Circuit Court for Baltimore City
Case No. 122146004

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 966

September Term, 2023

ANTONIO WILSON

v.

STATE OF MARYLAND

Zic,
Tang,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: October 1, 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 jury trial in the Circuit Court for Baltimore City, Antonio Wilson, the appellant, was convicted of armed carjacking and second-degree assault, among other related offenses. On appeal, the appellant asks us to address the following questions:

I. Did the court abuse its discretion in admitting the video from the Foxtrot helicopter?

II. Did the court abuse its discretion in admitting the video from Corona Grocery?

III. Did the court abuse its discretion in instructing the jury on motive?

IV. Was the evidence sufficient to sustain the appellant's convictions for armed carjacking and second-degree assault?

For the reasons that follow, we shall affirm the judgments of the circuit court.

BACKGROUND

In the early morning of April 23, 2022, a man accosted Dario Ramirez as he walked from his car to a nearby restaurant. Mr. Ramirez had parked his car, an Audi S5 convertible, about two blocks away from the restaurant. The man approached Mr. Ramirez, pulled out a knife, and tried to stab him. Mr. Ramirez grabbed the man's hand that was holding the knife to push him away. A struggle ensued, with Mr. Ramirez punching the man several times and the man attempting to obtain the car keys from Mr. Ramirez's pocket. The man then stabbed Mr. Ramirez in the back, grabbed his car keys, and drove away in his Audi. Mr. Ramirez called 911 and was taken to the hospital for treatment.

Trial

During trial, the State presented five Baltimore City Police Department ("BCPD") officers and Mr. Ramirez as witnesses. Officer Angelica Avitia, the State's first witness,

testified that she responded to the 911 call, found Mr. Ramirez at the scene, and called an ambulance to take him to the hospital.

Detective Peter Reddy, the State's second witness, testified that he entered the description and license plate number of Mr. Ramirez's Audi into a database of stolen vehicles. He also downloaded surveillance video from Corona Grocery, less than a block away from the incident. The State offered the video exhibit consisting of two angles of the street outside the store. The exhibit was admitted over objection and played for the jury. The footage shows Mr. Ramirez parking and getting out of the car. As he walked away, the taillights of his Audi flashed as if Mr. Ramirez was remotely locking the doors. The assailant is shown intercepting Mr. Ramirez across the street. The footage depicts a struggle between the two, during which the Audi's taillights flashed a few times. It then shows the assailant running towards the Audi, getting in, and driving away.

On April 30th, a BCPD license plate reader detected Mr. Ramirez's car as it traveled on the street. Officer Edward Nero, the State's third witness, testified that he was operating a BCPD Foxtrot helicopter when he received an alert for the stolen vehicle. Upon receiving the alert, Officer Nero activated the onboard camera to record the event. The footage from the onboard camera was admitted into evidence over objection and played for the jury. In the recording, Officer Nero is heard confirming that the vehicle was reported stolen, tracking the car through the city, and informing patrol officers that the driver was about to park. Officer Nero is also heard advising patrol officers that the vehicle had parked, and the driver and another man had exited the vehicle. On the recording, Officer Nero described

the driver as wearing a red jersey and the passenger as wearing a blue shirt. Finally, the video depicts the driver and the passenger walking down the street, followed by officers apprehending them moments later.

Officer Ockeive Farquharson,[1] the State's fourth witness, assisted in arresting the two individuals as they walked down the street. The arrest was recorded on his body-worn camera. The body-worn camera footage was admitted into evidence and played for the jury. During his testimony, Officer Farquharson identified the man wearing the blue shirt (the passenger) in the footage as the appellant.

Detective Jack Boyd, the State's fifth witness, testified that he interviewed the appellant after he had been arrested. During the interview, the appellant acknowledged that he was the passenger in the stolen car but denied having stolen it. The appellant claimed that he had supplied drugs to Mr. Ramirez, that Mr. Ramirez had failed to pay for them in full, and that the appellant had "sent a little junkie [and] told him to beat [Mr. Ramirez] up." The appellant also claimed that this person took Mr. Ramirez's car and had been driving it. The appellant then took possession of the car and had planned to "turn it in" and "get some quick money for [his kids] . . . . [He] was gonna get some money so [he] could have some money to spend, and at least help [his] baby's mother."

Mr. Ramirez, the State's final witness, recounted the incident described above. He also identified the appellant in court as the assailant.

[1] The trial transcript indicates the spelling "Arquharson," but other parts of the record, such as the Statement of Charges prepared by this witness, indicate that the spelling is "Farquharson."

Verdict & Sentence

After trial, the jury found the appellant guilty of armed carjacking, second-degree assault, unlawful taking of a motor vehicle, unauthorized removal of property, and theft of property valued between $25,000 and $100,000. The court sentenced the appellant to fourteen years of incarceration for armed carjacking and to a concurrent term of five years for theft. It merged the remaining offenses for purposes of sentencing.

This appeal followed. We supply additional facts below as necessary.

DISCUSSION

I.

VIDEO FROM THE FOXTROT HELICOPTER

The appellant argues that the circuit court abused its discretion by admitting the footage from the Foxtrot helicopter. Before trial, defense counsel moved *in limine* to exclude the video. The defense argued that the footage was irrelevant because the prosecution was introducing it to show that the appellant was in the stolen vehicle when there were other ways to establish this fact, such as the testimony of Officer Nero and the appellant's statement to the police. Defense counsel also argued that the video was unduly prejudicial in that it implied a "huge investigation" and that the vehicle's occupants were dangerous. The State responded that the video demonstrated probable cause to stop the stolen car and that the appellant was observed inside it. The court denied the motion, finding that the video was relevant and that any prejudice was outweighed by its probative value. When the prosecution offered the video into evidence during Officer Nero's

testimony, the defense objected to its admission for the same stated reasons, and the court admitted it over objection.[2]

The appellant argues that the court should have excluded the video under Maryland Rule 5-403 because it was unnecessary to prove the prosecution's case and thus cumulative to other evidence introduced throughout the trial. He points out, for instance, that Officer Nero testified that he observed the events on the ground, Officer Farquharson's body-worn camera footage captured the appellant's arrest, and the appellant admitted during his interrogation to being in the vehicle and knowing that it was stolen.

Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[3] Md. Rule 5-401. Under Maryland Rule 5-403, even if the proffered evidence is relevant, such evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice,[4] confusion of the

[2] A ruling on a motion *in limine* is subject to change as the case unfolds during trial. *See Dallas v. State*, 413 Md. 569, 578 (2010) (instructing that a trial court possesses the discretion to alter its *in limine* ruling after hearing the testimony even if nothing unexpected happens at trial). "When a pretrial ruling results in the admission of evidence, the contemporaneous objection rule, Maryland Rule 4-323(a), shall continue to apply. Contemporaneous objection to the admission of evidence normally must be made when the evidence is offered at trial." *Reed v. State*, 353 Md. 628, 643 (1999).

[3] The appellant does not argue that the video was irrelevant under Rule 5-401.

[4] At trial, the appellant argued that the admission of the video would be unduly prejudicial. On appeal, however, the appellant makes no contention that the video was unfairly prejudicial under Rule 5-403 nor that it should have been excluded because the prejudice outweighed its probative value. Even if he did, we would conclude that its admission was not unfairly prejudicial under Rule 5-403.

issues, or misleading the jury, or by considerations of undue delay, waste of time, or *needless presentation of cumulative evidence*." (emphasis added). We review a ruling under Maryland Rule 5-403 for abuse of discretion. *Montague v. State*, 471 Md. 657, 673–74 (2020).

When the court admitted the helicopter video during trial, there was no evidence connecting the appellant to the stolen vehicle. Officer Avitia, the first witness, testified that she found Mr. Ramirez at the scene and arranged for his transportation to the hospital. Then, Detective Reddy testified that he entered the stolen vehicle information into the database and obtained footage from Corona Grocery. Although the store footage was admitted into evidence and played for the jury, there was no testimony at that point establishing that the appellant was the assailant who drove away in Mr. Ramirez's car. Thereafter, Officer Nero authenticated the helicopter video and explained how a license plate reader relayed the alert of the stolen Audi to the helicopter. However, he did not identify the appellant as the passenger who exited the stolen car.

It was only *after* the helicopter video was admitted that later evidence established that the appellant was the passenger in the stolen vehicle. Officer Farquharson identified the person in the blue shirt (the passenger) as the appellant. Then, Detective Boyd recounted the appellant's confession to being inside the stolen car. Following that, Mr. Ramirez identified the appellant in court as the assailant. Thus, the admission of the video from the helicopter was not cumulative in light of the state of the evidence at the time the court decided to admit it. *See Duncan v. State*, 64 Md. App. 45, 52 (1985) ("When we

determine whether the trial judge committed an error in admitting or rejecting evidence[,] . . . we do so on the basis of the record as of the time the ruling was made, not on the basis of facts later developed.").

Even if the video was cumulative of other evidence, it was not wholly needless under the circumstances; the video provided an audio and visual description of the events, not fully developed in testimony. While there may have been some overlap in the evidence presented, there was no impropriety in the redundancy. As this Court has explained, the State "may occasionally present redundant evidence" because it bears the burden of presenting sufficient evidence to convince the jury of the appellant's guilt. *Lucas v. State*, 116 Md. App. 559, 573 (1997). Although photographic evidence, including video evidence, may be cumulative "in the sense that they provide the fact finder with an alternative form of information, the trial court has 'discretion to determine whether this alternative form of information . . . was wholly needless under the circumstances.'" *Id.* (citation omitted). Based on this record, we perceive no abuse of discretion by the circuit court in admitting the helicopter video.

II.

VIDEO FROM CORONA GROCERY

As stated, Detective Reddy downloaded the footage from Corona Grocery as part of his investigation. During his testimony, the State introduced the video exhibit from the store along with a certification of business records signed by the store owner. Defense counsel objected, arguing that Detective Reddy was not the appropriate person to lay a

foundation for this evidence. After reviewing the certification, the court ruled that the business records exception to the rule against hearsay was satisfied under Maryland Rule 5-902(b),[5] that the footage was properly authenticated, and that it was admissible.

The appellant argues that the State should have called the store owner or someone with knowledge of the store's video surveillance system to lay the foundation for the admission of the footage. Relying on *Washington v. State*, 406 Md. 642 (2008), the appellant maintains that the admission of a surveillance video that operates automatically requires that a witness testify to "the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system." *Id.* at 653 (citation omitted). According to the appellant, Detective Reddy's testimony did not meet these requirements, nor did the State call any other witnesses, such as the store owner, to provide such testimony.

"[A]dmission of evidence is committed to the considerable and sound discretion of the trial court" and thus a trial court's ruling on the admissibility of relevant evidence is reviewed under an abuse of discretion standard. *Collins v. State*, 164 Md. App. 584, 608–09 (2005). The same standard of review applies to a trial court's ruling on the admissibility of photographic evidence. *See Conyers v. State*, 354 Md. 132, 188 (1999).

[5] At trial, the circuit court cited Maryland Rule 5-902(b) (Certified Records of Regularly Conducted Business Activity). However, Rule 5-902(b) was amended and replaced by Rule 5-902(12), effective on October 1, 2021, a year before the trial. The differences between the two versions of the rule do not affect the analysis. For this discussion, we will refer to Rule 5-902(12), in effect during the trial.

In various cases, the Supreme Court of Maryland discussed the "pictorial testimony" and "silent witness" theories as two methods of authenticating video footage. *See Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 20–26 (1996); *Washington*, 406 Md. at 652–55; *Jackson v. State*, 460 Md. 107, 116–17 (2018). The "pictorial testimony" method requires that a witness testify "from first-hand knowledge that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time." *Cole*, 342 Md. at 21.

On the other hand, the "silent witness" method requires that the proponent "lay an adequate foundation assuring the accuracy of the process that produced the photo." *Id.* at 26. Such a foundation can be laid where, for instance, a witness testifies about "the type of equipment or camera used, its general reliability, the quality of the recorded product, the process by which it was focused, or the general reliability of the entire system." *Jackson*, 460 Md. at 117 (citation omitted). "The 'silent witness' theory of authentication corresponds to Maryland Rule 5-901(b)(9), under which an exhibit can be authenticated through '[e]vidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.'" *Mooney v. State*, ___ Md. ___, No. 32, Sept. Term 2023, 2024 WL 3766058 at *1 (filed Aug. 13, 2024).

The appellant focuses on the "silent witness" theory, asserting that the State failed to lay an adequate foundation under that method of authentication. The appellant, however, assumes that this was the only method for authenticating the store video and overlooks that

the State offered it as a business record. Recently, the Supreme Court of Maryland in *Mooney v. State* clarified that the "pictorial testimony" and "silent witness" theories of authentication are not the exclusive ways a video can be authenticated. *Id.* at *13. It reiterated that video can be authenticated as a business record under Maryland Rule 5-902(12).[6] *Id.* at *1 n.1 (citing *Cole*, 342 Md. at 30). The Court explained:

> This theory of authentication corresponds to Maryland Rule 5-902(12), under which an exhibit is considered self-authenticating where, among other conditions, the exhibit satisfies the requirements for the "business record" hearsay exception under Maryland Rule 5-803(b)(6). One of those requirements is establishing that "the regular practice of [the] business was to make and keep the" exhibit. Md. R[ule] 5-803(b)(6)(D).

Id.

There was no dispute that the certification of business records for the Corona Grocery footage complied with Maryland Rule 5-902(12). Accordingly, we hold that the

[6] Maryland Rule 5-902(12) provides in pertinent part:

> Subject to the conditions in this Rule, the following items of evidence are self-authenticating, and, except as required by statute or this Rule, require no testimony or other extrinsic evidence of authenticity in order to be admitted:
>
> * * *
>
> **(12) Certified Records of Regularly Conducted Activity.** The original or a copy of a record of a regularly conducted activity that meets the requirements of Rule 5-803 (b)(6)(A)-(D) and has been certified in a Certification of Custodian of Records or Other Qualified Individual Form substantially in compliance with such a form approved by the State Court Administrator and posted on the Judiciary website, provided that, before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

footage from Corona Grocery was properly authenticated as a business record, and the circuit court did not err in admitting the video exhibit.

III.

JURY INSTRUCTION ON MOTIVE

The appellant argues that the circuit court should not have instructed the jury on motive because there was insufficient evidence of motive presented at trial. The argument, however, is not preserved.

Maryland Rule 4-325(f) requires that "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." However, "[w]e have recognized that, on occasion, an objection in substantial compliance with the Rule will be considered adequately preserved." *Bowman v. State*, 337 Md. 65, 69 (1994). To establish substantial compliance with Rule 4-325(f),

> [1] there must be an objection to the instruction; [2] the objection must appear on the record; [3] the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and [4] the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Gore v. State, 309 Md. 203, 209 (1987).

At trial, before jury instructions were given, defense counsel objected to including an instruction regarding motive without explanation: "I'm objecting to motive." The court overruled the objection, noting that the instruction was "pretty benign" because it provides that the presence of motive may be evidence of guilt, the absence of it may suggest

innocence, and the jury should give the presence or absence of motive the weight it deserved.

After a recess, defense counsel renewed the objection just before the instructions were read to the jury. But counsel did not provide any grounds for the objection: "I just remembered I was objecting to the [c]ourt giving a motive instruction. I will object. I'll note it again." The court overruled the objection, explaining again that the instruction was benign because it instructs the jury to give the absence or presence of motive "whatever weight." The court proceeded to give the jury the instruction as follows:

> Motive is not an element of the crime[s] charge[d] and need not be proven. However, you may consider the motive or lack of motive as a circumstance of this case. Presence of motive may be evidence of guilt. Absence of motive may suggest innocence. You should give the presence or absence of motive the weight you believe it deserves.

The appellant did not satisfy the third prong of the substantial compliance analysis.[7] He did not explain that his objection to the instruction on motive was due to insufficient evidence of motive, as he now does on appeal. Nor was it apparent to the court, based on its response that the instruction was "benign," that it understood the appellant's grounds to

[7] Although the appellant did not renew his objection after the instruction was given as required by the Rule, we are satisfied that the doing so would have been an exercise in futility, under the fourth prong of the substantial compliance analysis, given that the court overruled the appellant's objection twice beforehand. *See, e.g.*, *Corbin v. State*, 94 Md. App. 21, 27 n.2 (1992) (after being rebuffed by the trial court on three separate occasions, counsel did not have to renew her objection after the jury was instructed because doing so would have been an exercise in futility).

be that there was insufficient evidence of motive. Thus, the ground raised for the first time on appeal is not preserved. *See Laster v. State*, 70 Md. App. 592, 601 (1987).

Even if preserved, we would conclude that the court did not abuse its discretion in giving the instruction on motive. Motive is a factual issue analogous to an evidentiary inference and "is not an element of the crime charged and need not be proven." Maryland Criminal Pattern Jury Instructions ("MPJI-Cr") 3:32. Motive is "a factor in the burden of persuasion," however, as it "may influence a jury in deciding which inferences to draw." *Ross v. State*, 232 Md. App. 72, 90 (2017). While a trial court must instruct a jury on legal issues that "relate to the requirement that a party meet a burden of proof[,]" such as the elements of a crime or affirmative defenses to a crime, there is no such requirement for evidentiary inferences. *Patterson v. State*, 356 Md. 677, 684–85 (1999).

Maryland Rule 4-325(c) states that the trial court "may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." We review a trial court's refusal or giving of a jury instruction under the abuse of discretion standard. *Gunning v. State,* 347 Md. 332, 351 (1997). "Where the decision or order is a matter of discretion it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Stabb v. State*, 423 Md. 454, 465 (2011) (citations omitted).

"We consider the following factors when deciding whether a trial court abused its discretion in deciding whether to grant or deny a request for a particular jury instruction:

(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Id.* (citing *Gunning*, 347 Md. at 348).

Here, the second factor is at issue. When considering whether the requested instruction is applicable under the facts of the case, the party requesting the instruction must produce "some evidence" to support the instruction. *Dykes v. State*, 319 Md. 206, 216–17 (1990). The standard for "some evidence" is low. *See id.* at 217 ("[Such evidence] need not rise to the level of 'beyond reasonable doubt' or 'clear and convincing' or 'preponderance.'").

Applying the abuse of discretion standard, we conclude that the court's decision to give the jury an instruction on motive was not "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Stabb*, 423 Md. at 465. The appellant told Detective Boyd that he had sold drugs to Mr. Ramirez, who failed to pay in full. The appellant also told the detective that he then sent a "junkie" to beat up Mr. Ramirez. After the "junkie" took Mr. Ramirez's car, the appellant took possession of it and indicated that he planned to sell it for some "quick money" to support his children and their mother. Despite the appellant's claim otherwise, this was "some evidence" of motive from which the jury could make factual inferences about whether the appellant committed the offenses. Accordingly, the trial court did not abuse its discretion in providing the instruction on motive.

IV.

SUFFICIENCY OF THE EVIDENCE

The appellant argues that the evidence was legally insufficient to sustain his convictions for armed carjacking and second-degree assault. We disagree.

To determine if the State has provided sufficient evidence to sustain a conviction, we ask "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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). An appellate court views "not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in a light most favorable to the State." *Id.* at 185–86. However, exculpatory inferences are not considered when viewing the evidence in a light most favorable to the State. *Cerrato-Molina v. State*, 223 Md. App. 329, 351 (2015). "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Tracy v. State*, 423 Md. 1, 12 (2011).

A.

Armed Carjacking

Section 3-405(b) of the Criminal Law Article prohibits carjacking: "An individual may not take unauthorized possession or control of a motor vehicle from another individual

who actually possesses the motor vehicle, by force or violence, or by putting that individual in fear through intimidation or threat of force or violence." Md. Code Ann., Crim. Law ("CL") § 3-405(b)(1) (2021) (emphasis added). CL § 3-405(c)(1) further prohibits armed carjacking: "A person may not employ or display a dangerous weapon during the commission of a carjacking."

To satisfy the actual possession element under the statute,

> the victim need not actually be seated in, or operating the vehicle in order for a carjacking or attempted carjacking to be consummated. Rather, the victim need only be entering, alighting from, *or otherwise in the immediate vicinity of the vehicle* when an individual obtains unauthorized possession or control of the vehicle by intimidation, force, or violence, or by threat of force or violence.

Mobley v. State, 111 Md. App. 446, 455–56 (1996) (emphasis added); *see* MPJI-Cr 4:04 ("A person is in actual possession of a vehicle when that person has control or possession of the vehicle and is in the vehicle *or in the immediate vicinity of the vehicle*.") (emphasis added).

In *Reeves v. State*, 192 Md. App. 277 (2010), this Court held that there was sufficient evidence to support a carjacking conviction. In that case, the victim was leaving his home through the garage to move his van to the center of his driveway to wash it. *Id.* at 304. The defendant approached the victim, grabbed the keys from the victim's hand, and ran out of the garage to the van while the owner was an estimated twenty-two feet away from the vehicle. *Id.* at 304–05.

The defendant argued that the evidence was insufficient to support his carjacking conviction because the victim was not in actual possession of the vehicle at the time the

defendant stole it. *Id.* at 301. This Court disagreed, explaining that the victim was in the immediate vicinity of and walking to his vehicle when the defendant approached. *Id.* at 304–05. The car and the keys to start the engine were within the victim's control "such that if he had not been overcome by fear and violence, he would have maintained control over the vehicle." *Id.* at 305. Thus, we concluded there was sufficient evidence to support the carjacking conviction. *Id.*

The same analysis in *Reeves* applies in the instant case. Mr. Ramirez parked his car on one side of the street, locked the car, and crossed the street toward a restaurant. The appellant accosted Mr. Ramirez and took his keys after a struggle. The footage from Corona Grocery showed the struggle close enough to the Audi for the key to activate its lights. The jury could have easily concluded from this that the car and the keys were within Mr. Ramirez's control such that if he had not been overcome by fear and violence, he would have maintained control over the vehicle. Accordingly, there was sufficient evidence to support the conviction for armed carjacking.[8]

[8] In further support of his argument, the appellant asks us to note that no knife connected to the crime was ever found. The point, however, was not raised by the defense as part of the motion for judgment of acquittal, and thus, not preserved. *See Darling v. State*, 232 Md. App. 430, 468 (2017) (where the defendant raised a different issue in his motion for judgment of acquittal than he raises on appeal, he failed to preserve the issue he raised on appeal).

B.

Second-Degree Assault

The appellant argues that there was insufficient evidence to support his conviction for second-degree assault. CL § 3-203 prohibits assault in the second degree. It encompasses three types of common law assault: (1) intent to frighten, (2) attempted battery, and (3) battery. *State v. Frazier*, 469 Md. 627, 644 (2020). This case focuses on battery.

In accordance with the Maryland Criminal Pattern Jury Instructions, the court instructed the jury in this case that to find the appellant guilty of second-degree assault, the State must prove that: (1) the defendant caused offensive physical contact with, or harm to, the victim; (2) the contact was the result of an intentional or reckless act of the defendant and was not accidental; and (3) the contact was not consented to by the victim and was not legally justified. *See* MPJI-Cr 4:01.

The appellant argues that he and Mr. Ramirez were engaged in a mutual affray, i.e., Mr. Ramirez consented to the fight,[9] and thus the third prong of battery is not satisfied. This is because, according to the appellant, Mr. Ramirez admitted to punching the appellant several times and Mr. Ramirez considerably outweighed the appellant.

[9] An affray is a common law offense defined as "the fighting together of two or more persons, either by mutual consent or otherwise, in some public place, to the terror of the people." *Dashiell v. State*, 214 Md. App. 684, 689 (2013) (citation omitted).

We conclude that there was sufficient evidence that Mr. Ramirez did not consent to the appellant's offensive contact. According to Mr. Ramirez, the appellant approached him, attempted to stab him with a knife, and grabbed at his pockets. Mr. Ramirez grabbed the appellant's hand that was holding the knife to push the appellant away, and then he punched the appellant several times. The jury could reasonably conclude, based on the evidence and common-sense reasoning, that Mr. Ramirez did not consent to the appellant's offensive contact. *See Cerrato-Molina*, 223 Md. App. at 337 ("Choosing between competing inferences is classic grist for the jury mill."). Accordingly, there was sufficient evidence to support the conviction for second-degree assault.

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