

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1008

September Term, 2015

JAMES ANTHONY HAWTHORNE

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: May 18, 2016

*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.

Convicted by a jury, sitting in the Circuit Court for Anne Arundel County, of first-degree assault, second-degree assault, use of a firearm in the commission of crime of violence, wearing, carrying, and transporting a handgun, possession of a regulated firearm after being convicted of a disqualifying crime, and reckless endangerment,¹ James Hawthorne, appellant, challenges the sufficiency of the evidence presented by the State. Specifically, he claims that the State failed to prove that he “utilized or possessed an item capable of expelling or designed to fire a projectile.” For the reasons that follow, we affirm.

TRIAL

At trial, the State presented evidence showing that on November 15, 2014, at approximately 10:30 p.m. Gary and Lisa Bendall were in their home, on Dunfield Court, in Severn. Upon hearing gunshots, they looked out of the window and saw a man standing in the street, shooting a black semi-automatic handgun at another man who was “crouched behind cars that were parked in the parking lot.” Ms. Bendall then called “911.” Ten shots later, the shooter fled in the direction of nearby Durness Court.

Neighbors Amanda Cross, Tessa Harrison, and Christopher Reihl also heard gunshots at about 10:30 that evening. Both Cross and Reihl testified that when they looked out of their windows they saw a man standing in the middle of the street shooting at another man. The Bendalls, Cross, and Reihl described the shooter as a black male wearing dark pants and a hooded sweatshirt, and the man, at whom he was shooting, as a black male

¹ The court sentenced appellant to a total of twenty-five years of incarceration and suspended all but five years of that sentence, which was to be served without the possibility of parole.

wearing a FedEx jacket and dark pants. Reihl later identified appellant in court as the shooter.

Corporal Jeremy Furrow of the Anne Arundel County Police Department received the call about the shots and responded to Dunfield Court and Stillmeadows Drive in a matter of “a minute to a minute-and-a-half.” When he arrived, he saw a man, later identified as “Ryan Jeffrey Morgan,” walking on Dunfield Court wearing a FedEx jacket. After ordering him to lay lower down on the ground, the corporal checked him for weapons and found none. When Corporal Furrow then tried to speak with Morgan, he was uncooperative.

In addition to Corporal Furrow, Anne Arundel County Detective Stephanie Hinson responded to the location “in probably less than a minute” after the 911 call. She drove to Durness Court, which is next to Dunfield Court, and, there, saw a black male who was later identified as appellant, wearing a grey hooded sweatshirt and jeans, running. She gave chase on foot and apprehended him moments later. No firearm was found on appellant, nor was one recovered at the scene, but gunshot residue was found on his hands and the sweatshirt he was wearing.

Upon searching the area, the police found a shell casing between vehicles where witnesses had seen Morgan during the shooting. A bullet fragment was found at the end of Dunfield Court. No other pieces of evidence, or bullet holes, were found in the vicinity of the shooting.

The parties stipulated that appellant had been “previously convicted of a crime under State law that would prohibit his possession of a regulated firearm.” At the

conclusion of the trial, the jury found appellant guilty of first and second-degree assault, use of a firearm in the commission of crime of violence, wearing, carrying, and transporting a handgun, possession of a regulated firearm after being convicted of a disqualifying crime, and reckless endangerment.

DISCUSSION

Appellant contends that the evidence presented was insufficient to “show that [he] is guilty of first degree assault or any of the multiple weapons offenses because the State failed to show that [he] used or possessed an item which was designed to, or capable of, firing projectiles.”² The State responds that “[m]ultiple strands of circumstantial evidence established that [appellant’s] weapon propelled projectiles and, therefore, qualified as a firearm.”

In reviewing the record for the sufficiency of evidence presented by the State in a criminal prosecution, we must decide “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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). That conclusion may be based entirely on circumstantial evidence. *Jensen v. State*, 127 Md. App. 103, 117 (1999). As we explained in *Nichols v. State*, 5 Md. App. 340, 350 (1968), cert. denied, 252 Md. 735 (1969):

The law makes no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred. No greater degree of certainty is required when the evidence is circumstantial

² Appellant does not challenge his convictions for second-degree assault or reckless endangerment.

than when it is direct, for in either case the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused.

Appellant was convicted of three firearm offenses. The first offense was using a handgun in a crime of violence under MD. CODE ANN., CRIM. LAW § 4-204(b). A firearm is defined by § 4-204(a) as:

- (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
- (ii) the frame or receiver of such a weapon.

The second offense was wearing, carrying or transporting a handgun in violation of CRIM. LAW § 4-203(a)(1)(i). A “handgun” is defined by § 4-203(c)(1) as “a pistol, revolver, or other firearm capable of being concealed on the person.” The third offense was possession of a “regulated firearm” after having been previously convicted of a disqualifying offense³ in violation of MD. CODE ANN., PUB. SAFETY § 5-133(c)(1). A “regulated firearm” is defined by § 5-101(r) as a “handgun”; or a “firearm” on an enumerated list of “specific assault weapons or their copies.”

Because a weapon was not found at the scene of the reported shooting, appellant contends that the “State failed to meet its burden to show that the item utilized in this case was capable of expelling, designed to expel, or could be readily converted to expel a projectile.” But, “tangible evidence in the form of the weapon is not necessary to sustain a conviction; the weapon's identity as a handgun can be established by testimony or by inference.” *Brown v. State*, 182 Md. App. 138, 166 (2008). In fact, “in the absence of

³ At trial the parties stipulated that appellant had been previously convicted of a disqualifying offense.

contradictory evidence,” the State “is not required to introduce specific evidence that the weapon was a firearm; was operable; or was not a toy.” *Id.* at 167. Moreover evidence sufficient to conclude that a weapon was a handgun may be “based on eyewitness testimony stating that a handgun was used,” as occurred here. *Id.* at 168.

At trial, the State presented the testimony from five witnesses that they heard gunshots at approximately 10:30 p.m. Four of those witnesses testified that when they looked out of their window they saw a man with a black gun shooting in the direction of another man. And three witnesses, Gary and Linda Bendall and Amanda Cross, testified that the handgun used by the shooter was a black semi-automatic handgun, and, because of their military service, both Gary and Linda Bendall were familiar with firearms. In fact, Gary Bendall testified that he had seen or heard thousands of gunshots over the course of his life and that he had “no doubt” that what he was hearing and seeing was a firearm being discharged that night. Furthermore, the police responded quickly to the scene and recovered a Luger 9mm shell casing and a projectile fragment in the area of the shooting. Finally, appellant, who was found near the scene of the shooting, was swabbed for gunshot residue at the scene, was found to have gunshot residue on his hands, and was later identified as the shooter, by a witness at trial.

Thus the evidence was more than sufficient to support the jury’s finding that appellant possessed and used a firearm.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**