UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1999

September Term, 2014

CALVIN LUCAS, JR.

v.

STATE OF MARYLAND

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: May 20, 2015

Calvin Lucas, Jr., appellant, was convicted by a jury sitting in the Circuit Court for Baltimore City of attempted first-degree murder, reckless endangerment, use of a firearm in the commission of a crime of violence, illegal possession of a firearm, illegal possession of a handgun, and discharge of a firearm in the City of Baltimore.[1] Appellant asks one question on appeal: Was there sufficient evidence of an intent to kill to support his conviction for attempted first-degree murder? For the following reasons, we shall affirm the judgments.

FACTS

Phyllis Lucas, appellant's wife, testified that around 2:00 a.m. on February 18, 2013, appellant called her at their home at 3807 Fairview Avenue in Baltimore. Appellant asked his wife to pick him up near a corner bar and drive him home. Appellant was a Vietnam war veteran and had served more than 35 years in the military. The Lucas's had been married 15 years but their relationship was "not good[.]" When she drove to the corner, he got in the car and she could smell alcohol on his person. They drove home in silence.

Once home, they went upstairs to their bedroom where appellant asked her if, several weeks earlier, she had failed to give him the message that someone had called the house looking for him to do some work on their house. Ms. Lucas admitted that she had not given appellant the message. According to Ms. Lucas, appellant became "real nasty real quick"

[1] The court sentenced appellant to 20 years of imprisonment, all but eight years suspended, for attempted first-degree murder; a concurrent five years without parole for use of a firearm; and a second concurrent five-year sentence without the possibility of parole for illegal possession of a firearm. The court merged his remaining convictions. His sentences were to be followed by three years of supervised probation.

and started "ranting and raving and cussing [that] he was killing this one and killing that one." Appellant screamed at her, "I know what I'm going to do. . . . I'll show you what I'm going to do." Ms. Lucas retreated to the second floor bathroom, closed the door, and waited about ten minutes for appellant to calm down. When she exited the bathroom, she found appellant sitting in a chair by the bed with a shotgun across his lap. Appellant said, "I'm going to show you what I'm going to do." At this point, she walked down the stairs to get their cordless telephone to call the police.

When she reached the stair landing and picked up the phone, she heard appellant, who had followed her down the steps, say: "Who are you calling? . . . Are you calling the police?" When she responded in the affirmative, he stuck the barrel of the shotgun into her cheek. In response, Ms. Lucas hit the gun with her hand and the gun discharged, putting a hole in the stairwell wall. At this point, they struggled for control of the gun. He eventually let go of the gun, went back upstairs, and returned to the stair landing with his jacket on. He told her, "I ought to cut your throat." and "You got that gun; I got another one." He then left the house and she called the police. A tape of her 911 call was played for the jury.

The police responded and found a 20-gauge, single shot, shotgun at the bottom of the staircase and noted the damage to the stairwell wall. The police recovered a spent shotgun shell from inside the shotgun. The police also found a severely rusted pistol with six live cartridges in a box in a second bedroom on the second floor. A firearms expert testified that

to fire the shotgun, the hammer must be pulled back and then the trigger pulled. The expert testified that the shotgun was operable but the pistol was not.

Appellant's version of the incident was slightly different. He testified that while in the upstairs bedroom, he asked his wife about not receiving a telephone message. His wife began getting "loud," so he decided to leave the house. He grabbed a change of clothes, his cell phone, and a shotgun. He explained that his wife operated a day care center out of their house, and he did not want to leave the gun in the house while he was gone. He acknowledged that he knew the shotgun was loaded, but testified that he was planning to unload it in his car. As he neared the bottom of the stairs with the shotgun in one hand and his personal affects in the other, his wife, who was standing at the bottom of the stairs, hit the shotgun with her hand. They then started wrestling for control of the gun. While they wrestled, the gun discharged. He denied touching the gun to her cheek. Once the gun discharged, he left.

The parties stipulated that appellant had been convicted of a crime that made it illegal for him to possess a regulated shotgun and firearm.

DISCUSSION

Appellant argues on appeal that the evidence was insufficient to sustain his conviction for attempted first-degree murder because the State failed to establish that he acted with an intent to kill. He argues that the evidence that he carried a loaded shotgun down the steps

and that that shotgun touched his wife's cheek proved, at most, that he intended to cause her grievous bodily harm or even that he intended to frighten her.

When reviewing the sufficiency of the evidence, our task is 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.'" *Taylor v. State*, 346 Md. 452, 457 (1997)(quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))(emphasis in original). The appellate court does not weigh the evidence or judge the credibility of the witnesses, as that is the responsibility of the trier of fact. *Bryant v. State*, 142 Md.App. 604, 622, *cert. denied*, 369 Md. 179 (2002). Instead, "we [] determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince *a* rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Bryant*, 142 Md.App. at 622-23 (quotation marks and citation omitted)(emphasis added). The same standard applies to those criminal cases resting upon circumstantial or direct evidence "since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *State v. Suddith*, 379 Md. 425, 430 (2004)(quotation marks and citation omitted).

As with direct evidence, circumstantial evidence will sustain a conviction when all the facts taken together do not require the fact-finder "to resort to speculation or conjecture[.]" *Taylor*, 346 Md. at 458. The Court of Appeals has explained:

> [c]ircumstantial evidence is not like a chain which falls when its weakest link is broken, but is like a cable. The strength of the cable . . . does not depend upon one strand, but is made up of a union and combination of the strength of all its strands. No one wire in the cable that supports the suspension bridge across Niagara Falls could stand much weight, but when these different strands are all combined together, they support a structure which is capable of sustaining the weight of the heaviest engines and trains. We therefore think it is erroneous to speak of circumstantial evidence as depending on links, for the truth is that in cases of circumstantial evidence each fact relied upon is simply considered as one of the strands and all of the facts relied upon should be treated as a cable.

Hebron v. State, 331 Md. 219, 227-28 (1993)(quotation marks and citations omitted). "Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *Suddith*, 379 Md. at 447 (quotation marks and citation omitted) (brackets added in *Suddith*).

Murder is a common law crime in Maryland that is codified and parsed into degrees for punishment purposes by Md. Code Ann., Crim. Law Art. §§ 2-205 and 2-206, respectively. The *mens rea* for attempted first or second-degree murder is an intent to kill. *State v. Earp*, 319 Md. 156, 163 (1990). An "'intent to kill' means just what the term suggests – one person intends to bring about the death of another." *Earp*, 319 Md. at 163.

> The required intent to kill, may, of course, be proved by circumstantial evidence – that is, the trier of fact may infer the existence of the required intent from the surrounding circumstances.

> [S]ince intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.

Davis v. State, 204 Md. 44, 51, 102 A.2d 816 (1954).

Id. at 167. Moreover, it is permissible for the jury to infer that "one intends the natural and probable consequences of his act." *Smallwood v. State*, 343 Md. 97, 105 (1996)(quotation marks and citations omitted).

The jury was free to believe Mrs. Lucas's testimony and not to believe appellant's testimony. The aiming of a loaded shotgun at Mrs. Lucas's cheek, a vital part of her body, with the hammer pulled back so it was ready to fire was evidence of an intent to kill. That intent was supported by appellant's rage, his inability to "cool down" after Mrs. Lucas spent 10 minutes in the bathroom, and his threatening, posturing statement of "I'm going to show you what I'm going to do" minutes before he pointed the gun at her cheek. Under the circumstances presented, we are persuaded there was sufficient evidence for *a* rational trier of fact to find that appellant acted with an intent to kill.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.