

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2020

September Term, 2018

BIJAN STEPHENS

v.

STATE OF MARYLAND

Kehoe,
Friedman,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 31, 2019

*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.

After a bench trial in the Circuit Court for Howard County, Bijan Stephens was convicted of, among other crimes, rape in the first degree, sexual offense in the first degree as well as second-degree rape and second-degree sexual offense, all arising out of his 2017 sexual assault of his former intimate partner. The court merged the convictions for sentencing purposes and sentenced Stephens to a term of incarceration of seventy years with all but thirty years suspended. In his appeal to this Court, Stephens concedes that there was legally sufficient evidence to support his convictions for second-degree rape and sexual offense. He raises just one issue: whether the evidence was sufficient to sustain his convictions for *first-degree* rape and sexual offense. It was and we will therefore affirm the court's judgments.

At the time the offenses were committed, Maryland's first-degree-rape statute provided that a person may not "engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other," and, in so doing, either (emphasis added):

(ii) *suffocate, strangle*, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; [or]

(iii) *threaten, or place the victim in fear*, that the victim, or an individual known to the victim, *imminently will be subject to death, suffocation, strangulation*, disfigurement, serious physical injury, or kidnapping[.]

Md. Code, Crim. Law § 3-303(a)(1)–(2) (2002, 2012 Repl. Vol., 2016 Supp.).

Similarly, our since-repealed first-degree-sexual-offense statute provided that a person may not "engage in a sexual act with another by force, or the threat of force, without the consent of the other," and, in so doing, commit any of the same aggravators listed above.

Md. Code, Crim. Law § 3-305(a)(1)–(2) (2002, 2012 Repl. Vol., 2016 Supp.) (repealed Oct. 1, 2017).

At the conclusion of the trial, the court issued a bench opinion addressing each element of the crimes of which Stephens was convicted. As to the aggravating factors for first-degree rape and sexual offense, the court stated (emphasis added):

[I]n this case [the evidence is] actually a bit of a mix, but enough to establish that it appears from [the victim’s] testimony that [Stephens] *was using the threat of suffocation or strangulation and the attempts to do it as a reason to subdue her and to have her in fear that if she did not go along with it that it would . . . lead to her suffocation or strangulation.*

[T]he Court believes that there’s sufficient evidence to support a verdict on [the first-degree sexual offense count]

* * *

The testimony of [the victim], which the Court finds credible, fully supports [the conclusion that Stephens committed second-degree rape].

First degree rape [requires] all the elements of second degree rape, plus that [aggravating] circumstance, once again . . . either suffocation or strangulation or attempt or *placing the [victim] in reasonable fear of suffocation or strangulation is required.*

* * *

[A]ll of these counts [have] been proven by the State with proof beyond a reasonable doubt.

The trial court further explained that, in reaching these conclusions, although the victim’s testimony contained some minor inconsistencies, on the whole her rendition of the events was “very credible.” Additionally, the court relied upon the testimony of the SAFE nurse (sexual-assault forensic examiner) who examined the victim at the hospital. We will discuss this testimony shortly.

To this Court, Stephens contends that “no rational trier of fact could find, beyond a reasonable doubt, that Stephens suffocated or strangled [the victim] or placed her in fear of imminent suffocation or strangulation.” In reviewing a claim that the evidence was insufficient to sustain a conviction, we must determine “whether, after considering 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). In this exercise, we defer both to the fact-finder’s decision as to what evidence is credible and what evidence isn’t, as well as to the fact-finder’s decision as to what inferences are to be drawn from the evidence as long as those inferences are rational ones. *Smith v. State*, 415 Md. 174, 183 (2010).

In the present case, there was a wealth of evidence showing that Stephens repeatedly sexually assaulted the victim on the night of April 22, 2017. The victim was eventually able to call for help, the police responded, and the victim was taken to the hospital for examination and treatment. Pertinent to Stephens’s appellate contention, the victim testified at trial that, in the course of his serial assaults upon her, Stephens placed his hands over her face and squeezed until she was unable to breathe. The victim related that, although she continued to struggle, she “had no energy [and] no oxygen” and all that she could think about was that she couldn’t die because her son needed her. She testified that Stephens did this to her at least twice and that, after each occasion, he sexually assaulted her.

For her part, the SAFE nurse testified that, when she examined the victim at the hospital, she observed “petechiae”—small flat spots on the skin caused by ruptured capillaries bleeding into the skin—around the victim’s eyes. Additionally, the nurse noted that the victim’s eyes were bloodshot. She testified that both symptoms were consistent with strangulation or asphyxia to the chest or neck.

From this evidence, a fact-finder could reasonably conclude that Stephens placed his victim in fear that she was going to be suffocated and that his actions in doing so were intentional. The evidence was sufficient to support the guilty verdicts for the first-degree rape and first-degree sexual-offense charges.

**THE JUDGMENTS OF THE CIRCUIT
COURT FOR HOWARD COUNTY
ARE AFFIRMED. COSTS ASSESSED
TO APPELLANT.**