNTY.