UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2392

September Term, 2014

JOHNNY RAY HUNGERFORD, JR.

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Raker, Irma, S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 7, 2015

Johnny Ray Hungerford, Jr., ("Appellant") was convicted of first-degree assault by a jury sitting in the Circuit Court for Howard County on July 24, 2014. Initially charged by grand jury indictment with the attempted murder of Joseph Harris, the jury did not find Mr. Hungerford guilty of attempted murder, but did find him guilty of first-degree assault. On November 24, 2014, the court sentenced Mr. Hungerford to a term of 15 years imprisonment. In his timely appeal, Mr. Hungerford presents two questions for review:

I. Was it error to refuse to ask whether any prospective jurors would feel obliged to change their verdict of not guilty, only because they were in the minority?

II. Was the evidence sufficient to sustain Appellant's conviction of first-degree assault?

Because we can find no support in Maryland law for the proposition that a court is required to ask prospective jurors about their propensity to change their verdict in the face of disagreement with fellow jurors, we cannot say that the trial court abused its discretion in refusing to ask Mr. Hungerford's proposed voir dire question. Additionally, we hold that the jury had sufficient evidence from which it could conclude that, by repeatedly kicking a vital part of the body with deadly force, Mr. Hungerford had the requisite intent to cause serious physical injury to Mr. Harris. We affirm the judgment of the trial court.

BACKGROUND

On March 12, 2014, Mr. Hungerford was charged via a three-count indictment in the Circuit Court for Howard County. The indictment charged Mr. Hungerford with the attempted murder of Joseph Harris (count 1); first-degree assault of Joseph Harris (count

2); and second-degree assault of Joseph Harris (count 3). Mr. Hungerford pleaded not guilty to all counts.

Before the jury was empaneled on July 22, 2014, the parties discussed Mr. Hungerford's request for voir dire question 15, which stated:

> If you came to the conclusion that the State had not proven the guilt of the accused beyond a reasonable doubt, and you found that a majority of the jurors believed the defendant was guilty, would you feel compelled to change your verdict only because you were in the minority?

The State objected to proposed question 15, and defense counsel responded, "I think Number 15 is sort of a standard question, but I think Your Honor has ever [sic] given that on my behalf so that's fine." Subsequently, question 15 was not asked on voir dire.

After the jury was empaneled, the State called its first witness, Stephanie Talbott. Ms. Talbott testified that, prior to January 17, 2014, Mr. Hungerford resided with her in an apartment in Howard County, Maryland. During that time, Ms. Talbott and Mr. Hungerford had been in a tumultuous relationship and, by January of 2014, Mr. Hungerford had a second apartment at which he resided part-time. Ms. Talbott testified that, on the evening of January 17, 2014, when she came home from work, Mr. Hungerford was at their shared apartment. When Mr. Hungerford inquired as to her plans for the evening, Ms. Talbott indicated that she intended to go to the grocery store. However, Ms. Talbott changed her mind and, instead, decided to go play pool. Ms. Talbott then sought out Mr. Joseph Harris, and the two of them went to Second Chance Saloon. While at the Second Chance Saloon, Ms. Talbott and Mr. Harris "played two or three games[,] . . . ordered food," and had two or three beers each.

According to Ms. Talbott's testimony, when she and Mr. Harris returned to the apartment complex at approximately 1:00 a.m. on January 18, they hugged each other and, immediately thereafter, Mr. Hungerford approached them in the parking lot. Ms. Talbott and Mr. Hungerford began to argue. Ms. Talbott testified that Mr. Harris never interjected or joined the argument between herself and Mr. Hungerford, and she did not otherwise see any reaction from Mr. Harris. Regarding the physical altercation, Ms. Talbott testified to the following:

> [Ms. Talbott:] We were -- me and [Mr. Hungerford] were arguing back and forth, and then he just went to my left. And when I turned, [Mr. Hungerford and Mr. Harris] were just kind of holding each other. . . . And I believe I tried to separate them, because . . . I don't like seeing anybody fight, and then [Mr. Harris] was on the ground.
>
> [Prosecutor:] And when he was on the ground, what, if anything, happened?
>
> A. I saw [Mr. Hungerford] kicking him.
>
> * * *
>
> Q. Do you know if you recall what area [Mr. Hungerford] was kicking [Mr. Harris]?
>
> A. In the head.
>
> * * *
>
> Q. Okay. And what, if anything, were you able to see regarding [Mr. Harris's] response to being kicked in the head?
>
> A. What I saw was [Mr. Hungerford's] foot and then he just walked away. When I went down to [Mr. Harris] and was saying his name, his eyes were wide open and he wasn't answering me.
>
> * * *
>
> Q. How many times did you see [Mr. Hungerford] kick[] [Mr. Harris]?

A. Two or three.

When questioned about her observations of Mr. Harris's condition following the attack, Ms. Talbott stated: "[Mr. Harris's] eyes were open and he wasn't responding. . . . I just saw blood I think from his mouth and his ear maybe." Based on her observations, Ms. Talbott called 911. The audio recording of the resulting 911 call was admitted into evidence. In the audio recording that was played for the jury, a panicked Ms. Talbott stated: "Somebody just kicked this guy in the head (inaudible) and he's laying in the parking lot. I need help now." When the dispatcher asked if Mr. Harris fell, Ms. Talbott replied, "[n]o, he didn't fall and hit his head. Somebody kicked him in his [] head." Thereafter, the dispatcher asked who kicked Mr. Harris, and Ms. Talbott clearly and deliberately responded, "Johnny Hungerford."

After listening to the 911 recording played in open court, Ms. Talbott was questioned about her demeanor during the call. Ms. Talbott responded:

> [Ms. Talbott:] [T]hat's the way I spoke because of what I saw. When I saw [Mr. Harris's] eyes were open, I didn't know that he was unconscious. I thought he was gone.
>
> [Prosecutor:] When you say gone, what do you mean?
>
> A. Deceased. . . .

Howard County Police Officer Samuel Honablew testified that he responded to the scene at approximately 1:06 a.m. He testified to his observations upon arriving at the scene, stating:

> There was a male subject lying on the ground and a female subject sitting beside him.

* * *

> I noticed [Mr. Harris] was bleeding from his mouth. He was laying on his back. He was bleeding from his mouth. And he was breathing, but he wasn't conscious. . . . So I tried to talk to him to see if he would respond to my questions or, you know, see if he would wake up, but he wouldn't wake up.

Officer Honablew further indicated that, finding Mr. Harris unresponsive, he executed a sternum rub by applying pressure to Mr. Harris's sternum to cause a pain stimulus to which a conscious person would react. Officer Honablew testified that, to his belief, he did not apply enough pressure to Mr. Harris's sternum to fracture it. When Mr. Harris failed to respond to the sternum rub, Officer Honablew checked Mr. Harris's pockets for identification and repositioned him for safety. Officer Honablew stated:

> In addition to bleeding he also had teeth loose in his mouth, so I placed him [on] the side and rolled him on his side to prevent the blood and teeth from – because he was breathing, so to prevent him from choking [on] his blood and teeth, I rolled him on his side and awaited EMS.

Emergency medical services arrived between five and ten minutes later.

On the second day of the trial, firefighter/paramedic Michael McCoy, Jr., testified that, during his on-the-scene trauma assessment of Mr. Harris he found no injuries other than those to Mr. Harris's face and head. He described those injuries as "a lot of soft tissue injuries, bruising, swelling, open lacerations that were consistent with basically blunt force trauma." Additionally, Mr. McCoy also indicated that the injuries were concentrated on Mr. Harris's head and that bleeding was present from 3 to 5 different facial lacerations. After being stabilized at the scene, an unconscious Mr. Harris was transported to the University of Maryland Shock Trauma.

The jury also heard testimony from Eugenio R. Rocksmith, M.D., of the University of Maryland Rehabilitation and Orthopedic Institute. Dr. Rocksmith, who specializes in treating patients with brain injury, testified that he examined Mr. Harris on February 15, 2014, and found that Mr. Harris "was not able to interact with his environment much at all."

Mr. Hungerford testified in his own defense. According to his version of the events of January 18, 2014, Mr. Hungerford exited his apartment and saw Ms. Talbott being restrained by someone. Mr. Hungerford testified, that when he approached Ms. Talbott and asked her if she was okay, he was struck by Mr. Harris, who then lunged and grabbed him. Mr. Hungerford described the altercation in the following colloquy:

> [Mr. Hungerford:] [Mr. Harris] swung at me, okay? And then I hit him four times, and then he fell with his arms, like, wrapped around my legs, to the ground.
>
> [Defense Counsel:] Okay. When he hit the ground, did you see him hit the ground?
>
> A. Yes.
>
> Q. And what part of his body did you see hit the ground?
>
> A. His face; his head.
>
> * * *
>
> Q. Okay. And what, if anything, did you do after he fell?
>
> A. After he fell, I stepped from his grasp, and I got in my truck and I left.
>
> Q. Did you ever kick Mr. Harris?
>
> A. I did not.

Further, Mr. Hungerford testified that his intent that evening was never to hurt Mr. Harris any more than necessary to extricate himself from the situation.

On cross-examination, however, Mr. Hungerford's testimony wavered a bit regarding the positions of the various persons involved in the altercation, the number of times Mr. Hungerford struck Mr. Harris, and whether Mr. Hungerford could identify the individual who first struck him. The following notable colloquy occurred:

[Prosecutor:] …[Y]ou hit [Mr. Harris] three times.

[Mr. Hungerford:] Yes.

Q. And then he went down.

A. Yes.

Q. So you watched him go down, kicked his head on the ground, and then walked away.

A. Yes.

Q. And then that was it.

A. That was it.

The trial court instructed the jury prior to deliberation. Among the instructions given to the jury was Maryland Criminal Pattern Jury Instruction 2:01, which the court articulated as follows:

> The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. Your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment.
>
> Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations, do not hesitate to reexamine your own views. **You should**

> **change your opinion if you are convinced you are wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors, or for the mere purpose of reaching a verdict.**

(Emphasis added).

Following deliberation on July 24, 2014, the jury found Mr. Hungerford not guilty of attempted first-degree murder, attempted second-degree murder, and attempted manslaughter. However, the jury found Mr. Hungerford guilty of first-degree assault and second-degree assault. The jury was polled and harkened to the verdict, and all jurors affirmed their concurrence in the verdict announced by their foreperson.

DISCUSSION

I.

Before this Court, Mr. Hungerford contends that the circuit court erred in refusing to ask, on voir dire, whether prospective jurors would feel obliged to change their verdict simply by virtue of being in the minority. He argues that the requested question was aimed at identifying jurors who would feel compelled to surrender their honest opinions in the face of disagreement, and was, therefore, reasonably likely to reveal a specific cause for disqualification.

The State counters, first, that this Court should decline to address the issue because Mr. Hungerford has failed to present supporting case law and the matter is not adequately addressed in Mr. Hungerford's brief. In the alternative, the State argues that the requested voir dire question "was not reasonably calculated to determine whether prospective jurors

were statutorily qualified to serve or to elicit bias or prejudice," and that the matter was fairly covered by other voir dire questions.

We disagree with the State's contention that this issue was not addressed adequately in Mr. Hungerford's brief. Although the issue was, perhaps, not briefed to the fullest extent possible, it was presented in a manner sufficient to apprise all parties and this Court of the arguments presented by Mr. Hungerford, and it does not appear that the State was prejudiced in any way. *See Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 242 (2004).

Maryland employs a limited voir dire for the sole purpose of "ensur[ing] a fair and impartial jury by determining the existence of cause for disqualification." *Washington v. State*, 425 Md. 306, 312 (2012) (citations omitted). "[A] trial court need not ask a voir dire question that is 'not directed at a specific [cause] for disqualification[or is] merely "fishing" for information to assist in the exercise of peremptory challenges[.]'" *Pearson v. State*, 437 Md. 350, 356 (quoting *Washington*, 425 Md. at 315), *reconsideration denied* (Apr. 17, 2014).

Upon request by a party, a trial court is required to ask a voir dire question "if and only if the voir dire question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Id.* at 357 (alteration in original) (quoting *Moore v. State*, 412 Md. 635, 663 (2010)). "There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a 'collateral matter [is] reasonably liable to have undue influence over' a prospective juror." *Id.* (quoting *Washington*, 425 Md. at 313). Plainly, the former category does not apply to the matter before us. The latter category relates to questions calculated to reveal "biases directly related to the crime, the witnesses,

or the defendant[.]" *Id.* (quoting *Washington*, 425 Md. at 313). Mr. Hungerford's requested voir dire question was not calculated to reveal a specific bias related to the crime, witnesses, or the defendant. Rather, it was calculated to reveal the propensity of a juror to succumb to peer pressure.

We can find no support in Maryland law for the proposition that the court was required to ask prospective jurors "would you feel compelled to change your verdict only because you were in the minority." A question designed to determine how well a prospective juror would withstand pressure to change his or her mind does not fall within the limited scope of mandatory inquiries designed to reveal cause for disqualification in Maryland. "An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a voir dire question." *Id.* at 356 (citing *Washington,* 425 Md. at 314). It was, thus, within the discretion of the trial court to determine whether the question was appropriate. *See id.* (citing *Washington*, 425 Md. at 314). We note that prior to deliberation, the jury was given Maryland Criminal Pattern Jury Instruction 2:01: ". . . do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors . . . [.]" The instruction given addressed the concern raised in Hungerford's proposed voir dire question, *see Twining v. State,* 234 Md. 97, 100 (1964), and demonstrates that the trial court was appropriately careful in ensuring Mr. Hungerford was afforded his right to a fair and impartial jury. We hold that the trial court did not abuse its discretion in failing to ask Mr. Hungerford's request number 15 during voir dire.

II.

Mr. Hungerford was convicted of first-degree assault under Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CR") § 3-202(a)(1), which provides that "[a] person may not intentionally cause or attempt to cause serious physical injury to another." "Serious physical injury" is defined in CR § 3-201(d) as an injury that: "(1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." "[S]ince 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." *Pryor v. State*, 195 Md. App. 311, 335-36 (2010) (quoting *State v. Earp*, 319 Md. 156, 167 (1990)).

Mr. Hungerford contends that the evidence presented at trial was insufficient to support his first-degree assault conviction. He argues on appeal that the State failed to prove that he had "an intent to do serious bodily injury that could result in death." Mr. Hungerford acknowledges in his brief that he and Mr. Harris were "involved in a short struggle" and that Mr. Harris "sustained serious injuries." However, Mr. Hungerford maintains that there was no evidence that he "had a grudge against the victim, or that he ever said what his intentions were."

The State contends that it presented "abundant evidence from which a reasonable juror could infer an intent to inflict serious physical injury, including evidence that [Mr.] Hungerford repeatedly kicked an unconscious [Mr.] Harris in a vital part of the body, his head." The State argues that jurors may infer Mr. Hungerford's intent to inflict serious

bodily injury because such injury is the natural and probable result of his conduct—"direct[ing] deadly force at a vital part of the body."

"In reviewing the sufficiency of the evidence to support a criminal conviction, the standard to be applied is whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Owens v. State*, 161 Md. App. 91, 105 (2005) (citation and internal quotation marks omitted). Accordingly, "'a guilty verdict may be set aside only if there is no legally sufficient evidence or inferences drawable therefrom on which the jury could find the accused guilty beyond a reasonable doubt.'" *Diggs & Allen v. State*, 213 Md. App. 28, 88 (quoting *Morgan v. State*, 134 Md. App. 113, 121 (2000)), *cert. granted sub nom. Allen v. State*, 436 Md. 327 (2013) and *cert. granted sub nom. Diggs v. State*, 436 Md. 327 (2013) and *aff'd sub nom. Allen v. State*, 440 Md. 643 (2014). After reviewing the evidence, we hold that that there was sufficient evidence to support the jury's verdict that Mr. Hungerford was guilty of first-degree assault.

In addressing the evidence sufficient to prove intent for first-degree assault pursuant to CR § 3-202(a)(1), in *Chilcoat v. State*, we stated:

> Although the State must prove that an individual had a specific intent to cause a serious physical injury[], a jury may infer the necessary intent from an individual's conduct and the surrounding circumstances, whether or not the victim suffers such an injury. [] Also, the jury may "infer that 'one intends the natural and probable consequences of his act.'"

155 Md. App. 394, 403 (2004) (citations omitted).

In *Chilcoat*, the defendant was convicted of first-degree assault after hitting the victim in the head with a beer stein four or five times. *Id.* at 396-99. The jury was shown the weapon in question, and saw the victim's medical records, and photographs of his

injuries. *Id.* at 404. We noted that "the statute prohibits not only causing, but attempting to cause, a serious physical injury to another," and that "the jury may infer that one intends the natural and probable consequences of his act." *Id.* at 394 (citation and internal quotation marks omitted). Accordingly, we concluded that "[t]he jury could determine whether inflicting a serious physical injury was the natural and probable consequence of hitting [the victim] with the stein." *Id.*

Contrary to Mr. Hungerford's argument that the evidence was insufficient because there was no evidence that he "had a grudge against the victim, or that he ever said what his intentions were[,]" no such evidence is required. *See, e.g.*, *In re Lavar D.*, 189 Md. App. 526, 590 (2009) (stating that the court was permitted to draw the inference that the assailants intended to inflict serious physical injury based on evidence that the assailants "repeatedly hit, punched, and kicked [the victim]"); *see also Morrison v. State*, 234 Md. 87, 88 (1964) (per curiam) (holding that, even where the defendant testified to his lack of intention to do bodily harm, there was ample evidence of an intent to murder).

In the case *sub judice*, the jury was shown Ms. Harris's medical records and photographs of his injuries. The jury also heard testimony from an eyewitness, as well as the audio recording of Ms. Talbott's panicked 911 call reflecting that Mr. Hungerford kicked Mr. Harris in the head several times while Mr. Harris was incapacitated on the ground. It is clear that the jury had the necessary evidence to determine that inflicting serious physical injury to a vital part of the body was the "natural and probable consequence" of Mr. Hungerford's actions. Thus, we hold that the jury could reasonably

infer that Mr. Hungerford had the specific intent to cause a serious physical injury to Mr. Harris.

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