UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2471

September Term, 2014

EDMOND JARROD RIGGS

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: November 17, 2015

Convicted, after a jury trial in the Circuit Court for Anne Arundel County of attempted robbery, second degree assault, reckless endangerment, and attempted theft under $1,000, Edmond Jarrod Riggs noted this appeal, contending that the evidence was insufficient to establish that he had committed those offenses. We disagree and shall affirm.

Facts and Legal Proceedings

Riggs was charged with crimes stemming from two separate incidents on two consecutive days. The first incident, which occurred on November 9, 2013, involved the attempted robbery of a "Deborah Kimble" in the parking lot of a nursing home. The second incident, which took place the following day, was the robbery of a "Muhammad Khalid" at a nearby pizza restaurant. After the two cases were consolidated for trial, a jury convicted Riggs of the charges that arose out of the "Kimble" incident but acquitted him of those associated with the "Khalid" incident. Because Riggs challenges the sufficiency of the evidence supporting his convictions, our review of the record focuses solely on the evidence pertaining to the "Kimble" encounter.

At trial, the State presented evidence that Riggs blocked Deborah Kimble's vehicle in the parking lot of a nursing home, threatened her with a handgun, assaulted her, and attempted to steal her purse. Specifically, Ms. Kimble testified that, on the evening of Saturday, November 9, 2013, she had visited her mother at a nursing home on Hospital Drive in Glen Burnie. When, after visiting hours had ended at 8:00 p.m., as she was backing her car out of the parking space it occupied, another car stopped behind her vehicle, blocking her departure. She then pulled back into her parking space, believing that the

driver of that car was someone she knew from the nursing home. Ms. Kimble then lowered the window of her vehicle. At that time, a voice she did not recognize, coming from the driver's side of that car, said: "[G]ive me all your money."

At first, Ms. Kimble thought it was "a joke." But, when she looked out her open window, she saw a man "pointing" a small black handgun at her, waving it in the direction of her purse, which was lying on the passenger seat. Ms. Kimble had no money in her purse that night, and the purse and its contents were worth less than $1,000.

When the man, whom she did not recognize, once again demanded money, Ms. Kimble replied that she did not have any with her. Once more, he demanded money, and, once more, she denied having any. At that point, Ms. Kimble looked down and started to recite her favorite Psalm to quiet her nerves. When she got to the second verse of the psalm, she looked up and saw that the man had returned to his car, which Ms. Kimble observed was a "Chevrolet Lumina." At that point, she called a friend, on her cell phone, to tell her she had been robbed, and then called 911 to report the crime.

After the police arrived at the parking lot, she spoke to Anne Arundel County Detective Mason Ellis, who responded to the parking lot, and told him that her assailant was "a black male, between 5'8" and 5'10," with a "medium to heavyset" build and wore what "looked like a racer jacket or some type of sports jacket" with "a lot of colors in it." Somewhat knowledgeable as to cars, she informed the detective that the assailant's car was

"an older model gold Chevrolet Lumina." She specifically described it as having a "metallic" color, "like goldfish."

The following day, at approximately 6:30 p.m., fifteen-year-old Muhammad Khalid was robbed while working at his family's pizza shop. When the robber displayed a black handgun and told him to empty the cash drawer into a white plastic Wal-Mart shopping bag he provided, Mr. Khalid did so, including both bills and coins. Later, he described the robber to police as a black male with "a messed up eye," wearing all black, with a hood over his face.

Later that evening, at about 11:30 p.m., "less than a quarter mile away" from the "Khalid" robbery, Corporal John Hall of the Anne Arundel County Police Department came upon appellant, who was sitting alone in a parked metallic-colored Chevrolet Lumina and wearing a black, heavy NASCAR jacket with different patches. On the floor of the passenger seat of the car, which was registered in his mother's name, was a pile of coins and a white plastic bag. Corporal Hall did not detain appellant but did provide information about his encounter with Riggs to Detective Dan Keane, who was leading the investigation into the Khalid robbery. Detective Keane included Riggs's photo in an array, and Khalid identified him as the robber.

Detective Mark Zukowski, the lead detective in the Kimble assault, learned of the Khalid robbery and Hall's encounter with Riggs, who was living in the area and drove a metallic Chevrolet Lumina. When the detective showed Ms. Kimble "a generic photograph

of the type of vehicle that [a]ppellant was stopped in," *i.e*, a Chevrolet Lumina, she said that her assailant drove the same kind of car. He then showed her photographs that he took of the actual vehicle registered to appellant's mother, whereupon Ms. Kimble immediately identified that vehicle as the one driven by her assailant. And then, from a photo array she was shown, she identified Riggs as her assailant, an identification she later made again in court.

At trial, appellant offered an alibi defense. He testified that, on November 9, 2013, he had a respiratory illness for which he was taken to the emergency room by ambulance. When he was discharged from the hospital, he called his girlfriend, LaShaundra Lane, to pick him up from his mother's house. Although Riggs claimed that he was at the hospital most of the day, he acknowledged, on cross-examination, that medical records showed that he was at the emergency room for only three-and-a-half hours and that he was subsequently discharged in a stable, ambulatory condition more than eight hours before the assault on Ms. Kimble. Then, supporting his claim that he was in no condition to commit the robbery in question, his girlfriend, LaShaundra Lane, testified that after she picked up Riggs from his mother's residence on November 9th, he was so ill that he had trouble breathing and walking.

Discussion

Riggs contends that the evidence was insufficient to sustain his convictions for attempted robbery (Count 2), second degree assault (Count 4), reckless endangerment (Count 10), and attempted theft of property valued at less than $1,000 (Count 11). He cites

what he believes was evidentiary deficiencies with respect to each charge, arguing that "these defects in the State's case, when considered with the alibi testimony," showed that the State had "failed to prove, beyond a reasonable doubt, [his] guilt of any of the charges of which he was convicted." The State responds that Riggs failed to preserve all of his challenges to the sufficiency of the evidence, and that, in any event, none of his claims are meritorious.

Standard of Review

We review a criminal conviction to determine whether, on the evidence presented, considered in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Spencer v. State*, 422 Md. 422, 433 (2011); *see Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Whether the evidence was legally sufficient to support a conviction is a question of law, which this Court decides by making an independent judgment based on the evidence admitted at trial. *See Polk v. State*, 183 Md. App. 299, 306 (2008). "If the evidence '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 offenses charged beyond a reasonable doubt[,]' then we will affirm that conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). This standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*,

443 U.S. at 319, 99 S. Ct. at 2789. It also means "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).

Attempted Robbery (Count One)

We agree with the State that Riggs has not preserved an insufficiency challenge to his attempted robbery conviction, because he did not properly assert such a challenge at trial or even in his brief to this Court. To begin with, "our review of claims regarding the sufficiency of evidence is limited to the reasons which are stated with particularity in an appellant's motion for judgment of acquittal." *Claybourne v. State*, 209 Md. App. 706, 750, *cert. denied*, 432 Md. 212 (2013). Moreover, arguments that are "not preserved in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999). Accordingly, appellate review is limited to grounds that were raised in support of the motion for judgment of acquittal.

Although defense counsel moved for a judgment of acquittal after the State rested its case, he expressly stated that he had "no argument to make regarding Counts one, or Counts two [sic]." At the close of evidence, defense counsel, apparently forgetting his earlier waiver with respect to this count, stated that he was "not going to make an argument in terms of every count, but I would make the same argument in terms of attempted armed robbery, Count one[,]" that "this is an allegation that a robbery was done with a dangerous and deadly weapon and there . . . were no facts to support the use of the dangerous and deadly weapon

on the same day." In his appellate brief, Riggs generally asks whether there is sufficient evidence to support "the convictions" but does not discuss the attempted robbery conviction.

On this record, Riggs has waived any sufficiency complaint he might have had, by expressly waiving his right to challenge this conviction at the end of the State's case-in-chief and again waiving that right by failing to present any argument with respect to attempted robbery in his brief. Even if appellant had preserved a sufficiency challenge to this count, Ms. Kimble's testimony that appellant blocked her car, then demanded money while pointing a gun at her, provides an adequate evidentiary basis for the attempted robbery conviction.

Second Degree Assault (Count Four)

Riggs was convicted of second degree assault, specifically the "intent to frighten" form of that offense, which has three elements.

> A defendant commits second-degree assault of the intent-to-frighten type where: (1) "the defendant commit[s] an act with the intent to place [a victim] in fear of immediate physical harm"; (2) "the defendant ha[s] the apparent ability, at [the] time, to bring about the physical harm"; and (3) "[t]he victim is aware of the impending" physical harm.

Jones v. State, 440 Md. 450, 455 (2014) (citation omitted). *See also* MPJI-Cr. 4:01(A) (Second degree assault may be committed by "intentionally frightening another person with the threat of immediate physical harm.").

Riggs reiterates his trial counsel's argument, made in support of motions for acquittal after the State's case-in-chief and after the close of all of the evidence, that the evidence was insufficient to convict him of second degree assault because the State failed to prove the

third element of fright. In his view, "there was no testimony that the complainant, who initially thought that it was just a 'joke,' actually was frightened."

The trial court rejected that contention, ruling that "a reasonable finder of fact could . . . conclude that with a gun pointed in one's face and praying, and then having one's adrenaline kick in and calling the police, . . . that Ms. Kimble was in fear at the time[.]" We agree with that assessment of the evidence. In addition, Riggs blocked her vehicle, trapping her in a dark and largely empty parking lot, then continued to demand money even after she denied having any. From this evidence, the jury could find beyond a reasonable doubt that Ms. Kimble was frightened.

Reckless Endangerment (Count Ten)

"A person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" Md. Code (2012 Repl. Vol.), § 3-204(a)(1) of the Criminal Law Article. Riggs contends that the evidence was insufficient to establish reckless endangerment because "the mental element of the intentional offense of second degree assault is inconsistent with the mental element of reckless endangerment." "Moreover, because the object used, which merely appeared to be a 'gun' was never fired, recovered or tested, the State did not have any evidence that it was actually an operable firearm, or that, if operable, it was loaded."

We agree with the State that Riggs failed to preserve his inconsistency challenge. Although defense counsel argued this in support of the motion for judgment of acquittal,

which was made at the end of the State's case-in-chief, he did not make the same argument in support of his later motion at the close of all of the evidence. Failing to do so operated as a waiver of this challenge. *See generally* Md. Rule 4-324(c) ("A defendant who moves for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without have reserved the right to do so and to the same extent as if the motion had not been made. In doing so, the defendant withdraws the motion.").

Even if Riggs had preserved his inconsistency challenge, we would not find it persuasive. To be sure, attempted robbery requires proof of a specific intent to harm, whereas reckless endangerment may be proved without evidence of such intent. This Court has explained that

> [t]here is nothing legally incompatible or legally inconsistent with the *mens rea* of a reckless disregard for life-threatening consequences and the *mens rea* of a specific intent to inflict harm. The latter is more blameworthy than the former, but it is not legally inconsistent with the former. . . .
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> To be guilty of reckless endangerment, the defendant must be shown to have possessed *nothing less than* a reckless disregard of the consequences of his life-threatening act. He may, however, be shown to have possessed a more blameworthy *mens rea*, such as an intent to maim, but that excess culpability will be simply surplusage as far as the reckless endangerment charge is concerned. It certainly does not operate to exculpate him of reckless endangerment.

Williams v. State, 100 Md. App. 468, 476-77 (1991). Thus, Riggs is not entitled to acquittal based on the difference between the *mens rea* for second degree assault and that for reckless endangerment.

Riggs alternatively contends that the evidence does not establish reckless endangerment because the State did not prove that the object allegedly waved at Ms. Kimble was a loaded and operable handgun. Although this challenge was preserved for appeal, it incorrectly assumes that the State was required to recover, inspect, and test the weapon. It was not. Indeed, that offense may be proven by testimony from a witness that the defendant had a handgun. *See, e.g., Curtin v. State*, 165 Md. App. 60, 71 (2005) (testimony of bank employees that one of the bank robbers had a gun was sufficient to establish handgun element of armed robbery charge). *Cf. Mangum v. State*, 342 Md. 392, 398 (1996) ("operability may be proved by circumstantial evidence" such as testimony by a witness); *Brown v. State*, 64 Md. App. 324, 337 (1985) (where police did not recover weapon used in robbery, police officer's testimony that it was a "detective type special" and "the same type I carry" was sufficient circumstantial evidence to convict on handgun offense). As the State points out, when a witness testifies that he or she observed what appeared to be a real gun, "without further qualification, there is a permissible inference that it is a real and operable gun." *Brooks v. State*, 314 Md. 585, 589 n.3 (1989). *Compare Moulden v. State*, 212 Md. App. 331, 358 (2013) (witness's testimony that defendant brandished and pointed a "fake" gun was insufficient to satisfy "substantial risk" element of reckless endangerment).

Ms. Kimble's testimony that Riggs waved a black gun outside her vehicle, then pointed it at her while demanding money, provided a sufficient factual basis for the jury to find that Riggs had a real and operable gun, that he used to recklessly endanger Ms. Kimble.

Attempted Theft of Property Valued Under $1,000 (Count Eleven)

Because appellant has failed to argue particularized insufficiency grounds with respect to the attempted theft charge, we need not separately address his challenge as to that conviction. *See Klauenberg,* 355 Md. at 552. Nevertheless, it is clear that the same evidence supporting the attempted robbery conviction supports this conviction as well.

JUDGMENTS OF CONVICTION AFFIRMED. COSTS TO BE PAID BY APPELLANT.