

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1134

September Term, 2016

ROY SHARONNIE DAVIS, III

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: June 27, 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.

In 2004, after a jury trial in the Circuit Court for Baltimore City, appellant, Roy Sharonnie Davis, III, was convicted of second-degree rape and felony murder. Appellant filed an untimely motion for a new trial citing the sufficiency of the evidence, and the circuit court granted leave to file the belated motion. The court, after a hearing, denied the motion. Appellant was then sentenced to life imprisonment without parole for felony murder. Appellant noted an appeal which was later voluntarily dismissed. In July 2016, the post-conviction court granted appellant the right to file a belated notice of appeal. In this appeal, he presents the following questions for our review:

1. Was the evidence insufficient to sustain the convictions?
2. Did the lower court err in denying the motion for a new trial?

For the reasons discussed below, we affirm.

BACKGROUND

On May 1, 1998, around 11:26 a.m., Baltimore City 911 received a telephone call from an anonymous male who stated to the dispatcher, “I’m only gonna say this one time. The body is at Belair Road and Park Drive. It’s down there by the water.” Baltimore City police officers were dispatched to Belair Road and Parkside Drive to investigate the report. After canvassing the walk path, officers located the body of a black female lying face down near the edge of Herring Run Stream with her face submerged in approximately six inches of water. Officers observed that the woman was fully clothed, that her clothing appeared undisturbed, and that a jean jacket was neatly draped across her upper back “as if to keep her warm.” No identification or personal effects were found on or near her body, and no evidence of a struggle was noted in the area where she was

discovered. Officers pronounced the woman dead at the scene, and homicide detectives were summoned to take charge of the investigation.

The Office of the Chief Medical Examiner conducted an autopsy and determined that the victim died of manual strangulation, citing the extensive hemorrhages into the musculature of her neck, abrasions and contusions of the skin overlying her neck musculature, and other injuries. The autopsy report noted contusions, abrasions, and swelling of the face and scalp determined to be consistent with blunt force blows. The autopsy report also noted extensive linear abrasions of the chest, abdomen, and upper thighs consistent with the victim's body being dragged over a rough surface after death. In addition, four abrasions to the posterior vaginal fornix and one abrasion of the posterior labia minora were noted in the autopsy report. A swab of the victim's vagina revealed spermatozoa with and without tails. At the time the body was discovered, the victim's identity was unknown, however, on the following day, her family identified her as 19-year-old Jada Danita Lambert.

The investigation revealed no suspects, and the case remained unsolved until November 2002, when a search of the State of Maryland DNA Database resulted in a match between appellant and the evidence recovered from Ms. Lambert's unsolved homicide case. A search warrant for blood and hair was issued for appellant, which confirmed that his DNA profile matched the vaginal evidence samples recovered during the autopsy. In December 2002, appellant waived his *Miranda* rights and submitted to a custodial interview conducted by Baltimore City police detectives, at which time he denied knowing Ms. Lambert despite being advised that traces of his DNA were

recovered during her autopsy. Appellant was subsequently charged with first-degree murder, first-degree rape, and other charges arising from Ms. Lambert's homicide.

At trial, the State asserted that the perpetrator of Ms. Lambert's rape and murder knew her and was familiar with the area where her body was discovered. In support of its case, the State presented testimony from Detective John Brown, the officer assigned to lead the reopened investigation after appellant was identified as a suspect. Detective Brown testified that during his custodial interview, appellant reported living at two different addresses on Shamrock Avenue, which is one street north of Parkside Drive, the wooded area where Ms. Lambert's body was found. He also testified that appellant lived with his wife in the same neighborhood where Ms. Lambert lived with her family. During cross-examination Detective Brown testified that appellant reported returning to the neighborhood where Ms. Lambert lived to visit his daughter after he moved.

The State also presented evidence to support its contention that Ms. Lambert was raped prior to her death. Dr. David Fowler, Chief Medical Examiner for the State of Maryland, testified regarding his observations from the autopsy, including the presence of spermatozoa, including some missing tails, in Ms. Lambert's vagina. While explaining that the condition of the tails did not indicate how long Ms. Lambert had been dead, he testified that spermatozoa can be expected to lose their tails within 24 hours of having been deposited. In his medical opinion, since Ms. Lambert was last seen at 1:12 p.m. the day before, and based on the rigor and lividity of her body at the time she was found, she had been dead between eight and twelve hours. The State also introduced evidence that the sample collected from Ms. Lambert's vagina matched appellant's DNA

profile, and Baltimore City Police Department DNA analyst Rosalyn Bowman testified that there was a one-in-180 billion probability of an unrelated individual in the African-American population matching the DNA profile and a one-in-3.2 trillion probability of a DNA profile match in the Caucasian-American population.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

A. Preservation of Grounds for Appeal

Appellant contends that the evidence presented by the State was insufficient to sustain his conviction for second-degree rape and felony murder. He concedes that his trial counsel, on moving for a judgment of acquittal, did not argue any grounds with specificity, and, therefore, his arguments regarding the sufficiency of the evidence the State presented to prove that intercourse with Ms. Lambert occurred through the use or threat of force and without her consent have not been preserved for review. Appellant asks this Court to exercise its discretion to reach the merits under Rule 8-131 or, in the alternative, hold that trial counsel's failure was ineffective assistance of counsel.

The State agrees that Appellant's claims are not preserved for review because they were not argued before the trial court. It further asserts that, even if appellant had pled the aforementioned grounds with specificity on moving for judgment of acquittal, the evidence presented was sufficient to sustain both convictions. We agree and explain.

In moving for a judgment of acquittal pursuant to Rule 4-324(a), “[t]he defendant shall state with particularity all reasons why the motion should be granted.” A criminal defendant is not entitled to base his insufficiency of the evidence claim on arguments raised for the first time on appeal. *Starr v. State*, 405 Md. 293, 302 (2008) (citing *State v. Lyles*, 308 Md. 129, 135-36 (1986); *Muir v. State*, 308 Md. 208, 218-19 (1986); *Graham v. State*, 325 Md. 398, 416-17 (1992)). In *Washington v. State*, 191 Md. App. 48 (2010), this Court discussed the preservation of grounds for appeal and noted that “[r]aising trial errors for the first time in a motion for a new trial is not a substitute for preservation.” *Washington*, 191 Md. App. at 121 n. 22 (citing *Torres v. State*, 95 Md. App. 126, 134 (1993)). Nonetheless, in *Isley v. State*, 129 Md. App. 611, 622 (2000) (internal citations omitted), *overruled on other grounds*, this Court explained that “[b]ecause a Motion for a New Trial appeals to the trial judge’s subjective ‘sense’ or ‘feel’ as to whether a verdict was unfair or unjust, he may consider anything he wants to, preserved or unpreserved.” *Id.*

Here, at the close of the State’s case-in-chief, appellant’s defense counsel made a motion for judgment of acquittal on all counts. The trial court asked, “[d]o you wish to be heard?”, and defense counsel responded, “No, Your Honor.” At the close of all evidence, defense counsel again asserted the motion, stating, “[w]e’ll move for judgment of acquittal at the end of all evidence, your Honor; and once again, submit.”

There is no dispute that appellant’s counsel failed to state the grounds for the motion for judgment of acquittal with particularity during trial and, therefore, did not preserve the issue for appellate review. However, the record reflects that the trial court

granted appellant leave to file a belated motion for a new trial “out of an abundance of caution,” at which time his claims regarding the sufficiency of the evidence were raised. After a hearing, the motion was denied. Since the trial court entertained appellant’s claims regarding the sufficiency of the evidence and decided the issue on the merits, pursuant to Rule 8-131(a), his claims “plainly appear[] by the record to have been raised in or decided by the trial court.” While we note that the law is clear regarding the trial court’s lack of authority to consider or grant an untimely filed motion for a new trial pursuant to Rule 4-331(a), we, nevertheless, will exercise our discretion to reach the issue. See *Campbell v. State*, 373 Md. 637, 658 (2001) and *Ramirez v. State*, 178 Md. App. 257, 279 (2008).

B. Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to sustain his conviction for second-degree rape. Specifically, he maintains that the State proved only that his semen was in Ms. Lambert’s vagina and also that the abrasions present on her vagina were consistent with consensual sexual activity rather than rape. Appellant also challenges his conviction for felony murder on the grounds that the State failed to present sufficient evidence of the underlying rape. We find no merit in either argument.

In *Donati v. State*, 215 Md. App. 686, 718, *cert. denied*, 438 Md. 143 (2014), we set forth the standard of review on a challenge to the sufficiency of the evidence as follows:

The test of appellate review of evidentiary sufficiency 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.” *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, “but rather is only with whether the verdicts were supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479 (1994). “We ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.’” *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). Further, we do not “‘distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.’” *Montgomery v. State*, 206 Md. App. 357, 385 (quoting *Morris v. State*, 192 Md. App. 1, 31 (2010)), cert. denied, 429 Md. 83 (2012).

Donati, 215 Md. App. at 718.

Here, the State had the burden to present evidence that appellant had vaginal intercourse with Ms. Lambert by force or threat of force and without her consent. The State presented testimony from Dr. Fowler, Chief Medical Examiner, that the abrasions he observed on Ms. Lambert’s posterior labia minora and vaginal fornix were caused by something inserted into her vagina. On cross-examination, Dr. Fowler acknowledged that abrasions during the course of sexual intercourse were not uncommon, however, he did not exclude the possibility that Ms. Lambert was raped. He also testified to observing bruising, swelling, and abrasions on her head, scalp, and face caused by blunt force injury. He noted hemorrhaging on the outside of her brain, which he attributed to her being struck with “a fairly large amount of force” “either with a fist or an open hand.” He also noted the presence of linear abrasions on her chest, abdomen, thighs, and arm that, in his medical opinion, were consistent with her body having been dragged across

rough ground or branches. In addition, Dr. Fowler testified that evidence samples collected during the autopsy revealed spermatozoa inside Ms. Lambert's vagina. Rita Lambert, the victim's mother, also testified that her daughter typically wore underpants, which she was not wearing when her body was discovered.

Ms. Bowman, the State's DNA expert, testified that appellant's DNA profile matched the evidence collected in Ms. Lambert's homicide case. During cross-examination, Ms. Bowman explained that even if the sample had degraded, it would not identify someone other than the person who contributed the DNA. In addition, Christopher Knickerbocker, a records custodian employed by private DNA-testing laboratory Orchid Cellmark, authenticated a report prepared by a former employee that was subsequently entered into evidence. This report indicated that no irregularities or flaws were noted in the procedures used to collect or test the evidence samples. The State also played for the jury a tape of appellant's custodial interview, where he denied knowing Ms. Lambert or having an extramarital affair with her. Based on the testimony that her underwear was missing; the evidence of injury to her vagina; the extensive bruising, swelling, and contusions to her face and head that were consistent with forceful blows from a fist or open hand; the statistically certain probability that appellant's DNA matched the spermatozoa deposited into her vagina within eight to twelve hours of her death; as well as the audio recording of appellant denying having a consensual sexual relationship with Ms. Lambert, a reasonable jury could infer that appellant used force or the threat of force to accomplish vaginal intercourse with her without her consent.

With regard to the charge of felony murder, the State’s evidentiary burden required that it prove that Ms. Lambert’s death occurred during the perpetration or attempted perpetration of a felony, in this case, her rape. *See* Section 2-201(a)(4)(viii) of the Criminal Law Article of the Maryland Code (2002). Relying upon the aforementioned evidence that Ms. Lambert was beaten and raped before her death, as well as Dr. Fowler’s testimony that she died as a result of manual strangulation, a reasonable jury could conclude that appellant raped Ms. Lambert and, within the course of that event, strangled her to death. Accordingly, there was sufficient evidence to support appellant’s conviction for felony murder.

II.

Appellant’s final contention is that the trial court abused its discretion by failing to grant his motion for a new trial based on grounds of insufficient evidence. On appeal, we review the denial of a motion for new trial for abuse of discretion. *Cooley v. State*, 385 Md. 165, 175 (2005). An abuse of discretion occurs where “no reasonable person would take the view adopted by the [trial] court.” *Fontaine v. State*, 134 Md. App. 275, 288 (quotation marks and citations omitted) (brackets in original), *cert. denied*, 362 Md. 188 (2000). “Thus, where a trial court’s ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.” *Id.* “Because so much depends on the inherent ‘sense’ of justice of the trial judge, the only judicial figure who had his thumb on the action pulse of the trial, the judge’s exercise of discretion in evaluating credibility [of the evidence] is indispensable.” *Jackson v. State*, 164 Md. App. 679, 713 (2005), *cert. denied*, 390 Md. 501 (2006).

As previously addressed, the State presented sufficient evidence from which a reasonable jury could conclude that appellant raped Ms. Lambert and subsequently murdered her. Accordingly, we find no abuse of discretion by the trial court in denying appellant's motion for a new trial.

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