Circuit Court for Dorchester County
Case No. C-09-CR-22-000230

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2203

September Term, 2022

DEVONTA LEWIS BOLDEN

v.

STATE OF MARYLAND

Nazarian,
Zic,
Robinson, Dennis M., Jr.,
(Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 11, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On July 26, 2022, officers attempted to arrest Devonta Lewis Bolden for trespassing on posted property. When Mr. Bolden tried to flee, a struggle ensued and police recovered his satchel, which contained heroin and cocaine. He ultimately was convicted in the Circuit Court of Dorchester County of possession of both heroin and cocaine with the intent to distribute, two counts of reckless endangerment, resisting arrest, and related crimes.

On appeal, Mr. Bolden raises four errors relating to: (1) the trial court's denial of his motion to suppress, (2) the sufficiency of the evidence to support his convictions for reckless endangerment, (3) the admission of the controlled dangerous substances ("CDS") and related laboratory report, and (4) the trial court's denial of his request to remove a juror who indicated recalling being told facts about the case prior to trial. We reverse his convictions for reckless endangerment for insufficient evidence and affirm the remainder.

I. BACKGROUND

On the evening of July 26, 2022, Officer Logan Rippons of the Cambridge Police Department was patrolling the 700 block of Douglas Street when he saw Mr. Bolden sitting on the porch of a "house [that] was boarded up and ha[d] two posted no trespassing signs." Body-worn cameras captured the interaction that followed. Officer Rippons and his partner, Officer Paul Casolaro, walked up to the residence and confronted Mr. Bolden. As Officer Rippons approached, Mr. Bolden headed to an alley between houses. When Officer Rippons reached out to seize Mr. Bolden's arm to place him under arrest, Mr. Bolden pulled away and ran toward the backyard. Officer Rippons pursued him and there was a struggle

between the officers and Mr. Bolden. Officer Rippons deployed his taser, and Mr. Bolden was eventually cuffed and arrested.

Officer Casolaro seized a satchel Mr. Bolden tried to discard during the struggle, placed it in his patrol bag, and then moved it into his patrol vehicle. He transported Mr. Bolden to the hospital (to remove the taser prongs) and responded to another call before putting the satchel into "temp evidence" (one of four secured evidence lockers) at the station. Once at the police department, Officer Rippons "inventoried" the satchel and its contents, which contained ammunition and suspected CDS:

> 15 bundles of approximately 14 wax folds. 12 green small containers containing a white substance, suspected crack cocaine. 13 clear containers containing a white substance, suspected crack cocaine. Three rubber containers containing heroin, approximately the size of a lip gloss container.

Officer Rippons did not break the bundles[1] apart due, he said, to the presence of suspected fentanyl within the wax folds. According to Officer Rippons, "[s]omebody else" packaged the items to be sent out for testing, but he was unaware of who that was. Stephanie Laufert, a forensic chemist in the Maryland State Police, Forensic Sciences Division, tested the substances and found that they contained cocaine and heroin.

The State filed a fifteen-count indictment in the Circuit Court for Dorchester County charging Mr. Bolden with (1) possession of heroin with intent to distribute, (2) possession of cocaine with intent to distribute, (3–4) two counts of second-degree assault on a law

[1] He testified that each wax fold contained CDS and each bundle had "multiple wax folds bundled up together" that were secured with a rubber band and sold together. This is a type of packaging used in the sale of heroin and fentanyl.

enforcement officer, (5–6) two counts of second-degree assault, (7–8) two counts of reckless endangerment, (9) resisting arrest, (10) possession of heroin, (11) possession of cocaine, (12) illegal possession of ammunition, (13) trespassing on posted property, (14) failing to obey a reasonable and lawful order of a law enforcement officer, and (15) disorderly conduct.

Mr. Bolden filed a motion to suppress the evidence from the satchel, which was denied on December 19, 2022. After a two-day jury trial, Mr. Bolden was convicted of possession of both heroin and cocaine with the intent to distribute, two counts of reckless endangerment, resisting arrest, possession of cocaine and heroin, illegal possession of ammunition, failing to obey a lawful order of a law enforcement officer, and disorderly conduct. The State entered a *nolle prosequi* for the trespassing charge and the jury acquitted Mr. Bolden of the assault-based charges. Mr. Bolden was sentenced to an aggregate fifteen-year term of imprisonment. He timely appealed his convictions.

Additional facts will be supplied as necessary below.

II. DISCUSSION

Mr. Bolden presents four issues in his appeal, which we have reordered and reworded:[2] *first*, whether the circuit court erred in denying his motion to suppress because

[2] Mr. Bolden briefed his Questions Presented as follows:

> 1. Is the evidence insufficient to sustain Mr. Bolden's convictions for reckless endangerment of Officer Rippons and Officer Casolaro?
>
> 2. Did the trial court abuse its discretion in admitting the

Continued . . .

Officer Rippons lacked probable cause to arrest him, *second*, whether the evidence that he wrestled with officers and pointed and deployed a taser in the direction of Officer Casolaro was sufficient to sustain his convictions for reckless endangerment, *third*, whether the State established a proper chain of custody for the admission of the CDS and corresponding lab report, and *fourth*, whether the circuit court abused its discretion denying defense counsel's request to remove a juror. We agree with Mr. Bolden with respect to the reckless endangerment issue and reverse those convictions, but affirm otherwise.

> suspected heroin, cocaine, and associated laboratory report, where the chain of custody for the substances was not properly established?
>
> 3. Did the trial court abuse its discretion in denying defense counsel's request to remove Juror 38 after he disclosed that he "recalled" facts about the case and his relationship to a Cambridge Police Department officer?
>
> 4. Did the suppression court err in denying Mr. Bolden's motion to suppress?

The State briefed its Questions Presented as follows:

> 1. Did the trial court correctly deny Bolden's motion to suppress?
>
> 2. Was the evidence sufficient to sustain Bolden's convictions for reckless endangerment of Corporal Rippons and PFC Casolaro?
>
> 3. Did the trial court properly admit the controlled dangerous substances recovered in this case?
>
> 4. Did the trial court properly exercise its discretion by declining to remove Juror 38 from the jury?

A. The Trial Court Denied Mr. Bolden's Motion To Suppress Properly Because Officer Rippons Had Probable Cause To Arrest Mr. Bolden.

The *first* issue is whether the evidence seized incident to Mr. Bolden's arrest should have been suppressed. Mr. Bolden argues that Officer Rippons's "conduct violated the Fourth Amendment" because "he lacked probable cause to make an arrest and he failed to articulate any otherwise valid basis to support his illegal arrest." We disagree and hold that Officer Rippons had probable cause to arrest Mr. Bolden for trespassing on posted private property.

1. Proceedings below.

On December 19, 2022, the court held a hearing on Mr. Bolden's motion to suppress where Mr. Bolden argued there was no probable cause to arrest him. In response, the State offered the testimony of Officer Rippons, a photograph of the house showing the no trespassing signs, and Officer Rippons's body-worn camera footage. Mr. Bolden offered a letter from the resident of 712 Douglas Street[3] stating that she granted him permission to be on her property.

Officer Rippons testified that he was patrolling the area of Douglas Street for "proactive policing" in order to "eliminate crime" in an area known for drug activity and violence. He stated that at the time of the incident, he knew that the 714 Douglas Street

[3] The initial police report lists 712 Douglas Street as the property on which Mr. Bolden trespassed, but the actual address (as shown in the body-cam footage) was 714 Douglas Street, which was boarded up with no trespassing signs. Defense counsel conceded that it was "the wrong address anyway," but entered it into evidence at Mr. Bolden's insistence.

property had been boarded up and unoccupied for "at least a week" before observing "Mr. Bolden and a female subject sitting on the porch."

He stated, "As I pulled up, parked my car, Mr. Bolden jumped off the porch, started heading towards the back of the residence," at which point, Officer Rippons called Mr. Bolden back to him to arrest him for trespassing. That's when Officer Rippons "saw a satchel across his chest." When approached, Mr. Bolden begins "blading his body," which shows "a risk of flight and also that they might be hiding something on the side that they're blading away from you." Officer Rippons believed Mr. Bolden "might be hiding something" and "[h]e start[ed] backing away." He stated that he went "to grab him and he takes off running." He caught up to Mr. Bolden and "[w]ent to detain or to arrest Mr. Bolden" but "he just kept resisting." Mr. Bolden attempted to discard the satchel by throwing it (Officer Rippons testified, "But it was always in eyesight."), and after a brief struggle, Mr. Bolden was arrested and the satchel was seized.

The State argued that Officer Rippons "had first-hand knowledge that that house was abandoned" such that there was a trespass occurring in the presence of a law enforcement officer. The State also asserted that the officers had authority to detain Mr. Bolden based solely on his flight from them in a high crime area, at which point he assaulted the police officers, providing another basis to arrest Mr. Bolden. And the search of the satchel was incident to a lawful arrest. Mr. Bolden, on the other hand, argued that "absent a call or complaint" about someone trespassing at the property, the officers lacked probable cause to arrest him for trespassing. In addition, before his arrest "Mr. Bolden [did]

stop and submit to the officer's commands," but otherwise he was "allowed to not submit to an unlawful detention."

The court denied the motion, finding that the stop was lawful, the arrest was lawful, and the evidence from Mr. Bolden's person was seized lawfully:

> [W]e've heard testimony that [Mr. Bolden] was known by the officer to not reside there and that . . . the residence was boarded up, had been for about a week, and had no trespassing signs there.
>
> So initially the court's view is that there was probable cause to arrest the Defendant at that point in time, take him into custody. Any search into that would have been lawful. But even if that is not the case, certainly those facts together constitute a reasonable, articula[ble] suspicion that criminal activity is afoot.
>
> . . . What happens during that investigatory stop is that assaults are committed, including physical assaults, and the disarming of the officer . . . of his taser in an effort apparently to deploy that towards the partner.

2. Suppression analysis.

Our review of a motion to suppress evidence is limited to the record of the suppression hearing, and we view the record "in the light most favorable to the party who prevails on the motion, in this case, the State. *State v. Johnson*, 458 Md. 519, 532 (2018). We defer to the circuit court's fact-finding but perform our own "independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Grant v. State*, 449 Md. 1, 14–15 (2016).

The Fourth Amendment of the U.S. Constitution, which applies to the States through the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not

be violated . . . .” U.S. Const. amends. IV, XIV. “Searches conducted without a warrant are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Johnson*, 458 Md. at 533 (cleaned up). A search incident to a valid arrest is one such exception, *Ricks v. State*, 322 Md. 183, 188 (1991), and warrantless arrests for misdemeanors committed in the officer’s presence are valid, so long as supported by probable cause. *Maryland v. Pringle*, 540 U.S. 366, 370 (2003).

The question here is whether Officer Rippons had probable cause to arrest Mr. Bolden for trespassing. “An officer has probable cause to arrest where the facts and circumstances within the officer’s knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *McCormick v. State*, 211 Md. App. 261, 269 (2013) (cleaned up). The State argues that Officer Rippons had probable cause to believe that Mr. Bolden, in the presence of the officer, was trespassing on posted property in violation of Maryland Code (2002, 2021 Repl. Vol.), § 6-402(a)(1) of the Criminal Law Article (“CR”).[4] The elements of CR § 6-402 are: (1) entry or trespass on property; (2) that has signs posted conspicuously against trespass; and (3) that are placed in a manner where they reasonably may be seen.

[4] The statute defines trespass on posted property as follows: “A person may not enter or trespass on property that is posted conspicuously against trespass by . . . signs placed where they reasonably may be seen[.]” CR § 6-402(a)(1).

At the suppression hearing, Officer Rippons testified that he believed Mr. Bolden was trespassing because of the condition of the property, the "no trespassing" signs posted, and because he "knew" Mr. Bolden did not live there. Mr. Bolden contends that Officer Rippons only had reasonable suspicion that Mr. Bolden was trespassing and needed first to "attempt to investigate whether Mr. Bolden was permitted to be at the property . . . ." That contention lacks any legal basis. Officer Rippons needed only a reasonable belief that an offense was being committed, which "is not a high bar." *Johnson*, 458 Md. at 535 (cleaned up). Mr. Bolden claims also that the arrest was a pretext to search for evidence, but it is a longstanding principle that "the police officer's subjective intentions have no bearing on probable cause determination[s]." *Brown v. State*, 171 Md. App. 489, 524 (2006) (*citing Whren v. United States*, 517 U.S. 806, 814–15 (1996). The question is an objective one: whether a reasonable officer had probable cause to believe an offense had been committed. *McCormick*, 211 Md. App. at 269. There was.

In the end, the trial court credited Officer Rippons's testimony that he had observed Mr. Bolden sitting on the porch of the house that had been boarded up and unoccupied for "at least a week," findings that are not clearly erroneous. The body-cam footage and photograph of the property show no trespassing signs posted conspicuously at the time of the incident. We agree with the circuit court that Officer Rippons had probable cause to arrest Mr. Bolden for trespassing on posted property in violation of CR § 6-402. The arrest, and thus the search incident to that arrest, was lawful.

B. The Evidence Of Mr. Bolden Resisting Arrest And Gaining Control Of Officer Rippons's Taser Was Insufficient To Convict Mr. Bolden Of Reckless Endangerment.

The *next* issue we consider is whether the State produced evidence sufficient to permit a rational trier of fact to find the essential elements of reckless endangerment. Mr. Bolden argues that the State's allegation that Mr. Bolden "attempted to discharge the taser" was insufficient to "create a substantial risk of death or serious physical injury" necessary to support a conviction for reckless endangerment. Based on the evidence that was before this jury, we agree.

1. Proceedings below.

At trial, the State cited Mr. Bolden gaining control of Officer Rippons's taser during the struggle as the basis for the reckless endangerment charges. We review the sufficiency of evidence to support a conviction "in the light most favorable to the prosecution and determine whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Pagotto*, 361 Md. 528, 534 (2000) (cleaned up). We don't second-guess the judgment where there are "competing rational inferences available." *State v. Manion*, 442 Md. 419, 431 (2015) (*quoting Smith v. State*, 415 Md. 174, 183 (2010)). But "evidence must permit the trier of fact to infer guilt beyond a reasonable doubt, and must not rely solely upon inferences amounting to mere speculation or conjecture." *Id.* at 432 (cleaned up).

The evidence before the jury, viewed in the light most favorable to the State, included Officer Rippons's and Officer Casolaro's testimony along with the officers' body-worn camera footage. Officer Rippons testified that they were in the area on proactive

patrol due to "multiple complaints" of "drug activity and gun violence." When officers attempted to take Mr. Bolden into custody, he fled. Officer Rippons tackled him to the ground and they wrestled. As they wrestled, a crowd gathered, "getting close" to Mr. Bolden and the officers.

Officer Casolaro's body cam footage shows the entirety of the struggle to subdue Mr. Bolden. Upon Mr. Bolden's flight to the backyard of 714 Douglas Street, Officer Rippons tackled him to the ground and pointed his taser against Mr. Bolden's back while Mr. Bolden lay on his stomach. Mr. Bolden had his hands underneath him, presumably on the satchel. Officer Rippons instructed him to "get [his] hands out" and he did not comply. Meanwhile, both officers were yelling at onlookers to back away. Mr. Bolden was able to push himself upright again, at which point Officer Rippons deployed his taser. Both prongs of the taser cartridge went into Mr. Bolden and Mr. Bolden fell to the ground again, but was able to right himself again. Officer Rippons then bear-hugged Mr. Bolden from behind (with the taser still in his right hand) and they both fell to the ground.

In this stance, Mr. Bolden reached for the taser in Officer Rippons's right hand and momentarily held the barrel of the taser in his left while Officer Casolaro began to cuff the same hand. But that's when Officer Rippons tells Officer Casolaro to "get that bag"—referring to the satchel—and Officer Casolaro stopped attempting to cuff Mr. Bolden in order to retrieve it. The view of Mr. Bolden and Officer Rippons is lost while Officer Casolaro retrieved the satchel briefly, but Officer Rippons stated that he saw Mr. Bolden "point the taser at [his] partner," Officer Casolaro, and that "someone pull[e]d the trigger

[of the taser] when [he did not] have control of it." When Officer Casolaro returned to Mr. Bolden and they were again in view in the body cam footage, Officer Rippons had regained control of the taser and was subduing Mr. Bolden by pressing his fist (which is holding the taser) against Mr. Bolden's chin. At that point, Mr. Bolden stopped resisting and was cuffed. Officer Rippons testified that he injured his right shoulder, which required medical treatment and Officer Casolaro "ended up with a busted lip."

At the end of the State's case, Mr. Bolden made a motion for judgment of acquittal, arguing that his conduct did not "rise to the level of a substantial risk of death or serious physical injury." Mr. Bolden argued with respect to the taser that "he was the recipient" of the taser's force and the State can't be "in a position . . . that what was done to him would then turn around to be something that creates the same sort of risk . . . when the roles are reversed." The State responded that there was a sufficient factual basis for the jury to find reckless endangerment "in the taser," "that he resisted arrest for as long as he did," that "he elbowed [Officer] Casolaro in the face" and fought with officers. The court denied Mr. Bolden's motion, stating that "[t]he conduct was reckless and it did . . . cause a dangerous situation out there for everyone, . . . even for Mr. Bolden. . . . Tasers are known to incapacitate people and at times do cause serious physical injuries."

In closing, the State didn't reference the reckless endangerment charge specifically but argued that there was a "fight" between Mr. Bolden and the officers. The State argued that while Mr. Bolden continued to resist "a crowd at this point is starting to form around them. There is no backup." At that point, "Mr. Bolden gets Corporal Rippons's taser. He

has the Corporal's taser in his hand is pointing it at Corporal Rippons. . . . [W]hen Mr. Bolden had the taser, [Corporal Rippons] heard [Mr. Bolden] pull the trigger. He heard the noisiness and there's another shot. Mr. Bolden holding the taser, pointing it at Officer Casolaro's face." Mr. Bolden chose to "fight" officers, "to disarm him of his taser, and to attempt to fire it at both of them." Mr. Bolden urged the jury "to consider the fact that Mr. Bolden was the first one to be tased":

> as you consider that in light of the other charges, remember that Corporal Rippons agreed that the first taser that was deployed did not make contact. . . . But for purposes of the reckless endangerment; if we're saying that Mr. Bolden did something that created a substantial risk of death or serious physical injury to another, then ergo we have to also be saying that when the officers used the taser they did something that created a substantial risk of death or serious physical injury. And I don't think that we're going to concede that law enforcement was using a technique that would create such a risk simply to place somebody under arrest for a trespass.

The jury acquitted Mr. Bolden of all four counts of second-degree assault but found him guilty of reckless endangerment.

2. Sufficiency of the evidence analysis.

Mr. Bolden argues that the evidence in this case was insufficient for a rational jury to conclude beyond a reasonable doubt that Mr. Bolden endangered Officers Rippons and Casolaro recklessly. The State counters that "by wrestling, kicking, pulling away, as well as pointing a taser in the direction of one of the officers and deploying it, [Mr.] Bolden recklessly 'created a substantial risk of death or serious physical injury'" to the officers. The State cites the evidence that "a crowd of people gathered in an area known for recent crime and violence, creating an unnecessary risk that [officers] could be seriously injured."

The reckless endangerment statute, CR § 3-204(a)(1), provides that "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" The elements of reckless endangerment are "'1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury[5] to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly.'" *Holbrook v. State*, 364 Md. 354, 366–67 (2001) (*quoting Jones v. State*, 357 Md. 408, 427 (2000)).

"Criminal recklessness is assessed by considering whether the conduct, 'viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish.'" *State v. Morrison*, 470 Md. 86, 124–25 (2020) (*quoting Minor v. State*, 326 Md. 436, 443 (1992)). And we look to the conduct of the defendant rather than the harm caused. *See Albrecht v. State*, 105 Md. App. 45, 58 (1995) (the crime of reckless endangerment "is intended to deal with the situation in which a victim is put at

[5] CR § 3-201(d) provides:

> "Serious physical injury" means physical injury that:
>
> (1) creates a substantial risk of death; or
>
> (2) causes permanent or protracted serious:
>
> (i) disfigurement;
>
> (ii) loss of the function of any bodily member or organ; or
>
> (iii) impairment of the function of any bodily member or organ.

substantial risk of death or serious bodily harm but may, through a stroke of good fortune, be spared the consummated harm itself").

The issue here is the risk element of the offense, *i.e.*, whether Mr. Bolden's conduct created a substantial risk of death or serious physical injury to the officers. *Williams v. State*, 100 Md. App. 468, 490 (1994) ("The *actus reus* of reckless endangerment is the creation of a substantial risk of death or serious bodily harm to another."). The question is an objective one and does not rely on Mr. Bolden's subjective perception of the riskiness of his conduct. *Id.* at 495 ("It is undisputed that the *actus reus* of creating a substantial risk is to be measured objectively, not subjectively. . . . Whether the conduct in issue has, indeed created a substantial risk of death or serious physical injury is an issue that will be assessed objectively on the basis of the physical evidence in the case."); *see also id.* at 498–500 (*discussing People v. Davis*, 526 N.E.2d 20 (N.Y. 1988), where use of an inoperable gun did not create a risk and thus could not constitute reckless endangerment, and *State v. McLaren*, 376 A.2d 34 (Vt. 1977), where there was a jury question as to whether the firearm used was unloaded or inoperable and evidence presented a factual issue for the jury to decide whether there was an objective state of danger). So we're presented in this case with the question of whether the physical evidence generated a factual issue for the jury on whether there was a substantial risk of death or serious bodily injury to the officers by Mr. Bolden's conduct of resisting arrest and pulling the trigger of Officer Rippons's taser. And we're not convinced there was.

Various cases uphold reckless endangerment convictions involving firearms,[6] but what about a taser? Maryland courts have not had the opportunity to address the question. *Moulden v. State*, 212 Md. App. 331 (2013), however, is worth a close examination. There, we held that "a fake gun incapable of firing" did not "satisfy the risk element of reckless endangerment." *Id.* at 357. In that case, a robbery victim testified that the defendant came up to him and "'stuck a gun . . . right in [his] face.'" *Id.* at 349. But when the victim got closer, he "realized the gun was fake" and started fighting with the defendant. *Id.* at 350. The jury found the defendant guilty of reckless endangerment for wielding the fake gun. *Id.* at 353. In considering the sufficiency of the evidence of the objective risk created by the defendant, the Court looked to the specific evidence before the jury and the indisputably fake nature of the gun:

> Although the State challenges [the victim's] testimony that the gun was "fake," his testimony was the only evidence presented by either side regarding the authenticity and/or operability of the gun. The State failed to counter [the victim's] testimony with any evidence from which a juror might rationally infer that the gun was real and capable of firing a projectile, or if

[6] *See Albrecht*, 105 Md. App. at 55 (shotgun), *Minor*, 85 Md. App. at 307 (shotgun), *Boyer v. State*, 107 Md. App. 32, 38–39 (1995) (machine gun), *Thompson v. State*, 229 Md. App. 385 (2016) (shotgun); *Perry v. State*, 229 Md. App. 687 (2016) (handgun). *Cf. Ford v. State*, 90 Md. App. 673, 686–87 (1992) (rational inference of substantial risk of defendant who hurled large rocks at windshield of cars driving on highway had intent to permanently disable driver because it would be a natural and foreseeable consequence of act); *Pryor v. State*, 195 Md. App. 311, 335 (2010) (sufficient evidence of risk when defendant "lit a gasoline-fed fire in the first floor" of a townhome); *Williams*, 100 Md. App. at 473 ("Stabbing a victim in the neck or lower face and then again in the chest-shoulder area could reasonably be deemed to be an act creating a substantial risk of death or serious physical injury to the victim of the stabbing.").

> used as a club, would present a substantial risk of death or serious personal injury.

Id. at 356. The Court in *Moulden* went on to discuss Maryland's reckless endangerment statute, which it found was enacted to address "a particular concern for the reckless discharge of *firearms*." *Id.* (*citing* Senate Judicial Proceedings Committee Floor Report on H.B. 1448 (1989)).

A taser falls somewhere in between an obviously fake firearm and a loaded, operable one. But we likewise are concerned that there was no evidence presented to this jury from which it rationally could infer that Mr. Bolden wielding Officer Rippons's taser could create a substantial risk of death or serious bodily injury. The jury had before it the body cam footage showing that the taser's stun was ineffective at gaining Mr. Bolden's compliance. Although the taser clearly was operable, the only testimony as to how the device works came from Officer Rippons, and it was less clear:

> [THE STATE:] Did there come a time when you lost control of the taser?
>
> [OFFICER RIPPONS:] That's correct.
>
> [THE STATE:] How did that happen?
>
> [OFFICER RIPPONS:] The Defendant took my taser.
>
> [THE STATE:] How close were you to the Defendant during this incident?
>
> [OFFICER RIPPONS:] Tight. I mean, the entire time I think as I tased him I backed up. Brought it back. Because the taser's only going to separate—when it goes out it's only going to separate so far. The way a taser works pretty much with electrodes and stuff like that and electric is the farther you can separate it—kind of if you were ever to get a Charlie horse, *you know how bad like a Charlie horse feels? So what it does is it locks those muscles up* so you want to spread to be farther apart

> so that way you can gain control of the incident at a quicker time.
>
> So a tighter spread is not going to have as much impact as if it were further apart to allow us, again, to gain control.

(Emphasis added.) Additionally, there was evidence that both taser cartridges were discharged in the incident, and a reference to a "dry stun," but the State didn't offer any evidence as to what those descriptions meant.

The jury had before it evidence that a taser causes a temporary impairment of a subject's muscle control, but no evidence that the device could cause "permanent or protracted serious . . . impairment" of any "bodily member or organ." CR § 3-201(d); *Williams*, 100 Md. App. at 468 (*quoting McLaren*, 376 A.2d at 36). Juries are permitted to use "common sense, powers of logic, and accumulated experiences in life" to make reasonable inferences, *Robinson v. State*, 315 Md. 309, 318 (1989), but tasers don't necessarily fall into any of those categories when the only evidence was that "it locks . . . muscles up . . . ." Accordingly, the jury's finding that there was a substantial risk of death or serious personal injury to the officers fell into the realm of "speculation or conjecture." *Moulden*, 214 Md. App. at 354. We agree with Mr. Bolden that his conduct amounted to resisting arrest, not reckless endangerment. *See DeGrange v. State*, 221 Md. App. 415, 421 (2015) (The elements of resisting arrest are "(1) a law enforcement officer arrested or attempted to arrest the defendant; (2) the arrest was lawful, and; (3) the defendant refused to submit to the arrest and resisted the arrest by force."). And indeed, Mr. Bolden was in fact charged with and convicted of resisting arrest.

We also reject the State's argument that Mr. Bolden's conduct created a substantial risk of death or serious injury to the officers when "a crowd of people gathered in an area known for recent crime and violence, creating an unnecessary risk that [officers] could be seriously injured." Mr. Bolden's act of resisting arrest where a crowd of people formed could not support a rational and legitimate inference that his resistance would cause the violent intervention of bystanders. There was no evidence that the crowd was irate or angry, nor any that would support a finding that his actions caused a reaction, *see Minor*, 326 Md. at 445 (Bell, J., dissenting) ("the defendant's conduct, by itself and *directly*" must "create[] the substantial risk of death or serious bodily injury"), nor that he encouraged bystanders to intervene (which they didn't). *Cf. id.* at 443 (appellant handed shotgun to inebriated brother who "indicated an intention to put the gun to his head and pull the trigger" and "dared him" to pull trigger in order to "'call his bluff'"). Also, the State never argued that the harm came from Mr. Bolden pointing the taser in the direction of any bystander. We agree with Mr. Bolden that "[a]t best, the crowd gathering as a result of the ongoing police encounter could amount only to disorderly conduct," for which—yet again—he was charged and convicted.

As in *Moulden*, the State needed to prove that Mr. Bolden's conduct, specifically with respect to grabbing and pointing a taser, presented a real risk of death or serious injury. Based on the facts presented in this case, a rational juror could not infer that Mr. Bolden's actions created a substantial risk of serious injury or death, the evidence was insufficient

to support the convictions for reckless endangerment, and we reverse the convictions on those two counts.

C. The Trial Court Admitted The CDS And Associated Laboratory Report Properly.

Mr. Bolden's *next* contention is that the circuit court abused its discretion by admitting the heroin, cocaine, and laboratory analysis because the State failed to establish the chain of custody between the times the materials were gathered at the scene and analyzed in the lab. Before trial, Mr. Bolden filed a written demand under Maryland Code (1973, 2020 Repl. Vol.), § 10-1003(a)(1)[7] of the Courts and Judicial Proceedings Article ("CJ"), triggering the State's common law "burden of establishing that the evidence presented at trial is in substantially the same condition as it was when initially recovered." *Wheeler v. State*, 459 Md. 555, 561 (2018); *see also id.* at 566 (demand under CJ § 10-1003 reverts State's burden back to the common law standard for authentication and admissibility).

Section 10-1002(a)(1) provides that "[c]hain of custody" means: "(i) [t]he seizing officer; (ii) [t]he packaging officer . . . ; and (iii) [t]he chemist . . . ." To establish the chain of custody, the State offered the testimony of Officer Rippons, Officer Casolaro, and Ms. Laufert, a forensic chemist in the Maryland State Police, Forensic Sciences Division. The State conceded that it did not offer testimony from the packaging officer, and thus that it

[7] This section provides that "[i]n a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 5 days prior to a trial in the proceeding, require the presence of the chemist, analyst, or any person in the chain of custody as a prosecution witness."

couldn't use the statutory "shortcut," but argued nevertheless that it met the common law standard for admissibility.

We review the trial court's ruling on admissibility of evidence for an abuse of discretion. *Wheeler*, 459 Md. at 560–61. "A court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* at 561 (cleaned up). And Maryland Rule 5-901(a) provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

1. Proceedings below.

The evidence established that Officer Casolaro recovered the satchel from the scene and transported it back to the station into a secured locker. Officer Rippons testified that all the evidence was still in Mr. Bolden's satchel when he "inventoried" the items within it, estimating the number of wax folds that were bundled together due to the suspected presence of fentanyl. The wax folds were rather unique, each stamped with a cartoon image of "Heisenberg," the high school chemistry teacher turned meth dealer from the television show "Breaking Bad." A photograph of the items contained in the satchel was admitted without objection.

An issue arose at trial when Officer Rippons could not identify the packaging officer who shipped the evidence to the lab. He stated that "[s]omebody else" packaged the items and that "[i]t would have been up to an evidence tech and the detectives," to send out the

evidence "to the lab to be tested to determine what, if any, CDS was involved." Officer Casolaro testified that the CDS evidence offered at trial was the same as that found in the satchel "[b]ecause of the items that were listed and [his] name as the seizing officer" on the chain of custody log, and that he knew they were the same items from the satchel "[b]ecause [he] remember[ed] the distinct color; the green and the clear and then the distinct color—or shape of the wax folds."

Ms. Laufert testified that when suspected drug samples are delivered to the laboratory, the substances go first to central receiving unit where they "log it, give it a laboratory case number, and then it's put in storage until it is assigned" to a chemist. She testified that when she received the package in this case, it was heat sealed, there were initials on the seal, and she did not notice any tampering with the package. She inventoried the items, "making sure what was on the chain of custody was inside" the package. But Ms. Laufert explained that her report was "supplemental" because "the first time [the evidence] came . . . into my possession item number four [(the bundled wax folds)] had a count that was off by more than two. . . . So I counted less than what they listed on the [chain of custody log]." She "analyzed items one, two and three, as those counts were correct, and then item four was returned not analyzed." The evidence was returned to her several weeks later, and someone "had crossed out the original count and wrote another count underneath it." She didn't know who changed the number from 210 wax folds to 184.

Mr. Bolden objected to the admission of the CDS evidence based on the gap in the chain of custody and on the count discrepancy, which, he argued, the State had failed to explain. The court found that the State had satisfied its burden to authenticate the evidence:

> I do believe that the evidence was incredibly unique actually compared to many of the cases I've seen through the years. We have the wax folds with a stamp that is very unique to this case. We would have the lip gloss container. We've got the green cans. Quote, unquote, the "clear plastic cans." And it shows up—the officers testified as to the first part of this, both Casolaro and Rippons, to the extent that they knew. I do believe that this is squarely on point with Wheeler in the sense that there is a reasonable probability that has been demonstrated this is in fact the same evidence that reached [the lab in] Pikesville as was seized allegedly from the satchel that was allegedly in the possession of Mr. Bolden. The court is satisfied that the State has met its burden that the evidence is what it purports to be; that it reached the lab in substantially the same condition as when seized and there's a reasonable probability it has not been tampered with and there's been no indication to a reasonable probability showing that it has been tampered with. And for that reason, when we go back on, this court will be admitting State's 6 and 7.

2. Chain of custody analysis.

After Mr. Bolden made his demand under CJ § 10-1003(a)(1), the State was required to "establish a proper chain of custody that negates a reasonable probability of alteration or tampering." *Wheeler*, 459 Md. at 569. This required "a finding that the evidence is what it purports to be." *Id.* And "gaps or weaknesses in the chain of custody generally go to the weight of the evidence and do not require exclusion of the evidence as a matter of law." *Easter v. State*, 223 Md. App. 65, 75 (2015).

Mr. Bolden argues that his case is distinguishable from *Wheeler v. State* and that the State failed to negate the possibility of tampering or alteration of the evidence. In *Wheeler*,

the Court held that the testimony of the seizing officer and chemist was sufficient to authenticate CDS evidence obtained during an undercover drug purchase. 459 Md. at 567. Mr. Wheeler had argued that it was legal error for the evidence to be admitted when the State failed to call the packaging officer as a witness. *Id.* at 557–58. The Court disagreed and affirmed the decision to admit the evidence, noting the circumstantial evidence on which the trial court to support its finding:

> Among the significant evidence in this case is that the—the gap which the defense has identified is entirely within police custody, not something where the drugs were unaccounted for in some unknown location for a period of time.
>
> But particularly I think the linking aspects of the description of the actual items and the dates; that is, [the seizing officer] has testified clearly that what he purchased were two orange zips of tan substance and one clear zip with blue writing, of a tan substance; that within 24 hours the same description of items are tested by Chemist Sharma, and that the State has accounted for the actual custody of them by [the seizing officer] up to the point at which he was in headquarters, with references to the fact that a different submitting officer submits them into [Evidence Control Unit ("ECU")] and then the chain properly picks up in the lab from ECU on the next day.
>
> That evidence I find sufficient to allow the jury to infer that these are the same items. On that basis, I will admit State's Exhibit 7 and State's Exhibit 8.

Id. at 568–69.

Mr. Bolden tries to distinguish *Wheeler* by arguing that "much of the testimony in this case reveals that the evidence was in unknown locations, *albeit in either the police or the forensic laboratory's custody*, and with unknown technicians or detectives for significant periods of time." (Emphasis added). But we fail to see the distinction when the "gap" in *Wheeler* was also "entirely within police custody." *Id.* at 568. Here, the State

called the seizing officer and the testimony of the State's chemist, and also offered evidence of the CDS's unique attributes that were discernibly the same from the seizure to the lab to the courtroom. Additionally, the evidence revealed that Officer Casolaro transported the satchel to a secure locker. Officer Rippons recovered it, in an unopened state, and inventoried the contents. Ms. Laufert described the safeguards the laboratory (also a secured facility) had in place to prevent tampering and alteration, and she confirmed that those safeguards were implemented in this case. Ms. Laufert's count discrepancy was explained by Officer Rippons, who testified that he estimated the number of wax folds because of the suspected presence of fentanyl.

This chain of custody evidence was sufficient to allow a rational fact finder to determine that the CDS tested by Ms. Laufert was the same evidence Officer Casolaro collected from Mr. Bolden and turned over to Officer Rippons. The trial court did not abuse its discretion in admitting the evidence and any weaknesses in the chain of custody went to the weight of the evidence rather than its admission. *Easter*, 223 Md. App. at 75.

D. The Trial Court Denied Defense Counsel's Request To Remove A Juror Properly.

Lastly, we resolve Mr. Bolden's contention that the trial court abused its discretion denying his motion to remove a juror after he disclosed that he "recalled" facts about the case. We agree with the State that the trial court exercised its discretion properly.

1. Proceedings below.

After opening statements, Juror 38 sent a note to the court stating, "I may have a conflict with this case. My nephew . . . is in the Cambridge Police. After opening statements

today, I recall hearing a little about this case." The court then questioned the juror:

> THE COURT: . . . So tell me a little more about that in terms of; do you recall a conversation with him?
>
> JUROR 38: Yeah. Just when opening statements were being made I heard, the trigger—
>
> THE COURT: Uh-huh.
>
> JUROR 38:—the taser—
>
> THE COURT: Okay.
>
> JUROR 38:—situation. Just I remember hearing a conversation over —
>
> THE COURT: Okay.
>
> JUROR 38:—dinner one night with family and that's, that's really it.
>
> THE COURT: Would that in any way influence your decision making in this case? Would the fact that your nephew is a Cambridge police officer, would you be able to separate that out and decide the case solely on the evidence and the facts of this case?
>
> JUROR 38: I believe so, yes.
>
> THE COURT: Okay. Any follow-up questions?
>
> [DEFENSE COUNSEL:] Do you recall what was being said about the incident?
>
> JUROR 38: I—the only thing I recall is the, a taser being used back on a police officer.
>
> * * *
>
> They were talking about it over dinner.

Defense counsel requested the juror be excused because "he ha[d] heard about [the] incident" and "he didn't respond when asked if he had a connection to law enforcement" during voir dire. The circuit court denied the request, finding that the juror did not "fail to

answer the question the way it was asked"[8] and reasoned that "[i]t doesn't sound as though the conversation that he heard has impacted anything. It's just a matter of having . . . happened to have heard about it. No details or forming an opinion about that."

2. Disqualification of juror analysis.

On appeal, Mr. Bolden argues that the court abused its discretion "because the juror's responses demonstrated that he had formed an opinion regarding a critical fact bearing on many of Mr. Bolden's conduct-based charges." Mr. Bolden contends as well that the court abused its discretion because the juror had a "personal relationship with someone who had strong interests in the outcome of the case."

Maryland Rule 4-312(g)(3) provides that "[a]t any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate [juror]." A substitution is a matter of discretion of the trial judge "and such an exercise of discretion will not be disturbed on appeal unless arbitrary and abusive in its application." *Williams v. State*, 231 Md. App. 156, 195–96 (2016) (cleaned up). We give deference because "the trial judge has the opportunity to question the juror and observe his or her demeanor." *State v. Cook*, 338 Md. 598, 615 (1995).

We are satisfied that the trial court's decision was not arbitrary or abusive. The juror was forthright in disclosing that he had "hear[d] a conversation" about "a taser being used,"

[8] The jurors were asked "Have any of you ever been a member of or associated with a law enforcement agency?"

but did not describe any conclusion he had independently drawn. The court inquired about the juror's ability to decide the case "solely" on the evidence before him and, being able to view the demeanor of the juror, the court was satisfied in his responses to questions. Defense counsel was given the opportunity to question the juror, and did not explore whether the juror, having a nephew in the police department, had a "close personal relationship with someone having a strong personal interest in the case's outcome." *Hunt v. State*, 321 Md. 387, 419 (1990) (cleaned up) (affirming trial court's exclusion of a juror based on such potential prejudice). There was no evidence the juror and his nephew were "close," nor was there any evidence the nephew had "strong interests in the outcome of the case." On this record, we hold that the trial court did not abuse its discretion in declining to discharge the juror.

* * *

As a result of the foregoing decisions, we affirm all of Mr. Bolden's convictions except the convictions for reckless endangerment, which we reverse. Because we reversed the reckless endangerment convictions on the grounds that the evidence was insufficient as a matter of law to support them, he may not be re-tried on those counts.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED IN PART AND REVERSED IN PART. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.