Circuit Court for Baltimore City
Case No. 113172007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2740

September Term, 2018

DONTE ANTONIO FRYE

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: April 14, 2020

*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 sitting in the Circuit Court for Baltimore City convicted Donte Frye, ("Appellant"), of first- and second-degree assault. After merging Appellant's second-degree assault conviction into his conviction for first-degree assault, the trial court sentenced him, as a subsequent offender, to a mandatory 25-year term of imprisonment without the possibility of parole. Appellant raises a single question on appeal, which we have slightly rephrased:[1]

I. Was the evidence sufficient to sustain his conviction for first-degree assault?

For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 11, 2013, Terrell Warren ("Warren") had lived for about three weeks in a transitional house at 2819 Ashland Avenue in Baltimore with three others, including Appellant, who was the "house manager." As house manager, Appellant was responsible for keeping the house clean and monitoring the residents' comings and goings. Warren's bedroom was in the basement, which was accessible through stairs off the kitchen. The stairs consisted of about 10 steps that at the bottom led to Warren's bedroom. Appellant and the other residents had bedrooms on the second floor.

Warren testified that on the morning of April 11, 2013, he was packing to move to a different house with a lower rent. At some point, Appellant handed him two trash bags

[1] Appellant presents the following question for review:

1. Is the evidence insufficient to sustain the conviction of first-degree assault?

to pack his belongings. Warren testified that there was nothing unusual about this interaction, and Appellant showed no anger toward him.

About twenty minutes later, Appellant called downstairs to Warren, stating, "Come here. I need to talk to you." According to Warren, Appellant's voice was calm, and he did not sound mad. Warren answered and walked to the top of the stairs. As he twisted the knob, the door pulled open and "hot scalding water" hit him in the face and body. Warren fell backwards down the stairs and hit his forehead on his bedroom door. His skin was "burning real bad, real bad," and he retreated to his bedroom, closing and locking the door. He was trying to understand what had happened and yelled out, "What was all that for? What was in that that you threw at me?" Appellant yelled back, "Some good shit" and said someone had eaten his sausages. When Warren, who testified that he had not eaten the sausages, had asked why Appellant had not just asked him about the sausages, Appellant responded, "it's the princip[le] of the matter." About thirty minutes later, when he thought Appellant had left the house, Warren walked about 18 blocks to the hospital. As Warren walked through the kitchen, he noted an empty pot on the stove with a "white-like ring" on the inside and an empty salt container next to the stove.

At the hospital, Warren was assessed as having "7-9% superficial second-degree scald burns to face and right neck/shoulder." Warren testified that he had a pain level of 10 when he arrived at the hospital and that he had burns to his face, neck, shoulder, chest, and back; mostly on the left side. Warren testified the burns "got real red and [] started pussing up[.]" His head also hurt as he had split his forehead when he fell down the stairs. About three days after the assault, he had more blisters on his face, neck, shoulder, and the blisters

began to pop. The corners of his mouth were burnt badly and would crack and split when he tried to eat. About three weeks after the attack, most of his scalded skin had sloughed off and the new skin underneath was pink. He was very self-conscious of the burns on his body, testifying that "people look at you funny and weird" and others "criticize[d] and ma[d]e jokes[.]" At the time of trial, about a year after the attack, Warren testified that he still had burn marks under his eye, and his skin was discolored.

Officer Porfirio Negron ("Officer Negron") with the Baltimore Police Department responded to the hospital emergency room. He described the victim as having red blisters over about a 1/3 of his face, and covering about half his neck, back, chest, and arm. The victim told Officer Negron what had happened, which was consistent with his trial testimony. A call was placed to the director of the housing project, who provided Officer Negron with Appellant's full name and date of birth. During a second call, made by Officer Negron to the director, the director handed the phone to Appellant, who happened to be nearby. Officer Negron asked Appellant what happened, and Appellant said that he was mad at the victim and "that's why he did it." Photographs the police took of the first floor of the house and the steps down into the basement were admitted into evidence.

After the attack, Appellant was arrested. The State introduced and played two recorded jail telephone conversations between Appellant and his girlfriend. One occurred on May 20, 2013, about a month after the assault, and the second occurred on June 15, 2013, about two months after the assault. In the first call, Appellant made the following statements:

> See, it ain't even like I got bodies and all that type of shit. I got six gun charges. This is just throwing water on somebody. They're not going to sweat that.
>
> * * *
>
> It ain't like I done killed 100 people and all that shit and they got – but I'm saying it ain't heavy. They're not sweating me like that.
>
> So I'm just saying somebody in that building told on me. Somebody told on me in that building. So you know what I'm saying? Listen, babe, I threw water on somebody. That's it. I don't got no other charges, just throwing water.

In the second call, Appellant made the following statements:

> So you know what I'm saying? Right? Hopefully, the dude don't show up, because every court date they will call and see if they're going to come to court. They ain't going to come to court. And then, you know, it's right it may seem a little harsh, hot water (phonetic), but it really ain't. It really ain't.
>
> Like it ain't an actual weapon. It ain't an actual weapon, like a stick or a gun or a knife or anything like that. So you know what I'm saying? Like it ain't really nothing. You see what I'm saying? And they told me that when I first got locked up, man.
>
> * * *
>
> Because this ain't heavy. It ain't – it ain't heavy. The dude wasn't even bleeding or nothing, man. There all these little burns (phonetic), but he wasn't bleeding. So you know what I'm saying?
>
> * * *
>
> They don't care about nothing messed up, right. It wasn't life-threatening. The dude wasn't damn near dead.
>
> * * *
>
> As long as it's not a life-threatening joint, I mean, they're not going to put that stuff like that. You know what I'm saying? Like I wasn't trying to kill nobody or none of that. You know what I'm saying?

> It was out of anger, but I wasn't trying to kill the dude or none of that stuff. Yeah, yeah, yeah, so you know what I'm saying? Everything gonna be all right.

At the close of the State's case-in-chief, Appellant moved for a judgment of acquittal, arguing:

> [W]ithout a medical expert and there is no summary defining it as such that's in the medical record that's been introduced, the severity is in question, the severity of the harm is in question, because we don't have a definition of second degree but the State hasn't called any expert witness to tell us what that means.
>
> * * *
>
> Your Honor, I'm arguing intent. What the victim testified to is that he had no idea why this happened or why my client did this and that he came up the stairs because my client was speaking calmly and wasn't angry and then when he got to the stairs this happened. So I don't know how we establish intent based on the testimony that we have.

The trial court denied the motion, stating on the record:

> All right. Thank you. Look, the victim has identified the Defendant as a person who threw some hot substance, presumably hot water that may have had a salt content in it, into his face either intentionally and/or recklessly and with regard to the injuries that suffered [sic], it caused serious and/or permanent or protracted disfigurement and/or injury. So looking at the case in the light most favorable to the State as to Assault I and II, the elements have been met in the light most favorable to them at this time. Your motion for judgment of acquittal is denied.

A jury subsequently convicted Appellant of first- and second-degree assault. On November 17, 2014, Appellant was sentenced to twenty-five years' incarceration, without the possibility of parole.

DISCUSSION

A. Parties' Contentions

Appellant argues that the evidence was insufficient to sustain a conviction of first-degree assault because the State failed to prove that he acted with the requisite intent to cause serious physical injury or that Warren suffered serious physical injury. The State rebuts, stating that there was sufficient evidence for a jury to determine that, beyond all reasonable doubt, Appellant intended to cause Warren serious physical injury and that Warren did in fact suffer a serious injury. We agree with the State.

B. Standard of Review

The standard for 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.'" *Taylor v. State*, 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "That standard 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). "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) (brackets in *Suddith*). This is because weighing "the credibility of witnesses and

resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *In re Heather B.*, 369 Md. 257, 270 (2002) (quotation marks and citations omitted). Thus, "the limited question before an appellate court 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." *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted).

C. Analysis

First-degree assault prohibits a person from "intentionally caus[ing] or attempt[ing] to cause serious physical injury to another." Md. Code Ann., Criminal Law ("Crim. Law"), § 3-202(a). "Serious physical injury" is defined as an injury that "creates a substantial risk of death" or "causes permanent or protracted serious" disfigurement, or loss or impairment of the function of any bodily member or organ. *See* Crim. Law § 3-201(d). "[A] jury may infer the necessary intent from [the defendant]'s conduct and the surrounding circumstances, whether or not the victim suffers such an injury." *Chilcoat v. State*, 155 Md. App. 394, 403 (citation omitted), *cert. denied*, 381 Md. 675 (2004). A jury may also "infer that one intends the natural and probable consequences of his act." *Id*. (quotation marks and citation omitted).

In support of his argument that he did not act with the requisite intent to perform a first-degree assault, Appellant points out that he "repeatedly" said in his recorded telephone conversations that "he never intended to cause serious bodily harm[,]" emphasizing the "petty" nature of the quarrel, suggesting that he "merely intended to annoy" the victim, not seriously harm him. Although Appellant discounts the evidence against him, electing to

only consider evidence the he wants to view through a lens most favorable to him, his position that he did not act with the requisite intent based on the phone conversation does not fit the standard by which this Court reviews sufficiency of the evidence. As stated above, we review the sufficiency of the evidence by whether any *rational* juror could have found the elements of the crime viewing the evidence "in the light most favorable to the prosecution[.]" *Taylor v. State*, 346 Md. at 457 (emphasis added). Viewed in this light, a rational juror could have found that Appellant, in throwing scalding water at Warren's face and neck while he was on the steps, acted with the intent to cause serious physical injury, even if in self-serving statements to his girlfriend, he downplays his intent and actions. Further, we note that while Appellant argues that he told his girlfriend that he never intended to cause "serious bodily harm", what he actually told his girlfriend was that he did not intend *to kill* Warren. *See supra.*

Additionally, in arguing that Warren did not suffer a serious injury, Appellant points to evidence that Warren walked the 18 blocks to the hospital following the attack; that the burns were described in the medical records as "superficial"; and that the State failed to call a witness to explain the meaning of "second degree" burns.

However, Warren testified that he experienced pain at a level of 10 on a scale of 1 to 10; that he suffered painful blisters; and for days afterward he had difficulty eating because the corners of his mouth would break open from the burn wounds. The medical records that were introduced into evidence showed that he suffered second-degree burns over his face and neck. Moreover, Warren testified at the time of trial that he still had scars under his eye and his skin was discolored. It is clear that a rational juror could conclude

that the pain and wounds were a serious injury that amounted to an impairment of bodily function. *Cf. Handy v. State*, 357 Md. 685, 699-700 (2000) (loss of vision for several hours and pain and burning sensation in eyes due to use of pepper spray constituted "protracted loss or impairment of his vision" to sustain first-degree assault conviction). Additionally, the jury, who was instructed by the court on the statutory definition of "serious physical injury," had ample opportunity to view Warren as he testified and determine for themselves whether his injuries were still visible. *See Scott v. State*, 61 Md. App. 599, 608 (1985) (defining disfigurement as something "generally regarded as externally visible blemish or scar that impairs one's appearance.") (citation omitted).

CONCLUSION

Accordingly, we hold that the evidence presented was sufficient to sustain Appellant's conviction of first-degree assault, as we are persuaded that any reasonable trier of fact could have found beyond a reasonable doubt that Appellant intentionally caused serious physical injury to Warren. We therefore affirm Appellant's conviction.

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