Circuit Court for Baltimore City
Case No. 918101006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2010

September Term, 2018

IN RE: S.G.

Fader, C.J.,
Wells,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 19, 2019

The Circuit Court for Baltimore City, sitting as a juvenile court, found appellant, S.G., involved in first-degree assault, second-degree assault, and reckless endangerment of both Rodney Johnson and Dimetri Gaither, as well as two counts of wearing or carrying a dangerous weapon. Following disposition, this appeal was noted, raising three issues:

> I. Whether there was sufficient evidence to find that S.G. committed the delinquent acts of first-degree assault, second-degree assault, and reckless endangerment against Dimetri Gaither;
>
> II. Whether the juvenile court erred in denying S.G.'s motion to suppress a statement purportedly obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966); and
>
> III. Whether the juvenile court erred in denying S.G.'s motion to suppress Rodney Johnson's out-of-court identification of S.G. from a photographic array.

Because the evidence was sufficient, and the juvenile court did not err in denying either suppression motion, we affirm.

BACKGROUND

The Incident

On Friday, May 12, 2017, a group of friends, Brent White, Rodney Johnson II, Dimetri Gaither, Cameron Price, Angelica Hernandez, Antoinette Scott, and Lauren Sanchez, went out for an evening of drinking and dancing. They first went to Mother's, in the Federal Hill neighborhood of Baltimore City, and later, at approximately 1:00 a.m. Saturday morning, they left and went across the street to Banditos.

While at Banditos, White asked a "white female" from another group to dance; she obliged his request once but refused his second request. Immediately thereafter, an "all

out brawl" broke out between the two groups, and, by the time it concluded, Johnson, Gaither, Price, and appellant all had suffered stab wounds.

Shortly thereafter, police received a call that appellant had walked into MedStar Harbor Hospital, the nearest hospital to Banditos, suffering from a stab wound. Officer Terry Graham, of the Baltimore City Police Department, responded to that call and was ushered by hospital staff into the room where appellant was being treated. Officer Graham asked appellant how he had been injured, and appellant replied, in Officer Graham's words, that he had been stabbed while "trying to buy some weed" from a "young, . . . dark complected" man, in an alley near the 1000 block of East Patapsco Avenue in the Brooklyn section of Baltimore City. While Officer Graham remained with appellant, another police officer travelled to that area in an attempt to verify appellant's story, but that officer could find no indication of a crime scene.

Hospital staff collected appellant's clothes and gave them to the police for forensic testing. While doing so, a can of mace was found in one of his pockets.

Although initially, police were unsure whether appellant was a victim or a perpetrator, they ultimately concluded that he had been the latter, and charges were filed in the Circuit Court for Baltimore City. The matter was "reverse waived"[1] to juvenile court, and a four-day adjudicatory hearing was held.

[1] Appellant initially was charged with two counts of attempted first-degree murder, charges which, given his age at the time of the alleged offenses, are under the jurisdiction of the criminal court. Md. Code (1974, 2012 Repl. Vol.), Courts & Judicial Proceedings Article ("CJ"), § 3-8A-03(d)(1). A "reverse waiver" motion was filed and subsequently granted, under Criminal Procedure Article ("CP"), § 4-202, transferring jurisdiction to (continued)

The Adjudicatory Hearing

Prior to the commencement of the adjudicatory hearing, the court held a preliminary hearing to resolve appellant's motions to suppress his out-of-court statement, which he had made while in the hospital, and Johnson's out-of-court identification of him, from a photographic array that had been shown to him several days after the brawl.[2] The juvenile court's denials of those motions are at issue in this appeal.

During the preliminary hearing, appellant actually challenged two out-of-court identifications, the first by Brent White, several hours after the incident, and the second by Rodney Johnson, several days afterwards. White called Detective Frank Mundy at the Southern District precinct at approximately 5 or 6 a.m. on the morning of May 13 and offered to come in for an interview. Upon doing so, he gave a statement, and Detective Mundy then prepared a photographic array, using the "dashboard database," which is used if the subject does not have an arrest record. Using a double-blind procedure, another police officer administered that array, and White positively identified appellant as the assailant. Although appellant challenged that identification below, it is not at issue in this appeal.

juvenile court. (See *Gaines v. State*, 201 Md. App. 1, 8-11 (2011), for a more detailed discussion of waiver and reverse waiver in cases involving juveniles charged with committing crimes or delinquent acts.)

[2] Appellant further moved to suppress a body camera video of him, taken from Officer Graham, while appellant was at Harbor Hospital, because of an alleged discovery violation. That motion also was denied, but appellant does not raise this issue on appeal.

Appellant was arrested shortly thereafter. Then, on May 16, Detective Mundy prepared a second photographic array, but this time, he used the "arrest viewer" database, which, according to Detective Mundy, is the preferred method if a subject's photograph is contained in it. That array was administered to Johnson, while he was at the University of Maryland Medical System Shock Trauma Center, recovering from his wounds, using a similar double-blind procedure. Johnson not only positively identified appellant as the assailant but stated his name, having "heard it on the news." As it turned out, subsequent to appellant's arrest, an article had appeared in the *Baltimore Sun*, reporting the brawl, identifying appellant by name, and depicting the same photograph that had appeared in the "arrest viewer" database. In any event, although Johnson acknowledged that he had seen the *Baltimore Sun* article at issue, he declared that he had selected appellant's photograph from the array because he will "never forget his face," having "watched him stab me."

After the juvenile court denied appellant's suppression motions, the adjudicatory hearing immediately commenced. During that hearing, there were multiple and somewhat conflicting testimonial accounts of what had occurred during the melee, which we now summarize:

According to White, after he had finished dancing with the woman, he noticed that a group on the opposite side of the club was "staring" at his group. White's friends, in turn, "stare[d] back" at the other group. As tensions rose, White saw someone in the opposing group, whom he later identified as appellant, begin "to have an outburst," throwing his hands in the air "very aggressive[ly]."

White then gestured to appellant to "calm down," and as he did so, he observed a six-inch-long knife in appellant's hand. That observation prompted White to attempt to notify security, but before he could do so, "the fight broke out." Almost immediately thereafter, White was pepper sprayed by someone to his left whom he "didn't even know was there." Once he was able to clear his eyes, White saw someone from the opposing group (not appellant), "on top of" his friend Cameron Price, and White jumped in to help his friend. After fighting off Price's assailant, he went outside, where he saw Dimetri Gaither, seriously wounded. Although, during direct examination, White was unable to say who had assaulted Gaither or Johnson, during cross-examination, he testified that he had observed Gaither charge appellant as soon as he had brandished the knife.

According to Johnson, White danced once with the unknown white woman and then returned to his group of friends. He next went back to the dance floor and asked her for another dance, but she declined his second request. At that point, Johnson noticed a "line of men," giving his group "dirty looks." Then, Johnson saw "a punch thrown" and "a line of an unknown substance just being sprayed." Both groups converged, and Johnson "immediately felt what [he] thought was a punch" to his side from appellant. Johnson soon realized that he had been stabbed. As he made his way to the exit, he encountered his friends, Cameron Price and Lauren Sanchez. Price, too, had been stabbed, but Johnson did not see who had committed any of the other assaults. Upon arriving outside, Johnson saw Dimetri Gaither, seriously wounded and "fighting for his life," waiting for an ambulance.

According to Gaither, he observed Brent White being surrounded by "three or four" members of the opposing group, prompting him to intervene "immediately" to assist his

friend. When he did so, he was pepper sprayed, and, to protect himself as best he could, Gaither "hugged the guy" who had just pepper sprayed him. At that point, Cameron Price engaged Gaither's assailant, which "released" Gaither "from the scuffle." Gaither made his way outside and collapsed on the sidewalk, because he had been stabbed. He had no further recollection of what had happened in the nightclub; upon awakening subsequently at Shock Trauma, he was told that he had sustained a stab wound to his chest that had required open heart surgery.

According to Price, he had been talking on his cell phone when Rodney Johnson tapped him on the shoulder to alert him "that some guys across the room looked like they wanted to start something." Once he put his phone in his pocket, Price "saw pepper spray" from "[d]irectly across the room." He stepped to one side to avoid the stream of pepper spray, at which point an "all out brawl" broke out. Price observed his friend Dimetri Gaither "clenched with another [gentleman]," and he went over to assist Gaither. While doing so, a different person "charged at" Price from his right, and the two men "scuffled around for a few seconds." They then disengaged, and Price "made [his] way towards the exit," where he encountered his friends Lauren Sanchez and Rodney Johnson. Price and Johnson had been stabbed.

In addition to the testimony summarized above, the State presented a forensic expert who testified about DNA testing of appellant's clothes, which had been recovered for testing while he was hospitalized, as well as samples taken from the stabbing victims. Of note here, Gaither's pants were tested but were found inconclusive with respect to anyone's

DNA except his own, and appellant's clothing was tested, but no conclusive proof of Gaither's DNA was detected.

Upon the conclusion of the adjudicatory hearing, the circuit court found appellant involved in the following counts: first- and second-degree assault and reckless endangerment of Dimetri Gaither; first- and second-degree assault and reckless endangerment of Rodney Johnson; openly carrying a dangerous weapon; and concealed carry of a dangerous weapon.[3] After disposition, this timely appeal was noted.

DISCUSSION

I. Standard of Review

Review of a judgment entered following a bench trial is governed by Maryland Rule 8-131(c), which provides:

> **(c) Action Tried Without a Jury.** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Thus, in applying this rule, we defer to the circuit court's factual findings unless clearly erroneous, but we review its legal conclusions without deference. *In re Elrich S.*, 416 Md. 15, 30 (2010).

[3] The juvenile court found appellant not involved in reckless endangerment of Cameron Price, and it previously had granted an acquittal as to charges of attempted murder of Gaither and Johnson.

II. Analysis

A. Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to sustain the juvenile court's finding that he was involved in the assault and reckless endangerment of Gaither. He points out that Gaither "was unable to describe the person who stabbed him," nor, appellant claims, did any other witnesses. Moreover, it is uncontested that appellant's DNA was not detected on Gaither's clothing, nor vice versa. Gaither's only stab at an identification was his testimony that, immediately prior to being stabbed, he had "hugged the guy who pepper sprayed" him. That testimony, combined with White's testimony that the pepper spray had come from a "separate" person to appellant's left, leads, in appellant's view, to only one conclusion: assuming that only one person deployed pepper spray that night (and, he claims, there was no testimony to the contrary), appellant "could not have been the person who" assaulted Gaither.

In assessing a claim of evidentiary insufficiency, a reviewing court does not "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt," but rather, it asks "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." *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979) (citation and quotation omitted). It is for the fact-finder "to measure the weight of the evidence and to judge the credibility of witnesses," and, accordingly, we "do not second-guess the [fact-finder's] determination where there are competing rational

inferences available." *State v. Manion*, 442 Md. 419, 431 (2015) (citations and quotations omitted).

Appellant sets forth a plausible interpretation of the evidence, which, if accepted, would lead one to find reasonable doubt that he had assaulted Gaither. The juvenile court, however, was not required to adopt that interpretation.[4]

As the State points out in its brief, appellant's argument rests on a faulty foundation, namely, it assumes that only a single person deployed pepper spray during the fracas and that that person could not have been appellant. That assumption ignores Officer Graham's testimony that a can of mace was found in appellant's pocket when his clothes were examined in the emergency room of Harbor Hospital, and it further ignores White's testimony that appellant was the person he had observed wielding a knife and that Gaither had charged directly at appellant. That evidence was plainly sufficient to sustain the

[4] Given the sensitivity of modern DNA analysis, one might think that, if Gaither's recollection were correct that he had bear-hugged his assailant, then, given the absence of his DNA on appellant's clothes, and the absence of appellant's DNA on his, he must have been assaulted by someone other than appellant. Appellant ignores the reality, however, that a witness's memory may not be entirely accurate, especially when he attempts to recall details of a stressful and chaotic scene, such as the bar fight at issue in this case. Nor, for that matter, was there evidence that an "inconclusive" result for DNA testing necessarily precludes the possibility that someone, such as appellant, may have briefly come into contact with Gaither, and we are in no position, as an appellate court, to make findings in that regard. In any event, it has long been the law that a "fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony." *Pryor v. State*, 195 Md. App. 311, 329 (2010) (citation omitted). *See* Maryland Criminal Pattern Jury Instruction 3:10 ("You may believe all, part, or none of the testimony of any witness.").

juvenile court's finding that appellant was involved in the assault and reckless endangerment of Gaither.

B. Motion to Suppress Statement

Appellant contends that the juvenile court erred in denying his motion to suppress a statement he made, while seeking medical care at Harbor Hospital, shortly after the bar fight and stabbings, because, he asserts, that statement was the product of a custodial interrogation, but he was not advised of his rights under *Miranda v. Arizona*. We are not persuaded.

In reviewing a circuit court's denial of a motion to suppress evidence, we "ordinarily" confine our review "to the information contained in the record of the suppression hearing and not the record of the trial." *Grant v. State*, 449 Md. 1, 14 (2016) (citation and quotation omitted). "When there is a denial of a motion to suppress, we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion." *Id.* As to the ultimate question, however, of whether evidence was admitted in violation of a constitutional right, "we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Id.* at 15.

The "central principle" established by *Miranda v. Arizona* is that

> if the police take a suspect into custody and then ask him questions without informing him of the rights enumerated [in *Miranda*],[5] his responses cannot be introduced into evidence to establish his guilt.

[5] In *Miranda*, the Supreme Court set forth the now-familiar advisements:

(continued)

Berkemer v. McCarty, 468 U.S. 420, 429 (1984) (citations omitted) (footnote omitted). *Miranda*'s prophylactic rule does not apply, however, to statements made by a suspect who was not in custody at the time the statements were made. *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2012); *California v. Beheler*, 463 U.S. 1121, 1121-22 (1983) (per curiam). In the instant case, it is undisputed that no *Miranda* advisements were given to appellant at any time during the police interview at the hospital, and, thus, the custody issue is outcome determinative.

In the *Miranda* context, "'custody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." *Howes v. Fields*, 565 U.S. 499, 508-09 (2012). "In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Id.* (citations and quotations omitted) (cleaned up). To determine how a reasonable person "would have gauged his freedom of movement, courts must examine all of the circumstances surrounding the interrogation." *Id.* (citation and quotation omitted)

> As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

Miranda, 384 U.S. at 444.

(cleaned up). Among those circumstances are "the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning[.]" *Id.* (citations omitted). In addition, because appellant was, at the time of the offenses, a juvenile, a court must also include, as a relevant circumstance, his "age at the time." *J.D.B.*, 564 U.S. at 281.

Initially, we note that, contrary to the State's suggestion, we cannot decline to consider appellant's age at all.[6] Nonetheless, under the circumstances of this case, appellant's age at the time of the offenses, barely under 18 years old, carries little weight in our analysis. The circumstances here are vastly different than those in J.D.B., a 13-year-old middle school student who was "removed from his classroom by a uniformed police officer, escorted to a closed-door conference room, and questioned by police for at least half an hour" about his role in a series of burglaries. *J.D.B.*, 564 U.S. at 265. Appellant, in contrast, was able to obtain entry to a nightclub, where he proceeded to participate in a brawl. He was only in the most technical sense a minor.[7]

[6] The State avers in its brief: "Preliminarily, this Court ought not give S.G. the protections typically afforded to juveniles, when he was injured in a melee at a bar—plainly a place where no juvenile should be."

[7] Indeed, appellant was charged originally as an adult, and the case was heard in the juvenile court only because he had successfully persuaded the circuit court to transfer jurisdiction to the juvenile court. In other words, the jurisdictional statute, CJ § 3-8A-03(d)(1)-(4), plainly contemplates circumstances in which a juvenile, sufficiently close in age to an adult and charged with serious crimes, may be regarded as an adult.

As for the other circumstances surrounding the police questioning of appellant, none of them weighs in favor of a finding of custody. The duration of the questioning was relatively brief; appellant did not admit to having committed any delinquent acts during that questioning; he was constrained only to the extent it was medically necessary, and, moreover, his confinement was not in any way effected by the police, but rather, was dictated by the injuries he had suffered; and he was not placed under arrest upon the conclusion of questioning, either actually or constructively. Most importantly, appellant was questioned in a hospital, where he had voluntarily presented himself for treatment for wounds he had sustained in the brawl. The general rule is that questioning in a hospital, with nothing more, is insufficient to create *Miranda* custody. *See*, *e.g.*, *Owens v. State*, 399 Md. 388, 430 n.8 (2007) (noting that the "consensus of American case law is that the questioning of a suspect who is confined in a hospital but who is not under arrest is not a custodial interrogation within the contemplation of *Miranda*") (quoting *Cummings v. State*, 27 Md. App. 361, 369-70 (1975)); Andrew Jezic, et al., *Md. Law of Confessions*, § 8.2, at 337-39 (4th ed. 2018). Under the circumstances of this interrogation, we hold that "a reasonable person" of appellant's age would not "have felt he . . . was not at liberty to terminate the interrogation." *Fields*, 565 U.S. at 509. We therefore conclude that the juvenile court did not err in finding that appellant had not been in custody during the hospital interview, and consequently, it properly denied his motion to suppress his statement made during that interview.

C. Motion to Suppress Identification

Finally, appellant contends that the juvenile court erred in denying his motion to suppress Rodney Johnson's out-of-court identification of him from a photographic array. According to appellant, Johnson's identification was irreparably tainted by a photograph he had seen in a newspaper article, reported in the *Baltimore Sun*, describing the altercation at Banditos and displaying a photograph of appellant, which had, apparently, been obtained from Baltimore City Police. The State counters that Johnson's identification was sufficiently reliable because he testified, during the suppression hearing, that, when being shown the photographic array, he would "never forget [appellant's] face" because he had "watched him stab me."

We need not consider this issue for long, since appellant acknowledges that, under our recent decision in *Bean v. State*, 240 Md. App. 342, *cert. denied*, 464 Md. 591 (2019), Johnson's out-of-court identification was admissible. Here, as in *Bean*, we do "not conclude that 'improper police conduct' influenced a witness's out-of-court identification when police merely release a photograph of the defendant to the media as part of an on-going investigation." *Id*. at 357. We decline appellant's invitation to revisit *Bean*.[8] But

[8] As we stated in *Archer Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 325 (2007):

> A reported decision is a decision *by the Court*, not a panel, and is not reported unless approved by at least a majority of the members of the Court. Moreover, a reported decision constitutes binding precedent[.]

(continued)

in any event, we further agree with the State that Johnson's out-of-court identification of appellant, whose face he declared he would "never forget" because he had "watched him stab me," was sufficiently reliable to pass constitutional muster.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS ASSESSED TO APPELLANT.

Thus, for appellant to prevail on this issue, we would have to issue a reported decision overruling *Bean*, which we are not at all inclined to do, as we do not think that case was wrongly decided. Appellant appears to understand as much, noting that he wishes to preserve the issue for subsequent review, if any, by the Court of Appeals.