UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1354

September Term, 2016

LAVAR PAYTON

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2017

*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.

Levar Douglas Payton, appellant, was convicted of second degree assault following a jury trial in the Circuit Court for Allegany County. On appeal, he contends that there was insufficient evidence to support his conviction because the State failed to prove that he acted intentionally or recklessly when he struck the victim. *See Nicholas v. State*, 426 Md. 385, 407 (2012) (stating that to convict a defendant of a second degree assault of the battery variety, the State must prove that the contact with the victim was the result of an intentional or reckless act, and was not accidental). For the reasons that follow, we affirm.

"The standard for our review of the sufficiency of the evidence is '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.'" *Neal v. State*, 191 Md. App. 297, 314 (2010) (citation omitted). "The test is 'not whether the evidence should have or probably would have persuaded the majority of the fact finders but only whether it possibly could have persuaded any rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted). In applying the test, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.'" *Neal, supra*, 191 Md. App. at 314 (citation omitted).

At trial, the State introduced evidence that Payton, an inmate at North Branch Correctional Institution, kicked a correctional officer in the face immediately after that officer handcuffed him and released him from his cell. This evidence, when viewed "in a light most favorable to the State," supported a reasonable inference that Payton acted intentionally, and did not strike the correctional officer by accident or mistake. *See generally Jones v. State*, 213 Md. App. 208, 218 (2013) ("In determining a defendant's

intent, the trier of fact can infer the requisite intent from surrounding circumstances such as the accused's acts, conduct and words." (internal quotation marks and citation omitted)). Although Payton contends, as he did at trial, that he had no ill-will toward the officer and that he did not remember the incident, the jury, as the finder of fact, was free to disbelieve his testimony. *See Johnson v. State*, 227 Md. 159, 163 (1961) (noting that "exculpatory statements by an accused are not binding upon, but may be disbelieved by, the trier of facts").

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