

Circuit Court for Howard County  
Case No. 13-K-17-058411

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1024

September Term, 2018

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JOSE DIAZ

v.

STATE OF MARYLAND

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Nazarian,  
Wells,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: August 8, 2019

\*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.

Jose Diaz, appellant, was convicted by a jury in the Circuit Court for Howard County of second-degree assault. On appeal, Mr. Diaz challenges the sufficiency of the evidence. We shall affirm.

In reviewing the sufficiency of the evidence, we ask “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.” *Smith v. State*, 232 Md. App. 583, 594 (2017) (citation omitted). Furthermore, we “view[ ] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the prevailing party[,]” which in this case is the State. *Id.* (citation omitted). In this analysis, “[w]e give ‘due regard to the [fact-finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)).

To prove that Mr. Diaz was guilty of second-degree assault, the State was required to prove that he intentionally caused offensive physical contact to the victim without consent or legal justification. *Nicholas v. State*, 426 Md. 385, 403-04 (2012). Viewing the evidence in the light most favorable to the State, as we must, we conclude that the evidence was sufficient to sustain the conviction.

Ander Perez Portillo, the victim, testified that, on June 25, 2017, Mr. Diaz, David Hernandez, and a third male person, who was not identified by name, were at his home, drinking beer. At about 9:00 p.m., Mr. Portillo asked them to leave because he needed to get up at 4:30 the next morning for work. The others protested and said they wanted to

stay and keep drinking. Mr. Hernandez then hit Mr. Portillo with a two-by-four piece of wood, breaking his clavicle and knocking him to the ground. Mr. Hernandez straddled Mr. Portillo and began hitting him in the face. Mr. Diaz then “came over and kicked [Mr. Portillo] in the ribs.” The third man held Mr. Portillo down while Mr. Hernandez continued punching him and Mr. Diaz continued to kick him in the ribs. Mr. Portillo eventually heard sirens, and three men “took off running.”

Lorena Argueta, who described Mr. Portillo as her “partner” and the father of her children, testified that she saw the three men attacking Mr. Portillo and yelled at them to let him go. She stated specifically that Mr. Diaz was kicking Mr. Portillo. When she told them that she was going to call the police, “they went running.” Police later found appellant hiding in the bushes.

Mr. Diaz contends that, because there were some inconsistencies in the testimony of Mr. Portillo and Ms. Argueta as to whether the assault began inside or outside the house, and because Mr. Portillo said he became “unconscious” after he was hit with the two-by-four, the jury “could only speculate as to the extent” of Mr. Diaz’s participation.<sup>1</sup> We disagree.

Viewed in the light most favorable to the State, the evidence at trial, if believed, was legally sufficient to support a finding of each element of second-degree assault. Any inconsistencies or weaknesses in the testimony of the State’s witnesses affects the weight

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<sup>1</sup> Mr. Portillo, who testified through an interpreter, explained that by “unconscious” he meant that his “mind was blank and [he] could not react, but [he] could see what was going on.”

of the evidence, and not its sufficiency. *Owens v. State*, 170 Md. App. 35, 103 (2006) (“a witness’s credibility goes to the weight of the evidence, not its sufficiency.”) *See also Correll v. State*, 215 Md. App. 483, 502 (2013) (“It is not a proper sufficiency argument to maintain that the jurors should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses[,]” as it is “the jury’s task to resolve any conflicts in the evidence and assess the credibility of witnesses.”) (citation omitted).

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