Circuit Court for Baltimore City
Case Nos. 116008026 & 116147002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2303

September Term, 2016

JAMES D. JACKSON, III

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 3, 2017

Following a jury trial in the Circuit Court for Baltimore City, James D. Jackson, III, appellant, was convicted of voluntary manslaughter, use of a handgun in a crime of violence, possession of a regulated firearm by a prohibited person, and making a false statement to a law enforcement officer. On appeal, Jackson raises two issues: (1) whether the trial court erred in failing to apprise defense counsel of three notes that were received from the jury, and (2) whether the evidence was sufficient to sustain his convictions. For the reasons that follow, we affirm.

During trial, the court received twenty-three notes from the jury. Those notes were written on a pre-printed form that contained a signature line for the judge, the prosecutor, and defense counsel. Jackson claims that the trial court failed to notify him about three of the jury notes, specifically notes 4, 5, and 6, because those notes were not signed by defense counsel.

Maryland Rule 4-326 codifies the common law and constitutional right of a defendant to be present at every critical stage of trial and to be apprised of communications from the jury. *See Grade v. State*, 431 Md. 85, 96 (2013). Relevant to this appeal it provides that, if the judge determines that a communication from the jury pertains to the action, he or she shall "direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response." Md. Rule 4-326(d)(2)(C).

To be sure, the trial court was required to notify Jackson and defense counsel of all the notes it received from the jury. We are persuaded, however, that the trial court fully complied with its obligations in this case. The record reveals that the trial court informed

the prosecutor and defense counsel about jury notes 4 and 5 during the testimony of Jacqueline Jones; that the trial court, the prosecutor, and defense counsel had a lengthy discussion about those notes at the bench; that the prosecutor then asked Jones several questions based on those notes; and that after the prosecutor finished questioning Jones, defense counsel indicated that he did not need to see the notes again and that he had no further questions. The record also demonstrates that the trial court informed the parties of jury note 6 in open court, that the note was then passed to the parties, and that the note was verbally acknowledged by defense counsel. Consequently, Jackson's claim that he was not apprised of these notes lacks merit.

Appellant also contends that there was insufficient evidence to support his convictions. "The standard for our review of the sufficiency of the evidence is 'whether, after reviewing 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.'" *Neal v. State,* 191 Md. App. 297, 314, *cert. denied,* 415 Md. 42 (2010) (citation omitted). "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of the fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'@ *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted). In applying the test, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.'" *Neal*, *supra*, 191 Md. App. at 314 (citation omitted).

With respect to his convictions for voluntary manslaughter and use of a handgun in the commission of a crime of violence, Jackson claims that the evidence of perfect self-

defense was so overwhelming as to entitle him to a judgment of acquittal as a matter of law. He similarly asserts that there was insufficient evidence to support his conviction for possession of a firearm by a prohibited person because the evidence demonstrated that his possession of the handgun was a matter of necessity. *See State v. Crawford*, 308 Md. 683, 698-99 (1987) (holding that necessity is a defense to the charge of unlawful possession of a handgun).

In *Hennessy v. State*, 37 Md. App. 559 (1977), we rejected a similar argument stating:

> [Hennessy] . . . argues that because the State did not affirmatively negate his self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. The factfinder may simply choose not to believe the facts as described in that, or any other, regard[.]

Id. at 561-562 (internal citations omitted).

Jackson's contentions are equally "absurd." He was entitled to, and received, a jury instruction on perfect self-defense. And, although he did not request a jury instruction on the defense of necessity, we assume it was raised by the evidence. However, the fact that Jackson met his burden of production with respect to those defenses does not, as he claims, mean that he established them as a matter of law or that the jury was required to acquit him. Instead, the jury, as the finder of fact, was "free to believe some, all, or none of the evidence [he] presented" in support of those defenses. *Sifrit v. State*, 383 Md. 116, 135 (2004).

Jackson also asserts that there was insufficient evidence to sustain his conviction for making a false statement to a law enforcement officer. However, defense counsel did not

articulate any reasons to support his motion for judgment of acquittal with respect to that charge. Instead, he stated: "I will ask the Court to dismiss it and I won't make [an] argument for that and I'll submit on the false statement." Consequently, this claim is not preserved. *See Peters v. State*, 224 Md. App. 306, 354 (2015) ("[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal." (citation omitted)). Moreover, we decline to exercise our discretion to address this contention pursuant to Maryland Rule 8-131(a).

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