Circuit Court for Baltimore City
Case No. 118225002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 196

September Term, 2019

EDGAR A. PEREZ-DURAN

v.

STATE OF MARYLAND

Berger,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 27, 2020

Following a jury trial in the Circuit Court for Baltimore City, Edgar Perez-Duran, appellant, was convicted of attempted voluntary manslaughter, second-degree assault, reckless endangerment, theft of property, motor vehicle theft, and unauthorized removal of property. On appeal he contends that there was insufficient evidence to sustain his convictions. For the reasons that follow, we shall affirm.

BACKGROUND

At trial, the State called three witnesses: the victim; the victim's wife; and Edgar Martinez, Mr. Perez-Duran's roommate. Each witness provided a slightly different account of the incident. However, viewed in a light most favorable to the State, the evidence demonstrated that Mr. Perez-Duran, Mr. Martinez, and Nelson Garcia had left a bar and were returning to Mr. Martinez's vehicle when they observed the victim and the victims' wife arguing on the sidewalk. Mr. Garcia asked the victim if anyone had ever taught him how to treat a lady and then asked the victim's wife if she wanted to come home with him. Mr. Garcia and the victim began arguing and, during the argument, Mr. Garcia punched the victim in the mouth. The victim and his wife went into their apartment building and Mr. Garcia tried to follow them inside. The victim then went to his apartment, retrieved a knife, went back outside, and asked Mr. Perez-Duran and his companions, who were still standing on the steps of the apartment building, to leave. Mr. Perez-Duran and Mr. Garcia then said "bad things" to the victim and Mr. Garcia asked him if he wanted to fight. At this point, the victim's wife was standing between the victim and Mr. Garcia.

Mr. Perez-Duran then approached the victim from behind and stabbed him in the arm, causing the victim to drop the knife. Mr. Perez-Duran also stabbed the victim in the

back and on his left side. After the victim dropped the knife, Mr. Garcia picked it up and stabbed the victim once in the stomach. Mr. Perez-Duran then got into Mr. Martinez's car and drove away without Mr. Martinez's permission. He eventually crashed the car after driving it for several blocks and took a bus home.

Mr. Perez-Duran elected to testify and stated that the victim had threatened to get a gun before going into the apartment, that he did not stab the victim, and that he only hit the victim in the arm one time with a lug wrench after the victim had threatened to kill them. He also testified that he only took Mr. Martinez's car because he was "confused" and thought that Mr. Martinez had told him to get into the car. However, he acknowledged on cross-examination that, after he crashed the car, he went home and did not contact Mr. Martinez or the police to let them know about the accident.

DISCUSSION

Mr. Perez-Duran challenges the sufficiency of the evidence to sustain his convictions. In reviewing the sufficiency of the evidence, we ask "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." *Ross v. State*, 232 Md. App. 72, 81 (2017) (citation omitted). Furthermore, we "view[ ] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, "[w]e give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity

to observe and assess the credibility of witnesses.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

With respect to his convictions for attempted voluntary manslaughter and second-degree assault, Mr. Perez-Duran contends that the evidence was insufficient because the State failed to disprove that he acted in self-defense. Specifically, he asserts that "a reasonable finder of fact could not have found beyond a reasonable doubt that [he] was not acting in self-defense" because he "was clearly not the aggressor." However, in *Hennessy v. State*, 37 Md. App. 559 (1977), we rejected an identical argument stating:

> [Hennessy] concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but 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).

Mr. Perez-Duran's contention is equally "absurd." Although, he was entitled to, and received, a jury instruction on perfect self-defense, *see Dykes v. State*, 319 Md. 206, 211 (1990) (stating the requirements for perfect self-defense), the jury was "free to believe some, all or none of the evidence presented" that supported that defense. *Sifrit v. State*, 383 Md. 116, 135 (2004). Here, the jury could reasonably find that Mr. Perez-Duran did not have reasonable grounds to believe that he was in danger of death or serious bodily harm, that he used excessive force, or that his testimony that he subjectively believed that he needed to defend himself was unbelievable in its entirety. *See, e.g., Rajnic v. State*, 106 Md. App. 286, 291-93 (1995) (finding that sufficient evidence existed from which a jury

could reject appellant's claim of self-defense despite the undisputed testimony that the victims were larger than appellant, intoxicated, threatened to beat up appellant, and charged into his bedroom on the heels of those threats). Therefore, the evidence did not establish that he acted in self-defense as a matter of law.

Mr. Perez-Duran similarly asserts that there was insufficient evidence to sustain his conviction for reckless endangerment, because "the evidence was that [he] reacted to disarm Mr. Torres who was brandishing a knife and had threatened to get a gun to kill them." However, this contention fails for the same reason. Specifically, the jury was free to disbelieve the testimony that supported his claim of self-defense, including that the victim had threatened to kill him and that he only struck the victim once in the arm with a lug wrench in an attempt to disarm him.[1]

Finally, Mr. Perez-Duran claims that the evidence was insufficient to sustain his convictions for theft, motor vehicle theft, and unauthorized removal of property. He first asserts that his taking of Mr. Martinez's car was not "willful" because he was confused and believed Mr. Martinez had told him to get in the car. However, this claim is based entirely on Mr. Perez-Duran's testimony at trial, which the jury was free to disbelieve.

[1] Mr. Perez-Duran also states that the State "failed to identify conduct by which [he] created a substantial risk of death or serious physical injury to Mr. Torres[.]" However, this claim is not preserved as he did not raise it when making his motion for judgment of acquittal. *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)).

Alternatively, Mr. Perez-Duran contends that the State failed to prove the offense of theft because there was no evidence that he had the specific intent to deprive Mr. Martinez of his vehicle. Section 7-104(a) of the Criminal Law Article makes it unlawful to take the property of another person if the person "intends to deprive the owner of the property" or "willfully or knowingly uses . . . or abandons the property in a manner that deprives the owner of the property. "Deprive" is defined as the withholding of the property of another: "permanently"; "for a period that results in the appropriation of a part of the property's value"; or "to dispose of the property or use [it] in a manner that makes it unlikely that the owner will recover it." Md. Code Ann., Crim. Law § 7-101(c).

Here, the evidence demonstrated that Mr. Perez-Duran took the vehicle in an attempt to flee after the victim was stabbed; drove the vehicle in such a manner that he crashed it almost immediately after he left the scene; walked away from the crash scene and then took a bus home; and did not contact Mr. Martinez to inform him about the accident or attempt to compensate him for the damage to his vehicle. Based on this evidence, we are persuaded that the jury could reasonably find that Mr. Perez-Duran intended to use the vehicle in a manner that he knew would either result in the appropriation of part of the vehicle's value or that made it unlikely that Mr. Martinez

would ever recover it, thus depriving Mr. Martinez of his property. Consequently, the court did not err in denying his motion for judgment of acquittal.

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