Circuit Court for Baltimore City
Case No. 118095017

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2067

September Term, 2018

KRISTEN NICHOLS

v.

STATE OF MARYLAND

Graeff,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 31, 2019

Kristen Nichols, appellant, was charged in the Circuit Court for Baltimore City with numerous crimes arising out of a fight that occurred on a light rail train. After a jury trial, she was found guilty of one count of second-degree assault. The court sentenced her to incarceration for a term of four years, with all but time served suspended, and three years of supervised probation. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the evidence was sufficient to sustain appellant's conviction for second-degree assault. For the reasons explained herein, we shall affirm.

FACTUAL BACKGROUND

On February 28, 2018, at about 5:45 in the morning, two groups of women engaged in a fight on a light rail train in Baltimore City while on their way to work at a company in Hunt Valley. The fight was captured by video cameras on the light rail train and by a bystander, and those recordings were admitted in evidence and played for the jury. There was no dispute below that appellant had a knife and that she used it to stab Artia Shanton, who was taken to Sinai Hospital and treated for a collapsed lung. Appellant argued at trial, as she does on appeal, that she acted in defense of herself and others.

Four of the participants in the fight testified at trial. Carmella Johnson was one of those women. She has two sisters, Artia and Shakia Shanton, and they all had jobs with the same staffing agency.[1] The agency had two locations, one on York Road and one in

[1] Because Artia and Shakia share the same last name, we shall refer to Artia as Ms. Shanton and to Shakia by her full name.

Hunt Valley. In the two weeks leading up to the incident, the Hunt Valley location was short staffed, so some employees from the York Road location were brought in to help out, including appellant.

At one point, Shakia Shanton was working on the lower level of the building in Hunt Valley with appellant and another woman from the York Road location. Shakia Shanton started crying and went upstairs where her sister, Ms. Johnson, was working. She told Ms. Johnson that some of the girls working on the lower level were arguing and that she was "real upset." Ms. Johnson went downstairs to see what was going on and she observed appellant and Jacelle Burgess sitting next to one another. Ms. Johnson testified that she walked to the end of the line and "talked to who [she] talked to" and that was the end of it. Ms. Johnson then told her supervisor that there was confrontation and conflict between some of the people from the York Road location who were working on the lower level and, thereafter, the supervisor sent appellant and Ms. Burgess home.

Also in the weeks leading up to the stabbing incident, Ms. Shanton and appellant had an encounter on a light rail train. Appellant was on her phone and was bumping into passengers on a packed train. Ms. Shanton told appellant, "if you want to sit down just say it." Appellant sat down and the encounter ended.

On February 28, 2018, at about 5:35 a.m., Ms. Johnson got on a light rail train at the North Avenue stop. She had previously received a phone call from her sister, who said that a woman on the train had called Ms. Shanton a bitch. Ms. Shanton, appellant, and Ms. Burgess, as well as other employees of the Hunt Valley location, were on the train. Ms. Johnson sat next to her sister. Appellant and Ms. Burgess were "on the edge of their seats,

turned around facing" Ms. Johnson and Ms. Shanton, and they were talking and "cussing," although Ms. Johnson could not hear what they were saying. Appellant and Ms. Shanton started arguing back and forth. Ms. Shanton said, "If you want to do something you're going to do it." Appellant and Ms. Burgess got up out of their seats and Ms. Shanton got up and they walked toward each other. Ms. Johnson was standing when her sister got up and she also walked toward appellant and Ms. Burgess. Ms. Shanton and Ms. Johnson both hit appellant, but eventually, appellant and Ms. Shanton fought each other and Ms. Johnson and Ms. Burgess started to fight.

Ms. Johnson stood up on a seat and moved from seat to seat in order to be eye-to-eye with Ms. Burgess. At one point, Ms. Johnson fell onto another woman and Ms. Burgess fell on top of her. Ms. Burgess put her hands in Ms. Johnson's face and scratched her. Ms. Johnson bit Ms. Burgess's finger and she let go. At one point, Ms. Johnson was hit in the head with an object that was later identified as a combination lock. Ms. Shanton and other co-workers on the train tried to get Ms. Burgess off Ms. Johnson. Ms. Johnson heard someone say, "she stabbed me." Ms. Johnson was lifted up and then saw appellant and Ms. Burgess run toward their belongings, pick them up, and get off the train. As appellant exited the train, Ms. Johnson saw that she had what appeared to be a kitchen steak knife. Ms. Shanton had been stabbed in the back and was taken to Sinai Hospital.

Ms. Shanton worked on the upper level of the company in Hunt Valley. She did not see any of the conflict that occurred on the lower level, but her sister, Shakia, told her about it. Ms. Shanton usually took the light rail train to work with her "godsister," Ms. Johnson, and her sister, Shakia Shanton, but Shakia was not on the train on the day of the stabbing.

After boarding the train, Ms. Shanton began arguing with appellant and Ms. Burgess, the two women she believed her sister Shakia had argued with in prior weeks. After the fight broke out, there came a point where Ms. Burgess was on top of Ms. Johnson. Ms. Shanton went to help get Ms. Burgess off Ms. Johnson. At that point, appellant left the fight. Ms. Shanton then felt "warm go down my back, blood[,]" and as soon as she "got down" she "felt [her] lung collapsing because [she] couldn't breathe." Ms. Shanton saw appellant run off the train.

Ms. Shanton denied that she had a combination lock during the fight and that she was hit with one. She acknowledged that she had a lock, but it was in her bag. Ms. Shanton was confronted with an inventory of items recovered from her at the hospital, which included "a lock," but she maintained that she never had a lock in her hands during the fight. She also denied ever spitting on appellant. Ms. Shanton acknowledged that she engaged in a lot of fights. She testified that she felt threatened when appellant stood up with her hands in her pockets.

Jacelle Burgess testified for the defense. She usually worked in the York Road location, but was sent to the Hunt Valley office in February 2018. One day, while at work, she exchanged words with Shakia Shanton, who got upset. Ms. Burgess met Ms. Johnson that day when she came downstairs to ask what had happened with Shakia Shanton.

On the day of the stabbing, Ms. Burgess boarded the train as usual with appellant, who is her cousin. She did not expect to see Ms. Shanton on the train, but had not had any problems with her in the past. She first became aware of Ms. Shanton when she started "making faces" and "rolling her neck . . . trying to make herself obvious[.]" Two people

associated with Ms. Shanton, Ms. Johnson and Audrina Jones, boarded the train. Ms. Jones said to appellant, "dang, you can speak," and appellant responded, "oh, hey, hey, girl, I didn't even know you was sitting right there." Ms. Shanton said, "what you all looking back here for?" Ms. Burgess and appellant responded that they were looking at her because she was staring and making them feel uncomfortable. Ms. Shanton "ran her mouth," was disrespectful, and cursed, and Ms. Burgess cursed back.

Ms. Shanton stood up and walked toward Ms. Burgess and appellant "as if she wanted to fight." Appellant and Ms. Burgess stood up and "were like, you know, if you want something, what's up?" At first, Ms. Shanton retreated, but then she came back and spat on appellant. Appellant began to fight with Ms. Shanton and Ms. Johnson and Ms. Burgess then jumped in. Ms. Burgess stated that she started fighting because Ms. Shanton and Ms. Johnson were "banking" appellant, meaning that the fight was two people against one. Initially, Ms. Burgess felt like Ms. Shanton was hitting her hard with her hands, but she later came to believe that Ms. Shanton was hitting her with a combination lock. While Ms. Shanton was hitting her, Ms. Johnson was scratching her. Ms. Audrina Jones was "making it seem like she was breaking [up the fight], but she was really scratching" Ms. Burgess's eyes. Ms. Burgess testified that she was not able to escape the three women. While Ms. Shanton was beating her over the head with the lock, she thought, "oh, my God, she's going to beat me to death because nobody is stopping her, nobody is pulling her off." She stated that she was in fear for her life "because she didn't know how many times she was going to keep hitting me and I didn't know if I was going to get away."

Ms. Burgess heard a loud commotion and someone say, "somebody got a knife." She did not know who had a knife, but the fight broke up and she and appellant left the train. Ms. Burgess explained that she left because she was concerned that the police would lock up those who had participated in the fight, and she did not "want to go to jail over something as petty as a little fight[.]" Ms. Burgess had a scratch under her eye, three knots on the back of her head, a "really, really bad headache," and suffered a panic attack. She testified that if she had turned her head during the fight, the lock "probably would have put my eye out." She did not believe she could have escaped if appellant had not intervened.

Appellant testified on her own behalf. She had worked at the staffing agency on and off for three years packing make-up. On the day of the fight, she got on the light rail train with her cousin, Ms. Burgess. Ms. Shanton boarded the train at the next stop and began to stare and make her feel uncomfortable. Appellant denied that she made faces or rolled her eyes at Ms. Shanton. Ms. Johnson and Ms. Jones boarded later. Ms. Jones looked at appellant and said, "Hi, what, you can't speak?" Appellant responded, "hey girl – I didn't know you were there," to which Ms. Jones replied, "well, what the F is she looking at," referring to Ms. Burgess. Ms. Jones proceeded to cuss and curse at Ms. Burgess. At that point, Ms. Shanton stood up, proceeded down the aisle toward where they were sitting, and said, "do you all want to fight?" She also said, "all you B's do not want to fight us" and was "very aggressive." Ms. Shanton walked back toward her seat, but then turned and walked toward appellant and Ms. Burgess, both of whom then stood up. Appellant's hands were in her pocket because it was cold and she did not want Ms. Shanton to think she was trying to fight. As Ms. Shanton approached, words were exchanged and

Ms. Shanton spit in appellant's face. Ms. Shanton and Ms. Johnson hit appellant and Ms. Burgess came to appellant's "rescue."

Appellant saw Ms. Shanton take a combination lock out of her sock and hit her over the head with it five to six times. Appellant thought she might be hit unconscious or possibly die. She was afraid and, at one point, was so stunned by getting hit with the lock that she fell backwards. Ms. Jones was holding Ms. Burgess's arms and Ms. Johnson was "banging her." At the same time, Ms. Shanton was on a chair and was beating Ms. Burgess. Appellant went to her pocketbook and took out a knife that had been there for a while. She struck Ms. Shanton in the back as she was bending down. Appellant was scared and ran off the train. Appellant testified that she believed Ms. Burgess would have been seriously harmed if she had not stabbed Ms. Shanton.

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

DISCUSSION

Appellant contends that the evidence was insufficient to support her conviction for second-degree assault. In determining the sufficiency of the evidence on appeal, the standard of review 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) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). This standard of review "applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415

Md. 174, 185 (2010) (citation omitted). We review the factual evidence in the light most favorable to the prevailing party, in this case the State. *Id.* at 185-86. Findings of law, however, are reviewed *de novo*. *Rosales v. State*, 463 Md. 552, 562 (2019).

"Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted). "Our role is not to retry the case: [b]ecause the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Nicholson v. State*, 239 Md. App. 228, 252 (2018), *cert. denied*, 462 Md. 576 (2019) (internal quotations and citation omitted).

Appellant contends that no rational fact-finder could conclude that she was guilty of second-degree assault because the evidence presented at trial "clearly established all four elements of defense of others, which is a complete defense to assault." She argues that even though Artia Shanton wound up with the most serious injury, reversal is required because the evidence established that when she stabbed Ms. Shanton, she had an actual and objective belief that Ms. Burgess was in immediate or imminent danger of bodily harm and she used no more force than was reasonably necessary under the circumstances to aid Ms. Burgess. According to appellant, because the evidence established defense of others as a

matter of law, the evidence was insufficient to sustain her conviction for second-degree assault and reversal is required. We disagree and explain.

Defense of others is a recognized defense in Maryland. *Lee v. State*, 193 Md. App. 45, 55 (2010). We explained the defense in *Lee*, as follows:

> Defense of others, like self-defense, is a justification or mitigation defense. If the appellant proved that he was acting in perfect defense of others, *i.e.*, that he held a subjectively genuine and objectively reasonable belief that he had to use force to defend another against immediate and imminent risk of death or serious harm *and* the level of force he used was objectively reasonable to accomplish that purpose, he would be entitled to an acquittal on the murder charge. *See* Judge Charles E. Moylan, Jr., *Criminal Homicide Law*, 194 (2002). On the other hand, if the appellant held an actual belief that he had to use force to defend another, but his belief was not objectively reasonable and/or the level of force he used was not objectively reasonable, the result would be to mitigate 'what might otherwise be murder down to the manslaughter level.' *Id.* at 193. The former is the 'perfect' or 'complete' form of the defense; the latter is the 'imperfect' or 'partial' form. *Id.*

Lee, 193 Md. App. at 58-59 (footnote omitted).

In this case, the court instructed the jury on defense of others, pursuant to Maryland Criminal Pattern Jury Instruction 5:01, as follows:

> Defense of others. You have heard that the defendant acted in defense of Jacelle Burgess. Defense of others is a defense and you are required to find the defendant not guilty if all of the following four factors are present: that the defendant actually believed that the person she was defending was in immediate or imminent danger of body [sic] harm, that the defendant's belief was reasonable, that the defendant used no more force than was necessary in light of the threatened or actual force and that the defendant's purpose in using force was to aid the person that she was defending. In order to convict the defendant, the State must prove that the defense of others does not apply. This means that you are required to find the

> defendant not guilty unless the State has persuaded you beyond a reasonable doubt that at least one of the four factors was absent.

It is clear that appellant's testimony provided "some evidence" so as to generate the need for the jury instruction on defense of others, but generating enough evidence to warrant a jury instruction does not establish, as a matter of law, that the State's evidence was legally insufficient or that there were no competing facts in evidence. The jury was not required to credit the evidence tending to show appellant's defense of others. As we explained in *Hennessy v. State*, 37 Md. App. 559, 561-62 (1977):

> Appellant concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that because the State did not affirmatively negate this self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. *Gilbert v. State*, 36 Md. App. 196, 373 A.2d 311 [(1977)]. The factfinder may simply choose not to believe the facts as described in that, or any other, regard. *Jacobs v. State*, 6 Md. App. 238, 242, 251 A.2d 33 [(1969)], and the very fact that a large knife was used, causing the death of an unarmed man, raises in itself the issue of excessive force even if appellant's account had been believed. "The law is clear that although a person may defend himself, even to the extent of taking life to repel the attack of an aggressor, it is equally well settled that he cannot use more force than is necessary." *Ware v. State*, 3 Md. App. 62, 65, 237 A.2d 526, 528 [(1968)].

Appellant's contention is equally "absurd." She was entitled to, and received, a jury instruction on perfect self-defense. The jury, however, was "free to believe some, all, or none of the evidence [she] presented in support of that defense." *Sifrit v. State*, 383 Md. 116, 135 (2004). *See also Holmes v. State*, 209 Md. App. 427, 438 (2013) (fact-finder is

free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony).

Here, the jury could have concluded that when appellant stabbed Ms. Shanton in the back with a steak knife, she used more force than was necessary or that she used that force for a purpose other than defending Ms. Burgess. In addition, appellant's testimony that she knew it was "wrong" to stab Ms. Shanton, that she did not think it was worth hurting Ms. Shanton "for something that could have been avoided," and that she did so because she was "scared" and "upset" undercut her claim that she used the knife to defend Ms. Burgess. Appellant's contention that no rational fact-finder could conclude that she was guilty of second-degree assault is without merit and the trial court properly submitted the issue of defense of others to the jury.

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