

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0289

September Term, 2015

ROMEO SILKEY TAYLOR-FLOYD

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: February 18, 2016

*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 bench trial, in the Circuit Court for Prince George’s County, Romeo Silkey Taylor-Floyd, appellant, was convicted of possession of a controlled dangerous substance, possession with intent to distribute a controlled dangerous substance, and second-degree assault but acquitted of fleeing and eluding, resisting arrest, and escape in the second degree. He was thereafter sentenced to a term of one year of imprisonment for possession with intent to distribute marijuana and to a term of three years’ imprisonment for second-degree assault; the two terms of imprisonment were to run consecutive to each other.

In this appeal, appellant presents a single question for our review: “Was sufficient evidence presented to support his conviction for second-degree assault?” Because we conclude that the evidence was sufficient to support that conviction, we affirm.

Factual Background

The evidence produced at trial established that, on May 22, 2014, several Prince George’s County police officers observed appellant committing various traffic offenses, namely, failing to stop at a stop sign, failing to signal, and failing to wear a seat belt. One of those officers, Shane Pumphrey, then activated his emergency equipment, signaling appellant to pull his vehicle to the side of the road. But, instead of doing so, appellant immediately sped up and, then, while speeding away, began throwing small bags of what was later determined to be marijuana out the driver-side window of his vehicle.

When appellant finally pulled his car over to the side of the road, Officer Pumphrey ordered him to step out of the car. Appellant complied, and Officer Pumphrey arrested and

handcuffed him. The officer then escorted appellant to his squad car and placed appellant in the front passenger seat of the squad car.¹ The officer then entered the squad car through the front driver’s side door.

But, after Officer Pumphrey fastened the appellant’s seat belt, appellant unclipped the seat belt, began kicking and screaming, and tried to open the passenger-side door of the car. As Officer Pumphrey struggled with appellant, Detective Halsey, who was also present at the scene, walked over to Pumphrey’s vehicle to assist Officer Pumphrey. When Detective Halsey reached the front passenger-side door, appellant kicked the door, causing it to fling open and strike the detective on his hand and wrist. That blow left Detective Halsey with a sprained wrist and in need of medical treatment.

Standard of Review

“In reviewing the sufficiency of the evidence presented . . . we consider the evidence in the light most favorable to the prosecution.” *Painter v. State*, 157 Md. App. 1, 10 (2004) (internal citations omitted). “We then determine whether, based on that evidence, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Id.* at 10-11 (internal citations omitted). “When we apply that test, we consider circumstantial as well as direct evidence.” *Id.* And, indeed, circumstantial evidence alone, may be “sufficient to support a conviction, provided the circumstances

¹ Officer Pumphrey did not place appellant in the rear of his car because it was not equipped with a divider between the front and rear seats.

support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Id.* (internal citations omitted).

Discussion

Appellant contends that there was insufficient evidence at trial to sustain his conviction for the battery variety of second-degree assault.² He claims the trial court created an “ambiguity” in not specifying whether the facts supporting his conviction for second-degree assault were distinct from the facts that supported the counts for which he was acquitted, namely fleeing and eluding, resisting arrest, and escape in the second degree, and that this ambiguity shows that the evidence was legally insufficient to sustain the assault conviction. Then, as a last resort, appellant insists that any physical contact between appellant and Detective Halsey was “incidental to typical police activity” and was thus “*de minimus*.”

In Maryland the elements of the battery variety of second-degree assault are as follows: (1) the defendant causes offensive physical contact with the victim; (2) the contact is the result of an intentional or reckless act of the defendant and was not accidental; and (3) the contact is not consented to by the victim or was not legally justified. *Nicolas v. State*, 426 Md. 385, 407 (2012). The evidence presented at trial showed that appellant “did cause offensive physical contact” with Detective Halsey when he kicked the door into

² Under Section 3-203(a) of the Criminal Law Article of the Maryland Code, “assault” includes: an assault of the battery variety (i.e., consummated battery), a consummated battery and an antecedent assault, an attempted battery, or a placing of the victim in fear of imminent battery. *Lamb v. State*, 93 Md. App. 422, 428 (1992).

Detective Halsey’s hand and wrist; the testimony of both Officer Pumphrey and Detective Halsey established that appellant intentionally and unjustifiably kicked the car door. Moreover, Detective Halsey did not consent to that contact. Thus, the evidence was sufficient for a rational finder of fact to determine all of the elements of second-degree assault had been met beyond a reasonable doubt.

This conclusion does not resolve this matter, however, because appellant claims that the trial court failed to specify whether the acts resulting in the assault conviction were distinct from the other charges on which he was acquitted, namely fleeing and eluding, resisting arrest, and escape in the second degree, and that this ambiguity must be resolved in his favor. And, when that occurs, the evidence, he claims, was insufficient to sustain his second-degree assault conviction.

There were no ambiguities in the trial court’s findings. The trial court did not find that the assault occurred while the appellant was resisting arrest. Indeed, the appellant was not convicted of resisting arrest, as the trial court found that the Officer Pumphrey had completed the arrest prior to the assault: “I have testimony from Officer Pumphrey that [appellant] was cooperative, that he did what he was told, he was handcuffed and he was arrested at that time.” In fact, the trial court found that only *after* the appellant was arrested and his seat-belt fastened in the squad car did the assault occur; the two were not contemporaneous. Hence, the court found the conduct resulting in the assault charge, of which he was convicted, and the conduct resulting in the resisting arrest charge, of which he was acquitted, were separate and distinct.

Nor were the trial court's findings ambiguous as to the charge of fleeing and eluding, as the court found that there was no evidence that the officers had displayed a badge or insignia of office as required under the fleeing and eluding statute, Md. Code Ann., Transp. 21-904, and thus acquitted appellant of that charge. Finally, appellant was acquitted of escape because the State did not establish that appellant knowingly departed from custody without the authorization of a law enforcement or judicial officer as required under Md. Code Ann., Crim. Law 9-405.

Thus, the three counts on which appellant was acquitted require a proof of facts that his conviction of second-degree assault does not. Accordingly, the record reflects that the factual basis supporting the trial court's finding of second-degree assault was separate and distinct from the factual bases supporting appellant's acquittals. Consequently, we find that there were no ambiguities in the trial court's findings that appellant was guilty of second-degree assault.

While the record reveals that there were no ambiguities in the trial court's findings, we shall, nonetheless, briefly address appellant's argument that, if ambiguities were present, they must be resolved in his favor. In support of this proposition, appellant cites *Nicolas*, a case in which the Court of Appeals held that, under the facts of that case, ambiguities regarding the conduct on which the defendant's convictions for resisting arrest and second-degree assault were based should be resolved in favor of the defendant, and, therefore, the second-degree assault conviction, the lesser offense, must merge with his resisting arrest conviction, the greater offense. *Id.* at 409. However, appellant was not convicted of an offense into which second-degree assault, if based on the same underlying

conduct, may merge as occurred in *Nicolas*. Unlike the defendant in *Nicolas*, appellant was acquitted of resisting arrest. Consequently, the merger doctrine was not applicable.

Finally, there is no evidence to support the appellant's contention that his kicking of Detective Halsey was "incidental to typical police activity (particularly to arrests)." The only legal exceptions to such an offensive touching are that either the contact was accidental or legally justified, and neither exception is applicable in this case. Although appellant claimed that the kicking was unintentional, the testimony of both Officer Pumphrey and Detective Halsey established that appellant intentionally and unjustifiably kicked the car door, which then struck Detective Halsey on the hand and wrist. The trial court, in rendering its conclusions, chose to credit the officer's testimony over the appellant's, which it may do.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**