

Circuit Court for Wicomico County
Case No. C-22-CR-19-000006

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1132

September Term, 2019

JESUS SAMUEL GOMEZ

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 13, 2021

*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.

Convicted by the Circuit Court for Wicomico County of second degree assault and reckless endangerment, Jesus Samuel Gomez, appellant, presents for our review a single question: whether the evidence is sufficient to sustain the conviction for second degree assault. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that on October 10, 2018, Mr. Gomez, Willdelys Morales, Nicholette Acevedo, Ramone Mosquea, and their supervisor Matthew Swicegood were working at their jobs at Chesapeake Nurseries in Salisbury, when Ms. Morales and Ms. Acevedo began to argue over whether Ms. Morales was doing her job correctly. After a supervisor separated the two, Mr. Gomez walked over to Ms. Acevedo, stated “broke that bitch face,” and punched Ms. Acevedo in her nose. Ms. Acevedo slapped Mr. Gomez in his face, and Mr. Swicegood separated them. Mr. Gomez subsequently obtained a pocket knife and approached Ms. Acevedo. Mr. Mosquea stepped in front of Ms. Acevedo and tried to hold Mr. Gomez off. Mr. Swicegood subsequently asked Mr. Gomez to leave, and he departed.

In convicting Mr. Gomez of the offense, the court found that “his intent was to frighten.” The court explained:

I think the reason why he had the knife there was that he intended to scare her. He intended to let her know that he was mad about what had occurred, about the altercation, or potentially even about the words when she was not letting it go, that she was yelling at him. I think he had the ability at that point to bring about an assault, obviously, and committed an act that placed her in immediate fear that there was going to be physical harm to her.

Mr. Gomez contends that the evidence is insufficient to sustain the conviction because, for numerous reasons, he “did not have the apparent ability to bring about the

physical harm at the time of the relevant event.” *See Jones v. State*, 440 Md. 450, 455 (2014) (a “defendant commits second-degree assault of the intent-to-frighten type where: (1) the defendant commits an act with the intent to place a victim in fear of immediate physical harm; (2) the defendant has the apparent ability, at the time, to bring about the physical harm; and (3) the victim is aware of the impending physical harm” (internal citation, quotations, and brackets omitted)). We disagree. At trial, the State elicited the following testimony:

- Ms. Acevedo testified that Mr. Gomez ran at her “with the blade [of the knife] pointed out toward” her. When Mr. Mosquea stepped in front of Ms. Acevedo, Mr. Gomez tried “to find a blind spot to keep going[,] like trying to find [her] to stab” her. Ms. Acevedo further confirmed that “the only thing that was stopping [Mr. Gomez] from stabbing [her] was [Mr. Mosquea] being in between the two of” them.
- Mr. Mosquea testified that as he stood in front of Ms. Acevedo, Mr. Gomez “was just walking around” and “looking for a blank point,” meaning a “way to get in” to Ms. Acevedo.
- Mr. Swicegood testified that Mr. Gomez “ran over towards where” the group was “at that moment” while “holding a knife” that “he had . . . pointed.” Mr. Mosquea and Ms. Acevedo’s father were between her and Mr. Gomez, who was “right in their face[s].” Mr. Swicegood confirmed that Mr. Gomez was “only a foot away” from Mr. Mosquea and Ms. Acevedo’s father, and that “it’s a very possibility [sic] that” the knife “was closer than a foot” away.

We conclude that this evidence, combined with the evidence that Mr. Gomez had already assaulted Ms. Acevedo by punching her in her nose, could convince a rational trier of fact beyond a reasonable doubt that Mr. Gomez had the apparent ability, at the time, to bring

about additional physical harm to Ms. Acevedo. Hence, the evidence is sufficient to sustain the conviction.

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