Circuit Court for Cecil County
Case No. C-07-CR-18-000723

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 391

September Term, 2019

HOLLY LAREN OAKMAN

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 14, 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.

A jury in the Circuit Court for Cecil County convicted Holly Oakman, appellant, of failing to obey a reasonable and lawful order, obstructing and hindering, resisting arrest, and various traffic offenses. The court sentenced appellant to a total term of six months in jail, with all but ten days suspended. In this appeal, appellant presents the following questions for our review:

1. Was the evidence adduced at trial sufficient to sustain appellant's conviction of failing to obey a reasonable and lawful order?

2. Was the evidence adduced at trial sufficient to sustain appellant's conviction of obstructing and hindering?

3. Was the evidence adduced at trial sufficient to sustain appellant's conviction of resisting arrest?

4. Was defense counsel ineffective in failing to preserve for appellate review appellant's arguments as to the sufficiency of the evidence for the convictions of obstructing and hindering and resisting arrest?

For the reasons to follow, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was arrested and charged following an incident that occurred during a traffic stop. At trial, Maryland State Police Trooper Courtney Gee testified that on April 5, 2018, she was on patrol on Route 40, a two-lane highway, when she observed a vehicle that "appeared to not have a tag light." Upon positioning her vehicle closer to the suspect vehicle, Trooper Gee observed "that the registration plate was obstructed by a black trash bag" that was partially hanging out of the vehicle's trunk. Trooper Gee pulled her vehicle behind the suspect vehicle and activated her vehicle's emergency lights. The suspect vehicle eventually pulled onto the shoulder and came to a stop, and Trooper Gee followed.

After exiting her vehicle, Trooper Gee approached the suspect vehicle's passenger-side window and observed a man "about 25 to 30 years old sitting in the back row directly behind the passenger seat." Trooper Gee also observed that the vehicle's front passenger seat was empty, except for "an open purse." Appellant was then identified as the driver. When Trooper Gee attempted to make contact with appellant, appellant "rolled down her window about an inch or two, only enough for the purposes of speaking." Trooper Gee testified that she then asked appellant to "roll down her window," and appellant responded that "she wasn't comfortable."

Trooper Gee testified that she then introduced herself, explained the reason for the traffic stop, and requested appellant's license, registration, and insurance. In response, appellant "leaned towards the passenger seat" in the direction of "the open purse." After pausing for a moment, appellant "moved back to an upright position" and stated, "I don't have any of that so you can look me up from my tags." Trooper Gee then told appellant that it would be unsafe to "look her up from her tags" because the Trooper would have to place herself directly behind appellant's vehicle. Trooper Gee testified that appellant "wasn't being cooperative" and, consequently, "the last thing [she] wanted to do was place [herself] in that particular position . . . so that [appellant] could potentially run over [her]."

Trooper Gee testified that she then pulled out "an index card and a pen" so that she could write down appellant's information. When Trooper Gee subsequently asked appellant for her name and date of birth, appellant "refused to make eye contact" and stated, "Look me up from my tags." Trooper Gee then explained to appellant that failing to provide such information was "an arrestable offense," to which appellant voiced her

disagreement. After a brief "back and forth" with appellant, Trooper Gee directed her attention to the male passenger, asking him "if he had any form of identification on him." Appellant responded for the passenger, stating that he did not have any identification and that he could not speak for himself.

Trooper Gee testified that she wanted the passenger's identification because "traffic stops are official police investigations," as they help "locate missing people" and people who "are wanted for whatever reason." As for appellant's identification, Trooper Gee testified that such information would have helped to determine if the vehicle was stolen, if appellant's insurance was valid, and if appellant was "even supposed to be driving." Trooper Gee added that she needed appellant's information to issue a valid traffic citation. When appellant asked Trooper Gee why she could not "just look at the tag and get [appellant's] information," Trooper Gee testified that the tag appeared to have been purposely obstructed and that, as a result, she "didn't know who [she] was dealing with, what they had done, what their intentions were." Trooper Gee further testified that, even if she had obtained appellant's information from her license plate, that information would only identify the registered owner and did not always include a picture to enable the trooper to "verify that the person was the same person as the listed name."

Following that exchange with appellant, Trooper Gee returned to her patrol vehicle and "requested a second unit." After the second officer, Maryland State Police Trooper Derek Surratt, arrived on the scene, Trooper Gee exited her vehicle and approached the driver's side of appellant's vehicle, while Trooper Surratt approached on the passenger's side. Upon reaching the driver's side window, which appellant had "cracked," Trooper

Gee asked appellant to exit the vehicle. Appellant refused. Trooper Gee then "told [appellant] a second time" to exit the vehicle and stated that she "was no longer requesting" but that "it was an official order." Again appellant refused to comply.

After trying to open the vehicle's door and discovering that it was locked, Trooper Gee used a "window punch" to break open the driver's side window. Trooper Gee then reached into the vehicle through the broken window and unlocked the door. By that time, appellant had moved from the driver's seat into the front passenger seat. Trooper Gee testified that she "had to force entry" because appellant "was not compliant with any of [the officer's] commands."

After opening the vehicle's door, Trooper Gee attempted to remove appellant from the vehicle. As Trooper Gee did so, appellant "swung her right arm" at the officer but missed. Appellant then "put both her hands into her pocket" and wrapped "her hand or her fingers around something," which Trooper Gee could tell was not a cell phone. Fearing that appellant may have been reaching for a weapon, Trooper Gee stepped back from the vehicle and "began to undo the retention on [her] holster." Appellant then removed her hands from her pocket, and Trooper Gee pressed the vehicle's "automatic locking device," which unlocked the vehicle's passenger side door. Trooper Surratt then opened the passenger side door and pulled appellant out of the vehicle and onto the ground. According to Trooper Gee, appellant was "yelling," "fighting," "flailing her arms," and "not putting her arms behind her back." Trooper Gee then went around the vehicle and placed appellant in handcuffs. Upon searching appellant's pocket, Trooper Gee discovered a can of pepper spray. Trooper Gee testified that the male passenger in appellant's vehicle left the scene

following appellant's arrest and was never identified. Trooper Gee also testified that she eventually identified appellant "at the barrack" following appellant's arrest.

On cross-examination, Trooper Gee admitted that, when she first went back to her vehicle after initiating the traffic stop, she received a call from "Dispatch" indicating that appellant had called 911 and reported the incident. Trooper Gee testified that it was possible that Dispatch had relayed appellant's name and date of birth to Trooper Gee, but that she could not "recall if all of that information was given to [her]."

On redirect examination, Trooper Gee testified that, because the windows of appellant's vehicle had been lowered only slightly, it would have been "extremely difficult" to smell alcohol on appellant's breath had she been drinking. Trooper Gee further testified that the obscured license plate and appellant's refusal to provide identifying information were "criminal indicators" that may suggest that "criminal activity is afoot."

Following Trooper Gee's testimony, Trooper Surratt testified, stating that after he arrived on the scene in response to Trooper Gee's request for assistance, he and Trooper Gee approached appellant's vehicle on foot, with Trooper Gee approaching on the driver's side while he approached on the passenger's side. Trooper Surratt testified that, after observing Trooper Gee interact with appellant, he walked over to the driver's side of the vehicle and informed appellant that "she was being placed under arrest" for "obstructing and hindering, not identifying herself." Trooper Surratt added that appellant was also not "obeying any orders." Trooper Surratt explained that appellant refused to exit the vehicle as instructed.

Trooper Surratt testified that, after Trooper Gee broke appellant's window, he moved back around to the passenger side of the vehicle and, once the doors were unlocked, opened the passenger side door and pulled appellant out. Appellant was then "placed on the ground and placed into handcuffs." According to Trooper Surratt, as the handcuffs were being placed on appellant, she was "pulling her arms in" and "attempting to pull away." Trooper Surratt testified that he told appellant to "stop resisting, stop fighting" but that appellant refused.

At the conclusion of the State's case-in-chief, and again at the close of all evidence, defense counsel moved for judgment of acquittal on three of the charges: failing to present evidence of required security; obscuring vehicle registration plate with intent to avoid identification; and failing to obey a lawful order. Regarding the charge of failing to obey a lawful order, defense counsel argued that there was "no testimony that the public peace was in any way disturbed by [appellant's] actions." Defense counsel's motion was ultimately denied.

As stated above, the jury convicted appellant of failing to obey a reasonable and lawful order, obstructing and hindering, and resisting arrest. This timely appeal followed.

DISCUSSION

I.

Appellant contends that the evidence adduced at trial was insufficient to sustain her conviction of failing to obey a reasonable and lawful order. Appellant maintains that, in order to sustain her conviction, the State needed to show that the officers' commands were made in order to prevent a disturbance to the public peace. Appellant asserts that the

troopers' commands were not made to prevent a disturbance to the public peace, but rather were "made to allow the troopers to arrest and identify [her]—a course of action which was entirely unnecessary given that [she] had already identified herself to law enforcement by calling 911." Appellant also contends that, in order to sustain her conviction, the State needed to show that her refusal to abide by the officers' commands posed a danger of breaching the public peace. Appellant maintains that no evidence was presented to show that her conduct "was disruptive to the flow of traffic, or that members of the public were in any way disturbed by, or even observant of, her conduct."

The State contends that appellant's first claim—that no evidence was presented establishing that the officers' commands were made in order to prevent a disturbance to the public peace—is unpreserved. Specifically, the State argues that appellant's motion for acquittal "focused on a perceived *lack of actual public disturbance*, whereas [appellant's] appellate argument focuses on a perceived lack of evidence that *the purpose of the order* was to prevent such a disturbance." We agree with the State. As the State points out, in the motion for acquittal, defense counsel focused on whether the public peace was actually disturbed. The colloquy between defense counsel and the State on the motion for judgment of acquittal makes this clear:

> [Defense counsel]: Count 3, failing to obey a lawful and reasonable order. There has to be evidence, Your Honor, *that a person that willfully disobeys a reasonable and lawful order creates a disturbance to the public peace. There was no testimony that the public peace was in any way disturbed by Ms. Oakman's actions that day.*
>
> They may have met part of that statute, and this is under the 10-201(c)(3). It says, "A person may not willfully fail to obey a reasonable and lawful order." We understand that. Obviously, in the light most favorable

> to the State they have met that burden. *However, they have not proven or even offered evidence that it made a disturbance to the public peace[.]*
>
> . . .
>
> [State]: With regard to fail [sic] to obey a reasonable lawful order, when you have multiple police vehicles showing up, you have the defendant flailing about on the side of the road, I mean, that in and of itself is disturbing the public peace, the way things are normally run.
>
> When you ask for license and identification information and it's given by people on the side of the road where they hand it over to the police, everything runs orderly. When they don't do that, then that's disturbance of the peace.
>
> . . .
>
> [Defense counsel]: *There is caselaw that says that police cannot create the disturbance and ultimately then go back and point it on the defendant and say, Well, guess what, we showed up to your house, or we arrested you, or we pulled you over, and there's three police cars here and that's disturbance and therefore it's your fault.* The police are the ones that initiated that. The caselaw says that, Your Honor. So that's why I'm asking the Court to grant the motion on Count 3. With that, I will submit.

(Emphasis added). Thus, the basis for the motion for acquittal was whether appellant's conduct (and the officer's reactions to her conduct) created a public disturbance. At no point did defense counsel assert the argument now made by appellant on appeal—that "the State failed to establish that Troopers Gee and Surratt ordered [appellant] out of the car for the purpose of preventing a disturbance to the public peace."

Maryland courts have strictly construed the requirement that, in arguing a motion for judgment of acquittal, the defendant state all reasons with particularity. For example, in *Starr v. State*, 405 Md. 293, 294–95 (2008), the Court of Appeals determined that Starr's insufficiency argument was not preserved. There, Starr was charged with openly carrying a dangerous weapon, and the evidence at trial indicated that the weapon at issue was a

sawed-off shotgun. *Id.* at 295–98. At the conclusion of the State's case-in-chief, Starr's counsel argued, "Simply put[,] shotguns, even sawed off shotguns aren't dangerous weapons as contemplated by this particular statute." *Id.* at 298. On appeal, however, Starr made a different argument, *i.e.*, that the State only proved he was in possession of a handgun, which did not meet the definition of a dangerous weapon under the applicable statute. *Id.* at 301.

Rather than consider this argument, the Court of Appeals concluded that it was not preserved for appellate review. *Id.* at 301–02. The Court stated, "A criminal defendant who moves for judgment of acquittal is required by Md. Rule 4-324(a) to 'state with particularity all reasons why the motion should be granted[,]' and is not entitled to appellate review of reasons stated for the first time on appeal." *Id.* at 302 (quoting *State v. Lyles*, 308 Md. 129, 135–36 (1986)). The Court then provided the following example:

> [I]n *McIntyre v. State*, 168 Md. App. 504, 897 A.2d 296 (2006), while affirming possession and distribution of child pornography convictions, the Court of Special Appeals refused to decide whether "the evidence produced at trial was insufficient to establish that the images depicted actual children, as opposed to virtual images of children[,]" because that argument was not made in the Circuit Court when the appellant's trial counsel moved for a judgment of acquittal. *Id.* at 526–27, 897 A.2d at 308–09.

Starr, 405 Md. at 303 (second alteration in original). The Court further observed, "A defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal[.]" *Id.* (quoting *Bates v. State*, 127 Md. App. 678, 691 (1999), *overruled on other grounds by Tate v. State*, 176 Md. App. 365 (2007)). Additionally, the Court noted that "[w]hile an appellant/petitioner is entitled to present the appellate court with 'a more detailed version of the [argument] advanced at

trial[, this Court has refused] to require trial courts to imagine all reasonable offshoots of the argument actually presented to them before making a ruling on admissibility.'" *Id.* at 304 (quoting *Sifrit v. State*, 383 Md. 116, 136 (2004)).

In summary, in appellant's motion for acquittal, she argued that the evidence failed to show an *actual* public disturbance; on appeal, she argues that the State failed to prove that the *trooper's command was made to prevent a disturbance to the public peace*. It would be inappropriate to require the trial court to infer appellant's appellate argument from her argument at trial. *Id.* at 304. Accordingly, we conclude that appellant's appellate argument was not preserved for our review.

II.

Appellant next claims that the evidence adduced at trial was insufficient to sustain her conviction of obstructing and hindering. Specifically, appellant argues that the State failed to prove that her conduct actually obstructed or hindered the officers or that she possessed the requisite intent to commit the crime.

We hold that appellant's claim is unpreserved. At trial, defense counsel did not move for judgment of acquittal on the charge of obstructing or hindering. Accordingly, appellant failed to preserve her sufficiency argument as to that charge. *See Hobby v. State*, 436 Md. 526, 540 (2014) ("On appeal from a jury trial, 'appellate review of sufficiency of evidence is available only when the defendant moves for judgment of acquittal at the close of all the evidence and argues precisely the ways in which the evidence is lacking.'" (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997))).

Because it informs our discussion of appellant's ineffective assistance of counsel claims in Part IV, *infra*, we conclude that, even if preserved, the evidence was sufficient to support the conviction. "In Maryland, obstructing and hindering a law enforcement officer in the performance of his duty is a common law offense." *Titus v. State*, 423 Md. 548, 558 (2011). The elements of the offense are: (1) that a police officer was engaged in the performance of a duty; (2) that the defendant committed an act or omission that obstructed or hindered the officer in the performance of a duty; (3) that, at the time of the act or omission, the defendant knew that the officer was performing a duty; and (4) that the defendant intended the act or omission to obstruct or hinder the officer. *Id.* at 558–59 (citing *Cover v. State*, 297 Md. 398, 413 (1983)). At issue here are the second and fourth elements.

The second element "requires proof of 'how [a defendant's] act actually obstructed and hindered the police officers . . . based on the totality of the circumstances[.]'" *Id.* at 560 (alterations in original) (emphasis removed) (quoting *Nieves v. State*, 160 Md. App. 647, 658 (2004)). "[T]he act of obstructing . . . 'includes any impediment, direct or indirect, active or passive, to the execution of process or exercise of authority.'" *Id.* at 562 (quoting Lewis Hochheimer, *The Law of Crimes and Criminal Procedure* 436 (2d ed. 1904)). Moreover, "[t]o perform an analysis of whether the evidence adduced at trial is sufficient to support a finding of actual obstruction or hinderance of an officer in the performance of his duties, it is necessary to determine the scope of an officer's duty in the particular circumstances presented by each case." *Id.* at 571.

The fourth element of the offense requires sufficient facts from which a "reasonably cautious person" could infer that the defendant intended to obstruct or hinder a police officer. *Nieves*, 160 Md. App. at 657. As in most cases, "the trier of fact can infer from a defendant's actions and the surrounding circumstances whether the defendant had the requisite intent to obstruct or hinder an officer in the performance of his or her duties." *Titus*, 423 Md. at 564; *see also Spencer v. State*, 450 Md. 530, 568 (2016) ("Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." (quoting *Davis v. State*, 207 Md. 44, 51 (1954))).

We hold that sufficient evidence was presented to prove that appellant intended to, and actually did, obstruct or hinder Trooper Gee in the performance of her duties. The record shows that Trooper Gee effectuated a lawful traffic stop of appellant's vehicle, and in furtherance of that official duty, made several reasonable requests of appellant, the driver. Those requests included that appellant roll down her window, furnish valid identification and vehicle registration, and, in the absence of those documents, provide her name and date of birth. Appellant refused all of those requests, and instead instructed Trooper Gee to obtain the information "from her tags." Due to appellant's obstinance, and despite the fact that Trooper Gee may have ultimately obtained appellant's information from Dispatch, Trooper Gee was, according to her testimony, unable to properly investigate the traffic stop and issue appellant a citation. Accordingly, a reasonable inference could be drawn that appellant actually obstructed or hindered Trooper Gee in the performance of her duties. *See Titus*, 423 Md. at 563 ("The word 'hinder' is defined by Webster's

Dictionary as 't[o] impede or delay the progress of.'" (alteration in original) (quoting *Webster's II New College Dictionary* 773 (3d ed. 2005))). Likewise, a reasonable inference could be drawn that appellant intended to obstruct or hinder Trooper Gee. *See id.* at 569 (finding that the defendant's intent to obstruct or hinder could "be gleaned from [the defendant's] actions in light of his knowledge that he was interacting with a police officer performing a traffic stop").

In addition, a reasonable inference could be drawn that appellant obstructed or hindered Trooper Gee when she refused to comply with Trooper Gee's lawful requests that she exit the vehicle. In fact, not only did appellant fail to respond to Trooper Gee's command that she exit the vehicle, but appellant actually moved from the driver's seat into the front passenger seat. As a result, Trooper Gee had to break the vehicle's window in order to remove appellant from the vehicle. Appellant thereafter continued to resist, at one point attempting to strike Trooper Gee and then reaching for a can of pepper spray in her pocket. In response, Trooper Gee backed away from the vehicle and reached for her service weapon. When appellant removed her hand from her pocket, Trooper Gee unlocked the vehicle's doors so that Trooper Surratt could open the passenger's side door and remove appellant. From those facts, a reasonable fact-finder could conclude that appellant obstructed or hindered Trooper Gee in the performance of her duties.

Appellant relies on two cases, *In re Antoine H.*, 319 Md. 101 (1990), and *Nieves v. State*, 160 Md. App. 647 (2004), both of which are inapposite. In *Antoine H.*, the respondent, a juvenile, was found involved in the crime of hindering or obstructing police officers after he refused to allow the officers to enter his residence so that the officers could

execute an arrest warrant on another individual whom the officers believed was inside. *Id.* at 106. The Court of Appeals later reversed, holding that the evidence was insufficient to sustain the charges. *Id.* at 109. In so doing, the Court noted that the only facts adduced to support the charge were that the juvenile failed to open the door promptly when the police arrived, that he lied to the police about the suspect's presence in the home, and that he was generally uncooperative. *Id.* at 108. The Court held that those facts were insufficient to show that the police were actually hindered or obstructed, particularly given that the police ultimately did not believe the juvenile and successfully searched the house, finding the suspect and arresting him. *Id.* at 108–09.

In *Nieves*, this Court held that the police lacked probable cause to arrest the defendant for obstructing or hindering where the defendant, during a traffic stop, initially gave the police his middle name before providing his first name, which resulted in the police having to run the defendant's name through a computer database a second time before discovering that the defendant's license had been suspended. *Nieves*, 160 Md. App. at 656–58. We explained that the defendant lacked the requisite intent because "he simply provided his middle name as his first name, an act that is not at all uncommon" and because he "provided the police with his correct last name and his correct date of birth, arguably the only necessary information the police actually needed to ascertain [the defendant's] identity." *Id.* at 657. We further reasoned that the defendant's actions there did not actually obstruct or hinder the police. *Id.* at 657–58.

Unlike in *Antoine H.* and *Nieves*, appellant's actions in refusing to provide identifying information upon request actually hindered or obstructed Trooper Gee in the

performance of her duties, as Trooper Gee did not confirm appellant's identity until she got back to the police station following appellant's arrest. Moreover, appellant's actions in refusing to get out of her vehicle further obstructed or hindered the officer given that, in addition to having to break into appellant's vehicle, Trooper Gee needed the assistance of a second officer to remove appellant. Finally, when considered in their totality, appellant's actions evidenced a clear intent on her part to obstruct or hinder Trooper Gee in the performance of her duties. *See Titus*, 423 Md. at 564 (noting that, "[u]nless there is evidence presented to the contrary, the law presumes that a person intends the natur[al] and probable consequences of [her] acts" (alterations in original) (quoting *Attorney Grievance Comm'n of Md. v. Sheinbein*, 372 Md. 224, 245 (2002))). Accordingly, the evidence was sufficient to sustain that charge.

III.

Appellant next claims that the evidence adduced at trial was insufficient to sustain her conviction of resisting arrest. Appellant contends that the evidence was insufficient because her arrest was unlawful.

We hold that appellant's claim is unpreserved. At trial, defense counsel did not move for judgment of acquittal on the charge of resisting arrest. Therefore, appellant failed to preserve her sufficiency argument as to that charge. *See Hobby,* 436 Md. at 540.

Even if preserved, appellant's claim is without merit. The crime of resisting arrest is proscribed by § 9-408(b)(1) of the Criminal Law Article, which states that "[a] person may not intentionally . . . resist a lawful arrest[.]" Md. Code (2004, 2012 Repl. Vol.), § 9-408(b)(1) of the Criminal Law Article ("CR"). An arrest is lawful if "the officer had

probable cause to believe that the defendant had committed a crime[.]" *Olson v. State*, 208 Md. App. 309, 334 (2012) (quoting *Rich v. State*, 205 Md. App. 227, 240 (2012)).

As discussed, the evidence was sufficient to sustain appellant's conviction of obstructing and hindering. It is axiomatic, therefore, that the police had probable cause to arrest appellant. *See Parker v. State*, 66 Md. App. 1, 7 (1986) (noting that "the establishment of 'probable cause' requires more than mere suspicion but less than belief 'beyond a reasonable doubt'"). Thus, the evidence was sufficient to sustain appellant's conviction of resisting arrest.

IV.

Appellant's final contention is that defense counsel rendered ineffective assistance of counsel in failing to move for judgment of acquittal as to the charges of obstructing and hindering and resisting arrest. Appellant maintains that, had defense counsel argued that the evidence was insufficient as to those charges, those arguments would have been preserved and appellant "would be entitled to reversal of her convictions because the evidence is insufficient to support those convictions." While recognizing that a claim of ineffective assistance is more appropriate in a post-conviction proceeding, appellant asks that we review the issue in the instant appeal.

We decline appellant's request. "Generally, absent any 'objective, uncontroverted, or conceded error,' the issue of defense counsel's effectiveness is raised most appropriately in a post-conviction proceeding." *Steward v. State*, 218 Md. App. 550, 570 (2014) (quoting *Haile v. State*, 431 Md. 448, 473 (2013)). "The primary reason behind the rule is that, ordinarily, the trial record does not illuminate the basis for the challenged acts or omissions

of counsel." *In re Parris W.*, 363 Md. 717, 726 (2001). "The rule, however, is not absolute and, where the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim, there is no need for a collateral fact-finding proceeding, and review on direct appeal may be appropriate and desirable." *Id.*

Regardless of the nature of the proceedings, "[a]n appellant asserting ineffective assistance of counsel must show (1) 'that counsel's performance was deficient,' and, (2) 'that the deficient performance prejudiced the defense.'" *Steward*, 218 Md. App. at 570 (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "To prove deficient performance, an appellant must identify acts or omissions of [her] attorney that were objectively unreasonable in comparison to prevailing professional norms." *Id.* To establish prejudice, an appellant must show "that there is a substantial possibility that, but for counsel's error, the result of [her] proceeding would have been different." *In re Parris W.*, 363 Md. at 727–28.

In light of our prior discussion, appellant cannot establish prejudice because the evidence adduced at trial was sufficient to sustain appellant's convictions of obstructing and hindering and resisting arrest. There is little possibility, therefore, that the result of the proceeding would have been different had defense counsel moved for judgment of acquittal as to those charges. Thus, review of appellant's ineffective assistance of counsel claim in this direct appeal is unwarranted. *Compare to Testerman v. State*, 170 Md. App. 324, 343 (2006) (holding that review of the defendant's ineffective assistance claim on direct appeal was appropriate where, had defense counsel raised the defendant's sufficiency claim at

trial, "we would have *directly* reviewed and reversed the sufficiency of the evidence of [the defendant's conviction]").

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.