Circuit Court for Anne Arundel County
Case No. C-02-CR-16-002145

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 554

September Term, 2017

RODNEY VENABLE

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: March 13, 2018

A jury sitting in the Circuit Court for Anne Arundel County convicted appellant, Rodney Venable, of first-degree assault, second-degree assault, and reckless endangerment. The court sentenced him to a total of seven years of incarceration, all but four years suspended, to be followed by three years of supervised probation. He appeals, and argues that the circuit court erred when it declined to instruct the jury on intoxication as a defense to the charge of first-degree assault. He further asserts that there was insufficient evidence to convict him of first-degree assault and reckless endangerment. We disagree, and affirm the judgments.

BACKGROUND

In October 2016, appellant lived with his girlfriend, Crystal Gilles, in the basement apartment of a three-story home on New Cut Road in Severn. The home was owned by Gilles's uncle and aunt who occupied the first and second floors.

On October 1, 2016, appellant and Gilles left the house separately and engaged in an argument via text messaging. Gilles testified that this argument via text continued for hours throughout the day. That evening, Gilles returned to the apartment and was sitting on the couch when appellant walked in. At trial, Gilles testified that she told appellant to get out of the apartment, and attempted to push him out the door. Appellant then tossed a two-liter soda bottle over his shoulder which struck Gilles. Appellant resisted Gilles's attempts to push him out the door, and he was able to remain in the apartment. Gilles then began to hit, smack, and "flail" at him. Appellant placed his hands on her shoulders in an attempt to restrain Gilles against a wall, which Gilles resisted. She momentarily broke free from him, but appellant then grabbed Gilles around the neck, whereupon she fell over onto

a clothes dryer. At trial Gilles testified that appellant did not squeeze her neck, but was holding her by the neck in an effort to calm her down. Gilles screamed for her uncle, whereupon appellant released her and left the apartment.

Gilles's uncle, Bradley Gilles, testified that he was upstairs on the first floor of the home when he heard Gilles scream for help. He described the scream as "very loud and terrifying." He ran downstairs where he saw Gilles crying and attempting to get up off the floor. He did not see appellant in the apartment, but heard tires squealing in the driveway. Gilles told him that appellant had choked her, and the two went upstairs where they called 911.

Officer Bumford, of the Anne Arundel County Police Department, responded to the home and observed redness on Gilles's chest and neck, and saw minor scratches on her face and chest area. Gilles complained that her throat hurt and that it was painful for her to swallow. Gilles reported that appellant had strangled her for sixty seconds. Later that night appellant was charged with driving under the influence.

On October 3, 2016, Gilles went to the Anne Arundel County Medical Center emergency room. While there she reported that she had throat pain when swallowing, swelling, slight hoarseness, and fatigue when talking. She was treated by Justin Smith, a registered nurse practitioner, who testified at trial as an expert in emergency medicine. Smith testified that Gilles had tenderness to her anterior throat and a small amount of swelling. A CAT scan revealed no evidence of an acute soft tissue injury, and Gilles was discharged later that day. Smith testified that Gilles's symptoms were consistent with someone who had been strangled.

At trial, the State introduced audio recordings of phone calls made between Gilles and appellant after the incident. In one call, the following exchange occurred:

APPELLANT: When you hollered at your uncle that fucked me up. I was like man, I don't want problems with these people.

GILLES: You were choking me, Rodney. I got bruises.

DISCUSSION

Appellant's first contention on appeal is that the court erred when it refused to instruct the jury on intoxication as a defense to first-degree assault. He asserts that his arrest for driving under the influence later that evening generated the issue. Appellant's second contention is that the "evidence was insufficient to sustain the conviction[s] of first[-]degree assault and reckless endangerment." We disagree as to both.

Jury Instruction

Maryland Rule 4-325(c) provides that the "court may, and at the request of any party shall, instruct the jury as to the applicable law[.]" We generally review a trial court's refusal to give a jury instruction for abuse of discretion. *Stabb v. State*, 423 Md. 454, 465 (2011). Initially, "whether an instruction must be given turns on whether there is any evidence in the case that supports the instruction." *Dishman v. State*, 352 Md. 279, 292 (1998). This "threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge." *Id.* On review, we must "determine whether the criminal defendant produced that minimum threshold of evidence necessary to establish a prima facie case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Id.* "[T]he threshold is low, as a

defendant needs only to produce 'some evidence' that supports the requested instruction." *Bazzle v. State*, 426 Md. 541, 551 (2012).

To convict a criminal defendant of first-degree assault, the State must prove that he had the specific intent to cause serious physical injury to the victim. *Chilcoat v. State*, 155 Md. App. 394, 403 (2004). "[W]hen charged with an offense requiring a specific intent, the defendant cannot be guilty if [he] [she] was so intoxicated, at the time of the act, that [he] [she] was unable to form the necessary intent." Maryland Pattern Jury Instructions Cr 5:08. "Mere intoxication," however, "is insufficient to negate intent." *Bazzle*, 426 Md. at 554. "A defendant is not entitled to an instruction on voluntary intoxication unless he can point to some evidence that would allow a jury to rationally conclude that his intoxication made him incapable of forming the intent necessary to constitute the crime." *Id.* at 555 (citation omitted).

At trial, counsel for appellant argued that appellant's arrest for DUI later that evening generated an intoxication defense. This arrest was the sole evidence that appellant was under the influence on the day of the assault incident. The court noted that there was no evidence regarding when appellant had been arrested for DUI, and whether he had consumed alcohol before he assaulted Gilles. The court thus denied the request, ruling that there was "not sufficient evidence for [the] instruction." We see no error in this ruling. Moreover, Gilles testified that during the assault, she did not smell the odor of alcohol upon appellant's person. As a result, not only was there no evidence that appellant's intoxication was of such a degree as to render him unable to form the specific intent required for first-degree assault, there was no evidence presented that he was intoxicated to any degree at

the time of the assault. We, therefore, conclude that the trial court did not abuse its discretion when it refused to instruct on voluntary intoxication as a defense to first-degree assault.

Sufficiency of Evidence

Appellant's next contention is that the "evidence was insufficient to sustain the conviction[s] of first[-]degree assault and reckless endangerment." He argues that the "medical evidence and the State's testimony, in general" were inconsistent "with any determined attempt" to cause serious physical injury, as required to support a conviction for first-degree assault. He further argues that, "where the complainant suffered no serious injury, and the struggle ended at the moment that the complainant screamed, there is insufficient evidence that what was merely a second[-]degree assault, during a mutual affray, could be charged as reckless endangerment." Appellant's claims are without merit.

On appeal "we review the evidence in the light most favorable to the prosecution and determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). "It is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finder's "task to resolve any conflicts in the evidence and assess the credibility of witnesses." *Id.*

First-Degree Assault

First-degree assault is prohibited by Md. Code. Ann., Crim. Law §3-202(a)(1), which provides that a "person may not intentionally cause or attempt to cause serious

physical injury to another." Serious physical injury is defined as a physical injury that "(1) creates a substantial risk of death; or (2) causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." Crim. Law §3-201(d). A conviction for first-degree assault may be "based on an attempt to cause 'serious physical injury,' not merely a completed injury." *Brown v. State*, 182 Md. App. 138, 179 (2008). "[A] jury may infer the necessary intent from an individual's conduct and the surrounding circumstances, whether or not the victim suffers such an injury." *Chilcoat*, *supra*, 155 Md. App. at 403. "Also, the jury may infer that 'one intends the natural and probable consequences of his act.'" *Id.* (citation omitted).

Here, appellant placed his hands around Gilles's neck. While, at trial, Gilles testified that appellant did not squeeze her neck, she told her uncle, just moments after the attack, that appellant had "choked" her. Later that night, she told a responding police officer that appellant had "strangled" her for sixty seconds. Both the police officer and Gilles's uncle observed redness on her neck. Two days later, she told Justin Smith, the nurse practitioner who treated her at the emergency room, that she had been grabbed by the neck and that the assailant had "squeezed." Smith testified that her symptoms were consistent with someone who had been strangled. He further testified that strangulation could block blood flow to the brain, and that death could occur as a result. Certainly the effects of strangulation qualify as "serious bodily injury." We hold that a rational trier of fact could have found that appellant strangled Gilles, and that he intended the natural consequences of his actions, namely to inflict serious bodily harm.

Reckless Endangerment

Appellant contends that, "where the complainant suffered no serious injury, and the struggle ended at the moment that the complainant screamed, there is insufficient evidence that what was merely a second[-]degree assault, during a mutual affray" amounted to reckless endangerment.

Crim. Law § 3-204(a)(1) provides that a "person may not recklessly: (1) engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" Reckless endangerment "is an inchoate crime and is intended to deal with the situation in which a victim is put at substantial risk of death or serious bodily harm but may, through a stroke of good fortune, be spared the consummated harm itself." *Albrecht v. State*, 105 Md. App. 45, 58 (1995).

The jury needed only to find that appellant placed Gilles at a substantial risk of death or serious bodily harm. Again, we hold that a rational trier of fact could have found that appellant strangled Gilles, and that he intended the natural consequences of his actions, namely to inflict serious bodily harm.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.