

Circuit Court for Prince George's County
Case No. CT210535X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 792

September Term, 2023

DARRYL R. WORMUTH

v.

STATE OF MARYLAND

Wells, C.J.,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 17, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Prince George’s County Police Corporal Darryl Wormuth was found guilty of second-degree assault and misconduct in office following a four-day bench trial in the Circuit Court for Prince George’s County. In this timely appeal, Corporal Wormuth presents the following question for our review:

Did the trial court err by failing to apply the correct legal standard—that of a reasonable police officer—when considering whether [Corporal] Wormuth’s use of force against [Kayvon] Hines was justified?

For the reasons that follow, we shall affirm the circuit court’s judgment.

BACKGROUND

On October 20, 2020, Corporal Wormuth was on routine patrol near an apartment complex at 4525 Davis Avenue in Suitland, Maryland when he received a call for assistance from a fellow officer regarding a fleeing armed individual. Corporal Wormuth then coordinated efforts with over a dozen other officers in their attempt to apprehend the suspect. To assist the officers, a police helicopter was also dispatched. Police were ultimately unable to locate the armed individual.

Shortly thereafter, Corporal Wormuth testified that he observed a person, later identified as Kayvon Hines, who was a “very, very close match” to the description of the suspect.¹ Corporal Wormuth parked his police vehicle near Mr. Hines and told him that he could not loiter in the apartment complex. Corporal Wormuth stated that Mr. Hines then “started yelling obscenities” back at him. Mr. Hines fled after Corporal Wormuth got out of his vehicle.

¹ Mr. Hines was not the suspect police had been looking for.

Corporal Wormuth called for assistance as he lost contact with Mr. Hines. Another officer, Officer Thomas Lester, spotted Mr. Hines and chased after him. As Mr. Hines ran into a residential driveway, Officer Lester ordered Mr. Hines to stop and get on the ground. Mr. Hines complied and was arrested with “[m]inimal force.” After Officer Lester verified that Mr. Hines was unarmed, he began walking Mr. Hines to police cruisers with other officers who had arrived on the scene.

At this point, two competing narratives emerged in the trial testimony. Officer Lester testified that as he was walking Mr. Hines to a police car, Corporal Wormuth approached “with a purpose” and started “yelling at the kid.” According to Officer Lester, Corporal Wormuth placed his hand “around the neck” of Mr. Hines and “proceeded to choke him.” Officer Lester testified that this “lasted for several seconds” before Corporal Wormuth let go. In Officer Lester’s view, the use of force by Corporal Wormuth against Mr. Hines was unnecessary given Mr. Hines’s compliance with police commands.

Corporal Michael Brown testified that he was on patrol when he responded to requests for assistance regarding Mr. Hines. Corporal Brown arrived to help secure Mr. Hines, exiting his vehicle as Officer Lester arrested Mr. Hines. As he was walking along a parallel driveway with a clear view of Officer Lester and Mr. Hines, Corporal Brown stated that he saw Corporal Wormuth move with a “determined” walk and instructed Mr. Hines to “[c]ome here.” Corporal Brown testified that he saw Corporal Wormuth “strike[]” Mr. Hines with an “open hand to the throat.” Corporal Brown also confirmed that, based on his training and observations on the scene, there was no need to use the type of force

employed by Corporal Wormuth.

Mr. Hines testified that he was a seventeen-year-old high school senior on the day of the incident. Mr. Hines stated that he fled from Corporal Wormuth because he was scared, but denied exchanging words with Corporal Wormuth. Mr. Hines said that he dropped to the ground upon Officer Lester’s order because he ran out of breath. After the arrest, Mr. Hines recounted that Corporal Wormuth “grabbed [him] from behind” and “started choking” him. Mr. Hines testified that this lasted “four to five seconds,” during which he “couldn’t breathe.”

Corporal Wormuth presented a contrary narrative. He testified that he drove to the location where Mr. Hines was arrested and parked his police cruiser. As he got out, he could see Officer Lester walking with Mr. Hines towards him, and then “stated to Mr. Hines . . . you know, I told you not to run, you know, the helicopter was going to catch you.” Corporal Wormuth stated that he then “walked up and . . . [took] custody of Mr. Hines” without incident. Corporal Wormuth testified that during the custody transfer, he only put his “hand on [Mr. Hines’s] left shoulder” and used it to “stabilize by [Mr. Hines’s] shirt.” Corporal Wormuth denied grabbing Mr. Hines by the throat.

All four witnesses testified to footage from the police helicopter, describing their recollection of the incident as the video played. Officer Lester, Corporal Brown, and Mr. Hines all independently corroborated a statement made by Mr. Hines after the alleged choking, wherein Mr. Hines turned to Officer Lester and exclaimed, “Are you going to let

him do this to me?”² Corporal Wormuth testified that Mr. Hines said, “‘You’re going to do this, you’re going to do this, you’re going to do this to me,’ or whatever” after Corporal Wormuth began escorting Mr. Hines towards his police vehicle.

The State called Dr. Tyrone Powers, a former Maryland State Trooper and former director of the Maryland Police Training Commission Police Academy, to testify as an expert in the police use of force in the State of Maryland. Dr. Powers testified that “based upon [his] review of the evidence in this case,” Corporal Wormuth’s use of force was not reasonable. In response, Corporal Wormuth called Sergeant William Gleason, an officer with the Prince George’s County Police Department and the acting commander of the Advanced Officer Training Section of the Training and Education Division, to testify as an expert in the use of force. Sergeant Gleason opined that, based on his review of the helicopter footage, Corporal Wormuth’s use of force was reasonable.

After four days of testimony, the trial court found Corporal Wormuth guilty of second-degree assault and misconduct in office. The trial judge ruled from the bench, stating in pertinent part:

[T]he State and the Defense presented testimony and evidence. The Court spent an incredible amount of time watching the slowed down version of the [helicopter] footage. I read the jury instructions that pertain to this case

* * *

The Defendant is charged with the crime of second-degree assault. Assault, again, is causing offensive physical contact to another person. In

² Specifically, Officer Lester testified that Mr. Hines said, “Are you going to let him do that?,” and Corporal Brown testified that Mr. Hines said, “You-all going to let him do this to me?”

order to convict the Defendant of assault, the State must prove that the Defendant caused offensive physical contact with or physical harm to Mr. Hines. That the contact was the result of an intentional or reckless act of the Defendant and was not accidental, and that the contact was not consented to by Mr. Hines or not legally justified.

Reckless act means conduct that under all circumstances shows a conscious disregard of the consequences to other people and there's a gross departure from the standard of conduct that a law abiding person would observe. While it's true that the contact was brief, the event was not. The event did not start when Corporal Wormuth reached Mr. Hines. The event started when Corporal Wormuth got out of his cruiser and started walking up the driveway. Walking towards Officer Lester and Mr. Hines, Mr. Wormuth could see that Mr. Hines was walking with his hands behind his back and escorted by Officer Lester.

He could see that Mr. Hines was not struggling with Officer Lester. He could see that there were five other officers literally be bopping behind him, unphased, unbothered and unconcerned with what was happening with Mr. Hines, because they all could see that Officer Lester had everything under control. I find Corporal Brown and Officer Lester credible. They both saw Corporal Wormuth walk up the hill with purpose and saw him strike Mr. Hines and pull him down.

It's possible that Corporal Wormuth made contact with Mr. Hines's neck when he reached for him, but then grabbed him by the clothes as he and Officer Gleason testified. They both described it as a grab and pull. Corporal Wormuth testified that when he first encountered Mr. Hines, Mr. Hines [w]as agitated, cursing and basically challenged Corporal Wormuth. He said he pulled up his pants leg and ran.

Corporal Wormuth did not give chase. But when Mr. Hines was caught, he want[ed] to get Mr. Hines, because Mr. Hines was his arrest. Even if I accept Corporal Wormuth's testimony to be exactly what happened, it would still be offensive physical contact that was the result of an intentional or reckless act, was not accidental, and was not consented to by Mr. Hines, nor legally justified. Therefore the Court finds Corporal Wormuth guilty of second-degree assault.

The court also found Corporal Wormuth guilty of misconduct in office because it found that he was "upset" and wanted to make Mr. Hines "pay the smart mouth run tax"

for yelling obscenities and fleeing. Corporal Wormuth was sentenced to five years’ imprisonment, which was suspended for time served, for second-degree assault; for misconduct in office, he received a five-year sentence with all but forty-five days suspended. Corporal Wormuth then noted this timely appeal.

DISCUSSION

Corporal Wormuth argues that the court applied the incorrect legal standard in its evaluation of the reasonableness of his use of force against Mr. Hines. Specifically, Corporal Wormuth contends that the court evaluated his use of force from the perspective of a reasonable person, instead of a reasonable police officer, as required by *Graham v. Connor*, 490 U.S. 386 (1989). Corporal Wormuth asserts that the court declined to make a specific finding regarding his conduct against Mr. Hines and “made no attempt to explain why [his] actions were not objectively reasonable from the standpoint of a reasonable police officer.”³

The State responds that Corporal Wormuth’s argument is unpreserved because he did not object to the court’s bench ruling. On the merits, the State argues that the trial court applied the correct standard when it ruled that Corporal Wormuth’s conduct was not legally justified. While the State concedes that the court “never used the phrase ‘*Graham* standard’

³ Corporal Wormuth also argues that statements made during sentencing indicate that the court applied the wrong legal standard. Because these statements were made after the verdict was given and were in response to information that emerged after the trial, they have little relevance to whether the court applied the correct legal standard in rendering its verdict. Moreover, the court’s comments at sentencing ostensibly relate to different modalities of second-degree assault as opposed to application of the *Graham* standard.

in its ruling[.]” it asserts that the language used by the court in its bench opinion indicates that it properly evaluated the evidence pursuant to the *Graham* framework. The State contends that it would be an improper “leap of logic” to assume that the trial court did not apply the correct standard, given that the court heard “testimony from expert witnesses and arguments from counsel” that discussed Corporal Wormuth’s use of force under *Graham*.

We initially conclude that Corporal Wormuth’s appellate claim is not preserved. “Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). Although there are exceptions to the preservation requirement in bench trials, Maryland courts have been reluctant to expand the exception beyond challenges to the sufficiency of the evidence. *See Rivera v. State*, 248 Md. App. 170, 183 (2020). A “core reason for the preservation requirement [is] to permit the judge to clarify what can readily be clarified if he [or she] is given the opportunity to do so.” *Chisum v. State*, 227 Md. App. 118, 140 (2016) (holding that a challenge to the legal standard applied in a bench ruling was unpreserved when an objection would have allowed the court to clarify its reasoning “within 20 seconds”).

Here, Corporal Wormuth’s contention that the trial court did not apply the correct legal standard is unpreserved because he did not interpose an objection following the bench ruling. Corporal Wormuth’s core argument is that it is unclear if the court employed the correct legal standard. This alleged uncertainty would have been quickly resolved, however, had he objected and allowed the court to clarify its reasoning, particularly where

the record here confirms that *Graham* permeated the trial. We are therefore “disinclin[ed] to let the appellant take advantage of . . . an ambiguity” in the bench ruling, especially when the court asked Corporal Wormuth and his attorney if they had any questions following the oral opinion and they responded “No.” *Id.* at 139.

Apart from lack of preservation, we hold that Corporal Wormuth’s substantive claim lacks merit. There is a “presumption that trial judges know the law and apply it properly.” *State v. Chaney*, 375 Md. 168, 181 (2003). Therefore, the “burden of rebutting that presumption is on the party claiming error first to allege some error and then to persuade us that error occurred.” *Id.* at 184 (quoting *Fisher v. State*, 128 Md. App. 79, 104 (1999)). “[E]rror is never presumed by a reviewing court, and we shall not draw negative inferences from [a] silent record.” *Id.*

The Fourth Amendment to the United States Constitution “guarantees citizens the right ‘to be secure . . . against unreasonable . . . seizures’ of the person.” *Graham*, 490 U.S. at 394. When law enforcement officers are alleged to have used “excessive force . . . in the course of an arrest,” courts are required to analyze the officer’s actions “under the Fourth Amendment and its ‘reasonableness’ standard[.]” *Id.* at 395. The proper application of this standard requires “careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he [or she] is actively resisting arrest.” *Id.* at 396. We examine the reasonableness of an officer’s actions “from the perspective of a reasonable police officer, [who] may use only that amount of force

reasonably necessary under the circumstances to discharge his [or her] duties.” *Wilson v. State*, 87 Md. App. 512, 520 (1991).

Corporal Wormuth argues that the trial court failed to articulate how his actions deviated from that of a reasonable officer and contrasts the court’s bench opinion with that considered in *Wilson*. There, after a bench trial, the court framed its evaluation of competing testimony regarding police use of force against a suspect by explicitly stating that “the standard of review on the charge of assault is one of reasonableness. A police officer is adjudged by a different standard than that we accord to an ordinary citizen.” *Id.* at 519. The court found the testimony of neighbors who witnessed the officer’s use of force to be credible and noted that their testimony was consistent with that of the suspect. *Id.* at 520. After the court used the testimony to “objectively adjudge[] the conduct of” the officer, *id.* at 521, it concluded that the “conduct [was not] reasonably necessary to use in the discharge of [his] duties[.]” *Id.* at 520. We therefore rejected Wilson’s argument that the trial court used an inappropriate legal standard.

Although the specificity provided by the trial court in *Wilson* is laudable,⁴ we find *Manno v. State*, 96 Md. App. 22 (1993), more instructive. In *Manno*, the appellant argued that the court “applied the wrong standard” when it found him guilty of first-degree murder after a bench trial. *Id.* at 24. The appellant claimed that the court’s decision was based “on a faulty legal premise, i.e., that a ‘specific intent to kill’ is the equivalent of premeditation

⁴ We also note that a trial court is not required to state the grounds for its decision in this context. *See* Md. Rule 4-328.

and deliberation.” *Id.* at 27.

After examining the court’s oral opinion, we found no statement or indication that the trial judge misapplied the legal standard for first-degree murder. *Id.* Importantly, we noted that “at no time[] did the court say that a finding of premeditation and deliberation was unnecessary to support appellant’s guilt of first degree murder.” *Id.* at 30 (footnote omitted). Furthermore, our review of the oral opinion demonstrated that the court properly evaluated “all of the events leading up to the shooting” that supported a finding of “premeditation and deliberation sufficient to support appellant’s guilt of murder in the first degree.” *Id.* at 30-31 (footnote omitted). We therefore held that the “failure of the trial judge to articulate specifically the words ‘premeditation and deliberation’” did not require a reversal of appellant’s conviction. *Id.* at 30.

In contrast, oral opinions or rulings that have incorrect statements of law or legally incongruous conclusions overcome the presumption that we apply to trial court judgments. In *Thornton v. State*, the court, after a bench trial, found the defendant guilty of second-degree murder because he stabbed the victim in the leg. 397 Md. 704, 738 (2007). Although the intent to inflict grievous bodily harm modality of second-degree murder is a specific intent crime, the court made an explicit finding that the defendant “at no time had any intent to kill anybody[.]” *Id.* at 736. The court stated in its bench ruling that the defendant was guilty despite his lack of intent because “one of the possible consequences” of stabbing is death. *Id.* at 737. The Supreme Court of Maryland reversed the conviction, holding that the trial judge’s bench ruling contained “mistaken conclusions of law” because

it “modified the specific intent requirement” for second-degree murder. *Id.* at 742; *see also Selby v. State*, 361 Md. 319 (2000) (reversing a conviction where the trial court found the defendant guilty of voluntary manslaughter despite finding that he did not have the requisite intent to kill the victim); *Williams v. State*, 173 Md. App. 161 (2007) (reversing a conviction for failing to return a motor vehicle when the court applied a strict liability standard for a general intent crime).

Against this backdrop, we conclude that there is insufficient evidence to overcome the presumption that the trial court knew the law and applied it properly. The court was obviously aware of the *Graham* standard because it permeated every stage of the trial. Both expert witnesses employed *Graham* in their analysis, and the prosecutor and defense counsel agreed that *Graham* was the controlling law. Unlike in *Thornton*, there was no statement during the trial or in the rendition of the bench opinion that would suggest that the court disregarded, or deviated from, *Graham*.⁵ Instead, our review of the transcript of the bench opinion indicates that the court properly paid “careful attention to the facts and circumstances” of this case and implicitly evaluated Corporal Wormuth’s conduct through the *Graham* factors. 490 U.S. at 396.

As stated above, the *Graham* factors include the “severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and

⁵ In fact, during a court-initiated dialogue after closing arguments where both parties discussed the elements of assault under *Graham*, the court acknowledged their arguments and gave no indication that it held a contrary view.

whether he [or she] is actively resisting arrest.” *Id.* Here, the court found that Corporal Wormuth could see that Mr. Hines posed little, if any, immediate threat to officer safety because “Mr. Hines was walking with his hands behind his back and [was] escorted by Officer Lester.” Furthermore, the court highlighted the relaxed dispositions of “five other officers” on the scene, who were “unphased, unbothered and unconcerned with what was happening with Mr. Hines, because they all could see that Officer Lester had everything under control.”

Additionally, the court noted that “Mr. Hines was not struggling with Officer Lester[,]” thereby addressing *Graham*’s third factor. Although the severity of the crime at issue was not discussed,⁶ the court’s opinion persuades us that the court properly evaluated Corporal Wormuth’s conduct pursuant to *Graham*. Our conclusion that the court applied the appropriate standard is bolstered by the court’s finding that both Corporal Brown and Officer Lester were credible—both officers’ testimony provided an evaluation of Corporal Wormuth’s conduct “from the perspective of a reasonable police officer.” *Wilson*, 87 Md. App. at 520. Although Corporal Brown and Officer Lester recounted slightly different versions of the incident, their testimony generally corroborated Mr. Hines’s testimony and, more importantly, demonstrated that Corporal Wormuth’s actions were not “reasonably necessary under the circumstances to discharge his duties.” *Id.* In light of the evidence

⁶ Corporal Wormuth testified that he initiated contact with Mr. Hines because Mr. Hines matched the description of an armed individual that police were previously searching for. The record is unclear, however, as to what crime the armed individual purportedly committed.

and record before us, we cannot conclude that the trial court’s failure to specifically refer to “*Graham*” or “reasonable officer” in her bench opinion constitutes error requiring reversal. *See Manno*, 96 Md. App. at 30.⁷

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**

⁷ Corporal Wormuth argues that the court’s analysis of the misconduct in office charge is evidence that it misapplied the law, because it improperly evaluated “whether [Officer] Wormuth’s actions were corrupt . . . as opposed to the balancing test set forth in *Graham*.” We hold that this argument was waived when Corporal Wormuth conceded below that “If the [c]ourt finds [Corporal Wormuth] guilty of [assault], then misconduct follows . . . it’s clear.” Appellate counsel conceded as much at oral argument.