Circuit Court for Prince George's County
Case No. CT210217X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 349

September Term, 2023

JAMES EARL FELLS

v.

STATE OF MARYLAND

Ripken,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 2, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Prince George's County of attempted theft of a cell phone, James Earl Fells, appellant, presents for our review two issues: whether the evidence is insufficient to sustain the conviction, and whether the term of probation imposed by the court is illegal. For the reasons that follow, we shall remand the case with instructions to strike the court's order for probation and amend the docket entries and commitment order accordingly. We shall otherwise affirm the judgment of the circuit court.

At trial, the State called Priscilla Adams, who testified that Mr. Fells is her former boyfriend, and that she ended their relationship in June 2020. On the morning of August 27, 2020, Ms. Adams entered her Oxon Hill residence, and when she "turned around to lock the door," she saw "Mr. Fells . . . coming out of [her] bedroom." When Ms. Adams asked Mr. Fells to leave, he "tried removing [her] clothes, pulling [her] pants down, lifting [her] shirt, asking [her] where [she] had been, [and] taking her phone." Ms. Adams and Mr. Fells "ended up wrestling down to the ground, where he then started choking [Ms. Adams] and taking [her] phone from" her. Mr. Fells "eventually ended up taking his fist" and "hitting [Ms. Adams] to the head," after which he took Ms. Adams's phone. When asked "what happened when [Mr. Fells] took [the] phone," Ms. Adams testified: "I tried getting it back of course. We were still fighting inside the apartment. Eventually I did get the phone back, and . . . he eventually walked out when I said I will call 911."

As Mr. Fells and Ms. Adams "were walking outside," Mr. Fells "started walking away and [Ms. Adams] was calling 911." As Ms. Adams was calling 911, Mr. Fells "ran back towards" her, took the phone, and "hung up the call." Mr. Fells had possession of the

phone for "probably a good five to ten second run." Mr. Fells then threw the phone at Ms. Adams, after which she again called 911. During the call, Ms. Adams told the 911 operator: "I had to run after him to get my phone."

Following the close of the evidence, the jury convicted Mr. Fells of the offense. The court subsequently sentenced Mr. Fells to a term of imprisonment of ninety days, and a subsequent term of probation of five years.

Mr. Fells first contends that the evidence is insufficient to sustain the conviction, because "no rational trier of fact could find beyond a reasonable doubt that [he] intended to deprive [Ms.] Adams of her cell phone." We disagree. From Ms. Adams's testimony that Mr. Fells tried to remove her clothes, wrestled with her, choked her, and struck her in her head with his fist, a rational trier of fact could reasonably infer that Mr. Fells was attempting to incapacitate Ms. Adams so that she could not retrieve her phone from him. From Mr. Fells's disconnection of Ms. Adams's call to 911, a rational trier of fact could reasonably infer that he wanted to prevent Ms. Adams from requesting that police come to the scene, and to escape liability for the acts that he performed upon Ms. Adams. From Ms. Adams's testimony that Mr. Fells was in possession of her phone for "probably a good five to ten second run" before throwing it back at her, and the common knowledge that disconnection of a phone call does not take five to ten seconds, a rational trier of fact could reasonably infer that Mr. Fells intended to deprive Ms. Adams of the phone, but then changed his mind. Finally, Ms. Adams told the 911 operator that Mr. Fells did not return the phone to her until after she pursued him. From these circumstances, a rational trier of

fact could conclude beyond a reasonable doubt that Mr. Fells intended to deprive Ms. Adams of the phone, and hence, the evidence is sufficient to sustain the conviction.

Mr. Fells next contends that the "term of probation is illegal because the 90 day sentence was not suspended in whole or in part." The State agrees, as do we. We have stated that "[w]hen . . . no part of the execution of a sentence is suspended, the imposition of a period of probation is without effect." *Gatewood v. State*, 158 Md. App. 458, 482 (2004). Accordingly, we shall remand, like in *Gatewood*, "with directions to the clerk to make the appropriate docket entries, to amend the commitment order, and to strike the order for probation." *Id.* at 483.

CASE SO REMANDED. JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-HALF BY PRINCE GEORGE'S COUNTY AND ONE-HALF BY APPELLANT.