

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0345

September Term, 2014

LAMON THOMAS

v.

STATE OF MARYLAND

*Zarnoch,
Leahy,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: December 21, 2015

*Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Allegany County, appellant, Lamont Thomas, was convicted of attempted first-degree murder, reckless endangerment, first-degree assault, wearing or carrying a dangerous weapon with intent to injure, and possession of a weapon while in a place of confinement. At the time of the offenses charged, Thomas was an inmate at the North Branch Correctional Institution (NBCI) in Allegany County. His convictions relate to an attack on a fellow inmate, Christopher Bolen.¹

Thomas challenges only the sufficiency of the evidence. We shall affirm.

FACTUAL and PROCEDURAL BACKGROUND

The genesis of the charges against Thomas was an incident that occurred on April 29, 2013, at NBCI in Housing Unit 4 of D tier. Officer James Grieves was the tier officer, controlling the opening and closing of cell doors from a control center, about 15 feet from the location of the fight. Having worked on the tier for two years, Grieves was familiar with Thomas. A fight broke out as inmates were returning to the tier after eating. Grieves observed Thomas approach inmate Christopher Bolen from behind and stab him multiple times with a “shiny object.” At about the same time, inmate Michael Mastriano began fighting with Thomas while inmate Corey McMillan stomped on Bolen as he lay on the

¹Thomas was sentenced to nine years’ imprisonment for possession of a weapon while in a place of confinement and a consecutive term of 30 years’ imprisonment for attempted first-degree murder.

floor.² Grieves called in the fight to other officers, and, following protocol, remained in the control center to observe. Additional officers arrived and broke up the fight, and Grieves observed Bolen bleeding from his chest. At trial, Grieves narrated a surveillance video which depicted the attack on Bolen. Key to Thomas's argument is Grieves' failure to mention seeing the weapon to the investigating detective, and his failure to include that information in his report. His first comment about seeing Thomas possess the weapon was at trial.

Officer Jay Tart was outside the doors of D tier observing inmates returning from a meal, when he received a call indicating multiple inmate-on-inmate fights in D tier. Upon entering D tier, he witnessed three or four fights then in progress. Tart was able to break up one of the fights upstairs. Thereafter, he proceeded downstairs, recovering a weapon from beneath the stairwell, approximately 20 feet from the control center. The weapon consisted of stainless steel fencing material wrapped in a white sheet. The weapon was not fingerprinted or tested for DNA because the lead detective did not believe it was necessary as "the inmates [involved] had been identified."

Officer Larry Gilpin was also observing inmates returning from a meal. He, too, received a call about the fights in D tier, and responded, observing Mastriano fighting near the steps on the right side of the tier. He also saw Bolen on the floor. As Gilpin approached

²McMillan and Thomas were housed in adjacent cells.

Bolen, he was interrupted by someone yelling behind him. Gilpin observed McMillan attempting to leave the tier, handcuffed him, and placed him in a holding cell. He then walked the tier, picking up anything which he thought might have evidentiary value. Gilpin did not recall seeing Tart recover anything, either contemporaneously, or on the video surveillance footage.

Following the attack, Officer Christopher Anderson observed Bolen lying on the floor of D tier. It appeared Bolen had been stabbed, so, following protocol, Anderson handcuffed him, and assisted him to a holding cell. Bolen fell off of the bench in the holding cell, began urinating and defecating on himself, and faded in and out of consciousness. Bolen told the nurse treating him that he had been stabbed.

Ultimately, Bolen was taken to the Western Maryland Health System emergency department, where he underwent surgery to treat his wounds. As a result of the attack, Bolen suffered a punctured aorta, additional puncture wounds in his chest and back, a swollen left arm, bruising on his flanks, and a laceration to his head.

At the conclusion of the State's case, Thomas moved for judgment of acquittal, arguing that the State had not met its burden of proof that he possessed the weapon used to attack Bolen, specifically noting that the video did not show Tart recovering the weapon.

The State recalled for the court the testimony of Grieves that he saw Thomas possess a weapon and attack Bolen with, it using stabbing motions. Both intent to kill and

premeditation were proved, the State continued, through the video and the multiple stab wounds inflicted on Bolen.

The Court denied the defense motion, explaining:

The, . . . Court is of the view that the . . . points raised by [Defense Counsel], very valid points for a jury argument, not really . . . controlling as to . . . granting of a Motion for Judgment of Acquittal. . . . [T]here is evidence before the Court just identified . . . and . . . that evidence could establish a prima facie elements of these offenses. Inferences . . . are drawable from the evidence by reasonable minds that would establish . . . the elements of first degree assault as well as attempted . . . first degree murder . . . for reasons identified by [the State's Attorney], so I'll deny the Motions for Judgment of Acquittal.

Thomas renewed his motion for judgement of acquittal at the close of all the evidence for the same reasons cited above. The court likewise denied the motion.

DISCUSSION

Thomas reiterates the argument defense counsel put forward before the trial court - that the State failed to prove that he possessed the weapon used to commit the attack. He makes several specific claims regarding the reliability of the evidence: first, that Grieves' testimony that he saw Thomas possess the weapon during the attack was contradicted by Detective Robert Fagan's³ testimony, and was not mentioned in Grieves' report; second, that Tart's recovery of the weapon was not shown on the video of the incident, and Gilpin

³Fagan, an officer of the Department of Public Safety Internal Investigation Unit, was assigned to conduct an investigation of the incident.

testified that he did not see Tart pick anything up after the incident; and finally, Fagan’s incident report stated that either appellant or McMillan had a weapon and used it on Bolen.

We have recently reiterated the test for appellate review of sufficiency of evidence:

[W]hether, ““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.”” *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court’s concern is not whether the verdict is in accord with what appears to be the weight of the evidence, “but rather is only with whether the verdicts were supported with sufficient evidence — that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offense charged beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479 (1994). “We ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.’” *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)).

Beattie v. State, 216 Md. App. 667, 684 (2014) (quoting *Donati v. State*, 215 Md. App. 686, 718, *cert. denied*, 438 Md. 143 (2014)).

Each of Thomas’ claims relates to the weight of the evidence, not its sufficiency. Interpretation of contradictory evidence is a task squarely within the purview of the jury. *See Neal v. State*, 191 Md. App. 297, 318, *cert. denied*, 415 Md. 42 (2010) (“[T]o the extent that conflicting inferences are possible from the evidence, it is for the fact finder to resolve the conflict. The possibility of raising conflicting inferences from the evidence does not preclude allowing the fact finder to determine where the truth lies.”) (internal quotations omitted). The Court of Appeals has opined:

[i]t is not our role to retry the case. 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. We defer to the jury's inferences and determine whether they are supported by the evidence.

Smith v. State, 415 Md. 174, 185 (2010) (internal citations omitted).

A jury may accept all, part, or none of a witness' testimony. *Whiting v. State*, 160 Md. App. 285, 310 (2004) (citation omitted), *aff'd*, 389 Md. 334 (2005). Each of Thomas' assertions of insufficiency relates to conflicting evidence and the inferences drawn therefrom. He obtains no relief from his claim of insufficient evidence because the jury, as fact-finder, clearly chose to credit testimony and evidence which supported conviction on each count.

Thomas makes much of the fact that Grieves had not, prior to his trial testimony, mentioned seeing the weapon before trial. Grieves was cross-examined extensively about this inconsistency, and the jury chose to credit his trial testimony. *See Owens v. State*, 170 Md. App. 35, 102 (2006), *aff'd*, 399 Md. 388 (2007) (“[I]t is the jury's task to resolve any conflicts in the evidence and assess the credibility of witnesses.”).

Thomas' second contention, that Gilpin never observed Tart recovering the weapon, nor is the recovery shown on the surveillance video, likewise presents a conflict that was for the jury to resolve. Thomas concludes that the recovered weapon was not linked to him. This inconsistency was also highlighted during cross-examination. It is apparent that the jury chose to credit Tart's testimony in that respect.

Finally, Thomas points to Fagan’s incident report, which stated that it “appeared that either inmate McMillan or inmate Thomas had a weapon and was striking inmate Bolen with it.” This evidence was admitted for impeachment purposes only, and not for the truth of the matter asserted. The Court ruled:

THE COURT: I don’t think it gets in to establish that someone else might’ve had a weapon, because it, whoever, whoever’s opinion that is needs to testify to that.

[DEFENSE COUNSEL]: Okay, but I . . .

THE COURT: But it can get in to . . . impeach [Detective Fagan’s] investigation.

Accordingly, we do not consider this evidence for the purposes asserted by Thomas.

Thomas does not, and indeed cannot, contend that the elements of the crimes for which he was convicted were not proven beyond a reasonable doubt. We summarize: Grieves, just 15 feet away, witnessed Thomas attacking Bolen with a weapon. Furthermore, the entire incident was captured on video surveillance. Anderson, and medical professionals who treated Bolen, provided testimony about the serious nature of his wounds. Each issue Thomas has raised relates to alleged inconsistencies in the evidence - clearly matters for determination by the trier of fact. We do not re-weigh the evidence and substitute our own judgment for that of the jury. Our function 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.” *Coleman*, 423 Md. at 672.

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