Circuit Court for Dorchester County
Juvenile Case No. C-09-JV-00042

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 592

September Term, 2018

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IN RE: M.W.

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Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: March 1, 2019

The Circuit Court for Wicomico County, sitting as a juvenile court, found M.W. involved in the delinquent acts of second-degree assault and resisting arrest. The case was then transferred to the Circuit Court for Dorchester County for disposition. On May 17, 2018, the Circuit Court for Dorchester County, sitting as juvenile court, issued an order staying commitment, with conditions.

M.W. now appeals from the adjudicatory findings of the Circuit Court for Wicomico County, finalized by disposition in the Circuit Court for Dorchester County, challenging the sufficiency of the evidence. We conclude that the evidence was sufficient, and affirm.

## BACKGROUND

The evidence at the adjudicatory hearing consisted of the testimony of Donald Gaines, the victim of the assault, and Deputy Perretta, of the Wicomico County Sheriff's Office.[1] On November 14, 2017, Deputy Perretta responded to a call for a "juvenile problem" at the Travelers Inn Motel, where M.W. was staying with his mother and her boyfriend, Mr. Gaines. Deputy Perretta was told that M.W. was being "disobedient" and "[t]hey wanted him committed to the juvenile detention center." Mr. Gaines reported that M.W. pointed a knife at him and said that he was "going to stab the shit out of him." M.W. then threw the knife at Mr. Gaines.[2] Mr. Gaines told Deputy Perretta that he "was fearful for his life" and wanted to press charges.

[1] Deputy Perretta's first name is not included in the record of the adjudicatory hearing.

[2] No evidence of M.W.'s age was presented at the adjudicatory hearing. According to the juvenile petition, M.W. was 11 years old at the time of the incident that gave rise to the charges of delinquency.

When Deputy Perretta told M.W. he was under arrest, M.W. said "no," "ripped his hand away" and "kept pulling away" when Deputy Perretta tried to put handcuffs on him. M.W. "disobey[ed] every command" and was "very uncooperative the whole time." He was kicking and "flailing his [ ] body around," "trying to make [Deputy Perretta's] job more difficult." M.W. was eventually placed in handcuffs "without incident." Because of M.W.'s behavior, it took about ten minutes to get M.W. into the patrol vehicle.

Mr. Gaines presented a slightly different version of events. He testified that he was "wrestling around" with M.W, but then told him he "wasn't playing no more" and told M.W. to stop. M.W. "wanted to keep on," but Mr. Gaines "kept pushing him off." M.W. "got mad because he couldn't get close" to Mr. Gaines. M.W. picked up a knife, stood eight feet away from Mr. Gaines and made a "jabbing motion" with the knife, and said, "I'll stab the shit out of you[.]" M.W. then threw the knife, and it landed "right next to" Mr. Gaines. When M.W. reached for the knife, Mr. Gaines "took him down on the bed and pinned him down . . . like police do[,]" and held him there.

Mr. Gaines agreed with defense counsel's characterization of the incident with the knife as "a continuation of the earlier playing" and stated that, "the whole time[,] [M.W.] was laughing and playing." He said that he did not restrain M.W. because he was worried about being stabbed, but because he wanted to teach M.W. a lesson about playing with knives. Mr. Gaines stated that the police were not called because of the incident with the knife, but because, about ten minutes later, M.W. began throwing trash and knocking over trash cans in the parking lot of the motel.

Mr. Gaines did not recall whether he told Deputy Perretta that M.W. was just playing with the knife. When the prosecutor asked him, "[d]id you tell the deputy that you had felt threatened at the time with the knife?", Mr. Gaines responded, "I don't know. I don't remember."

The juvenile court found M.W. not involved on a related charge of reckless endangerment, but involved in second-degree assault and resisting arrest, stating:

> On the charge of reckless endangerment, I have on the testimony of the alleged victim in this case that he did not feel threatened. [M.W.] did take possession of a knife and I find from the evidence [M.W.] did threaten the victim with the knife. But whether the victim ever was in danger from any acts of [M.W.] the Court has reasonable doubt. So I'm going to find him not responsible for reckless endangerment.
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> Second degree assault, the possession of the knife together with the threats, together with the apparent ability to carry out those threats, I think has been proven beyond a reasonable doubt and I find [M.W.] delinquent because of second degree assault. And I also think that his actions constituted resisting arrest. So I find him delinquent for the charge of resisting arrest also.

## DISCUSSION

The standard of review of evidentiary sufficiency that applies when reviewing a case from the juvenile court is the same standard that applies to other criminal cases. *In re James R.*, 220 Md. App. 132, 137 (2014). Specifically, "[w]e must determine whether, after viewing 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." *Id*. (citation and internal quotation marks omitted).

We agree with the State that the evidence was sufficient to find M.W. involved in either of two varieties of second-degree assault: "intent to frighten" or attempted battery. The first requires the State to prove that: (1) the defendant committed an act with intent to place another in fear of immediate physical harm; (2) the defendant had the apparent ability to bring about the harm; and (3) the victim was aware of the impending battery. *Snyder v. State*, 210 Md. App. 370, 382 (2013).[3] A rational trier of fact could have found those elements beyond a reasonable doubt based on the evidence that M.W., who was "mad" at Mr. Gaines, made jabbing motions with a knife, threatened to "stab the shit" out of Mr. Gaines, and then threw the knife at him. The same evidence was sufficient to find M.W. involved in an attempted battery, the elements of which are that the defendant (1) has specific intent to cause physical injury to the victim, and (2) takes a substantial step toward that injury. *Id.*

M.W. contends that the evidence was insufficient to find him involved in second-degree assault because Mr. Gaines testified at the hearing that he was not worried about being stabbed by M.W., and that M.W. was "laughing and playing" the whole time, and therefore lacked specific intent to frighten. We disagree. Mr. Gaines's testimony conflicted with that of Deputy Perretta, who stated, without objection, that Mr. Gaines reported being "fearful for his life." The juvenile court, as the finder of fact, was free to believe the testimony of Deputy Perretta over that of Mr. Gaines. *See Roes v. State*, 236 Md. App 569,

[3] Second-degree assault encompasses three types of common law assault and battery: "intent to frighten" assault, attempted battery, and consummated battery. *Snyder v. State*, 210 Md. App. 370, 382 (2013).

590 (2018) (it is the task of the finder of fact to resolve conflicts in the evidence and assess witness credibility and, in doing so, the factfinder "can accept all, some, or none of the testimony of a particular witness.") (citation omitted). *See also Perry v. State*, 229 Md. App. 687, 697 (2016) ("the appellate court will not second guess the determination of the trier of fact where there are competing rational inferences available." (citation and internal quotation marks omitted)).

M.W. further asserts that, because the juvenile court expressed reasonable doubt as to whether Mr. Gaines was in danger, it follows that "no rational trier of fact could have found the essential elements of second-degree assault beyond a reasonable doubt. We disagree. "The issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict." *Chisum v. State*, 227 Md. App. 118, 129 (2016). "It is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place." *Id.* at 129-30. We are "not concerned with what a factfinder, judge or jury, does with the evidence[,]" but only "with what any judge, or any jury, anywhere, could have done with the evidence." *Id.* at 130. Here, we are satisfied that the evidence presented by the State was sufficient to support a finding of involvement in second-degree assault.

We further conclude that the evidence was sufficient to find M.W. involved in the delinquent act of resisting arrest, the elements of which are that "(1) a law enforcement officer arrested or attempted to arrest the defendant; (2) the arrest was lawful, and; (3) the defendant refused to submit to the arrest and resisted the arrest by force." *DeGrange v.*

*State*, 221 Md. App. 415, 421 (2015). M.W. takes issue with the third element only, asserting that, although he was "clearly attempting to escape" from the police, there was no evidence that he used force against the police.

As we have observed, however, the level of force required to constitute resisting arrest "is not high." *Id.* In *DeGrange*, we upheld a conviction for resisting arrest based on facts quite similar to those in the present case. There, the defendant was advised she was under arrest, but refused to place her hands behind her back to be handcuffed, then pulled her arms away from the police officer who attempted to place her under arrest. *Id.* at 418. She "began to fight and struggle" with the police, and continued to disobey police orders, while kicking and yelling. *Id.* We held that these actions "rose to the level of the amount of force required to sustain the conviction for resisting arrest." *Id.* at 422.

M.W.'s conduct after being told he was under arrest was comparable to that of the arrestee in *DeGrange*. We therefore conclude that the juvenile court's finding of involvement in resisting arrest was based on sufficient evidence.

**JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**