Circuit Court for Washington County
Case No. C-21-CR-20-000225

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1431

September Term, 2021

EDWIN HOERNER

v.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 1, 2022

Following a jury trial in the Circuit Court for Washington County, Edwin Hoerner, appellant, was convicted of second-degree assault and reckless endangerment. On appeal, he contends that there was insufficient evidence to sustain his convictions. For the reasons that follow, 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." *Ross v. State*, 232 Md. App. 72, 81 (2017) (quotation marks and 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" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). 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) (citation omitted).

Viewed in the light most favorable to the State, the evidence at trial established that appellant and the victim were both inmates at Maryland Correctional Training Center. Correctional Officer Bradley Kiracofe testified that he walked onto the tier and observed appellant on top of the victim in what looked like a "bear hug." Officer Kiracofe asked appellant to get off the victim several times, but appellant refused to do so. Ultimately, Officer Kiracofe had to spray appellant in the face with pepper spray to get him off the victim. After appellant got off the victim, he walked over and spit out part of the victim's ear onto the floor.

We are persuaded that the foregoing evidence, if believed by the jury, was sufficient to sustain appellant's convictions. In claiming otherwise, appellant asserts that the evidence was insufficient because the State failed to disprove that he acted in perfect self-defense. Specifically, he contends that "no rational trier of fact could find that [he] was not justified by perfect self-defense" because the State "presented no evidence to demonstrate that [he] was the aggressor" or that he "did not actually believe he was in imminent danger of bodily harm." In support of this claim appellant points to his own testimony that the altercation started when he was hit in the back of the head by the victim, and that he bit the victim because he was afraid for his life; the testimony of another inmate that the altercation started when appellant was jumped by three to four other inmates; and the fact that the victim invoked his Fifth Amendment right against self-incrimination and refused to testify.

However, in *Hennessy v. State,* 37 Md. App. 559 (1977), we rejected a similar argument stating:

> [Hennessy] concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that, because the State did not affirmatively negate his self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. The factfinder may simply choose not to believe the facts as described in that, or any other, regard[.]

Id. at 561 (internal citations omitted).

Appellant's contention is equally meritless. Although, he was entitled to, and received, a jury instruction on perfect self-defense, *see Dykes v. State*, 319 Md. 206, 211 (1990) (stating the requirements for perfect self-defense), the jury was "free to believe

some, all, or none of the evidence presented" that supported that defense. *Sifrit v. State*, 383 Md. 116, 135 (2004). Here, the jury could reasonably find that appellant did not have reasonable grounds to believe that he was in danger of death or serious bodily harm; that he used excessive force; or that his testimony, and the testimony of the other inmate, that he was assaulted from behind prior to the altercation was not credible. *See, e.g.*, *Rajnic v. State*, 106 Md. App. 286, 291-93 (1995) (finding that sufficient evidence existed from which a jury could reject appellant's claim of self-defense despite the undisputed testimony that the victims were larger than appellant, intoxicated, threatened to beat up appellant, and charged into his bedroom on the heels of those threats). Because the evidence did not establish that appellant acted in self-defense as a matter of law, the court did not err in denying appellant's motion for judgment of acquittal.

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