Circuit Court for Frederick County
Case No. C-10-CR-19-000355

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1869

September Term, 2019

EDDIE W. MOORE

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 23, 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.

Convicted by a jury in the Circuit Court for Frederick County of three counts of second degree assault and reckless endangerment, Eddie W. Moore, appellant, presents for our review two questions: whether the evidence is sufficient to sustain one of the convictions for second degree assault and the conviction for reckless endangerment, and whether the counts of second degree assault "[s]hould . . . have been merged[] for sentencing purposes." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Donna Elias, who testified that she worked with Mr. Moore's wife Brandi Moore, and had met Mr. Moore "[m]aybe two, three times." On February 22, 2019, Ms. Elias went to the Moores' residence at 108 Boundary Avenue, Apartment 16, in Thurmont, "to check on" Mrs. Moore. While Ms. Elias and Mrs. Moore were speaking, Mrs. Moore received a phone call from Mr. Moore, who "wanted [Mrs. Moore] to come pick him up." Mrs. Moore "said that she couldn't," because she had "wrecked the car." When Mrs. Moore stated that she had "sold some things to . . . get the car out," Mr. Moore stated "that she was a stupid bitch and that the worst thing he ever did was marry her." Later, Ms. Elias went out to purchase medicine and food for Mrs. Moore. When Ms. Elias returned to the residence and knocked on the door, she "heard [Mr. Moore] say, don't you dare answer that door or I'll effing kill you." Ms. Elias replied: "Brandi, I know you're there. If you don't answer the door, I'm going to call the police." Mrs. Moore "opened [the door] a crack," and Ms. Elias saw that Mrs. Moore's "face was all red and [that] she had been crying." After Ms. Elias twice asked Mrs. Moore if she was "okay," Mr. Moore "stepped out from behind her." When Mrs. Moore said that she was "fine,"

Ms. Elias gave Mrs. Moore the medicine and food, hugged her, and stated: "I will be checking on you later."

The State next called Patsy Wetzel, who testified that she lives in Apartment 19 of the building where the Moores lived. On the morning of February 23, 2019, Ms. Wetzel "heard a scream." When Ms. Wetzel "went and looked out," she saw Mrs. Moore "scratching on the window" like she was "trying to get out." Ms. Wetzel told her daughter "to call [Mrs. Moore] and come over to [Ms. Wetzel's] place." Mrs. Moore, who "was shaking and crying," entered Ms. Wetzel's residence, "ran to the bathroom," and "shut the door behind . . . her." When Mrs. Moore exited the bathroom, she asked Ms. Wetzel to call the police. Ms. Wetzel saw that Mrs. Moore's "face was all messed up" and "bloody," and "she had a gash in the back of her head."

The State subsequently played for the jury a recording of Ms. Wetzel's call to 911, during which Mrs. Moore told the dispatcher: "He's trying to kill me." The following conversation ensued:

> [Mrs.] Moore: He – I wrecked the car. When he came home, he beat me last night, and then this morning he –
>
> [911] Dispatcher: Who's he? Is this your boyfriend or your husband?
>
> [Mrs.] Moore: My husband.
>
> [911] Dispatcher: Okay. Continue.
>
> [Mrs.] Moore: Eddie Moore. He beat me with a crutch. He kicked me in the mouth, punched me, told me he's –
>
> [911] Dispatcher: Okay. Take a deep breath, Brandi. Okay? I know this is difficult, okay, but keep going.

> [Mrs.] Moore: (Unintelligible) hollered out the door and they heard me, and I was beating on the window. He dragged me back. He pushed –
>
> [911] Dispatcher: Okay.
>
> [Mrs.] Moore: – my head against the wall, the floor, hit me (unintelligible).
>
> [911] Dispatcher: Okay. Were there any weapons involved or mentioned?
>
> [Mrs.] Moore: He just used crutches and a broom and whatever he could (unintelligible).

The State next called Frederick County paramedic Sarah Willis, who testified that on February 23, 2019, she was dispatched to respond to Ms. Wetzel's apartment. Ms. Willis "evaluated" Mrs. Moore and discovered that "she had a laceration and swelling to the back of the head with oozing blood," "a laceration to the right side of her forehead," swollen lips "with dried blood on them," "a laceration in the top lip and a laceration in the bottom lip," "a chipped front tooth," "a contusion, or red and purple marks, to the right side of . . . her chest below the collarbone," "a contusion and purple marks to the right rib," "left ankle pain," and "abrasions to the left upper arm." When Ms. Willis asked Mrs. Moore "what happened," she replied that "she was hit with crutches, [a] broom, [a] fist, and knees," "thrown around by her hair, [and] thrown into the shower." Mrs. Moore was susbsquently "transported to Frederick Memorial Hospital."

The State next called Frederick Memorial Hospital nurse Sarah Toliver, who testified that she was "in charge of taking care of [Mrs. Moore] throughout her stay" at the hospital. Mrs. Moore stated that "she had been assaulted . . . from about 6:00 p.m. [the previous] night until 9:00 a.m. that morning." Mrs. Moore also "reported that she had been

hit with a crutch and fists," and "that her assailant held a crutch to her neck." The State subsequently called Frederick Memorial Hospital forensic nurse examiner Kimberly Braden, who testified that during an examination of Mrs. Moore, Ms. Braden noticed that Mrs. Moore had "a raspy voice" and "was hoarse and coughing."

The State subsequently called forensic nurse examiner Pamela Holtzinger, whom the court accepted "as an expert in the area of forensic nursing and the science of nonfatal strangulation." When asked whether she was "able to formulate an opinion as to the severity of the strangulation that [Mrs.] Moore suffered," Ms. Holtzinger stated: "The . . . totality of all of the injuries and . . . the assessment from her strangulation, specific assessment[,] the totality of the symptomatology, the . . . more than 40 injuries, soft tissue swelling, lacerations, abrasions, the pain, it was a very serious event." In photographs of Mrs. Moore, Ms. Holtzinger "was able to identify a few [injuries] that were not in the record that were significant to the actual strangulation event itself," including "an injury that was . . . underneath of [Mrs. Moore's] chin and on her jaw line" that is "very classic for nonfatal strangulation." Another "classic injury that we see in . . . nonfatal strangulation" that Ms. Holtzinger was "looking for [was] petechiae, which are pinpoint red dots." Ms. Holtzinger saw "on a different photograph" of Mrs. Moore "two very clear petechial areas . . . outside of the bruising."

Following the close of the evidence, the court instructed the jury that to convict Mr. Moore of the first count of second degree assault, the State had to prove that "in the morning hours of February 23, 2019," Mr. Moore "caused an offensive physical contact with [Mrs.] Moore, to-wit strangulation." To convict Mr. Moore of reckless endangerment,

the State had to prove that Mr. Moore "engaged in conduct, to-wit strangulation that created a substantial risk of death or serious physical injury to another and that a reasonable person would not have engaged in that conduct and [he] acted recklessly." To convict Mr. Moore of the second count of second degree assault, the State had to prove that "in the morning hours of February 23, 2019," Mr. Moore "caused offensive physical contact with [Mrs.] Moore to-wit, striking [her] multiple times in the face and body." Finally, to convict Mr. Moore of the third count of second degree assault, the State had to prove that "in the evening hours of February 22nd," Mr. Moore "committed an act with the intent to place [Mrs.] Moore in fear of immediate offensive physical contact or physical harm." The jury subsequently convicted Mr. Moore of the offenses.

At sentencing, the court sentenced Mr. Moore to a term of ten years' imprisonment for the first count of second degree assault. For the second count of second degree assault, the court sentenced Mr. Moore to a term of ten years' imprisonment, to be served consecutive to the sentence for the first count of second degree assault. For the third count of second degree assault, the court sentenced Mr. Moore to a term of ten years' imprisonment, all but four years suspended, to be served consecutive to the sentence for the second count of second degree assault. Finally, the court merged the count of reckless endangerment into the first count of second degree assault.

Mr. Moore contends that the evidence is insufficient to sustain the convictions for the first count of second degree assault and reckless endangerment, because "it cannot be said . . . that the evidence supported a finding of 'strangulation.'" We disagree. The State produced evidence that while Mrs. Moore was at the hospital, she reported that "her

assailant held a crutch to her neck," she had "a raspy voice," and she "was hoarse and coughing." Also, Ms. Holtzinger, an expert in "the science of nonfatal strangulation," testified that the totality of the evidence reflected a "very serious event" of strangulation, and that "an injury . . . underneath of [Mrs. Moore's] chin and on her jaw line," and the presence of "two very clear petechial areas . . . outside of the bruising," were "classic for nonfatal strangulation." We conclude that this evidence could convince a rational trier of fact beyond a reasonable doubt that Mr. Moore strangled Mrs. Moore, and hence, the evidence is sufficient to sustain the convictions for the first count of second degree assault and reckless endangerment.

Mr. Moore next contends that "the three consecutive maximum sentences" for the counts of second degree assault are "unlawful, as the convictions should have merged for sentencing purposes." We disagree. The Court of Appeals has stated that "[s]entences for two convictions must be merged when . . . the convictions are based on the same act or acts[.]" *Brooks v. State*, 439 Md. 698, 737 (2014) (citations omitted). Here, the court explicitly instructed the jury that each count of second degree assault was based on a different act or acts. Hence, the court was not required to merge the counts of second degree assault for sentencing purposes, and the sentences for the counts are not unlawful.

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