Circuit Court for Washington County
Case No. C-21-JV-23-000069
Case No. C-21-JV-24-000012

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 322, September Term, 2024

and

No. 323, September Term, 2024

CONSOLIDATED CASES

IN RE: E.W.

Reed,
Zic,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: September 5, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In July 2023, the Circuit Court for Washington County, sitting as a juvenile court, adjudicated appellant E.W.[1] delinquent based on a charge of attempting to flee a uniformed police officer on foot ("Case 1"). As a result, the court placed E.W. on probation for six months, effective September 2023.

While still on probation in Case 1, E.W. was again adjudicated delinquent after the juvenile court found his actions would constitute the crime of second-degree assault if committed by an adult ("Case 2"). The court placed E.W. on probation for six months. In light of the delinquency adjudication in Case 2, the juvenile court also ruled that E.W. had violated his probation in Case 1.

E.W. separately noted a timely appeal of the violation of probation in Case 1 and of the delinquency adjudication in Case 2. E.W. moved to consolidate the two cases. We granted his motion on September 13, 2024.

In his consolidated appeals, E.W. asks us to consider the following questions:

1. Was the evidence insufficient to prove E.W. committed a second-degree assault of the intent to frighten variety in Case [2]?

2. If the evidence was insufficient for a facts-sustained finding of second-degree assault in Case [2], did the trial court err in finding E.W. in violation of his juvenile probation in Case [1] based on the erroneous facts-sustained finding?

For the reasons that follow, we conclude that the evidence was sufficient to sustain the juvenile court's adjudication of delinquency in Case 2. And, because we uphold the

[1] In order to protect the minor child's privacy, we refer to him by his initials.

delinquency adjudication in Case 2, we find no error in the juvenile court's ruling that E.W. violated his probation in Case 1.

BACKGROUND

In January 2024, the State filed a juvenile delinquency petition alleging that 16-year-old E.W. had committed second-degree assault upon a police officer and malicious destruction of property with a value of less than $1,000.00 (previously, "Case 2").[2] As a result of the alleged assault, the State also filed a petition for violation of probation in Case 1.

At the April 10, 2024, delinquency adjudication hearing on the two related matters, Hagerstown Police Department Officer Jeffrey Nicholls testified that on December 10, 2023, he and two other officers were dispatched to an apartment on North Locust Street for a complaint of disturbance and disorderly conduct. Officer Devin Ortiz also testified at the hearing and was the first officer to arrive at the scene.

Officer Ortiz testified that, as he pulled up to the apartment building, he heard E.W. and his mother yelling and screaming. After speaking with E.W.'s mother, Officer Ortiz and Officer Celmarie Rowe went up the stairs to talk to E.W. As Officers Ortiz and Rowe approached E.W.'s bedroom door, where E.W. had retreated, E.W. walked out past them, continuing to yell at his mother and telling Officer Ortiz to shut up. At that time, Officer Nicholls was still at the bottom of the stairs.

[2] The State later entered a *nolle prossequi* as to the charge of malicious destruction of property, proceeding only on the assault charge.

From the first floor, Officer Nicholls heard "glass breaking and a lot of screaming and yelling." E.W. was not calming down, so Officer Nicholls ascended the stairs to attempt a de-escalation of the situation.

While Officer Nicholls was ascending the stairwell, E.W. yelled, "Get the fuck out of my face," and advanced on the second-floor landing toward the top of the stairwell. When Officer Nicholls was about five feet from the landing, E.W. screamed, "Keep talking and I'm going to kick you down them steps." From E.W.'s body language—puffing out his chest, throwing his arms back in "a wild manner," and lunging forward—Officer Nicholls believed that E.W. was about to attack him on the stairwell. Officer Nicholls repositioned his body in case of an attack.

Continuing to yell and scream, E.W. then turned his attention to Officer Rowe, telling her to shut up. At that point, Officer Ortiz placed E.W. into custody.

According to Officer Ortiz, E.W. was within kicking distance of Officer Nicholls—three to five feet away—and appeared to have the ability to carry out his threat, although he had been a few feet farther away from the officer at the moment he made the verbal threat a few seconds earlier. Officer Ortiz said he was then on "red alert" because, under those circumstances, "anything can happen." Officer Ortiz acknowledged that E.W. did not actually kick, hit, or spit on any of the officers.

The juvenile court admitted video clips of all three officers' body-worn camera footage of the incident into evidence.[3]

At the close of the State's case, E.W. moved for judgment of acquittal on the charge of second-degree assault, arguing that he had not exhibited any intent to threaten Officer Nicholls. Instead, his intent was merely to induce the officer to back away from him, as evidenced by his distance from Officer Nicholls when he made the comment, the absence of any striking motion, and his lack of duty to retreat from three full-grown police officers in his own home. The juvenile court denied the motion.[4]

In his defense, E.W. testified that when the three police officers came up the stairs of his home, he thought they were going to arrest him because of his yelling, and he believed he had to defend himself. As Officer Nicholls approached, E.W. testified that he only said he was going to kick Officer Nicholls down the stairs in an effort to get the officer to back up. E.W. asserted that he had no intention of kicking or harming any of the officers.

[3] The audio of the majority of the body-worn footage was not admitted, as defense counsel objected when the videos did not reveal that the officers advised E.W., as statutorily required, that he was being recorded. Nonetheless, defense counsel elected to play a portion of the audio during his cross-examination of Officers Ortiz and Nicholls.

[4] E.W. did not renew his motion for judgment of acquittal at the close of the case, but in juvenile delinquency proceedings, which are tried without a jury, a defendant is "not required to make a motion for judgment of acquittal . . . in order to preserve his right to appellate review of the sufficiency of the evidence." *In re Antoine M.*, 394 Md. 491, 502-503 (2006).

On cross-examination, E.W. agreed that the prosecutor was "probably right" in suggesting that the officers had just been trying to calm him down and that his belief that he was about to be arrested was only in his mind and not based in fact.

The juvenile court determined that the State had proven the allegations in the delinquency petition beyond a reasonable doubt as to the charge of second-degree assault of the intent to frighten variety and adjudicated E.W. a delinquent child. Immediately proceeding to disposition, the juvenile court placed E.W. on probation for a period of six months. The State pointed out that the delinquency adjudication in Case 2 warranted a finding of a violation of probation in Case 1, and the court, while acknowledging the violation, elected to take no action on it.

E.W. moved to set aside the finding of involvement, and thus the adjudication of delinquency, on the ground that he had the right to defend himself and resist an unlawful arrest by physical force. Employing the "reasonable child" standard, E.W. concluded that his "limited and proportional response" to the perceived intentions of the police officers was nothing more than a justified and reasonable mistake of fact. The juvenile court denied the motion without a hearing.

E.W. filed a timely notice of appeal.

DISCUSSION

E.W. contends that the evidence presented at the delinquency adjudication hearing was insufficient to prove that he committed a second-degree assault of the intent to frighten modality upon Officer Nicholls. E.W. urges us to "analyze the various angles of

the case through the lens of a reasonable child standard" and then to conclude that he did nothing more than, in essence, throw a temper tantrum in his own home while defending himself from what he believed was a threat of arrest without cause.

Moreover, E.W. continues, because he and Officer Nicholls were several feet apart when he threatened to kick the officer down the stairs, he physically lacked the ability to follow through on the threat at that time. Therefore, Officer Nicholls reasonably could not have feared an imminent battery.

When faced with a challenge to the sufficiency of the evidence in a juvenile delinquency case, as in any criminal case, we determine "'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.'" *In re Kevin T.*, 222 Md. App. 671, 676-77 (2015) (quoting *In re Anthony W.*, 388 Md. 251, 261 (2005)). The question before us is a narrow one; it does not ask "'whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004)). "We defer to the fact-finder's decisions on which evidence to accept and which inferences to draw when the evidence supports differing inferences." *Morris v. State*, 192 Md. App. 1, 30 (2010) (citation omitted). We will not disturb the juvenile court's findings of fact unless they are clearly erroneous. *In re Kevin T.*, 222 Md. App. at 677.

Pursuant to Maryland Code, Ann., Crim. Law ("CR") § 3-203(a) (2002, 2021 Repl. Vol.), "[a] person may not commit an assault." Assault includes "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." CR § 3-201(b).

There are "three types of common law assault: '(1) intent to frighten, (2) attempted battery, and (3) battery.'" *State v. Frazier*, 469 Md. 627, 644 (2020) (quoting *Jones v. State*, 440 Md. 450, 455 (2014)). A defendant commits second-degree assault of the intent to frighten type when: (1) the defendant acts with the intent to place the victim in fear of immediate physical harm; (2) the defendant has the apparent ability, at the time, to bring about the physical harm; and (3) the victim is aware of the impending physical harm. *Snyder v. State*, 210 Md. App. 370, 382 (2013). "The State may prove a defendant's intent through 'direct [evidence] or circumstantial evidence[.]'" *Jones*, 440 Md. at 455 (quoting *Bible v. State*, 411 Md. 138, 158 (2009)).

Here, the evidence presented at the delinquency adjudication hearing—which included the officers' body-worn camera recordings—revealed that when Officer Nicholls arrived at E.W.'s home, he heard a loud disturbance between E.W. and his mother, including screaming and glass breaking. Officers Ortiz and Rowe had already walked up the staircase to attempt to calm E.W., but their efforts were unsuccessful. Officer Nicholls, in a further effort to de-escalate E.W.'s behavior, began to ascend to the second floor and found E.W. at the top of the stairs still screaming. From the top landing, approximately five to seven feet from Officer Nicholls, E.W. threatened to kick the

officer down the stairs. E.W. continued to scream, puff his chest and throw his arms back in "a wild manner" as Officer Nicholls reached three to five feet away, within E.W.'s kicking distance. Officer Nicholls, anticipating an attack, assumed a defensive stance. These facts, as presented through the officers' live testimony and body-worn camera footage, viewed in the light most favorable to the State, satisfy all the elements of the intent to frighten type of second-degree assault.

In addition, despite E.W.'s assertion that he had a right to defend himself from what he believed would be a baseless arrest, the video evidence and Officer Ortiz's testimony at the delinquency hearing bear out the fact that none of the officers mentioned arrest before E.W. threatened Officer Nicholls, nor did any of them assume a threatening posture or display a firearm. Under those circumstances, E.W. was the initial aggressor and would not be permitted to benefit from a claim of self-defense. *See Bynes v. State*, 237 Md. App. 439, 442 (2018) (citing *Jones v. State*, 357 Md. 408, 422 (2000)) (In charged crimes not involving deadly force, the defendant, in invoking a self-defense claim, must prove that: (1) he actually believed he was in immediate or imminent danger of bodily harm; (2) his belief was reasonable; (3) he was not the aggressor of, or provoked, the conflict; and (4) he used no more force that reasonably necessary to defend himself in light of the threatened or actual harm.).

We hold that there was sufficient evidence that "possibly could have persuaded any rational fact finder," that E.W. committed second-degree assault of the intent to frighten type beyond a reasonable doubt. *Smith*, 232 Md. App. at 594 (emphasis

omitted). And, because we find the evidence sufficient to support the finding of involvement on the charge of second-degree assault in Case 2, we also conclude that the juvenile court did not err in ruling that that delinquency finding resulted in a violation of E.W.'s probation as imposed in Case 1.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANT.