Circuit Court for Washington County
Case No.: C-21-CR-18-000426

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 771

September Term, 2019

TERRY FULTON

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 16, 2020

*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.

Following trial in the Circuit Court for Washington County, a jury found Terry Levern Fulton, appellant, guilty of (1) attempted first-degree murder, (2) attempted second-degree murder, (3) first-degree assault, (4) second-degree assault, (5) reckless endangerment, (6) use of a firearm in the commission of a crime of violence, and (7) illegal possession of a regulated firearm for shooting his then fiancée three times with a pistol. The court sentenced appellant to life imprisonment with all but forty years suspended for attempted first-degree murder, five years' imprisonment for use of a firearm in the commission of a crime of violence to be served consecutive, and five years' imprisonment for illegal possession of a regulated firearm to be served concurrent. Appellant's sole contention on appeal is that the verdict was not supported by legally sufficient evidence. We disagree and shall affirm.

In reviewing the sufficiency of the evidence we review the record to 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.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

In challenging the sufficiency of the evidence, appellant first asserts that the State failed to prove his criminal agency because the victim did not identify him at trial, the firearm recovered was not tested, and "there was no DNA evidence." However, viewed in a light most favorable to the State, the evidence demonstrated that, appellant was the person who shot the victim. At trial, the evidence of appellant's criminal agency came largely from a recording made upon arrival at the scene of the shooting by a police officer on his

body-worn video camera in which the victim identified appellant as the person who shot her.[1] After searching the premises where the shooting took place, the police recovered, among other things, a pistol from appellant's bedroom, and shell casings from the living room, kitchen, and back porch. The shell casings were of the same caliber as the pistol that was recovered. Appellant was arrested at the scene and was observed to have blood on his hands, arms, and shoulder. That evidence, if believed by the jury, was sufficient to establish appellant's identity as the perpetrator beyond a reasonable doubt. *See Martin v. State*, 218 Md. App. 1, 35 (2014) ("[T]here is no difference between direct and circumstantial evidence" (internal quotation mark and citation omitted)).

Appellant also asserts that the evidence was insufficient to show that he acted with the requisite premeditation to support the crime of attempted first-degree murder because there was no evidence of the actual circumstances surrounding the shooting adduced at trial.

"A person may be convicted of first-degree premeditated murder upon evidence legally sufficient to establish that the person perpetrated a willful, deliberate, and premeditated killing." *Wagner v. State*, 160 Md. App. 531, 564 (2005).

> [T]o be 'premeditated' the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time. If the killing results from a choice made as a consequence of thought, no matter how short the period between the

[1] During her testimony at trial, the victim claimed that due to her drunkenness and ingestion of PCP on the day of the shooting, she had no recollection of the shooting or who shot her.

> intention and the act, the crime is characterized as deliberate and premeditated.

Fields v. State, 168 Md. App. 22, 47, *aff'd*, 395 Md. 758 (2006) (cleaned up). "[I]t is well established in Maryland that 'the firing of two or more shots separated by an interval of time may be viewed as evidence of premeditation.'" *Anderson v. State*, 227 Md. App. 329, 348 (2016) (quoting *Tichnell v. State*, 287 Md. 695, 701 (1980).

As noted earlier, in the instant case, the victim was shot three times. Moreover, given that spent shell casings were found in various areas of the residence, the jury was free to draw the inference that appellant moved from one place to another in between shots indicating that an interval of time separated the shots. On the record before us, we are satisfied that a reasonable jury could have found beyond a reasonable doubt that the attempted murder of the victim was premeditated.

We therefore hold that the evidence was legally sufficient to support appellant's convictions.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.