

Circuit Court for Baltimore City
Case No. 117100012

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2219

September Term, 2017

DONTE LYNCH

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 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.

Donte Lynch, appellant, was convicted by a jury in the Circuit Court for Baltimore City of second degree assault and reckless endangerment. The court sentenced Mr. Lynch to a term of ten years' imprisonment for the second degree assault, and a consecutive term of five years' imprisonment, all suspended, for the reckless endangerment. Mr. Lynch presents for our review two questions:

1. Did the court err in failing to merge the conviction for reckless endangerment into the conviction for second degree assault?
2. Was the evidence sufficient to support the convictions?

For the reasons that follow, we shall vacate the sentence for reckless endangerment, but otherwise affirm the judgments of the circuit court.

The victim was Jacquetta Hopson, with whom Mr. Lynch has a son. At the time of trial, Ms. Hopson had been in an “on and off” romantic relationship with Mr. Lynch for approximately nineteen years. At trial, the State called Baltimore Police Officer Terrell Carter, who testified that at approximately 8:00-8:30 p.m. on March 6, 2017, he responded to an address on Massachusetts Avenue “for a call for an aggravated assault.” After “clearing the house,” Officer Carter “came back outside” and saw Ms. Hopson “pull[] onto the street” in “her personal vehicle.” The officer “immediately saw that [Ms. Hopson] had a contusion on her forehead.” Officer Carter approached Ms. Hopson, who exited her vehicle. Ms. Hopson was “calm, but stand[]offish,” and did not “want to talk to” the officer. Officer Carter asked Ms. Hopson “if she needed medical attention,” but “she declined.” The officer then spoke with Ms. Hopson’s mother, Tonya Bell. When Ms. Hopson returned “to her vehicle to legally park it,” Mr. Lynch “entered the vehicle in the

passenger seat.” Officer Carter approached Mr. Lynch and “asked him what happened.” Mr. Lynch “advised that they had an argument.” The officer asked “what were their plans for the night,” and Mr. Lynch “advised that they were both going in the house.” Officer Carter “told them that [he] strongly disagree[d] with it and . . . tried to convince one of them to leave,” but “they both decided to stay at the location.” Mr. Lynch and Ms. Hopson then “enter[ed] the location together.”

Approximately one hour later, Officer Carter and another officer received a second call to respond to Massachusetts Avenue. Officer Carter entered the front yard of Ms. Hopson’s residence and “saw what appeared to be blood on the ground.” The officer knocked on the door, and “moments” later, he “saw a bloody hand on the front window, which was Ms. Hopson.” The officers “went around to the rear of the location,” where Ms. Hopson opened the door. Officer Carter “noticed that there was blood all over the place,” and that “there was a kitchen knife on the table.” Ms. Hopson “was hysterical,” “crying,” and “covered in blood.” As Officer Carter “[t]ook a sweep of the house . . . to make sure that no one else was in that location,” he discovered “blood throughout the house.” In an “upstairs . . . bedroom,” the officer discovered “a broken mop and a stick that was bent in like an L-shape.” The “mop had blood on it,” and “[t]here was blood splatter on the walls.” Officer Carter saw that Ms. Hopson “had a cut on her hand,” and “asked her how she sustained it.” Ms. Hopson eventually stated that “she jumped out the window to get away from Donte.”

When a “crime lab” technician arrived, the officers showed the technician “the locations where [the officers] observed the blood.” As the officers “were showing [the

technician] where the blood was in the rear yard and . . . alleyway,” Officer Carter observed Mr. Lynch “coming down the rear alley towards the location.” When Mr. Lynch “observed [the officers] in the rear of the location,” he “attempted to flee the scene.” Officer Carter “chased after Mr. Lynch on foot” and detained him. At the police station, the officer took Mr. Lynch’s clothing “because it was covered in what appeared to be blood.”

The State also called Ms. Bell, who testified that at approximately 5:30 a.m. on March 7, 2017, she “received a phone call” from “Shock Trauma.” Ms. Bell “went straight to the hospital,” where she “took photographs of” Ms. Hopson. Ms. Bell testified that Ms. Hopson’s “hand was cut and her artery was cut,” and that Ms. Hopson “couldn’t use her hand” and “didn’t have any feelings in her hand.” Ms. Hopson “was in Shock Trauma for a week” before “she came home.” Ms. Hopson subsequently “moved in with [Ms. Bell] for three months” because “of the injuries she had.” Ms. Hopson’s injuries included a broken foot, the cut on her hand, the inability to walk, black eyes, and a swollen face.

The State then played for the jury recordings of two phone conversations between individuals that Ms. Bell identified as Mr. Lynch and Ms. Hopson. Although the trial transcript indicates that much of the recordings was “inaudible,” Mr. Lynch concedes in his brief that during the first conversation, “the man identified as Mr. Lynch ‘apologized’ for the injuries sustained by [the] caller identified as Ms. Hopson and informed her[:] ‘I didn’t mean to do any of that.’” Mr. Lynch also concedes that in the second conversation, “the man told the woman[:] ‘You know I never meant to do any of those things.’” Mr. Lynch further concedes that “[i]n both calls the man suggested to the woman that she ‘stay away’ and not attend the court proceedings.” Additionally, the trial transcript indicates

that during the first conversation, Mr. Lynch stated: “I beat you. . . . I hit you, hit certainly over and over again.” Mr. Lynch further stated: “Okay, listen, just don’t show up.” During the second conversation, Mr. Lynch stated: “You know I never meant to do nothing, right, you know that.” Mr. Lynch further stated: “Just stay away from him, when he gets caught in more stuff, just stay away,” and “when you stay away, you know those charges gone go away.”

Mr. Lynch first contends that the “court erred in not merging reckless endangerment into second degree assault” (capitalization and boldface omitted), because “[w]ithout a clear verdict from the jury based on specific jury instructions detailing which facts it based each of the two convictions on, it cannot be assumed that the jury based their separate convictions on separate acts.” We agree. In *Nicolas v. State*, 426 Md. 385 (2012), the appellant contended “that the trial court erred in failing to merge his second degree assault convictions with his conviction for resisting arrest,” because “the record [was] ambiguous as to whether the jury convicted [Mr. Nicolas] of second degree assault based on acts different than those underlying his conviction for resisting arrest[.]” *Id.* at 389. The Court of Appeals agreed, stating:

Upon reviewing the trial transcript, the judge’s instructions to the jury, and the verdict sheet, we hold that the record is ambiguous as to the factual bases for which the jury found [Mr. Nicolas] guilty of second degree assault of [two police officers]. In our view, a reasonable jury could have found that the assaults were based on acts that preceded the officers’ attempt to arrest [Mr. Nicolas], or that the assaults were an integral part of the resisting arrest. In accordance with Maryland precedent, we must resolve this factual ambiguity in [Mr. Nicolas’s] favor. Accordingly, the trial judge should have merged the assault convictions into the conviction for resisting arrest.

Id. at 412.

We reach a similar conclusion here. The trial transcript, jury instructions, and verdict sheet do not provide guidance as to the factual bases for which the jury found Mr. Lynch guilty of second degree assault. A reasonable jury could have found that the reckless endangerment was based on an act separate from the second degree assault, or that the reckless endangerment was an integral part of the second degree assault. This factual ambiguity must be resolved in Mr. Lynch’s favor, and hence, the court should have merged the conviction for reckless endangerment into the conviction for second degree assault pursuant to the rule of lenity. See *Marlin v. State*, 192 Md. App. 134, 168 (2010) (“[u]nder [the rule of lenity], if we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in effect, give the defendant the benefit of the doubt and hold that the crimes do merge” (internal citation omitted)). Accordingly, we vacate the sentence for reckless endangerment.

Mr. Lynch next contends that “the evidence was insufficient to support his convictions” because “there was no direct evidence that Mr. Lynch assaulted Ms. Hopson.” We disagree. Mr. Lynch stated during his phone conversations with Ms. Hopson that he had “beat” and “hit” Ms. Hopson “over and over again,” and apologized for the injuries she had sustained. Ms. Hopson also told Officer Carter that she had “jumped out the window” of her residence “to get away from Donte.” Moreover, we have recognized that “[c]ircumstantial evidence is entirely sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Hall v. State*, 119 Md. App. 377, 393 (1998) (citations omitted). Here, the State presented evidence that during Officer

Carter's first call to Ms. Hopson's residence, Mr. Lynch admitted that he and Ms. Hopson had engaged in an argument. Officer Carter then saw Ms. Hopson, who "had a contusion on her forehead," and Mr. Lynch enter the residence together. During Officer Carter's second call to the residence, he discovered blood "all over" the residence, on the ground in front of the residence, and in the rear yard and alleyway. The officer also discovered a kitchen knife, a broken and bloody mop, and a "stick . . . bent in . . . an L-shape." Officer Carter observed that Ms. Hopson was hysterical, crying, and "covered in blood." When Officer Carter observed Mr. Lynch "coming down the rear alley," Mr. Lynch "attempted to flee the scene." Officer Carter later observed that Mr. Lynch's clothing "was covered in what appeared to be blood." Ms. Bell testified that Ms. Hopson's injuries included black eyes, a swollen face, and a cut to an artery in her hand, which the jury could rationally infer was inflicted by use of the kitchen knife, broken mop, or stick. Finally, Mr. Lynch stated during his phone conversations with Ms. Hopson that he "never meant to do any of those things," and suggested to Ms. Hopson that she "stay away" and not attend court proceedings. This circumstantial evidence is entirely sufficient to support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt that

Mr. Lynch assaulted and recklessly endangered Ms. Hopson, and hence, the evidence is sufficient to sustain the convictions.

SENTENCE FOR RECKLESS ENDANGERMENT VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-HALF BY MAYOR AND CITY COUNCIL OF BALTIMORE AND ONE-HALF BY APPELLANT.