Circuit Court for Wicomico County
Case No. C-22-CR-18-000203

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3089

September Term, 2018

JOHN EDWARD LOWE

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Gould,

JJ.

PER CURIAM

Filed: April 10, 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.

Following a jury trial in the Circuit Court for Wicomico County, John Edward Lowe, appellant, was convicted of robbery, second-degree assault, and false imprisonment. Mr. Lowe raises two issues on appeal: (1) whether the court erred in denying his motion to suppress, and (2) whether the evidence was sufficient to sustain his convictions. For the reasons that follow, we shall affirm.

BACKGROUND

At trial, the State presented evidence that an unknown individual in a "white sweater with his face covered with a hoody" entered the Hebron Food Rite, told the cashier "give me all the money or I'm going to kill you right now," and then pushed the cashier across the store towards the cash register. After the cashier repeatedly told the man that she could not open the register, the man took a "bunch of Newport cigarettes" and left the store.

Approximately 30 to 40 minutes later, a man driving a dark colored Buick Encore parked at the Crown gas station on Route 50, entered the store, and tried to sell the cashier several black bags of Newport cigarettes. After the cashier refused to buy the cigarettes the man left the store. Wicomico County Sheriff's Detective William Oakey reviewed a surveillance video from the Crown gas station and was able to obtain a partial license plate number for the Buick. That license plate number was later matched to a 2015 Buick Encore owned by Mr. Lowe's mother. Detective Oakley testified that he compared a photograph of Mr. Lowe to the individual in the surveillance video and believed that it "was the same individual." During a search of Mr. Lowe's home, the police recovered a carton of Newport cigarettes in a trash can. A white hooded sweatshirt, a pair of white shoes, and a white tank top with some holes cut out of it, that looked like it could have been used as a

mask, were also found discarded on a street near the location of the robbery. DNA was found on the white tank top and testing revealed that Mr. Lowe was a major contributor of that DNA.

DISCUSSION

Mr. Lowe first contends that the court erred in denying his motion to suppress evidence that was recovered during the execution of two search warrants that were obtained by the Wicomico County Sheriff's Department. During the initial suppression hearing, Mr. Lowe claimed that Detective Oakley could not have obtained a partial tag number for the Buick vehicle that was at the Crown gas station, as was alleged in the search warrant application, because the vehicle's tag was not visible in the copy of the surveillance video that had been produced by the State in discovery. Mr. Lowe therefore moved for a *Franks*[1] hearing, which the court granted.

[1] In *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978), the Supreme Court stated:

> [W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

At the *Franks* hearing, Detective Oakley testified that he had viewed the surveillance video on an app that was on the store owner's cell phone and that the owner did not know how to save the video. Therefore, Detective Oakley used his cell phone to try and record the video. It was that recording that was turned over in discovery. Detective Oakley further testified that the video he had viewed on the owner's cell phone had been much clearer than the video that he had recorded. He also indicated that he was able to see the license plate on the original video even though he acknowledged that it was not visible on the video he recorded. The court ultimately credited Detective Oakley's testimony that he had seen the partial license plate on the original video and concluded that he had not made "a false statement at all" in the warrant application.

On appeal, appellant contends that the court erred in finding Detective Oakley to be a credible witness because there was no evidence to support his testimony about what he claimed to have observed on the original video. However, in reviewing the denial of a motion to suppress on appeal we do not engage in our own fact-finding. *Haley v. State*, 398 Md. 106, 131 (2007). Instead, we "extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous." *Brown v. State*, 397 Md. 89, 98 (2007). Having reviewed the record, we see nothing erroneous in the suppression court's findings that Detective Oakley's testimony was credible, and that he did not provide false information in the search warrant application. Consequently, the court did not err in denying Mr. Lowe's motion to suppress.

Mr. Lowe also claims that there was insufficient evidence to sustain his convictions. Again, we disagree. In reviewing the sufficiency of the evidence, we ask "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." *Ross v. State*, 232 Md. App. 72, 81 (2017) (citation omitted). Furthermore, we "view[ ] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, "[w]e give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

In challenging the sufficiency of the evidence, Mr. Lowe first asserts that the State failed to prove his criminal agency because no witness identified him as the robber at trial. However, viewed in a light most favorable to the State, the evidence demonstrated that: (1) the vehicle driven by the person who attempted to sell the cigarettes at the Crown gas station shortly after the robbery matched the make, model, and partial license plate number of the vehicle owned by Mr. Lowe's mother; (2) a carton of Newport cigarettes was found in a Mr. Lowe's trash can; and (3) Mr. Lowe's DNA was found on a white t-shirt that had been discarded on the street near the location of the robbery. That evidence, if believed by the jury, was sufficient to establish Mr. Lowe's identity as the perpetrator beyond a reasonable doubt. *See Martin v. State*, 218 Md. App. 1, 35 (2014) ("[T]here is no difference

between direct and circumstantial evidence" (internal quotation mark and citation omitted)).

Mr. Lowe also asserts that there was insufficient evidence to sustain his conviction for false imprisonment because there was no testimony that he "attempt[ed] to restrain [the store attendant] from leaving and no attempt by her to leave" during the robbery. To obtain a conviction for false imprisonment the State was required to prove: (1) that Mr. Lowe confined or detained the victim; (2) that the victim was confined or obtained against her will; and (3) that the confinement or detention was accomplished by force, threat of force, or deception. *Jones-Harris v. State*, 179 Md. App. 72, 99 (2008). The State was not required to prove that the victim attempted to flee or that she might have theoretically been able to do so. Here, the State presented evidence that Mr. Lowe threatened to kill the victim if she did not give him money and then pushed her towards the cash register. That evidence was sufficient to sustain Mr. Lowe's false imprisonment conviction.

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