UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0738

September Term, 2015

JACQUELIN UNDERWOOD

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: May 10, 2016

Following a jury trial in the Circuit Court for Baltimore City, Jacquelin Underwood, appellant, was convicted of openly carrying a dangerous weapon with the intent to injure, failing to obey a lawful order, and disorderly conduct.[1] Appellant noted a timely appeal, and presents two questions for our review:

1. Was the evidence sufficient to support [a]ppellant's convictions?

2. Did the trial court abuse its discretion in striking a potential juror for cause?

For the following reasons, we shall affirm the judgment of the circuit court.

BACKGROUND[2]

On September 28, 2014, four uniformed Baltimore City Police officers responded to the area of 6th Street and Freeman Avenue on a call for a "large fight in progress with weapons." The officers observed an "irate" "crowd" of people on both sides of the street, who were yelling at each other. The officers exited their marked patrol vehicles and attempted to "regain order" and determine the cause of the disturbance. During the process of "trying to get everything quieted down," the crowd "erupted again," into "a lot of screaming and pointing" to something on one side of the street.

[1] Appellant was sentenced to a two-year term of imprisonment for openly carrying a dangerous weapon with intent to injure; sixty days for failure to obey a lawful order, and ninety days for disorderly conduct. The court suspended all three sentences in favor of two years of supervised probation.

[2] As Underwood contends that the evidence was insufficient to support her convictions, the evidence is presented in the light most favorable to the State. Evidence tending to support the defense theory of the case is omitted as exculpatory inferences are not part of the version of evidence most favorable to the State. *See Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied*, 445 Md. 5 (2015).

Officer Jeff Meister looked in the direction the crowd had pointed, and observed a female, whom he identified at trial as appellant, standing at a doorway. She appeared to be holding a 10- to 12-inch "kitchen-style" knife in her right hand, "sort of down on her side." She was yelling "hostilities towards the crowd," and began to move the knife around "in a frantic manner." The officer, who stood between appellant and the crowd, ordered her to drop the knife. Instead, appellant ignored the order and "continued to scream." Officer Meister then began to walk toward appellant while repeatedly ordering her to drop the knife. When it appeared to him that she was starting to raise the knife, he began to run toward her. Appellant then threw the knife "over [Officer Meister] and into the crowd," whereupon the crowd dispersed. Appellant was placed under arrest. The police searched for the knife, but it was not recovered.

Laura Bocek lives on Freeman Street and witnessed the occurrence from her porch. She related that "there was an argument between two families" that live in houses located adjacent to one another, that the families had been arguing "pretty much all summer," and that appellant lived in one of those houses. She explained what happened on the evening in question as follows:

> Initially, there was a lot of yelling back and forth. Primarily, what I heard was [appellant], but I know there was a commotion from several people, mostly between the two families and the exact adjacent neighbors.

When the police arrived, they "pulled [one] family to their side of 6th Street and had the other families towards their side." Bocek explained that at some point, attention was drawn to appellant when she "grabbed [ ] a kitchen knife and threw it into the crowd." On cross-

examination, Bocek admitted that in a previous statement she had stated that the knife "landed before the crowd."

DISCUSSION

I. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

The standard for reviewing the sufficiency of the evidence as to all three of appellant's convictions is "whether, after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found each element of the crime beyond a reasonable doubt." *Rodriguez v. State*, 221 Md. App. 26, 35, *cert. denied*, 442 Md. 517 (2015) (citation and internal quotation marks omitted). It is the State's burden to prove each and every element of a criminal offense. *See Hoey v. State*, 311 Md. 473, 490 (1988); Maryland Criminal Pattern Jury Instruction 2:02.

B. Analysis

i. Openly Carrying a Dangerous Weapon with the Intent to Injure

Underwood was charged with a violation of Md. Code (2001, 2012 Repl. Vol.) § 4-101(c)(2) of the Criminal Law Article ("CL"), which prohibits an individual from wearing or carrying "a dangerous weapon . . . openly with the intent or purpose of injuring an individual in an unlawful manner." In order to convict Underwood, the State was required to prove that she 1) carried a dangerous weapon, 2) carried the weapon openly, and 3) openly carried the weapon while harboring the intent to injure a person. *See Harrod v. State*, 65 Md. App. 128, 139-40 (1985).

Appellant contends that the evidence was insufficient to prove the requisite intent of the dangerous weapons charge. First, she argues that the only intent that can be attributed to her as she stood holding the knife on the front porch was as a "reasonable precaution against an apprehended danger," which is not an illegal use of a weapon under the statute.[3] She further asserts that the requisite intent to injure when she threw the knife cannot be inferred from the mere use of the knife. The State responds that the evidence that Underwood was "yelling 'hostilities' at the crowd, waiving the knife in a 'frantic manner' and throwing the knife 'into the crowd'" was sufficient circumstantial evidence of an intent to injure.

We disagree with appellant's argument that the only intent that could be attributed to her was self-defense. The evidence that was presented showed that, despite the presence of uniformed police officers on the scene, appellant waved a large knife and continued to yell "hostilities" at a crowd of neighbors with whom she had been feuding, ignored repeated police orders to drop the knife, and then threw the knife into the crowd. We agree with the State, in that a rational jury could have easily inferred from that evidence that appellant acted with intent to injure. *See Breakfield v State,* 195 Md. App. 377, 393 (2010) ("intent may be inferred from the circumstances surrounding [a defendant's] acts.")

[3] The prohibition against openly carrying a weapon does not apply to "an individual who carries the weapon as a reasonable precaution against apprehended danger, subject to the right of the court in an action arising under this section to judge the reasonableness of the carrying of the weapon, and the proper occasion for carrying it, under the evidence in the case." CL § 4-101(b)(4).

Appellant mistakenly relies on *Chilcoat v. State*, 155 Md. App. 394, *cert. denied*, 381 Md. 674 (2004), in support of her argument that "the requisite intent cannot be inferred from [her] *use* of the knife" (emphasis in appellant's brief). In that case, we held that the defendant's "momentary possession" of a beer stein that was used to commit an assault did not amount to "carrying a weapon," but was merely incidental to the assault. *Id*. at 411-13. The holding in *Chilcoat* is inapposite because the issue there was whether the State had proved the element that the defendant *carried* a weapon in the first place, and not, as here, whether there was sufficient evidence to prove the element of the intent to injure.

To the extent that appellant is claiming that the evidence was insufficient to prove that she carried a weapon, we note that such an argument, as the State points out, was not preserved. Defense counsel's argument on the motion for judgment of acquittal as to the sufficiency of the evidence on this charge was limited to the element of intent.[4] *See Whiting v. State*, 160 Md. App. 285, 308 (2004), *aff'd*, 389 Md. 334, (2005) ("[R]eview of a claim of insufficiency is available only for the reasons given by appellant in his motion for judgment of acquittal.")

[4] In support of the motion for judgment of acquittal, defense counsel argued that there was no intent to injure shown because "the knife didn't even come by anybody." It was also argued that even if appellant had a knife, "she had it on her property," that it was "completely legal for her to have a steak knife at her house," and that it was "reasonable [for her to have the knife] when there's a mob out there coming to get her." We do not interpret this as an argument that the State had failed to prove that appellant was "carrying" a dangerous weapon. Rather, it appears to be an argument that appellant's actions were a "reasonable precaution against an apprehended danger," such that the exception in CL § 4-101(b)(4) to the prohibition against carrying a dangerous weapon should apply.

ii. Disorderly Conduct

Appellant next challenges the sufficiency of the evidence as to the charge of disorderly conduct. She was charged with a violation of CL § 10-201(c)(2), which provides that "[a] person may not willfully act in a disorderly manner that disturbs the public peace[.]" As we have explained,

> The gist of the crime of [disorderly conduct] . . . is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area. In other words, it is conduct of such a nature as to affect the peace and quiet of persons actually present who may witness the conduct or hear the language and who may be disturbed or provoked to resentment thereby[.]

Dziekonski v. State, 127 Md. App. 191, 200-01 (1999). To be found guilty, the "effect of [a defendant's] conduct need only be that the peace was disturbed." *Id.* at 201.

Appellant contends that the evidence was insufficient to convict her of disturbing the peace because "the peace was already disturbed." She also asserts that there was no evidence of whether, or how, the crowd reacted when she threw the knife, and therefore, no evidence that she "in any way disturbed the peace."[5] The State responds that her conviction for disturbing the peace should be affirmed because there was evidence that she started the disturbance in the street for which the police were called.

Although the record is unclear as to how, or by whom, the disturbance was started, the State introduced evidence that after the police arrived, the crowd "erupted again" and

[5] Appellant also argues that her possession of the knife was not a crime, but "a reasonable precaution against danger apprehended within that disturbance[.]" That is not an argument that the evidence to prove disorderly conduct was insufficient, but rather that her actions were justified.

began screaming and pointing to appellant, who was observed to be holding a knife, and that appellant's action of throwing the knife into the crowd caused the crowd to disperse. The evidence was sufficient to support an inference that appellant's conduct disturbed the public peace.

We reject appellant's suggestion that the evidence was insufficient to sustain the conviction because "the peace was already disturbed." The statute contains no provision that would exempt from prosecution all disorderly conduct that occurs during an ongoing disturbance, and appellant has cited no other authority in support of the proposition. In any event, as noted above, the evidence was sufficient for the jury to conclude that, at the very least, appellant's actions further incited the crowd and/or reignited the disturbance.

iii. Failure to Obey a Lawful Order

Appellant's third conviction was for a violation of CL § 10-201(c)(3), which provides that "[a] person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace." Appellant again contends that the "peace was already disturbed," and, therefore, the order to drop the knife was not made by the police in order to "prevent a disturbance to the pubic peace," because "there was no disturbance to the peace to prevent." The State responds that the conviction for failure to obey a lawful order should be affirmed because the police order to "drop the knife" was issued in an attempt to prevent a "re-initiation" of the disturbance.

We reject appellant's argument that she cannot be convicted for failure to obey a lawful order because "the peace was already disturbed." Officer Meister stated that he issued the order to drop the knife because he needed to get the weapon "taken out of play"

to "stop any violence or anything else from coming." He also explained that "due to the nature of the situation . . . and the hostilities that [appellant] had towards the crowd, [he] had enough to believe that there was a possibility of violence that [he] had to head off." This was sufficient evidence from which the jury could have found that the order to drop the knife was issued not only to quell the disturbance, which had "erupted again" when the crowd saw appellant with the knife, but also to prevent her from using the knife to cause injury to anyone at the scene, which would have resulted in additional disturbance.

II. MOTION TO STRIKE JUROR FOR CAUSE

Appellant's final argument, which she concedes was not preserved for appellate review, is that the court abused its discretion by granting the State's motion to strike a prospective juror based on his facility with the English language. During voir dire, juror number 590 was called to the bench, where the following colloquy occurred:

> THE COURT: [Juror 590], you stood for that question I asked with those various parts, whether you were a citizen of Baltimore City and – and understood English and –
>
> JUROR NUMBER 590: Not too much. I don't understand – I speak English, but not lawyer or law or –
>
> [DEFENSE COUNSEL]: Neither do I.
>
> THE COURT: And what do you do for a living? What do you do?
>
> JUROR NUMBER 590: Work in the 7-Eleven.
>
> THE COURT: In a 7-Eleven. Okay. So you believe you might have some difficulty understanding English?
>
> JUROR NUMBER 590: The big word, yeah.

THE COURT: All right. Well, I can assure you we – we would make every effort to make sure there weren't big words used unnecessarily. But I guess it's up to you whether you believe you would be able to understand. I mean, this is – I don't believe this type of case has a lot of technical testimony. I'm not sure.

Any questions for [Juror 590]?

[PROSECUTOR]: No, your Honor.

[DEFENSE COUNSEL]: No questions.

THE COURT: All right, [Juror 590], just step over to the side for one minute, please.

[PROSECUTOR]: I would make a motion.

THE COURT: Yeah, I think if you're –

[DEFENSE COUNSEL]: I think he's fine. I mean, he understood what we were talking about up here. Really, this isn't a case that is going to get into any type of real technical language.

THE COURT: I think the – part of my difficulty is I think professionally if he were – I mean, the profession is one that may not lend itself to the use of a lot of reading and writing of English, of understanding English if he's managing a store. So any rebuttal to the –

[PROSECUTOR]: Well, I would just say he – (indiscernible). He says he had trouble understanding English and trouble following the law, and without even using all those words –

THE COURT: All right. The court will grant the motion.

Before the jury was sworn, defense counsel stated, without qualification, that the jury was acceptable. Accordingly, any objection to the jury selection process was not preserved for appellate review.[6]

[6] *See State v. Tejada*, 419 Md. 149, 169 (2011) ("When a party complains about the exclusion of someone from or the inclusion of someone in a particular jury, (continued…)

Appellant now contends that the juror appeared capable of comprehending and speaking English, and that he "never said he could not comprehend or speak English," but only stated to the court that he spoke English "but not lawyer or law." She further submits that the court's reasoning that "working at a 7-11 is not a profession that would 'lend itself to the use of a lot of reading and writing [and understanding] English if he's managing a store'" was "baseless." Appellant requests plain error review of the court's ruling.

The State asserts that any error was not egregious such that plain error review is warranted. The State further asserts that the court's ruling was not an abuse of discretion, and points to the juror's responses to questions about his ability to understand English, coupled with "factors that do not appear in the cold record."

Maryland Rule 8-131(a) provides, in pertinent part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

The Court of Appeals has described the circumstances justifying the exercise of plain error review as follows:

> [W]e have characterized instances when an appellate court should take cognizance of unobjected to error as compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial. We further made clear that we would intervene in those circumstances only when the error complained of was so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial.

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and thereafter states without qualification that the same jury as ultimately chosen is satisfactory or acceptable, the party is clearly waiving or abandoning the earlier complaint about that jury.")

Rubin v. State, 325 Md. 552, 588 (1992) (citations and internal quotation marks omitted); *see also Morris v. State*, 153 Md. App. 480, 507 (2003) (appellate invocation of plain error doctrine is a "rare, rare phenomenon"), *cert. denied*, 380 Md. 618 (2004).

We perceive no error in the trial court's ruling on a motion to strike a juror for cause, when that juror had indicated some difficulty comprehending the English language—much less any extraordinary error warranting plain error review.

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