Circuit Court for Baltimore City
Case No. 121355004

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2102

September Term, 2023

JERMAINE JOSEPH JETER, JR.

v.

STATE OF MARYLAND

Wells, C.J.,
Graeff,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 2, 2025

*This is a per curiam opinion. Under 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 Baltimore City of first degree assault, use of a firearm in the commission of a crime of violence, and related offenses, Jermaine Joseph Jeter, Jr., appellant, presents for our review a single issue: whether the evidence is sufficient to sustain the convictions of first degree assault and use of a firearm in the commission of a crime of violence. For the reasons that follow, we shall affirm the judgments of the circuit court.

Mr. Jeter was initially charged by indictment with five counts of attempted first degree murder, five counts of first degree assault, five counts of use of a firearm in the commission of a crime of violence, and related offenses. At trial, the State called Baltimore City Police Detective Thomas Moore, who testified that he is in the department's Warrant Apprehension Task Force ("WATF"). On November 26, 2021, Detective Moore and other officers "responded to 2514 Loyola Northway to try to apprehend" Mr. Jeter. As the detective "was unlocking the first lock" of the door of the residence, he "heard a loud noise" that he "was pretty sure . . . was a gunshot." As Detective Moore "was trying to get to the second lock on the sealed door," he "definitely heard what was a gunshot." The officers retreated for cover and called for "SWAT and [a] hostage negotiator." The State produced evidence that following negotiations, Mr. Jeter opened the door of the residence, threw a firearm onto the front lawn, exited the residence, and surrendered.

The State also called Baltimore City Police Sergeant Matthew Tobjy, who testified that he was one of the officers who assisted the WATF. Sergeant Tobjy testified:

> While we're standing there, then we hear a gunshot come out. And notice that one of the windows sort of breaks out. At that point, we move, sort of stack on the house closer. Because we realize it's coming from the window,

> so that we're sort of out of line of fire. And at that point, I – there's like a guard, there was a railing next to the neighbor's porch. Just sort of jump over that and try to make sure everybody is positioned into, you know, an area of safety.
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> I hear it. You know, I don't see where it's coming from. And I'm just like, you know, going through my mind. It's like, oh, somebody is shooting at us. So, my first thought is for my safety. I have two of my guys there plus two other officers. I'm like, all right let's get them safe. And then it's also, you know, I heard a gunshot, not sure where it went, where exactly it was coming from immediately. So, then you worry about – because it is a residential neighborhood – about, like, I said, when we did go there, it was pretty quiet. So, there wasn't anybody out. But it still goes through your head. So, I'm just thinking, all right, let's get everybody to safety. And then, you know, be able to sort of pause and see what we have.
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> It was coming, like, so it went towards us, past, you know, past us. That's why I think we were able to figure out it was coming from, like, an upstairs window, because it did sound like a little high. So, all right. We were able to see, we were able to see the broken, you know, that the window was shot out. We were able to figure out where it was exactly coming from.

During cross-examination, Sergeant Tobjy confirmed that "the bullet . . . came from the second story," and "passed [the officers], kind of like above [their] heads." The sergeant further testified:

> I mean, it's not always easy to draw every small detail right then and there when you have a, sort of a high stress, a lot of stuff processing. It does get difficult where small details like that. Like you might forget, like, did I hear. Like you're saying, it's like, "[d]id I hear someone say something?" I don't know. Then you start thinking because your body is having a stress response to everything.

Following the close of the State's case, defense counsel moved for judgment of acquittal of all counts. With respect to the counts of attempted first degree murder and

attempted second degree murder, defense counsel argued, in pertinent part: "There's no testimony that he aimed at any officers, shot towards any officers . . . . . There was no shot in this particular case towards any of the officers." With respect to the lesser included offense of first degree assault, defense counsel argued, in pertinent part:

> And when we talk about assault, Your Honor, one of the elements that the State must prove in an assault is that the victim himself reasonably feared immediate offensive physical contact, physical harm. [N]one of those officers testified at any given time that they reasonably feared immediate physical contact or physical harm. Tobjy testified, . . . Detective Moore testified, but none of them can testify to the mental state or the mental state of the other officers at the time when the shots rang out. Those [other] officers . . . never testified that they [were] in immediate fear of offensive physical contact or physical harm. That's an element that must be proven when we talk about assaults.
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> Right? And you have to have some type of testimony at this particular juncture even looking at the evidence in the light most favorable to the State, there has to be some type of testimony that shows that the victim . . . reasonably feared immediate offensive contact or physical harm. There is no testimony regarding those . . . officers when it comes to an assault charge.

Following argument, the court granted the motion with respect to the counts of attempted first degree murder. The court denied the motion with respect to the lesser included offenses and remaining counts. The jury subsequently convicted Mr. Jeter of first degree assault of Sergeant Tobjy, one count of use of a firearm in the commission of a crime of violence, five counts of reckless endangerment, and related offenses.

Mr. Jeter contends that the evidence is insufficient to sustain the conviction of first degree assault, because for numerous reasons, the State "failed to prove all three of the

necessary elements of the intent to frighten" variety of the offense.[1] Mr. Jeter further contends that "without sufficient evidence to prove that [he] committed the crime of first degree assault, the State did not have sufficient evidence to prove that [he] used a firearm in a crime of violence." The State counters that "[n]one of [Mr.] Jeter's claims regarding first-degree assault are properly before [this] Court," because "he did not urge them in his motion for judgment of acquittal." Alternatively, the State contends that "the evidence was legally sufficient to convict." Mr. Jeter replies that the argument made by defense counsel with respect to the counts of attempted first degree murder, specifically that the evidence was insufficient "to prove . . . intent [to] put any of the victims in fear of immediate physical contact or harm," is "the same for the lesser included offense of assault."

We agree with the State that in moving for judgment of acquittal as to both the counts of attempted first degree murder and the lesser included counts of first degree assault, defense counsel did not specifically contend that the evidence was insufficient to show that Mr. Jeter intended to place Sergeant Tobjy in fear of immediate offense of

[1]As the court instructed the jury,

> [s]econd degree assault is intentionally frightening another person with the threat of immediate physical contact or physical harm. In order to convict the defendant of assault, the State must prove, one, defendant committed an act with the intent to place the alleged victim in fear of immediate offense of physical contact or physical harm; two, defendant had the apparent ability at that time to bring about physical contact or physical harm; and three, that the alleged victim feared immediate physical contact or physical harm.
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> . . . . In order to convict the defendant of first degree assault, the State must prove all of the elements of second degree assault and also must prove [that the] defendant used a firearm to commit the assault.

physical contact or physical harm, or that Mr. Jeter had the apparent ability at that time to bring about physical contact or physical harm. But, even if defense counsel had made those arguments, Mr. Jeter would not prevail. Sergeant Tobjy testified that as he stood in front of the residence, he heard a gunshot and noticed "one of the windows . . . break[] out." The sergeant further noticed that "the bullet . . . came from the second story" and "passed" the officers "above [their] heads." Mr. Jeter does not dispute that he was the individual who fired a firearm while the officers were attempting to gain entry to the residence, and following negotiations, Mr. Jeter was observed holding the firearm and throwing it onto the front lawn. Finally, Sergeant Tobjy expressly testified that after hearing the first gunshot, his "first thought [was] for [his] safety," he jumped over a railing to "an area of safety," and his "body [had] a stress response to everything." From this evidence, a rational trier of fact could conclude beyond a reasonable doubt that Mr. Jeter intended to place Sergeant Tobjy in fear of immediate offense of physical contact or physical harm, that Mr. Jeter had the apparent ability at that time to bring about physical contact or physical harm to the sergeant, and that the sergeant feared immediate physical contact or physical harm. Hence, the evidence is sufficient to sustain the convictions of first degree assault and use of a firearm in the commission of a crime of violence.

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