

Circuit Court for Washington County
Case No: C-21-CR-18-000768

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1580

September Term, 2019

JONATHAN SANDOVAL OSSES

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 5, 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.

Jonathan Sandoval Osses, appellant, was convicted by a jury in the Circuit Court for Washington County with attempted armed robbery,¹ first-degree assault,² use of a firearm in the commission of a crime of violence,³ and other related offenses.⁴ On appeal, Mr. Osses contends that the State presented insufficient evidence to sustain his convictions.

For the following reasons, we shall affirm the judgment of the trial court.

BACKGROUND

This appeal stems from an attempted armed robbery which occurred in August 2018 at the Star GrafX sign shop in Hagerstown, Maryland. Paul Dunlap, the store owner, testified that at approximately 11:30 a.m. two masked men entered the store, held him at gun point, and demanded money. Rather than comply, Mr. Dunlap pepper sprayed both men in the eyes and mouth, and the pair “stagger[ed] around” until they found the door and fled. The trial court accepted into evidence videotape and still images taken from video cameras installed throughout the City of Hagerstown and from the store’s surveillance system which captured the moments before, during, and after the attempted robbery.

¹ Md. Code Ann., Crim. Law §3.403.

² Md. Code Ann., Crim. Law § 3-202.

³ Md. Code Ann., Crim. Law §4-204(b).

⁴ Mr. Osses was also convicted of attempted robbery (Md. Code Ann., Crim. Law §3.402), second-degree assault (Md. Code Ann., Crim. Law §3.203), reckless endangerment (Md. Code Ann., Crim. Law §3-204), possession of a regulated firearm while under 21 years of age (Md. Code Ann., Public Safety §5-133(d)), and wearing, carrying, or transporting a handgun (Md. Code Ann., Crim. Law §4-203).

One of the would-be robbers was identified as Kevin Butler who, ultimately, admitted before a juvenile court his involvement in the incident. In addition, Mr. Butler admitted to the juvenile court that he had conspired with Mr. Osses to commit the robbery. The identity of the second robber was, nonetheless, at issue before the jury in Mr. Osses’s trial. In rendering its verdict, the jury decided that Mr. Osses was, indeed, the second offender.

DISCUSSION

“When reviewing the sufficiency of the evidence to support a conviction, we ask 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.” *McCauley v. State*, 245 Md. App. 562, 571 (2020) (internal quotations and citation omitted). In addition to the evidence, we view “all rational inferences that arise from the evidence” in the light most favorable to the prosecution. *Smith v. State*, 232 Md. App. 583, 594 (2017) (internal citation omitted). On appeal, we do not review “whether the evidence *should have or probably would have* persuaded the majority of fact finders[,] but only whether it *possibly could have* persuaded *any* rational fact finder.” *Id.* (internal citation omitted).

On appeal, Mr. Osses reiterates argument raised in his motions for judgment of acquittal that, as to each charge, there was insufficient evidence of his criminal agency. As to the lack of direct evidence of his criminal agency, Mr. Osses contends that 1) “there was ‘no positive identification’ of [him] as ‘the person involved in the robbery attempt,’” 2) “[t]he only identification is of him prior to the [attempted] robbery [was] from photographs

in the area,” and 3) “no identification was made from ‘photographs or any other evidence after the [attempted robbery].’”

The record reveals, however, that there was sufficient direct and indirect evidence of Mr. Osses’s criminal agency. Firstly, Officer Andrew Main testified that during the police interrogation of Mr. Butler immediately following the incident, he heard Mr. Butler identify the “other individual [] wearing the mask inside [the] Star Grafx” as “Mr. Jonathan Sandoval Osses.” Officer Main’s testimony was corroborated by Officer Alec Routhier who was also present during the interrogation and heard Mr. Butler identify Mr. Osses as the person with him in the Star Grafx store. Though Mr. Butler testified at trial that he did not “recall” who was with him at the time of the attempted robbery, the officers’ testimony regarding the content of the interrogation was unrebutted at trial. As the State correctly contends, the officers’ testimony alone was sufficient to positively identify Mr. Osses as the second perpetrator of the attempted robbery. Moreover, Mr. Butler conceded at trial that he had admitted in the juvenile court to “conspiring with Jonathan Sandoval Osses[] to commit robbery.”

Secondly, video surveillance from before the attempted robbery captured Mr. Butler and Mr. Osses walking together in Hagerstown. The pair had a black and white Adidas bag and, ultimately, disappeared behind a billboard. During his testimony, Mr. Butler affirmed that he and the person that he was with “had to change clothes” before the robbery attempt and “went up behind the billboards” to do so. Viewing this evidence in the light most favorable to the State, the jury could have rationally inferred that Mr. Osses was the

person with whom Mr. Butler changed clothes with behind the billboard before attempting to execute the robbery.

Thirdly, the contents of a recovered Adidas duffle contained black slide-on sandals, similar in style to sandals worn by Mr. Osses while he walked with Mr. Butler prior to the attempted robbery. Mr. Osses argues that recovery of the Adidas bag was insufficient evidence of his criminal agency, because 1) “[t]he officer who secured the bag...[did] not [testify], creating a “significant gap in the chain of custody,” 2) the Adidas duffle bag in evidence had “no identifying characteristics,” and 3) the only clothes discovered inside the Adidas duffle bag were “Kevin Butler’s ‘red shorts’ and no clothes attributable to Mr. Osses.

However, viewed in the light most favorable to the State, evidence concerning the Adidas bag, circumstantial though it may be, was sufficient for a reasonable juror to find Mr. Osses’s criminal agency. Specifically, video surveillance captured Mr. Osses wearing black slide-on sandals and carrying a black and white Adidas duffle bag prior to the robbery. Mr. Butler testified that while changing behind the billboard, he and the second perpetrator placed the clothes that they had been wearing in an Adidas duffle bag. Following the attempted robbery, Officer Gary Anderson and his K-9, Amigo, tracked in the direction that the assailants fled. The track led Amigo to a black Adidas bag which contained, among other things, black slide-on sandals similar to those worn by Mr. Osses prior to the attempted robbery. Officer William Oates was present when the bag was discovered by Amigo. Officer Oates observed officer Helman secure the bag and he identified the bag at trial.

Lastly, though masked, the trial court observed that the person Mr. Butler was with during the robbery was of a similar size and build as that of Mr. Osses. Combined with the prior elucidated evidence, it was possible for a rational jury to conclude that Mr. Osses was the second perpetrator of the attempted armed robbery at Star Grafx, thus establishing criminal agency.

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