Circuit Court for Talbot County

Case No. 20-K-15-010917

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1898

September Term, 2016

CLIFTON L. WEST

v.

STATE OF MARYLAND

Arthur,
Wright,
Friedman,

JJ.

Opinion by Wright, J.

Filed: October 23, 2017

Following a bench trial in the Circuit Court for Talbot County, Clifton West, appellant, was convicted of reckless endangerment and false imprisonment. Appellant was sentenced to a total of five years' imprisonment, with all but one day suspended. In this appeal, appellant presents the following question for our review:

Was the evidence legally sufficient to sustain appellant's convictions?

For reasons to follow, we answer appellant's question in the affirmative and affirm the judgments of the circuit court.

BACKGROUND

In the evening hours of May 11, 2014, Talbot County Police Officer Anthony Reyes was on duty when he responded to 29173 Superior Circle in Easton following a report of a domestic disturbance. Upon arriving at the residence, Officer Reyes made contact with an individual, later identified as appellant, who was standing inside of the home near the front entrance. Also in the home was appellant's wife, Nikki West, who was sitting in the home's first-floor living room with her three small children.[1] Officer Reyes informed appellant that he had been dispatched to that location, and appellant responded that "nothing happened." Officer Reyes entered the home and observed that appellant had blood on his clothes, a laceration on his hand, appeared to be intoxicated, and "very irrational."

[1] Officer Reyes testified that the children "were under eight, some point there."

Around the same time, another officer arrived on the scene. As that officer was parking his vehicle in front of appellant's house, appellant "immediately closed the door" and stated that "nobody needs to come in here." Officer Reyes informed appellant that the other officer was there to assist and that he needed to speak with Mrs. West and the children. Appellant became "a little defensive" and stated that "nothing had occurred" and that "everything was fine." Ultimately, appellant complied and allowed the other officer to enter the home and assist Officer Reyes. At that point, appellant led Officer Reyes to the kitchen and stated that he had cut his hand washing dishes.

When Officer Reyes again informed appellant that the officers needed to speak with Mrs. West, appellant "changed his story" and told the officer that he wanted to "go upstairs" and show the officer "exactly where it occurred." Officer Reyes then accompanied appellant to the home's second floor, which contained several bedrooms. Once there, Officer Reyes was able to see inside one of the bedrooms, where he observed an open closet containing "an automatic rifle" and "other handguns." Officer Reyes then went back downstairs to speak with Mrs. West, but, according to Officer Reyes, she "wanted to remain quiet and not say anything." Officer Reyes also observed that Mrs. West "was pretty much shocked," that the children "seemed scared," and that appellant "could be capable of hurting them" because of "his mental status." Officer Reyes reported that information to his superior and left appellant's residence.

Approximately two hours later, Officer Reyes received another report of a domestic disturbance at appellant's residence. Upon arriving at the scene, Officer Reyes

made contact with Mrs. West, who reported that appellant had left the premises. Officer Reyes then went inside of the home to "secure the house," at which time he observed a Glock handgun, which the police later discovered was loaded and had a round in the chamber, lying on the floor next to a bed in one of the home's bedrooms. Officer Reyes also observed that there were some bloodstains in various spots around that bedroom and on the gun and that the bedroom was "disorderly." According to Officer Reyes, the bedroom in which the gun was located appeared to belong to an adult but was not the same one in which, during his prior visit, he had seen the open closet containing firearms. Officer Reyes did check that bedroom and found that it "was pretty much disorderly as well."

Officer Reyes then completed a domestic violence supplementary report ("the report"), which documented the incident and was later admitted into evidence.[2] The report indicated, among other things, that Mrs. West responded in the affirmative when asked whether she and appellant had a history of domestic violence; whether appellant had previously threatened to kill her or her children; whether appellant had ever used a weapon against her or threatened her with a weapon; and, whether appellant had ever tried to choke her. The report also indicated that, on the night of the attack, Mrs. West was "afraid," "fearful," and "nervous" and appellant was "angry," "crying," "hysterical," and "irrational." After completing that report, Officer Reyes informed Mrs. West that the

[2] The trial court admitted a redacted version of the report, which omitted information regarding a prior court case, injuries sustained by Mrs. West, and the circumstances that caused the domestic incident.

gun found in the bedroom was loaded. Upon hearing that information, Mrs. West "became hysterical and started crying."

Around the same time that Officer Reyes was conversing with Mrs. West, several officers who were on the scene outside of appellant's house observed appellant drive his vehicle past the residence. Those officers then got in their vehicles and initiated a traffic stop of appellant's vehicle. Following the stop, appellant was removed from his vehicle and placed in a marked police car, which was equipped with recording equipment. While in the backseat of the police car, appellant had the following exchange with one of the officers on the scene:

APPELLANT:	What am I under arrest for?
OFFICER:	Hold on. **We were told that you held a gun to your wife's head and told her you were going to kill her.**
APPELLANT:	My wife told you that?
OFFICER:	What?
APPELLANT:	My wife told you that?
OFFICER:	No, we were told.
APPELLANT:	Who told you that? My wife couldn't have told you that. I never held a gun on –
OFFICER:	Okay.
APPELLANT:	My wife told you that?
OFFICER:	All right. So just chill out and let's –
APPELLANT:	No, no. **You know what, you're 100 percent right. I did. I'm sorry.** I'm so apo [sic] – I apol [sic] –

OFFICER:	Well, you don't need to tell me.
APPELLANT:	**I shouldn't have tried to kill her and I did it.** I did. Hey.
OFFICER:	Okay. Yeah.
APPELLANT:	**And what gun did I put against her head?**
OFFICER:	**The one, the Glock that was laying on the bedroom floor.**
APPELLANT:	There is no Glock that's in – the one I gave her?
OFFICER:	I mean, you don't need to talk to me anymore because I mean I haven't Mirandized[3] you anyway.

Following his arrest, appellant was charged with assault, reckless endangerment, false imprisonment, and use of a firearm in the commission of a felony or crime of violence. At trial, Mrs. West invoked her marital privilege and elected not to testify. Appellant testified in his own defense. He claimed that, prior to Officer Reyes' initial visit, he was at home moving furniture when his daughter "came running" and informed him that "the police were at the front door." Appellant admitted that he had been drinking "like two bottles of wine" and had taken "a lot of" prescription medication, including Oxycodone and Prozac, on the night in question. Appellant also claimed that he had cut his hand on a knife while reaching into the kitchen sink.

Appellant testified that, after Officer Reyes left, he went back upstairs to move furniture, as he and Mrs. West, both of whom were former military, had decided to sleep

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

in separate bedrooms due to appellant's post-traumatic stress disorder, which caused him to wake up in the middle of the night screaming and reaching for weapons. According to appellant, while he was attempting to enter Mrs. West's bedroom to retrieve some items, he noticed that Mrs. West, who was inside of her bedroom at the time, had placed a piece of furniture behind the bedroom door to prevent appellant from entering. When appellant asked her why she had blocked the door, Mrs. West responded that she did not want appellant to come into the room because she was afraid of him and his "drinking." Appellant then went and retrieved a handgun and, holding the gun in the hand that was bleeding, entered the bedroom, threw the gun onto the bed and stated: "If you're afraid of me then take your gun."[4]

The circuit court ultimately acquitted appellant on the charges of assault and use of a handgun in the commission of a felony or crime of violence but found him guilty of reckless endangerment and false imprisonment:

> I have [had] the chance to listen to the recording [of appellant's conversation with the officer during his arrest.] . . . [T]he tone of voice that [appellant] had was . . . sufficiently sarcastic enough that the Court has a reasonable doubt on the first-degree assault charges and the second-degree assault. So I will enter judgment of acquittal on Counts 1 and 2. On Count 3 reckless endangerment the evidence shows that [appellant's] hand was bleeding. That there was blood on the (inaudible) of the gun that is on which the gun was found is a, was a 45 Glock which [appellant] testified was his gun. The [officer] testified that the gun had several rounds in it. One which was chambered. There are other people in the house and persuaded [sic] beyond a reasonable doubt based on that evidence that [appellant] was guilty of reckless endangerment. On false imprisonment

[4] On cross-examination, appellant testified that he could not state definitively whether he "threw" the gun on the bed or "handed" it to Mrs. West but that it "wasn't on the floor."

> [appellant's] testimony was that his wife had barricaded herself in a room . . . and therefore I am persuaded that [appellant] is guilty . . . of false imprisonment . . . . I am not persuaded that beyond a reasonable doubt that the firearm was used to hold Mrs. West in the room that there were other reasons why she barricaded and it was not the firearm itself.

STANDARD OF REVIEW

"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.'" *Donati v. State,* 215 Md. App. 686, 718 (2014) (citations omitted). That same standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). "While we do not re-weigh the evidence, '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.* (citations omitted). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati,* 215 Md. App. at 718 (citations omitted). Moreover, "[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*, 191 Md. App. at 314 (citations omitted). That said, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact

finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original).

DISCUSSION

Appellant argues that the evidence adduced at trial is insufficient to sustain either of his convictions. Regarding his conviction of false imprisonment, appellant maintains that the State failed to show that he confined or detained Mrs. West against her will by way of force, threat of force, or deception. Appellant maintains, rather, that Mrs. West barricaded herself in her room of her own free will and without provocation by appellant. As for his conviction of reckless endangerment, appellant maintains that his throwing of a loaded Glock handgun in the direction of Mrs. West did not pose a substantial risk of death or serious physical injury to Mrs. West.

The State counters that the evidence supports the conclusion that Mrs. West barricaded herself in her room not of her own free will but out of fear that appellant, who was intoxicated, irrational, and had access to weapons, might harm her. The State maintains, therefore, that the evidence is sufficient to sustain appellant's conviction of false imprisonment. The State also maintains that the evidence is sufficient to sustain appellant's conviction of reckless endangerment, as a reasonable person in appellant's position would have known that throwing a loaded handgun in someone's direction carries a substantial risk of injury.

Before discussing the merits of appellant's claim, we must first set out the precise nature and scope of our review following a challenge to the legal sufficiency of the evidence in a bench trial, as a portion of appellant's argument relies upon certain findings made by the circuit court when it delivered the verdicts. In a jury trial, the scope of the legal sufficiency issue is governed by Maryland Rule of Procedure 4-324, which requires that a defendant make a motion for judgment of acquittal at the close of all evidence and state with particularity all reasons why the motion should be granted. Md. Rule 4-324(a). Upon such a motion, the court must determine whether, as a matter of law, the State satisfied its burden of production before submitting the case to the jury. Such a determination is made "by measuring the evidence that has been admitted into the trial objectively and then determining whether that body of evidence is legally sufficient to permit a verdict of guilty." *Chisum v. State*, 227 Md. App. 118, 130 (2016). "If that burden of production is not satisfied, the trial judge is wrong, as a matter of law, for denying the motion and for allowing the case even to go to the jury." *Id.* Thus, in reviewing the legal sufficiency of the evidence in a jury trial, "[w]e are not at all concerned with how the factfinder arrived at the verdict, the logic or illogic of the factfinder's reasoning, but only with the naked verdict itself." *Id.* at 125.

In a bench trial, however, the trial judge, not a jury, is the factfinder. In that instance, our authority to review the sufficiency of the evidence is governed by Md. Rule 8-131(c), which states that the appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" *Id.* In applying that Rule, we have

made clear that "the phrase 'clearly erroneous' in Md. Rule 8-131(c) refers only to whether the verdict is supported by legally sufficient evidence and not to peripheral incidents in its rendition." *Id.* at 128. In other words, "[i]f the evidence is not legally sufficient to support a verdict of guilty [following a bench trial], the judge's verdict of guilty is *ipso facto* clearly erroneous." *Id.* at 130.

In short, and despite the differences in the applicable rules, the test for sufficiency of the evidence, regardless of trial modality, is the same: whether the State satisfied its burden of production. Moreover, as with a jury trial, the issue of sufficiency of the evidence following a bench trial "is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict." *Id.* at 129. Rather

> [i]t is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place. The burden of production is not concerned with what a factfinder, judge or jury, does with the evidence. It is concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence. It is an objective measurement, quantitatively and qualitatively, of the evidence itself. It is a question of supply and not of execution.

Id. at 129-30.

Against this backdrop, we turn to the merits of appellant's claim. To meet its burden on the charge of false imprisonment, the State needed to show: "(1) that appellant confined or detained the victim; (2) that the victim was confined or detained against her will; and (3) that the confinement or detention was accomplished by force, threat of force, or deception." *Garcia-Perlera v. State*, 197 Md. App. 534, 558 (2011). To meet its burden on the charge of reckless endangerment, the State needed to show: "(1) that

[appellant] engaged in conduct that created a substantial risk of death or serious physical injury to another; (2) that a reasonable person would not have engaged in that conduct; and (3) that the defendant acted recklessly." *Thompson v. State*, 229 Md. App. 385, 414 (2016) (citations and quotations omitted).

The facts adduced at trial in support of appellant's convictions were as follows: that officers were dispatched to appellant's home following a report of a domestic disturbance; that, upon the officers' arrival, appellant was observed with a cut on his hand and blood on his clothes; that appellant had consumed, or was in the process of consuming, two bottles of wine and multiple medications, including Oxycodone and Prozac; that appellant had ready access to multiple firearms, which were in plain view; that Mrs. West was observed as being in shock and reluctant to talk; that, following the officers' departure, Mrs. West had barricaded herself in her bedroom because she was afraid of appellant; that appellant, armed with a handgun, which was loaded and had a round in the chamber, had entered the bedroom and had thrown the handgun somewhere in the vicinity of Mrs. West; that that same handgun was later found on the floor of the bedroom; that various bloodstains were also found in the bedroom and on the gun; that appellant had fled the scene prior to the officers' second arrival; that, after that arrival, Mrs. West had been described as afraid and fearful while appellant had been described as angry, hysterical, and irrational; that the police had returned to appellant's home after having been informed that appellant had held a gun to Mrs. West's head and told her that he was going to kill her; that appellant admitted to threatening to kill Mrs. West; and,

that, when appellant asked one of the officers to identify which gun he had pointed at Mrs. West's head, the officer responded that it was "the Glock that was laying on the bedroom floor."

When viewing the above evidence in the light most favorable to the State, we are persuaded that sufficient evidence exists from which a rational trier of fact could have found appellant guilty of false imprisonment beyond a reasonable doubt. To be sure, no evidence was presented to suggest that appellant, by means of direct force, overtly acted to confine or restrain Mrs. West in her bedroom. Rather, the evidence clearly showed that Mrs. West confined herself to the bedroom. That fact, however, is not fatal to the State's case, as "[a]ny exercise of force, or threat of force, by which in fact the [victim] is deprived of [her] liberty . . . is an imprisonment." *Carter v. Aramark Sports and Entertainment Services, Inc.*, 153 Md. App. 210, 250 (2003) (citations and quotations omitted). Here, Mrs. West barricaded[5] herself in her bedroom not of her own free will, but rather out of fear of appellant, who was likely under the influence of alcohol and narcotics and who had ready access to at least one loaded firearm, which he ultimately procured and then threw in Mrs. West's vicinity.[6] There would be no reason for Mrs.

[5] To "barricade" is to "obstruct or block with a [defensive barrier hastily constructed.]" http://www.dictionary.com/browse/barricade (last visited October 5, 2017).

[6] For that reason, appellant's reliance on *Fine v. Kolodny*, 263 Md. 647 (1971), is misplaced. *See id.* at 649-50 (trial court did not err in entering directed verdict against plaintiff on her claim of false imprisonment where plaintiff **voluntarily consented** to her confinement).

West to shut herself in or to defense herself by placing an obstacle in front of the door if she was not under threat of force. Accordingly, a reasonable inference can be drawn that appellant's threatening behavior forced Mrs. West to barricade herself in her bedroom, which in turn deprived Mrs. West of her liberty against her will.

Appellant maintains that the "trial judge refused to convict him of assault based on his statement to police officers that he put a gun to his wife's head, implicitly finding that this conduct was not established." As discussed *supra*, however, findings made by the circuit court in reaching its verdict have no bearing on the question of whether the evidence is sufficient as a matter of law. Moreover, even if the court acquitted appellant of assault and convicted him of false imprisonment, the threat of force necessary to convict one of false imprisonment may have arisen out of the totality of events during the evening hours of May 11, 2014.[7]

We are likewise persuaded that sufficient evidence exists from which a rational trier of fact could have found appellant guilty of reckless endangerment beyond a reasonable doubt. Evidence was presented at trial establishing that appellant held a gun to Mrs. West's head and threatened to kill her. Additional evidence was presented suggesting that the gun appellant used to threaten Mrs. West was the same gun that was

[7] Therefore, the Court of Appeals' decision in *Selby v. State*, 361 Md. 319, 333 (2000), where the trial judge made a finding that there was insufficient evidence to sustain a voluntary manslaughter conviction, would not be dispositive as the verdicts in this case were not factually inconsistent. *See McNeal v. State*, 426 Md. 455, 458 (2012) (describing factually inconsistent verdicts as "illogical, but not illegal.").

found in Mrs. West's bedroom and was later discovered to be loaded. Accordingly, a reasonable inference can be drawn that appellant, while under the influence of alcohol and prescription medication, pointed a handgun, which was loaded and had a round in the chamber, at Mrs. West's head and threatened to kill her. *See Wieland v. State*, 101 Md. App. 1, 28 (1994) ("[B]randishing a loaded and cocked weapon in the direction of another person, particularly when in shaky control of one's motor skills, could also be deemed conduct that 'creates a substantial risk of death or serious physical injury to another person.'"). Such conduct, when viewed objectively, "was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe[.]" *Thompson*, 229 Md. App. at 415 (citations omitted).

Although the circuit court seemingly based its guilty verdict on conduct separate from appellant's pointing of the gun at Mrs. West's head, we reiterate that the test of legal sufficiency of the evidence does not hinge upon the court's findings. Nevertheless, even if we were to confine our analysis to the conduct relied upon by the court, we would still find the evidence sufficient to sustain appellant's conviction. A reasonable person in appellant's position would have (or should have) known that handling and then throwing a loaded, ready-to-fire handgun in the direction of an individual while under the influence of alcohol, Oxycodone, and Prozac would be reckless and would create a substantial risk of death or serious physical injury to that individual.

Although we could find no Maryland cases in which a defendant was found to be reckless under circumstances identical to those presented here, the Court of Appeals has,

on at least one occasion, determined that the handling of a loaded firearm can constitute reckless endangerment even when the defendant never pointed the weapon at anyone or had his finger on the trigger. *See, e.g., Minor v. State*, 326 Md. 436, 443 (1992) (finding evidence sufficient to support conviction for reckless endangerment where defendant, while intoxicated, handed a loaded shotgun, with the safety off, to the victim and dared him to put the gun to his head and pull the trigger).

Thus, even though the record does not reflect that appellant pointed the weapon at Mrs. West or had his finger on the trigger at the time he threw the loaded handgun into her bedroom, we are persuaded that such behavior was, objectively speaking, reckless, particularly given appellant's mental state at the time. This is reinforced by the fact that Mrs. West, upon hearing that the gun found in the bedroom was loaded, "became hysterical and started crying." Such a reaction from someone who, like appellant, was former military and familiar with firearms, creates a clear inference that appellant's actions posed a substantial risk of death or serious physical injury.

JUDGMENTS OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.