UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2346

September Term, 2014

BOKOLA BODEMOSI

v.

STATE OF MARYLAND

Krauser, C.J.,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 23, 2015

Appellant, Bokola Bodemosi, was convicted in the Circuit Court for Baltimore City, Maryland, of second degree assault following a court trial. After she was sentenced to thirty days, all suspended, to be followed by one year probation, Bodemosi timely appealed and presents the following question for our review:

Was the evidence sufficient to support appellant's conviction?

For the following reasons, we shall affirm.

BACKGROUND

After kindergarten ended on March 25, 2014, six-year-old Brianna D., was dropped off at her home on Hamburg Street in Baltimore City by a taxicab hired for that purpose by Brianna's school.[1] Her stepmother, Ashley W., identified appellant, in court, as the driver of the taxicab. Because Brianna "had like a little mad face," when she arrived home from school, Ashley W. asked her what was wrong. Brianna told her stepmother that appellant "was hitting on me." Brianna also stated that appellant "told me that if I told that she was going to kill me and my family . . ." When Ashley W. asked for more detail, Brianna said that appellant told her "-B-, put your -F-g seatbelt on" and then appellant "started to punch her in her face." Ashley testified that Brianna had a "little knot" on the middle of her forehead as a result. Brianna said appellant had struck her on prior occasions as well, but Brianna was afraid to report them because appellant told her not to tell.

[1] We shall refer to the minor victim and her relatives by first names. *See Hajireen v. State*, 203 Md. App. 537, 540 n.1, *cert. denied*, 429 Md. 306 (2012).

Brianna D., who was seven-years-old at the time of trial, testified that appellant used to drive her to and from school. However, Brianna did not ride in appellant's taxicab after appellant "[p]oked me in my head" one day on the way to school. Brianna explained that appellant "[f]linged me," without her consent, while she sat in the front seat of the taxicab. Brianna testified that she did not tell appellant that she could "fling" her in her head. Appellant also used the "-B- and the -F- word" when this happened. Brianna subsequently told her father and her stepmother about this incident.

Alfred D., Brianna's father, explained that Brianna attended Belmont Elementary at the time of the incident, and that the school provided transportation to and from school. He confirmed that, on March 25, 2014, Brianna told him that the cab driver, appellant, "punched her in her head." Brianna told Alfred D. that appellant would have her pick up trash in the taxi and that, when Brianna did not, appellant "would buck at her, cuss at her, punch her in her forehead, stuff like that." When Alfred D. asked Brianna to demonstrate, Brianna "took her fist and put her fist on her forehead." Brianna also told him that appellant had punched her on several prior occasions.

Alfred D. called the police the next day because he wanted a police officer present when appellant arrived to pick up Brianna for school. After speaking with the officer, Alfred D. took Brianna to a pediatrician and was informed that Brianna would be fine. Alfred D. then filed a criminal complaint against appellant in relation to this incident.

Appellant testified on her own behalf. Appellant had worked as a cab driver for Yellow Transportation for two years and started driving Brianna D., along with approximately three other children, to and from school in January 2014. Appellant denied punching Brianna repeatedly in the face, and also denied "flicking" her in her forehead. She also testified that she did not drive Brianna home from school on March 25, 2014.

Officer Joshua Corcoran, of the Baltimore City Police Department, responded to six-year-old Brianna's residence on Hamburg Street at around 6:15 a.m. on March 26, 2014. Officer Corcoran examined Brianna but did not see any visible injuries to her forehead. He also testified that Brianna's father did not tell him that Brianna had sustained any injuries. Finally, Officer Corcoran testified that he offered to take Brianna to the hospital but her father refused.

DISCUSSION

The only issue on appeal is whether the evidence was sufficient to sustain appellant's conviction for assaulting Brianna. The test of appellate review of evidentiary sufficiency is 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.'" *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, "but rather is only with whether the verdicts were supported with sufficient

evidence -- that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994). "We 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)).

Section 3-203 of the Criminal Law Article, assault in the second degree, prohibits a person from committing an assault. Md. Code (2002, 2012 Repl. Vol., 2015 Supp.) § 3-203 of the Criminal Law Article ("Crim. Law"). An "assault" is defined by Section 3-201 of the Criminal Law Article to mean "the offenses of assault, battery, and assault and battery, which terms retain their judicially determined meanings." Crim. Law § 3-201 (b). There are three judicially recognized forms of assault in Maryland:

1. A consummated battery or the combination of a consummated battery and its antecedent assault;

2. An attempted battery; and

3. A placing of a victim in reasonable apprehension of an imminent battery.

Lamb v. State, 93 Md. App. 422, 428 (1992), *cert. denied*, 329 Md. 110 (1993).

This case concerns a consummated battery. A battery is an "unlawful application of force to the person of another," which "may be the result of an intentional or reckless act of

the defendant." *Cruz v. State*, 407 Md. 202, 209 n.3 (2009) (citations omitted); *see also Cooper v. State*, 128 Md. App. 257, 265 (1999) (battery requires proof "that the (1) defendant caused a harmful physical contact with the victim, (2) the contact was intentional, and (3) the contact was not legally justified").

Here, Brianna testified that appellant "[p]oked me in my head" and "flinged me" while she sat in the front seat of appellant's taxicab. Brianna told her father that appellant used her fist when she struck Brianna, and Brianna's stepmother confirmed that Brianna had a "knot" on the middle of her forehead afterwards. Brianna did not consent to this physical contact and there was no evidence suggesting that appellant was justified in striking a six-year-old girl.

Appellant counters by citing *Kucharczyk v. State*, 235 Md. 334 (1964). In that case, the State's main witness was "a mentally deficient 16-year-old boy." *Kucharczyk*, 235 Md. at 336. His testimony alternately supported the State's theory that he had been sodomized and contradicted the State's theory suggesting that no crime had occurred (twice on direct examination he testified that "nothing happened in the public lavatory" and once on cross-examination he testified that "nothing happened in the garage"). *Id.* at 336-37. The Court of Appeals reversed Kucharczyk's conviction for assault and battery because of insufficient evidence. *Id.* at 337. The Court held that where a witness testifies to a critical fact and then gives directly contradictory testimony regarding the same critical fact, the fact

finder should not be allowed to speculate and select one or the opposite version. *Id.* at 337-38.

Both this Court and the Court of Appeals has since made clear that "[t]he doctrine set forth in *Kucharczyk* is extremely limited in scope." *Smith v. State*, 302 Md. 175, 182 (1985); *see also Turner v. State*, 192 Md. App. 45, 81 (2010) (*Kucharczyk* is to be "narrowly interpreted"); *Vogel v. State*, 76 Md. App. 56, 59-60 (1988) ("Some appreciation of the limited utility of the so-called *Kucharczyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharczyk* in a criminal appeal and it has never been applied post-*Kucharczyk* in a criminal appeal") (quoting *Bailey v. State*, 16 Md. App. 83, 93-94 (1972), *aff'd*, 315 Md. 458 (1989)).

There were no internal inconsistencies in Brianna's testimony that even remotely rise to the level at issue in *Kucharczyk*. Moreover, "[i]t is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction." *Reeves v. State*, 192 Md. App. 277, 306 (2010); *see also Owens v. State*, 170 Md. App. 35, 103 (2006) (observing that "a witness's credibility goes to the weight of the

evidence, not its sufficiency"), *aff'd*, 399 Md. 388 (2007), *cert. denied*, 552 U.S. 1144 (2008). We hold that the evidence was sufficient to sustain appellant's conviction.

JUDGMENT AFFIRMED.

COSTS TO BE ASSESSED TO APPELLANT.