

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2200

September Term, 2014

SEAN McDONALD

v.

STATE OF MARYLAND

Meredith,
Berger,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 22, 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.

Following a court trial in the Circuit Court for Cecil County, Sean McDonald, appellant, was convicted of second degree assault based on evidence that he struck his girlfriend's two-year-old daughter. Appellant was sentenced to one year with all but ninety days suspended, plus supervised probation and restitution. He contends the evidence was insufficient to convict him. We disagree and affirm the conviction.

FACTS AND LEGAL PROCEEDINGS

On January 26, 2014, Ashley Smith and her two-year-old daughter, Micah, went to the home of her boyfriend, Sean McDonald. The child had “a lot of medical issues” associated with a Sotos syndrome diagnosis, including scoliosis and developmental delays that make her “a special needs child.” Because it was snowing, Ms. Smith decided to return home. Before leaving, Ms. Smith left Micah with McDonald for less than two minutes while she took the child's things to her car.

As she left, she heard her child crying lightly, so she rushed in order to get back quickly. When she returned, Smith testified, she heard her daughter's cry turn into a hard sob and “knew something wasn't right.” She “flew up” the stairs. As she entered the bedroom, she saw McDonald hit Micah on the right side of her head with his left hand, then hit her again on the left side of her head with his right hand. Each blow caused the child's head to move to the side and made her cry even harder.

Ms. Smith left McDonald's house with Micah and immediately called police, waiting for them at the entrance to McDonald's neighborhood. Smith and Cecil County Sheriff's

Deputy Joseph Cunningham did not notice any injury while Micah was still in her car seat in the dark vehicle.

Micah was nevertheless taken by ambulance to the emergency room at Union Hospital, where Ms. Smith “noted swelling to both sides of her head” and other marks, which she photographed. Doctors also found raised bumps and red marks on Micah’s head, none of which had been there earlier in the day. They directed Ms. Smith to watch for signs of concussion following discharge.

McDonald testified in his own defense, denying that he hit the child and claiming that any injuries were either self- or accidentally inflicted when he tried to prevent Micah from falling off the bed. In support, McDonald pointed out that Micah had been diagnosed with self-hitting behavior. The State countered, through Ms. Smith, that this behavior consisted only of the child pinching and squeezing her face and that, in any event, this behavior had ceased three to four months before this incident. Although Micah had fallen in her high chair two days before this incident, she hit only the back of her head and was not concussed.

According to Deputy Jonathan Pruett, who interviewed McDonald following Ms. Smith’s report, McDonald claimed that what Ms. Smith may have observed as she rushed into the room was an inadvertent blow that occurred after the upset child poked him in the eye and he reached out to prevent her from falling off the bed.

The trial court found McDonald guilty of second degree assault. It noted that there was “no testimony that indicates that there was any animosity or any budding animosity between Miss Smith and Mr. McDonald.” Although the child’s injury was not visible in the immediate aftermath of the blows, that initial examination was conducted in the back seat of a dark vehicle, “after 5:00 p.m. in January,” when “it’s pretty hard to see anything clearly without a visual aid.” The court determined that “[t]he medical records and the photographs” taken at the emergency room “are evidence that something happened to this child[,]” but “are not clear enough standing alone that would indicate that Mr. McDonald was the cause of these injuries.” What persuaded the trial court that McDonald struck Micah was “[t]he testimony by Miss Smith” and the fact that her “actions that day” were “internally consistent.” The court explained:

The testimony by Miss Smith, though, I mean, her testimony and her actions, the story generally in these kind of cases has to be pretty consistent, or at least internally consistent, her actions that day from the observation that she saw Mr. McDonald in her testimony strike the child twice. She doesn’t – you know, I’m sure from her description of the strikes, they were not that forceful. Her testimony, though, is pretty clear, her actions following that are very definite. I mean, there’s no doubt the way I perceive the testimony that she was convinced and her testimony has convinced me that Mr. McDonald did strike her child once, then he struck the child again. She witnessed this. And her actions since then, she left, took the child, called the police, went to the hospital. . . . I think with the medical record, like I said, standing alone maybe they would not convince me that Mr. McDonald did anything to that child. The photographs basically are the same, they wouldn’t convince me standing alone. But those and the testimony of Ms. Smith convince me beyond a reasonable doubt and to a moral certainty that Mr. McDonald did strike that child. Now, whether his striking caused the injur[ies] is almost totally

irrelevant. The fact that he did it and he struck the child and left no injuries, it would still be assault in the second degree.

STANDARDS GOVERNING SUFFICIENCY REVIEW

The Court of Appeals recently summarized the standards governing appellate review of a sufficiency of the evidence challenge, as follows:

It is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to determine “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.” “[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” Making this determination “does not require [the appellate] court to ‘ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.’”

Indeed, “we are mindful of the respective roles of the [appellate] court and the [trier of fact]; it is the [trier of fact’s] task, not the court’s, to measure the weight of the evidence and to judge the credibility of witnesses.” The appellate court gives deference to “a trial judge’s or a jury’s ability to choose among differing inferences that might possibly be made from a factual situation[.]” “We do not second-guess the [trier of fact’s] determination where there are competing rational inferences available.” It is simply not the province of the appellate court to determine “whether the [trier of fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.” Such deference is accorded, in part, because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first-hand, including the demeanor-based evidence of the witnesses, which weighs on their credibility.

In other words, “when evaluating the sufficiency of the evidence in a non-jury trial, the judgment of the trial court will not be set aside on the evidence unless clearly erroneous[.]” We apply this standard “to all criminal

cases, including those resting upon circumstantial evidence, since, generally, proof of guilt [beyond a reasonable doubt] based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.” In other words, similar to instances involving the presentation of direct evidence, where the determination of the accused’s guilt is formed entirely upon the basis of circumstantial evidence, such evidence must permit the trier of fact to infer guilt beyond a reasonable doubt, and must not rest solely upon inferences amounting to “mere speculation or conjecture.”

State v. Manion, 442 Md. 419, 430-32 (2015) (citations omitted).

DISCUSSION

Appellant contends that the evidence was insufficient to convict him of second degree assault. In support, he acknowledges that “Ms. Smith testified to seeing what she characterized as Mr. McDonald hitting Micah,” but maintains that

what she saw was entirely consistent with Mr. McDonald’s explanation that he was reaching out to prevent the child from falling off the bed. While it is certainly within the province of the trial court to believe Ms. Smith’s testimony as to what physical movements she believed she saw, the same cannot be said of her characterization that the movement of Mr. McDonald with respect to Micah constituted intentional hitting.

To draw the inference that Mr. McDonald intentionally struck the child from Ms. Smith’s description of the physical movements she described, without giving weight to her opinion that what she saw was hitting, would amount to speculation rather than to a reasonable inference. Indeed, given Mr. McDonald’s explanation, and given the totality of the circumstances, it would not be reasonable to infer, much less conclude beyond a reasonable doubt, that Mr. McDonald intentionally hit the child. He testified that he loved the child and that he wanted to care for her as much as Ms. Smith would allow him. There was no evidence that he was angry at Ms. Smith or the child. To suggest that he struck the child in anger because she had accidentally poked him in the eye, or because he was frustrated by Ms. Smith’s attitude toward him would

be a gross distortion of his testimony and would be simply unwarranted and unfair speculation.

Likewise, the physical findings in the case do not support the trial court's ruling with sufficient strength. There was no definitive evidence, medical or otherwise, that there were any physical findings that pointed toward intentional abuse. There was ample other evidence of alternate explanations for what marks were found. The child had a history of causing minor injuries to herself, including to her face and head. At the time of this incident, the child was very upset by the temporary absence of her mother and could very likely have caused whatever marks were pointed out by Ms. Smith to the doctor.

In sum, the most reasonable interpretation of all the evidence in this case is that Ms. Smith was mistaken in her characterization of what she saw. Mr. McDonald did not intentionally strike the child and was not guilty of assault. The conviction should be reversed.

This Court may not re-weigh the evidence in order to draw the different inferences posited by appellant. *See Manion*, 442 Md. at 431. The trial court credited Ms. Smith's testimony that she saw McDonald strike Micah in the head two times, changing hands to land blows on both sides of her head. Smith provided the following detailed account of the assault:

So I ran, I flew up the steps, and I got to the bedroom door, and right when I got there, that's when I saw Sean hit my daughter with his left hand on her right side of her head, and then he came back and hit her – it was his left hand on her right side and his right hand on her left side.

These blows had enough force to move the child's head from side to side. What Smith saw led her to call the police and have Micah taken to the hospital. As the trial court observed, Ms. Smith's testimony about what she observed is entirely consistent with the conclusion

that McDonald intentionally assaulted the child, and inconsistent with the defense theory that what Smith observed was merely an inadvertent blow in the course of McDonald preventing the child from falling.

The trial court found that Smith's actions immediately after the assault, in calling the police and seeking emergency medical care, corroborated her testimony. Further corroboration was provided by the evidence that at the hospital, doctors found swelling and fresh red marks on Micah's head, which were not there earlier in the day. The blows were serious enough that doctors warned about the possibility of a concussion.

We agree with the State that McDonald is asking this Court to usurp the trial court's responsibilities to determine the credibility of witnesses and to resolve conflicts in the evidence. The trial court expressly rejected McDonald's argument that Ms. Smith "misinterpreted what she saw or maybe she didn't see it clearly enough or maybe she's mistaken." Based on Smith's observations and actions, and the corroborating medical evidence and photographs, the trial court had sufficient evidence to find that McDonald intentionally hit Micah, and therefore to convict him of second degree assault.

**JUDGMENT OF CONVICTION
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**