Circuit Court for Montgomery County
Case No.: 138909C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1362

September Term, 2022

KENON LEONARD

v.

STATE OF MARYLAND

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

JJ.

Opinion by Eyler, James R., J.

Filed: August 21, 2023

*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).

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

A jury sitting in the Circuit Court for Montgomery County found Kenon Leonard, appellant, guilty of second-degree assault. Appellant asks this Court if the evidence was sufficient to sustain his conviction.[1] We hold that it was, and we affirm the judgment.

BACKGROUND

This appeal arises from two interactions that occurred at a Harris Teeter in Montgomery County, Maryland between appellant and another patron, Jennifer Roy. Ms. Roy was waiting in line at the pharmacy counter when she noticed appellant, waiting in line in front of her, staring at her. Ms. Roy testified that she felt "[v]ery uncomfortable" and at one point "said hi" in what she described as "a stop, I see you staring at me, stop staring at me kind of a way." After appellant finished his transaction at the pharmacy, he approached Ms. Roy and "bearhugged [her] suddenly." Ms. Roy testified that she was "very taken aback" and "tapped him" and said, "get off of me now."

Appellant walked away. Ms. Roy proceeded to pick up her son's prescription from the pharmacy. Ms. Roy testified that she then walked towards customer service to notify them of her interaction with appellant. Before reaching customer service, Ms. Roy noticed appellant again approaching her. Ms. Roy "panicked[,]" turned around, and then turned around once more to find appellant a foot away. She "took a few steps back but [appellant] grabbed [her] arm, [her] upper arm[,]" with "[m]edium force" and said "come with me,

[1] Although appellant's brief originally presented two additional questions, he has since withdrawn consideration of those issues and presents only this one question for our review.

come with me." She recalled "grounding" herself "so [she] could not get pulled away[,]" before a bystander stepped in to help. An employee called 911.

Ms. Roy testified that she had never met appellant before and did not give him permission to touch her. After a three-day trial, a jury found appellant guilty of second-degree assault. On September 30, 2022, appellant was sentenced to ten years, all of which was suspended except for 18 months. This appeal followed.

STANDARD OF REVIEW

Our responsibility in assessing the sufficiency of the evidence of a criminal conviction is "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.'" *Koushall v. State*, 479 Md. 124, 148 (2022) (quoting *State v. Manion*, 442 Md. 419, 430 (2015)) (further quotation marks and citation omitted). In so doing, our job is not to "measure the weight of the evidence[.]" *Taylor v. State*, 346 Md. 452, 457 (1997). Further, we will give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. In sum, "our 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." *Id*.

DISCUSSION

Appellant asserts that the evidence was not sufficient to sustain his conviction because "[t]here is no solid factual foundation for second-degree assault[,]" and that "Ms. Roy consented to th[e] interaction." In support, he maintains that while hugging Ms. Roy,

the "surveillance video shows her smiling and patting his back[,]" and that afterwards, she "did not alert the pharmacist or make a phone call." The State responds that the evidence "was legally sufficient to permit a rational juror to find that [Ms.] Roy did not consent to either instance of physical contact by [appellant] (let alone both)." We agree with the State.

Maryland's Criminal Law Article provides that "[a] person may not commit an assault." Md. Code Ann., Criminal Law ("CR") § 3-203(a). Assault includes "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." CR § 3-201(b). There are "three types of common law assault: '(1) intent to frighten, (2) attempted battery, and (3) battery.'" *State v. Frazier*, 469 Md. 627, 644 (2020) (quoting *Jones v. State*, 440 Md. 450, 455 (2014)). Appellant was convicted of the battery variety of second-degree assault, which "is committed by causing offensive physical contact with another person." *Nicolas v. State*, 426 Md. 385, 403 (2012).

At trial, Ms. Roy testified to two instances of physical contact caused by appellant. Appellant first "bearhugged" her, and later, after she had already told appellant to get off of her, he "grabbed" her by the arm. This testimony, if believed by the jury, was legally sufficient to support a finding of the battery variety of second-degree assault. *See Priester v. Bd. of Appeals of Baltimore Cnty.*, 233 Md. App. 514, 541 n.13 (2017) ("Battery includes offensive touching, as well as more violent force, and 'any unlawful force used against the person of another, no matter how slight, will constitute a battery.'" (quoting *Lamb v. State*, 93 Md. App. 422, 447 (1992)) (further quotation marks and citation omitted)).

Appellant maintains that Ms. Roy consented to the interaction, pointing to an image from a surveillance video which showed Ms. Roy with a "slight smile" on her face while

he hugged her. In support of his position that Ms. Roy consented to the physical contact, he asserts that Ms. Roy "continued running her errand and intended to leave the store."

Ms. Roy explained that the smile seen on the surveillance video was a "nervous" smile, and that beforehand, she felt "[v]ery uncomfortable" and "said hi" in a "stop staring at me kind of a way." Ms. Roy also testified that she only completed her transaction at the pharmacy before reporting the interaction because her son needed a prescription filled before leaving town the following day, not because she consented to the interaction. As we have previously made clear, it is the responsibility of the jury, not this Court, to "weigh the testimony and decide what weight to afford it." *Rosebrock v. E. Shore Emergency Physicians, LLC*, 221 Md. App. 1, 24 (2015). We see no reason to disturb the jury's credibility determination on appeal.

Under these facts, a rational trier of fact could find that Ms. Roy did not consent to the interactions with appellant, and that appellant's actions caused offensive physical contact with Ms. Roy. Accordingly, viewed "in the light most favorable to the prosecution," there was sufficient evidence for a juror to find that appellant committed second-degree assault. *Koushall*, 479 Md. at 148 (quotation marks and citation omitted).

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.