

Circuit Court for Baltimore City
Case No. 116180013

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 409

September Term, 2017

RICHARD BAILEY

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 9, 2018

*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.

In the Circuit Court for Baltimore City, Richard Bailey, appellant, was convicted of reckless endangerment. Bailey appeals his conviction on grounds that the evidence was insufficient. We conclude that Bailey’s claim was not preserved for appellate review, but in any event, lacks merit, and we affirm the judgment of the circuit court.

At trial, the State introduced evidence that, on March 31, 2016, Jamal Gardner was found leaning on a car, suffering from a gunshot wound. Police recovered eight .40 caliber shell casings and two metal fragments from the scene. Four days after Gardner was shot, Bailey told Emmanuel Washington, a witness for the State, that he had tried to kill Gardner.

On April 9, 2016, nine days after Gardner was shot, Bailey was shot and seriously wounded by Christopher Weis, an associate of Gardner. That shooting occurred in the 1100 block of East Belvedere Avenue, while Bailey was sitting behind the wheel of his 1993 Oldsmobile.

Joseph Payne, who was in a vehicle that was stopped at the intersection of East Belvedere Avenue and Loch Raven Boulevard on April 9, saw two cars travelling on East Belvedere at a high rate of speed. He thought at first that it was a “street race,” but then, as the second car passed through the intersection, the driver “basically put his gun out in the middle of the intersection” and “started shooting at the car in front of him that was speeding away.” Mr. Payne described the leading vehicle as a “newer version car” and the second vehicle, from which shots were fired, as an “older version car,” “probably [an] old Ford.”

Also on April 9, a car crashed through a fence and into two parked cars at or near the intersection of Fenwick Avenue and the 1600 block of Belvedere Avenue. The only occupant of the vehicle, Bailey, got out of the car and “staggered up the block,” then collapsed. Police responded to the scene and determined that Bailey had been shot. Bailey was taken to the hospital where he underwent emergency surgery.

Police recovered a loaded, operable .40 caliber handgun approximately eight feet away from Bailey’s car, in the bushes that were located along the path that Bailey had taken from his crashed car to the site where he collapsed. Police later determined that shell casings and bullet fragments that were found at the scene where Gardner was shot on March 31 had been fired from the same handgun that was found in the bushes following the car crash on April 9.

Bailey was charged with attempted murder, assault, reckless endangerment, use of a firearm in commission of a crime of violence, and wearing, carrying and transporting a handgun on his person. All charges were based solely on the March 31 shooting of Gardner. As noted above, Bailey was convicted of reckless endangerment, and acquitted of the other charges.

In support of his appellate claim that the evidence was insufficient to support his conviction, Bailey asserts that it was not “rational” for the jury to have convicted him of reckless endangerment in the March 31 shooting of Gardner, because they acquitted him of possessing a gun on that date. Bailey suggests that the jury was confused by the trial court’s instructions, the prosecutor’s closing argument, and the verdict sheet, and that the

jury “actually convicted” him for a “reckless shooting on April 9,” an offense that had not been charged.

This claim is different, however, than the theory of insufficiency asserted by Bailey in support of his motion for judgment of acquittal. At trial, Bailey argued that he was entitled to judgment of acquittal on all claims because there was no evidence: (1) of premeditation or malice, (2) that he was the shooter, (3) that he had a handgun, or (4) that he intended to create a substantial risk of death or injury to Gardner.

“It is a well established principle that our review of claims regarding the sufficiency of evidence is limited to the reasons which are stated with particularity in an appellant’s motion for judgment of acquittal.” *Claybourne v. State*, 209 Md. App. 706, 750 (2013). “Thus, ‘[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal[.]’” *Id.* (quoting *Bates v. State*, 127 Md. App. 678, 691 (1999)). Accordingly, the claim of insufficiency raised on appeal was not preserved for our review.

In any event, the evidence at trial was sufficient to support the conviction. “[E]vidence is sufficient if, viewing it in the light most favorable to the State, ‘*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Riggins v. State*, 223 Md. App. 40, 60 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in *Jackson*). In order to convict Bailey of reckless endangerment, the State was required to prove: (1) that he engaged in conduct that created a substantial risk of death or serious physical injury to another; (2) that a

reasonable person would not have engaged in that conduct; and (3) that he acted recklessly. Maryland Criminal Pattern Jury Instruction 4:26B.

At trial, the State introduced evidence demonstrating that: (1) days after Gardner was shot, Bailey claimed that he had tried to kill Gardner, (2) shell casings found at the scene where Gardner was shot were fired from a handgun that was found in the bushes in the immediate area where Bailey crashed his car, and (3) Bailey was in possession of a handgun just prior to crashing his car. Viewed in the light most favorable to the State, this evidence was sufficient for a rational jury to conclude that Bailey shot Gardner on March 31, and that such conduct was reckless and created a substantial risk of death and serious physical injury to Gardner.

It is immaterial that the jury did not convict Baily of possessing a handgun on the date Gardner was shot. As we recently explained, “[w]hen dealing with the issue of legal sufficiency in a jury trial, we are dealing only with the satisfaction of the burden of production. Was the evidence sufficient, as a matter of law, to permit the judge to submit the case to the jury for its decision?” *Chisum v. State*, 227 Md. App. 118, 125 (2016). In making this determination, “[w]e are not at all concerned with how the

factfinder arrived at the verdict, the logic or illogic of the factfinder’s reasoning, but only with the naked verdict itself.” *Id.*¹

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

¹ To the extent that Bailey challenges the reckless endangerment conviction on the ground that it is inconsistent with the acquittal on the charge of possession of a handgun, such a challenge is unpreserved, as it was not raised in the trial court. *See Tate v. State*, 182 Md. App. 114, 136–37 (2008). In any event, as the State points out, the verdicts were, at most, factually inconsistent. *See McNeal v. State*, 426 Md. 455, 458-59 (2012) (“Factually inconsistent verdicts are those where the charges have common facts but distinct legal elements, and a jury acquits a defendant of one charge, but convicts him or her of another charge. ... [J]ury verdicts which are illogical or factually inconsistent are permitted in criminal trials[.]”)

Likewise, any challenge to the jury instructions, verdict sheet and the prosecutor’s closing argument are waived as Bailey did not raise an objection to same. *See generally* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any ... issue [other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court[.]”)