Circuit Court for Howard County
Case No. C-13-CR-21-000245

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1276

September Term, 2022

CHRISTOPHER SHAN MASON

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 28, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

On June 16, 2022, Christopher Mason, appellant, was convicted by a jury in the Circuit Court for Howard County of attempted second-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, and unlawful possession of a firearm.[1] The State sought a mandatory minimum sentence of 25 years without the possibility of parole on the attempted second-degree murder count because appellant was a subsequent violent offender. The court sentenced appellant to a 37-year term of imprisonment: 30 years for the conviction of attempted second-degree murder, the first 25 years without the possibility of parole; five years, without parole, for the conviction of use of a firearm in the commission of a crime of violence; and two years for the conviction of illegal possession of a firearm, all of the sentences to be served consecutively.[2]

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Was the evidence sufficient to sustain appellant's conviction for attempted second-degree murder?

2. Did the circuit court erroneously sentence appellant as a subsequent violent offender based on consideration of prior out-of-state convictions?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

[1] Although the jury returned a verdict on two counts of first-degree assault arising under two separate theories, appellant was charged with and sentenced on only one count of first-degree assault.

[2] At sentencing, the circuit court merged appellant's first-degree assault conviction with the conviction of attempted second-degree murder.

FACTUAL AND PROCEDURAL BACKGROUND

On April 17, 2021, Hector Candia, a maintenance and management employee at the Cedar Motel, was resting in his residence on the grounds of the hotel after finishing his shift for the day. His room was on the motel property, but it was located in a building separate from the motel rooms. Mr. Candia heard a low sound and "didn't pay it much mind." Shortly thereafter, he heard two other sounds that were "a little bit louder." At first, Mr. Candia thought it sounded like gunshots, then he thought it was just fireworks, so he laid back down. Before lying down, Mr. Candia looked toward the office thinking "perhaps maybe somebody might be robbing the office." He noticed a white car leaving the hotel property. Narda Pereira, another employee at the motel, then called and advised that she heard gunshots in Room 118.

Mr. Candia immediately went outside and saw a woman, who appeared nervous, in front of the office. He brought her to his room and called 911.

Mr. Candia testified that the Cedar Motel had a video surveillance system, and he could download video from the time during which the shots were fired. The surveillance video was admitted into evidence and played for the jury. Mr. Candia identified appellant's car entering the motel parking lot on the video, noting that it was the same white car he saw exiting the parking lot after he heard the gunshots.

Ms. Pereira testified that her job responsibilities at the motel included cleaning and working in the office. When guests arrived, Ms. Pereira, or the clerk on duty, kept a written record of the room number, cost, entry and exit time, and the license plate of the guest's

car. On the evening of April 17, 2021, a guest checked into room 118 at 7:01 p.m. at a rate of $45 for a four-hour period. Ms. Pereira wrote down the license plate number of the guest, 9EL-1175, and identified the car associated with that license plate number as the one shown on the surveillance video. The man shown on the surveillance video getting out of the white car was the man who paid for room 118. After checking in the guest with the white car, Ms. Pereira went to the laundry room. She then heard two gunshots and notified Mr. Candia.

Tracey Dodson testified that, on April 17, 2021, she went to the Cedar Motel with appellant, and they "did woolies," a combination of marijuana and cocaine. While at the motel, appellant began acting "funny" and "weird." He was arguing with his girlfriend on the phone, and then he "went out to his car and got his gun." Appellant came back from the car, knocked on the door, and told Ms. Dodson to "open the f'ing door." She opened the door "because it was [his] room." Appellant "cocked [a] gun back and shot it at the bathroom." Appellant did not aim at her when he fired the shot into the bathroom.

Appellant then went back out of the room and shut the door. After he left, Ms. Dodson "peeped out the curtain . . . to see if he was gone so [she] could go outside to get help." Ms. Dodson identified herself on the surveillance video as the person behind the curtain in the motel room, stating that she moved the curtain just enough to see if appellant was gone. As she looked out the curtain, appellant pointed the gun and fired two shots "at the window where [she] was at." Ms. Dodson then "[w]ent to the floor and crawled behind the door." She did not see where appellant went after firing the shots.

On cross-examination, appellant's counsel asked Ms. Dodson whether she told the police that she was not standing by the window when appellant fired the second two shots. Ms. Dodson stated that seeing the films refreshed her memory, and she "was at the window." After being asked to disregard the video and testify regarding what she "actually experienced on that day," Ms. Dodson stated that she was not standing in front of the window when the bullets went through. Ms. Dodson stated that she had her phone in her bag, but she did not call for help while in the motel room.

On re-direct, Ms. Dodson testified that she previously told the police that she was not behind the curtain because she was "stunned" and "scared." She confirmed that, when appellant raised the gun, she "ducked down and went behind the door." After appellant fired the shots into the window, she walked toward the office to seek help. Mr. Candia saw her and called her over to his apartment in the white building to the left of the office. Mr. Candia tried to get her to talk to the police on the phone, but she "couldn't talk because [she] was too stunned and shook up." She stayed with Mr. Candia until the police arrived. Ms. Dodson identified appellant as the person who shot at her on April 17, 2021, at the Cedar Motel.

Allison Fischer, a Howard County Police Department Crime Scene Technician, arrived at the Cedar Motel at approximately 9:00 p.m. She recovered three 9mm cartridges, one inside the room and two outside the room. She did not recover a firearm or any other ammunition from the hotel room. She also found nine suspected bullet defects in the

bathroom of the hotel room, the front window, and in the curtain. Ms. Fischer swabbed appellant's hands for gunshot residue, but the test kit was never processed.

On April 17, 2021, Officer Keegan Romanoff responded to a dispatch call for a white Ford Focus with Maryland registration 9EL1175. When he went to the address associated with the license plate registration, appellant's vehicle was not there, but after a couple of minutes, appellant arrived at the residence and got out of the vehicle. Officer Romanoff approached him and asked to talk with him. Appellant responded, "give me a minute," and went inside the residence. Approximately an hour later, appellant came out of the house with his cousin, and the police took him into custody. The police searched the residence and car later that night. They did not find any guns, drugs, ammunition, or other items of evidentiary value in the house. They did locate in the car a room key on an orange key tab marked with the number 118.

The State moved into evidence a recording of a phone call between appellant and an unknown person that was made while appellant was incarcerated and pending trial. Ms. Dodson testified that she recognized the voice of Christopher Mason on the calls. The State played the recording of appellant on the call saying: "Yeah, I attempted, but I didn't shoot nobody, I didn't hit nobody, I didn't graze nobody."

After the State rested its case, defense counsel moved for a judgment of acquittal on the charge of attempted second-degree murder, arguing that the State did not prove specific intent because appellant did not point the gun at Ms. Dodson "when the shots were

discharged." The defense contended that, although the evidence might show reckless behavior, it did not establish specific intent.

With respect to the assault charges, the defense claimed that there was no intent to frighten Ms. Dodson because appellant did not point the firearm at her. The defense also argued that there was not a sufficient factual basis for a jury to conclude there was a firearm involved in this case, and even if there was, it was brandished in a manner of "reckless disregard," not while committing a crime of violence.

The State argued that the surveillance video and physical evidence at the crime scene corroborated Ms. Dodson's testimony that a gun was fired. In the State's view, the video illustrated a "very clear picture of exactly what malice looks like" because it showed appellant holding a gun and firing two shots from a close distance at the window where Ms. Dodson was peering out. The court denied the motion for judgment of acquittal, and as indicated, the jury convicted appellant on all counts.

Pursuant to Md. Code. Ann., Crim. Law ("CR") § 14-101 (2021 Repl. Vol.), the State sought a combined sentence of 55 years, the first 25 years without the possibility of parole, because appellant had two prior convictions for crimes of violence. Appellant was convicted in 2009 on a federal charge for robbery of a mail carrier and in 1994 for attempted common law robbery. Both crimes occurred in North Carolina, and appellant served terms of incarceration for the offenses. The State gave notice of its intent to seek a mandatory minimum sentence prior to the sentencing hearing and provided proof of both prior convictions. On the attempted second-degree murder count, the court sentenced

appellant to 30 years, the first 25 years without the possibility of parole, as a subsequent violent offender.

This appeal followed.

DISCUSSION

I.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to support his conviction for attempted second-degree murder. Specifically, he argues that the evidence did not support a finding that he had the specific intent to kill Ms. Dodson. Appellant asserts that, if he had intended to kill Ms. Dodson, he initially would not have shot at the bathroom wall; rather, he would have fired directly at her while they were the only two people in the room.

The State contends that the evidence was sufficient to support appellant's conviction of attempted second-degree murder. It points to evidence that appellant "fired two shots at a window which he knew [Ms.] Dodson was behind, from a short range and at approximately head and chest level." Moreover, appellant admitted an intent to kill in his recorded jail conversation, when he said: "Yeah, I attempted, but I didn't shoot nobody, I didn't hit nobody, I didn't graze nobody."

In assessing the sufficiency of the evidence, we apply the following standard of review:

> This Court reviews claims of insufficiency of the evidence by determining "whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Howling v. State*, 478 Md. 472, 493, 274 A.3d 1124 (2022) (emphasis in original). To accomplish this task, we

> view the evidence "in [a] light most favorable to the State," and give due deference to the jury's "findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *White v. State*, 363 Md. 150, 162, 767 A.2d 855 (2001) (quoting *McDonald v. State*, 347 Md. 452, 474, 701 A.2d 675 (1997)).

Vanderpool v. State, 261 Md. App. 163, 180 (2024).

"[T]o be guilty of attempted [second-degree] murder there must be a specific intent to kill." *Spencer v. State*, 450 Md. 530, 568 (2016). The intent to kill may be shown by circumstantial evidence. *Smallwood v. State*, 343 Md. 97, 104 (1996). Because "intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *In re David P.*, 234 Md. App. 127, 138 (2017) (quoting *Spencer*, 450 Md. at 568). Intent is therefore generally derived from evidence of the defendant's "acts, conduct and words." *Spencer*, 450 Md. at 568 (quoting *Smallwood*, 343 Md. at 104).

"[U]nder the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body." *Id.* at 569 (quoting *Smallwood*, 343 Md. at 104). In *State v. Raines*, 326 Md. 582, 592–93 (1992), the Supreme Court of Maryland held that a defendant's "actions in directing [a] gun at the window" of a tractor trailer driving on the highway, and "therefore at the driver's head on the other side of the window, permitted an inference that [defendant] shot the gun with the intent to kill."

Here, the surveillance video showed that, after appellant saw Ms. Dodson move the curtain to peek out of the window, he fired two shots at the window where she was located. Photographic evidence showed that the shots hit the window at head and chest level.

Accordingly, the jury could find that the shots were "directed at a vital part of the human body," which permitted the inference that appellant had the intent to kill Ms. Dodson. *Smallwood*, 343 Md. at 105–06 ("When a deadly weapon has been fired at a vital part of a victim's body, the risk of killing the victim is so high that it becomes reasonable to assume that the defendant intended the victim to die as a natural and probable consequence of the defendant's actions."). *See also State v. Earp*, 319 Md. 156, 160–62, 167 (1990) (evidence that knife was thrust into victim's back, along with 10 to 15 attempts to slash the victim, was sufficient to permit a finding of a specific intent to kill, even though wounds were not life threatening).[3]

Moreover, appellant stated in the recorded phone call that he "attempted, but [he] didn't shoot nobody, [he] didn't hit nobody, [he] didn't graze nobody." Although appellant contends that he was "merely referring to his charges," the jury was free to disbelieve this explanation of the phone call and instead infer that it was an admission that he attempted to kill Ms. Dodson. The evidence was sufficient to support appellant's conviction for attempted second-degree murder.

[3] Appellant argues that that evidence showed that he "could have believed that [Ms. Dodson] was standing to the side of the window," and not in the area where he fired. We do not, however, "second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). In evaluating sufficiency of the evidence, "exculpatory inferences do not exist. They are not a part of that version of the evidence most favorable to the State's case." *Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied,* 445 Md. 5 (2015).

II.

Illegal Sentence

Appellant next contends that the court imposed an illegal sentence by sentencing him as a subsequent offender. He does not dispute the existence of his prior convictions, nor the adequacy of the notice provided by the State, but he argues that his previous convictions for crimes of violence may not be considered qualifying predicate offenses under CR § 14-101 because the convictions occurred out of state.

The State contends that the court correctly sentenced appellant as a subsequent offender. It argues that "convictions from other jurisdictions support enhanced penalties for subsequent crimes of violence," and "out-of-state convictions for crimes of violence are predicate offenses under Criminal Law § 14-101."

CR § 14-101(c) provides for mandatory sentences for subsequent convictions for crimes of violence. For a third conviction of a crime of violence, the statute provides:

> (1) Except as provided in subsection (f) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:
>
> (i) has been convicted of a crime of violence on two prior separate occasions:
>
> 1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and
>
> 2. for which the convictions do not arise from a single incident; and
>
> (ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

> (2) The court may not suspend all or part of the mandatory 25-year sentence required under this subsection.
>
> (3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of § 4-305 of the Correctional Services Article.

A "crime of violence" includes "robbery under § 3-402 or § 3-403 of this article." CR § 14-101(a)(9).

In *Mitchell v. State*, 56 Md. App. 162, 180 (1983), we summarized the effect of this statute, as follows:

> Mandatory sentencing came into being in Maryland by virtue of Chapter 253 of the Laws of 1975. As subsequently amended, the present [CR § 14-101] provides that any person who has been convicted on two separate occasions of a crime of violence and who has served at least one term of confinement in a correctional institution as a result thereof, shall, upon being convicted a third time of a crime of violence, be sentenced to a term of imprisonment of not less than twenty-five years, no part of which may be suspended, and without eligibility for parole.

(Footnote omitted).[4]

As indicated, appellant contends that the statutory text of CR § 14-101(a)(9) limits the application of the mandatory sentencing statute to robbery convictions under CR §§ 3-402 and 3-403. We disagree.

The Supreme Court has held that "equivalent convictions in jurisdictions outside of Maryland of crimes of violence within the ambit of [CR § 14-101] may be considered as predicate offenses for purpose of sentencing under the statute's provisions." *Muir v. State*,

[4] "The current version of the enhanced penalty statute, [Crim. Law] § 14-101, was derived without substantive change from Art. 27 § 643B, which was originally enacted in 1975." *Williams v. State*, 220 Md. App. 27, 33 (2014).

308 Md. 208, 214 (1986). In *Williams v. State*, 220 Md. App. 27, 42 (2014), *cert. denied*, 441 Md. 219 (2015), this Court addressed the argument that convictions for common law robbery could not be used to support an enhanced penalty because they occurred before the codification of the crimes of robbery and armed robbery, and therefore, technically were not convictions under CR §§ 3-402 and 3-403. Noting that "[r]obbery and armed robbery have been included as qualifying crimes of violence for as long as Maryland has had an enhanced penalty statute," and that the purpose of the statute was to protect the public from repeat violent offenders, this Court rejected the argument that a conviction for common law robbery could not be used to support an enhanced penalty because it was not a conviction under CR §§ 3-402 or 3-403. *Id.* at 43. We reach the same conclusion regarding out-of-state convictions of robbery.

The convictions here included a 2009 federal conviction for robbing a mail carrier and a 1994 North Carolina conviction for attempted common law robbery. The State contends that appellant's "violations of federal and North Carolina laws [] are substantively indistinguishable from Maryland's" common law robbery definition, and therefore, they may be "used as predicate convictions to support [appellant's] sentence."

Under Maryland law, "robbery" is defined as "the felonious taking and carrying away of the personal property of another, from his person or in his presence, by violence, or by putting him in fear." *Williams*, 220 Md. App. at 33 n.2 (quoting *Smith v. State*, 412 Md. 150, 156 n.1 (2009)). A person violates 18 U.S.C.A. § 2114(a) if the person "assaults any person having lawful charge, control, or custody of any mail matter or of any money

or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States."[5] Under North Carolina law, "[c]ommon law robbery is the felonious, non-consensual taking of money or personal property from the person or presence of another by means of violence or fear." *State v. Smith*, 292 S.E.2d 264, 270 (N.C. 1982). Thus, we agree with the State that appellant's prior convictions were under statutes that would qualify as robbery in Maryland.

Both of the appellant's out-of-state convictions involved crimes of violence. The circuit court properly sentenced appellant as a subsequent offender under CR § 14-101(c).

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] "The word 'rob' is used in its common law sense, *Harrison v. United States*, 163 U.S. 140, 16 S. Ct. 961, 41 L. Ed. 104, that is, it involves the taking, animo furandi, and asportation of property from the person of another against his will by violence or putting him in fear." *Costner v. United States*, 139 F.2d 429, 431 (4th Cir. 1943).