Circuit Court for Prince George's County
Case No.: JA-22-0331

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 728

September Term, 2023

IN RE: J.T.

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

JJ.

Opinion by Eyler, J.

Filed: June 5, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a bench trial, the Circuit Court for Prince George's County, sitting as the juvenile court, found appellant, J.T., involved in the delinquent acts of second-degree murder, first-degree assault, second-degree assault, and theft. The court ordered appellant placed in a staff-secure facility. On appeal, appellant presents one question for our consideration, which we have rephrased:[1] Did the juvenile court err in finding appellant involved as to second-degree murder?

For the reasons explained herein, we shall affirm the judgment of the juvenile court.

FACTUAL BACKGROUND

On August 10, 2022 at 4:32 a.m., Israel Akingbesote was working at US Fuel gas station in Clinton when he called 911 to request assistance because he had been "attacked" with a knife and he was bleeding. He reported to the 911 operator that "[t]hey said they wanted to buy something. But they are thieves."

Corporal Orlando Treadwell of the Prince George's County Police Department responded to the 911 call. Upon arrival, he observed that the front door of the gas station was ajar. He entered the gas station wearing his body-worn camera and found Akingbesote in the office on the ground "suffering from multiple puncture wounds in a blood-covered shirt and stained pants." Akingbesote was moaning and barely responsive. Corporal Treadwell assessed Akingbesote's injuries and began treating him until paramedics

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[1] The question as posed by appellant is:

> After finding as a fact that J.T. lacked the requisite malicious intent, did the juvenile court err by finding J.T. involved as to the second-degree murder change?

arrived. Akingbesote was transported to the hospital, where he succumbed to his injuries and died several hours later. While in the gas station, Corporal Treadwell noticed that drinks were missing from a row in one of the drink coolers. Video footage from Corporal Treadwell's body-worn camera showing his encounter at US Fuel on August 10, 2022 was entered into evidence.

Prince George's County Police Detective Mark Roller responded to US Fuel in Clinton on August 10, 2022 at 4:55 a.m. Detective Roller recovered two unopened Brisk iced tea bottles on the curb of US Fuel. The detective observed that the two iced tea bottles appeared to have been taken from the cooler located to the right of the cash register.

Detective Aaron Thompson of the Prince George's County Homicide Unit was assigned to investigate Akingbesote's murder. During Detective Thompson's trial testimony, he reviewed video surveillance footage obtained from US Fuel and N.Y. Chicken & Grill ("N.Y. Chicken"), a business located next to US Fuel. The detective testified that he observed two individuals on the video footage enter the store, take one iced tea bottle each, and exit without paying for the items. Akingbesote was observed in the video holding a broom and sweeping.

Detective Thompson testified that he had identified the individuals in the video as appellant and C.M. Surveillance video introduced at trial showed appellant and C.M. parking their bikes in the drive-through of N.Y. Chicken. It showed appellant and C.M. emerging from US Fuel laughing and running toward N.Y. Chicken while being chased by Akingbesote. The video showed Akingbesote in the N.Y. Chicken drive-through picking up one of the bikes. The detective identified appellant on the video that showed he had a

sharp object in his right hand before Akingbesote dropped the bike. An altercation ensued on the far side of the N.Y. Chicken building. After the altercation ended, appellant and C.M. left the scene on bikes.

Detective Thompson executed a search warrant at appellant's residence where police recovered a blue BMX bicycle and a jacket with a logo of a professional football team that was consistent with the jacket he had observed appellant wearing in the video footage from US Fuel and N.Y. Chicken. A search of C.M.'s residence revealed several bicycles and a burgundy-colored bandana consistent with the bandana he appeared to be wearing in the video footage from US Fuel and N.Y. Chicken.

Dr. Zebiullah Ali, an assistant medical examiner for the State of Maryland, was admitted at trial as an expert in forensic pathology. Dr. Ali performed the autopsy of Akingbesote. His external examination of Akingbesote revealed one cutting wound to his right forearm and one to the back of his right hand and five deep stab wounds: one to the right upper chest, two to the right armpit area, one to the lower left back, and one to the right mid-back, which injured the right lung. All of Akingbesote's stab wounds were potentially fatal, however, the stab wound that injured the right lung was a rapidly fatal wound, which typically causes a victim to die within minutes or hours. Dr. Ali opined that Akingbesote's injuries were caused by a single-edged knife, but he was unable to state whether all of Akingbesote's wounds were caused by the same knife. Dr. Ali concluded that the cause of death was sharp force injuries and the manner of death was homicide.

C.M., called by the State, testified that he was involved in an incident at US Fuel on August 10, 2022. C.M. confirmed that he had identified appellant to police as the

individual who was with him at US Fuel on August 10, 2022. He testified that he and appellant both brought weapons with them to US Fuel. On cross-examination, C.M. testified that he was "almost positive" that appellant did not stab Akingbesote.

At the close of the State's case, the State entered nolle prosequi as to the charge of wearing and carrying a concealed dangerous weapon. Appellant moved for judgment of acquittal on all charges but did not present any argument with respect to second-degree murder. The juvenile court granted appellant's motion for judgment of acquittal as to the charge of conspiracy, but it denied the motion as to the remaining charges.

C.M. was recalled as a witness for the defense. C.M. testified that he had told the police that he and appellant had tried to pay for their drinks, but Akingbesote was hostile and looked at them like they were threats. According to C.M., Akingbesote yelled at them to "get out" before he "bash[ed] [their] head[s] in." He testified that Akingbesote chased C.M. and appellant with a broom to the next building.

C.M. also testified to the following. He and appellant tried to get on their bikes but Akingbesote grabbed both bikes. When appellant reached for his bike, Akingbesote dropped the bike and started swinging the broom at appellant. C.M. saw and heard the broom hit appellant and also heard grunting. C.M. threw a plastic bottle at Akingbesote and tried to kick him and push him off appellant. Akingbesote forced C.M. to the ground and punched him in his side. C.M. responded by stabbing Akingbesote "more than twice."

On cross-examination by the State, C.M. testified that he had pled guilty to second-degree murder. In C.M.'s guilty plea, he admitted that both he and appellant had knives with them at US Fuel on August 10, 2022.

In ruling on the evidence, the juvenile court stated:

> Well, I didn't have a good night because I had to watch a tape of a horrible act and listen to a 911 call over and over again of a man who was dying, and saying, "[t]hey tried to buy something, but they were thieves," and I had to think about a person who's 12 years old. Is he able to make a mental decision about a murder?
>
> I think that this was not a first-degree murder. I don't think he had the ability to turn it around in his mind, that this is going to be a murder. But he did have the ability to do what he did, and so I find him involved in second-degree murder. I find him involved in assault in the first degree, involved in assault in the second degree, and involved in theft, and I'm sad about that, but that's what it is.

At the disposition hearing, appellant was adjudged delinquent and placed with the Department of Juvenile Services in a staff-secure facility. He noted a timely appeal.

DISCUSSION

Appellant contends that the juvenile court erred in finding him involved as to the second-degree murder charge based on the juvenile court's express finding that he lacked the specific intent to kill Akingbesote. Alternatively, appellant argues that the juvenile court found that he lacked malice, and based on that finding, the juvenile court erred in finding him involved as to second-degree murder.

The State responds that appellant failed to preserve his claim of legal error because he did not raise the claim at trial. The State further asserts that, even if preserved, the juvenile court's verdict was not error because the court's comments did not amount to a finding that appellant did not intend to kill or grievously injure Akingbesote.

Appellant replies that his argument is preserved because there is no preservation requirement for sufficiency claims in a bench trial. He maintains that because this Court

must review the record in a bench trial on "both the law and the evidence" pursuant to Maryland Rule 8-131(c), it is immaterial whether his appellate claim is one of insufficiency of the evidence or legal error.

Md. Rule 8-131(c) governs appellate review of non-jury trials and provides that this Court "will review the case on both the law and the evidence" and "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." "Rule 8-131(c) applies only to **verdicts**, conferring on an appellate court the authority to **review a verdict on the evidence**." *Starke v. Starke*, 134 Md. App. 663, 669 (2000). Rule 8-131(c) is concerned "not with how the evidence arrived at the state it was in at the end of the adjudicatory process. Its concern is rather with whether the evidence at that stage, however it came to be, is sufficient to permit the deliberative process to begin." *Id*. at 670.

In *Chisum v. State*, 227 Md. App. 118, 122 (2016), we considered the scope of Rule 8-131(c), and specifically whether a challenge to the sufficiency of the evidence encompassed a claim of legal error. In that case, the defendant challenged the sufficiency of the evidence supporting his conviction for attempted second-degree murder following a bench trial. *Id.* at 122. The defendant also challenged the verdict, arguing that the trial judge had erred in convicting him of attempted second-degree murder following the trial court's express finding that he did not intend to kill the victim. *Id.* at 137.

In distinguishing the defendant's sufficiency claim from his claim of legal error, Judge Charles E. Moylan, Jr., writing for this Court, explained that a challenge to the

sufficiency of the evidence "is not an omnibus challenge or an amorphous challenge covering everything in the near neighborhood." *Id*. at 131. Specifically,

> [t]he issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict. It is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place.

Id. at 129-30. On the other hand, "errors in the rendering of the verdict would be errors other than and different from a challenge to the legal insufficiency of the evidence[,]" as they would be "errors that do not involve the burden of production." *Id.* at 131 n.2.

We determined in that case that the trial judge's comments in the course of delivering the verdict did not constitute a finding that the defendant did not have the intent to kill. *Id*. at 137. We noted that even if the judge had made such a finding, such an error would be reversible only if timely preserved and properly framed as an issue for review for the court. *Id.* at 131 n.2. But because the defendant had failed to raise the issue before the trial court, his claim was unpreserved. *Id*. at 139-40 (noting that "[t]his is the core reason for the preservation requirement, to permit the judge to clarify what can readily be clarified if he is given the opportunity to do so").

In *Rivera v. State*, 248 Md. App. 170, 176 (2020), we considered whether, in the context of a bench trial, the defendant preserved his claim that the trial court erred in relying on facts not in evidence in delivering the verdict. We examined the history of appellate review of evidentiary sufficiency claims from 1950 to the present, noting the difference in the preservation requirement for a bench trial and jury trial, as explained in *Williams v. State*, 5 Md. App. 450 (1968):

As the *Williams* Court observed, in interpreting a rule substantially similar to Rule 8-131(c),

> the issue [of sufficiency] comes before us in a case tried by the lower court sitting as a jury in a different posture than when the case is tried by a jury. In a non-jury case Rule 1086 specifically provides that we shall review the case upon the evidence (as well as the law) and we must determine whether the lower court was clearly wrong on the evidence in finding a verdict of guilty. In a jury case if the lower court finds upon motion for judgment of acquittal that the evidence is sufficient in law to justify a conviction, it denies the motion, and permits the evidence to go to the jury. On appeal we determine whether the denial of the motion was proper. **It is because of this difference in the posture of the issue of the sufficiency of the evidence that we may entertain the issue on appeal in a jury case only upon the denial by the lower court of a motion for judgment of acquittal but we must entertain the issue in a non-jury case when presented on appeal even in the absence of a motion for judgment of acquittal below.**

Rivera, 248 Md. App. at 179-80 (footnote omitted; emphasis in *Rivera*) (quoting *Williams*, 5 Md. App. at 455-56). We noted that "[i]t has always been true, and remains so today, that there is no preservation requirement for sufficiency claims in cases tried without a jury." *Id.* at 179.

The claim at issue in *Rivera* was not a sufficiency claim, but rather, a claim that the court had erred as a matter of law in rendering the verdict.[2] We concluded in that case that the contemporaneous objection rule applied to Rivera's claim of legal error, and that by failing to object or otherwise raise the issue before the trial court, he had failed to preserve his claim. *Id*. at 183. In deciding the preservation issue in *Rivera*, we relied on the Supreme Court of Maryland's decision in *Bryant v. State*, 436 Md. 653 (2014). Bryant had received

[2] In *Rivera*, the defendant raised a separate sufficiency claim, which we reviewed based on the evidence that was actually admitted at trial. 248 Md. App. at 183.

an enhanced sentence for distribution of cocaine and conspiracy to distribute cocaine. *Id*. at 656-57. He argued on appeal that the State had failed to prove that he had been the person who had committed two previous offenses due to discrepancies in the personal identification information contained in the evidence introduced by the State. *Id*. at 672-73. Bryant did not, however, raise that issue at sentencing. *Id*. at 659. On appeal, he argued that he was entitled to review of his sentence under Rule 8-131(c). *Id*. The Court rejected Bryant's claim, stating that "Rule 8-131(c) neither expressly nor implicitly provides an exception to our general preservation rules or the contemporaneous objection rule." *Id.* at 669.

In this case, appellant's claim of legal error was subject to the contemporaneous objection rule. Appellant's failure to object or otherwise challenge the verdict at trial resulted in a waiver of that claim. Accordingly, appellant's claim is not preserved for our review.

Even if preserved, we would conclude that the juvenile court's comments did not constitute a finding that appellant lacked the requisite intent and malice to kill Akingbesote.

Appellant relies on *Selby v. State*, 361 Md. 319 (2000) in support of his contention that the juvenile court erred in reaching its determination of his involvement, based on its finding that he lacked specific intent and malice.

In *Selby*, the Supreme Court of Maryland reversed the petitioner's conviction for voluntary manslaughter in the shooting death of his ex-girlfriend. *Id.* at 321. In reviewing the verdict, the Court noted that the trial court had made express findings regarding the defendant's state of mind, including an express finding after listening to the 911 call and

the defendant's testimony that '"[c]learly he did not have an intent to kill [the victim]."' *Id.* at 326. The Court determined that the trial court's affirmative finding that the petitioner lacked the intent to kill, a necessary element of voluntary manslaughter, rendered his conviction invalid and required reversal. *Id*. at 328. The Court held that "[w]here a trial judge finds as a fact that a necessary element of a crime is lacking, the conviction must be reversed." *Id*. at 331.

Unlike *Selby*, the juvenile court's comments in this case regarding appellant's state of mind do not demonstrate that the court found a lack of intent or malice. The juvenile court's comment that "I don't think he had the ability to turn it around in his mind, that this is going to be a murder" was in reference to the court's finding that "this was not a first-degree murder." This was consistent with the fact that the arguments of counsel focused on first-degree murder and self-defense. The court's finding, however, that "he did have the ability to do what he did," which was to stab Akingbesote in the torso multiple times, gave rise to a permitted inference of appellant's intent for purposes of second-degree murder.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.