Circuit Court for Howard County
Case No.: 13-K-18-058637

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1054

September Term, 2019

ANTHONY ANTIONE LEWIS

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Raker, Irma, S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 10, 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 Howard County, a jury found Anthony Antione Lewis, appellant, guilty of making a false statement to a law enforcement officer.[1] The court initially sentenced appellant to a term of six months' imprisonment, but later, acting on a motion for modification or reduction of sentence, suspended the balance of that sentence in favor of one year of probation. On appeal, appellant contends that the evidence was legally insufficient. For the reasons explained below, we shall affirm.

BACKGROUND

On October 4, 2017, between 7:00 and 8:00 p.m., as James Joyce sat on his patio talking to his mother on the telephone while holding his two-month-old baby, and with his service dog "Sam" sitting next to him unleashed on the floor, a man appeared from the woods about eight feet away. According to Joyce, Sam got up, without barking or growling, to investigate the person who appeared from the woods, later identified as appellant. At that point, appellant shouted to Joyce that if the dog got any closer, he would kill it. Joyce then ended his telephone call with his mother and began to pay closer attention to the events unfolding in his yard.

As the dog got closer to appellant, appellant moved back into the woods, assumed a defensive position, and when the dog got close enough, it looked to Joyce as if appellant took a "swing" at the dog causing the dog to let out a yelp. The dog then returned to the patio and Joyce noticed it was bleeding from a cut on the back of his neck. At that point, Joyce took his baby and the dog inside. Joyce testified that he did not see his dog bite

[1] At the close of the State's case in chief, the court, *sua sponte,* acquitted appellant of a count charging abuse or neglect of an animal.

appellant or act aggressively in any way. Joyce saw appellant on the phone and believed that appellant had called 9-1-1.

Appellant did, in fact, call 9-1-1 to report that he had been bitten by a dog. When the police arrived, they observed appellant on the sidewalk holding a knife, which he put down when instructed to do so. Appellant was hysterical, according to the police officer who responded, making it very difficult to gain an understanding of the events that had transpired. Eventually, after appellant calmed down, the police were able to see the cut on appellant's leg which was "a crescent shaped cut on the top of his leg, approximately three to four inches long and maybe one inch deep." Appellant was then transported to the hospital.

Later, a different police officer went to the hospital to investigate the case and speak with appellant. That police officer said that he had seen dog bite wounds before, and had, in fact, been bitten by a dog before. He said that the dog bite wounds that he had seen were characterized by holes from teeth or ripped flesh. He testified that stab wounds are characterized by a slice with no jagged edges. He said he stopped investigating the case as a dog bite case as soon as he saw the wound on appellant's leg.

The police officer asked appellant if he wanted to give a written statement, which appellant declined to do. Appellant did give a verbal account, however, in which he said that the dog came at him, bit him, and he stabbed it in the head. The police officer suggested to appellant that the wound did not appear to have been caused by a dog bite and suggested that appellant may have accidentally cut himself when he swung the knife at the

dog. The police officer said that appellant, who had been calm, "adamantly yelled" at him stating "I was bit by a dog."

DISCUSSION

The State charged appellant with abuse or neglect of an animal and making a false statement to a law enforcement officer. At the close of the State's case in chief, after the court asked appellant if he "had any motions to make" appellant replied "No. No, Your Honor. No motions." Nevertheless, the court, seeking to balance "doing the Defendant's job and protecting against an unfairness" considered the sufficiency of the evidence and acquitted appellant of abuse or neglect of an animal. The court also found the evidence legally sufficient to support the count charging making a false statement to a law enforcement officer.

Appellant contends on appeal, for the first time, that the evidence is legally insufficient to prove that he acted with the requisite *mens rea* to support the crime of making a false statement to a law enforcement officer. He claims that we should overlook his failure to have raised the sufficiency of the evidence at trial because the circuit court found that the evidence was sufficient, and therefore the issue was "raised in or decided by the trial court" within the contemplation of Maryland Rule 8-131(a).[2]

---

[2] Maryland Rule 8-131(a), describing our scope of appellate review, provides as follows:

> (a) *Generally*. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by

(continued)

The State counters that, because, when we interpret statutes or rules, a specific statute or rule will govern over a general one, and because Rule 8-131(a) is a general rule applicable to any issue raised on appeal, while Rule 4-324[3] is a specific rule, applicable only to motions for judgment of acquittal, Rule 4-324 governs here and therefore appellant was required at trial to "state with particularity all reasons why the motion [for judgment of acquittal] should be granted." We agree with the State.

The Court of Appeals has "been adamant" that the issue of the sufficiency of the evidence is not preserved for appeal if no motion for judgment of acquittal is made at trial, or, if made, not made with particularity. *Wallace v. State*, 237 Md. App. 415, 432 (2018), citing *State v. Lyles*, 308 Md. 129, 135 (1986). Hence, here, where appellant specifically declined to make a motion for judgment of acquittal when invited by the court to do so, the issue of the sufficiency of the evidence is not preserved for appeal. It is of no moment that appellant represented himself at trial because "'the procedural, evidentiary, and appellate rules apply alike to parties and their attorneys … [n]o different standards apply when

---

> the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

[3] Maryland Rule 4-324, titled "Motion for Judgment of Acquittal," provides in pertinent part:

> (a) *Generally*. A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.

parties appear *pro se*.'" *Gantt v. State*, 241 Md. App. 276, 302, *cert. denied*, 466 Md. 200 (2019) (quoting *Tretick v. Layman*, 95 Md. App. 62, 86 (1993)).

Even if the issue of the sufficiency of the evidence were preserved for appeal, appellant would fare no better because the evidence was legally sufficient to support the count charging making a false statement to a police officer.

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)).

Criminal Law Article § 9-501, titled, "False statement — To law enforcement officer," provides:

> (a) Prohibited. — A person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer of the State, of a county, municipal corporation, or other political subdivision of the State, or of the Maryland-National Capital Park and Planning Police with intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint.

The trial court gave the following jury instruction on the elements of crime of making a false statement to a police officer:

> The State must prove the Defendant did make a false statement or report or complaint to … a law enforcement officer. Two, that the Defendant knew it was false in its entirety or in a material part. Three, the Defendant had the intent to deceive. And four, the Defendant had the intent to cause an investigation or other action to be taken.

Appellant contends that the evidence at trial "failed to establish that [appellant] 1) knew that his statement was false at the time he made it and 2) that he intended to deceive anyone by knowingly making a false statement." In a nutshell, appellant draws the inferences from the evidence at trial that he was unaware that he had stabbed himself, and honestly believed that he was bitten by the dog. In asserting that the evidence is insufficient, he ignores the competing inferences that he stabbed himself, he was aware that he stabbed himself, and he lied to the police about it. In the light most favorable to the State, the evidence was therefore legally sufficient. "Choosing between competing inferences is classic grist for the jury mill." *Cerrato-Molina v. State*, 223 Md. App. 329, 337 (2015).

Consequently, we shall affirm the judgment of the circuit court.

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