UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 982

September Term, 2016

YAHSIM VAUGHN

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: June 8, 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.

A jury in the Circuit Court for Baltimore City convicted Yahsim Vaughn, appellant, of attempted second-degree murder, first-degree assault, attempted robbery with a dangerous weapon, and other related offenses. He contends on appeal that the evidence was insufficient to sustain his convictions and that the court should have declared a mistrial after an incident wherein someone may have attempted to influence the jury. For the reasons stated below, we affirm.

In the early morning hours of August 15, 2013, Zebadiah Drinkwater escorted his friend, Heather Petasky, to her vehicle, which was parked at 4003 Roland Avenue in Baltimore. Petasky did not drive away immediately because she was texting a friend, and she opened the sunroof. She noticed a man approaching the driver-side door, and she kept her doors locked and windows up. Then, she observed a man on the passenger side of her vehicle who was aiming a gun at her through the open sunroof. Petasky identified appellant as the gunman at trial. She thought appellant ordered her to unlock the car or get out of the car.

Drinkwater then approached and made a noise. Drinkwater identified appellant as the gunman in a pretrial photo array and at trial. Appellant pointed the gun at Drinkwater, saying "What you got? What you got?" Drinkwater retreated, and appellant followed. Petasky took this opportunity to flee the scene and call 911. Drinkwater, meanwhile, attempted to grab appellant's gun, but appellant's accomplice – who was not identified – struck Drinkwater in the eye and told appellant to "shoot the guy in the face." Appellant fired twice, striking Drinkwater in the neck both times. Appellant and his accomplice left, and Petasky later found Drinkwater in front of his home.

Sufficiency of the Evidence

On appeal, appellant challenges the sufficiency of the evidence sustaining his convictions, arguing that the identifications by Petasky and Drinkwater were unreliable. In reviewing a challenge to the sufficiency of the evidence, we ask "'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.'" *Chisum v. State*, 227 Md. App. 118, 130 n.1 (2016) (emphasis omitted) (quoting *State v. Albrecht*, 336 Md. 475, 479 (1994)). "[W]e do not re-weigh the evidence," and "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal v. State*, 191 Md. App. 297, 314 (2010) (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)).

Appellant's arguments concerning the reliability of the witnesses' identifications go to the weight of the evidence, not the sufficiency. *See Handy v. State*, 201 Md. App. 521, 559 (2011) (noting that "it is settled that '[w]eighing the credibility of witnesses and resolving conflicts in the evidence are tasks proper for the fact finder'" (quoting *State v. Stanley*, 351 Md. 733, 750 (1998))). Moreover, "[i]t is well settled that the evidence of a single eyewitness is sufficient to sustain a conviction." *Id.* (citing *Branch v. State*, 305 Md. 177, 184 (1986)). In this case, both Petasky and Drinkwater identified appellant as the gunman. Because assessing the credibility and reliability of those identifications was the province of the jury, and appellant does not raise any other challenges to the sufficiency of the evidence, we conclude that there was sufficient evidence sustaining his convictions.

Mistrial

During jury deliberations, an incident occurred wherein someone got onto an elevator with the jury and said, "Are you the jury? Send him home." The trial court proposed instructing the jury that the elevator passenger was a "random" person in the building and then questioning the jurors to determine if the incident would influence their deliberations. Appellant agreed. The court then instructed the jurors that the speaker was not related to appellant and had nothing to do with the case. The court also asked if the incident would influence their deliberations, and there was no response.

On appeal, appellant contends that his right to a fair trial was violated by this alleged attempt at jury tampering, and the court should have *sua sponte* granted a mistrial. "A mistrial is an extreme remedy and it is well established that the decision to grant it is within the sound discretion of the trial court." *Walls v. State*, 228 Md. App. 646, 668 (2016). When a jury is presented with improper information, the trial judge must assess its prejudicial impact and determine whether the prejudice can be cured. *Id.* If the court provides a curative instruction, then "appellate review focuses on whether 'the damage in the form of prejudice to the defendant transcended the curative effect of the instruction.'" *Id.* at 669 (quoting *Kosmas v. State*, 316 Md. 587, 594 (1989)).

We are not persuaded that this incident so prejudiced appellant as to deprive him of a fair trial. First, appellant's counsel conceded that the elevator passenger was not related to appellant in any way, and no one appeared to understand what the person meant by "[s]end him home." Moreover, appellant agreed with the court's proposal to instruct the jury and question them about the event's effect on their deliberations. Notably, appellant

never moved for a mistrial. *See Morales v. State*, 219 Md. App. 1, 12-13 (2014) (finding no error where the trial judge did what the defendant asked in striking a witness's testimony and where the defendant did not move for a mistrial). Furthermore, we are persuaded that the court's curative instructive cured whatever prejudice appellant may have suffered, and appellant was not deprived of a fair trial.

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