Circuit Court for Prince George's County
Case No. CT200959X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0923

September Term, 2022

BRYANT STRONG

v.

STATE OF MARYLAND

Reed,
Tang,
Albright,

JJ.

Opinion by Reed, J.

Filed: March 25, 2025

*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).

On October 17, 2019, Police Officer First Class Bryant Strong ("Appellant") of the Prince George's County Police Department responded to an ongoing traffic stop in Oxon Hill, Maryland. The driver, Demonte Ward-Blake ("Mr. Ward-Blake"), was removed from his vehicle, handcuffed, and then sat on the curb. After discovering Mr. Ward-Blake's license was suspended, along with what officers described as Mr. Ward-Blake's disorderly conduct, Mr. Ward-Blake was placed under arrest. The Appellant then attempted to conduct a search incident to arrest, and while he was searching Mr. Ward-Blake's leg the Appellant and Mr. Ward-Blake ended up on the ground, with different eyewitnesses testifying as to how this occurred. Mr. Ward-Blake suffered a fracture of two vertebrate and was diagnosed with lower body paralysis.

On September 10, 2020, the Grand Jury for Prince George's County returned an indictment for the Appellant for three counts: (1) Assault in the Second Degree; (2) Reckless Endangerment; and (3) Misconduct in Office. On May 2 through May 4, 2022, a bench trial was held before the Honorable Daneeka Varner Cotton of the Circuit Court for Prince George's County. Judge Cotton found the Appellant guilty of all three counts. The court later sentenced the Appellant to ten years of incarceration with one year suspended for Second-Degree Assault; for five years of incarceration, all suspended, for the Reckless Endangerment count; and five years of incarceration, all suspended, for the Misconduct in Office charge. The Appellant filed a timely appeal shortly after.

In bringing his appeal, Appellant presents three questions for appellate review:

I. Did the trial court err in denying Appellant's Motion for Judgment of Acquittal?

II. Did the trial court draw an impermissible inference from Mr. Ward-Blake's medical records as to the manner of the force used by Appellant?

III. Did the trial court draw an impermissible inference in determining that the opposite of Appellant's testimony was true given that it found him to be non-credible?

For the following reasons, we affirm the judgment of the Circuit Court for Prince George's County.

FACTUAL & PROCEDURAL BACKGROUND

On October 17, 2019, Prince George's County Police Department Corporal[1] Jeremy Ingraham was patrolling in Oxon Hill, Maryland. Around 5:30pm, Corporal Ingraham pulled over a sedan with an expired plate on the 4700 block of Wheeler Road. Mr. Ward-Blake was the driver, and he had a young child in the backseat.[2] Mr. Ward-Blake did not have any identification on his person, so Corporal Ingraham put his information in the National Crime Information Center database. During this interaction, Corporal Ingraham described Mr. Ward-Blake as "screaming," "acting irate," acting "hostile," and placing his "hand out of the window, gesturing wildly." He ordered Mr. Ward-Blake to place his hands on his steering wheel, which Mr. Ward-Blake refused to do. After Mr. Ward-Blake reached toward his car's center console, Corporal Ingraham drew his service weapon and called on

[1] Since the events of this case, then-Corporal Jeremy Ingraham was promoted to Sergeant.

[2] Chinayne Pollard and Mr. Ward-Blake had been dating for five years. Mr. Ward-Blake picked up Ms. Pollard's daughter from school using Pollard's vehicle**.** Mr. Ward-Blake was bringing the child to Ms. Pollard at the hair salon when he was pulled over.

his radio for additional units.[3] The Appellant then responded to the scene along with Officer Salvador Gonzalez. Another officer, Officer Sarah Cohen then arrived on the scene. Around this same time, Mr. Ward-Blake's girlfriend, Chinayne Pollard, arrived at the scene.[4]

The group of officers then approached Mr. Ward-Blake's vehicle and ordered him to exit the vehicle. Mr. Ward-Blake exited the vehicle but continued screaming and cursing at Corporal Ingraham. He was not pushing, shoving, elbowing, or kicking at the officers, so no physical force was used to remove Mr. Ward-Blake from his car.[5] The officers detained Mr. Ward-Blake with his arms handcuffed behind his back and then sat him on the curb beside the Appellant's cruiser. Officer Cohen, Corporal Ingraham, and Officer Gonzalez then went to search Ward-Blake's vehicle. Based on Mr. Ward-Blake driving

[3] Initially, Corporal Ingraham attempted to use his radio to call for additional units, however his shoulder radio was not working. As a result, Corporal Ingraham had to use his cell phone to call the Appellant.

[4] When Mr. Ward-Blake was pulled over, he contacted Ms. Pollard via FaceTime and she saw Corporal Ingraham draw his weapon. Ms. Pollard's hairstylist then drove her to the traffic stop scene, which was about five to ten minutes away. When she arrived, Ms. Pollard observed Mr. Ward-Blake and her daughter seated in the vehicle and the officer seated in his police vehicle. Ms. Pollard tried to remove her daughter from the back seat of the vehicle, but Corporal Ingraham used his P.A. system to instruct her to move away. Once Mr. Ward-Blake was removed from the car and placed in handcuffs, Ms. Pollard walked over to the car to retrieve her daughter.

[5] Corporal Ingraham described Mr. Ward-Blake as "flailing his arms" at this point. On cross examination, the State made him concede that while Mr. Ward-Blake was "flailing" earlier in the traffic stop, when he was exiting the vehicle his arms were not moving in that manner. Judge Cotton, in her ruling, noted that Corporal Ingraham "did modify" some of his testimony based on the videos showing a lack of Mr. Ward-Blake flailing his arms, and instead focused on the verbal remarks as to why Mr. Ward-Blake was described as non-compliant.

with a suspended license and because of his actions interacting with the officers present, he was formally placed under arrest at this time.

The Appellant then began conducting a search incident to arrest of Mr. Ward-Blake. From the Appellant's perspective, the Appellant stated that Mr. Ward-Blake moved his body, and he advised him to stop moving. The Appellant said he squatted down to search Mr. Ward-Blake's left leg. While conducting the leg search, the Appellant claimed that Mr. Ward-Blake used his left elbow to strike the Appellant on the right side of his head. The Appellant then claimed he lost his balance, and Mr. Ward-Blake began to turn away from the Appellant. The Appellant then said Mr. Ward-Blake grabbed the Appellant's left arm to try to regain his balance. Then both men were falling onto the pavement. The Appellant said Mr. Ward-Blake's feet left the ground, but he denied that he lifted Mr. Ward-Blake off the ground. Mr. Ward-Blake fell headfirst onto the ground. The Appellant then sat Mr. Ward-Blake upright and Mr. Ward-Blake said he could not breathe, so the Appellant called for an ambulance.

According to Corporal Ingraham, the Appellant asked Corporal Ingraham whether he could arrest Mr. Ward-Blake. Ingraham mentioned that he looked in Strong and Ward-Blake's direction during the arrest "because Mr. Ward-Blake was screaming, yelling, still being aggressive, so I wanted to make sure the officers were okay." Corporal Ingraham did not see what actions led to Strong placing Ward-Blake on the ground, but he said, "I heard what I would compare to a thud after I heard Mr. Ward-Blake yelling expletives and I looked over and saw Mr. Ward-Blake on the ground and Officer Strong over him trying to control him." He did not claim to witness any force being used. Minutes later, the Appellant

told Corporal Ingraham that Mr. Ward-Blake attempted to elbow him in the face.

When Officer Cohen arrived at the scene, Mr. Ward-Blake was already handcuffed, standing next to a police cruiser with his torso facing the cruiser. Cohen said that as she walked towards Mr. Ward-Blake's vehicle to assist with the search, she heard commotion which caused her to turn around. There, she saw "Mr. Ward-Blake coming down in handcuffs onto the ground." She described what happened as:

> [Mr. Ward-Blake's] feet were above his head at a diagonal. So he was, from where I was, it looked like he landed on his side, like, upper arm. And he wasn't completely straight up and down. Where I was it looked like his feet were above his head but it wasn't vertical.

Officer Cohen said that Mr. Ward-Blake was not taken down gently, but also admitted that she did not witness any portion of the incident prior to Mr. Ward-Blake hitting the ground. Officer Cohen also admitted that when observing the incident, she was twenty-five feet away from the incident and on the opposite side of a police vehicle.

Officer Salvador Gonzalez arrived on the scene after receiving a call from Corporal Ingraham. He also said that Mr. Ward-Blake was "cursing" and "was very irate" based on his speech. Officer Gonzalez was about five feet behind the Appellant and Mr. Ward-Blake while the Appellant conducted his search. He described seeing Mr. Ward-Blake throw a "violent elbow" backwards followed by the Appellant's head whipping back. Then Mr. Ward-Blake started pulling away from the Appellant and Officer Gonzalez saw both people fall to the ground. Officer Gonzalez said he never saw the Appellant slam or throw Mr. Ward-Blake to the ground. He also agreed that Mr. Ward-Blake's feet left the ground.

Ms. Pollard testified that when Mr. Ward-Blake was handcuffed, he was compliant

with officers, did not resist the handcuffs, and followed the officers to the curb. She yelled at Mr. Ward-Blake to be quiet after hearing him speaking to and cursing at the officers. Ms. Pollard saw the officers aggressively pat Mr. Ward-Blake down and check his person. Ms. Pollard had been recording portions of the incident with her phone, and she was making sure she kept her eyes on Mr. Ward-Blake during the incident. However, she received a phone call and looked away from Mr. Ward-Blake to end the call. Ms. Pollard said she "looked back up and the officer – Demonte's legs was just up in the air and the officer is going face down in the ground, like, he is slamming him face down into the ground." Ms. Pollard later said that "[Mr. Ward-Blake] was being slammed. He was being grabbed and he was being slammed onto the ground."[6] In court, Ms. Pollard identified the

[6] Specifically, the questioning of Ms. Pollard at trial went as followed:

> Q: You have your cell phone trying to record for history for everything, what is going on; is that right?
>
> A: Yes.
>
> . . .
>
> Q: And then you get this call and when you get the call that breaks up your video; is that right?
>
> A: Yes.
>
> Q: So it comes on, your video program app stops because this call is coming in; is that right?
>
> A: Yes.
>
> Q: And you have to stop the call, void the call, hang up on the call to get back to what is going on to what you are trying to pay attention to; is that right?

Appellant as the officer who took Mr. Ward-Blake down. She testified that she never saw Mr. Ward-Blake "throw any elbows" at an officer. After Mr. Ward-Blake was on the

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A: Yes.

Q: And when you testified to today is, as you turn back, you get back from the phone to what is going on with Mr. Ward Blake, you see him in the air going to the ground; is that right?

A: When I turned – when I ignored the call and I put my eyes back on Demonte that's when he was slammed.

Q: He was going to the ground is what you testified into examination, he was going to the ground as you turned back?

A: Yeah. I know what I said to them. He was being slammed. He was being grabbed and he was being slammed onto the ground.

. . .

Q: He was in the process of it, you didn't see the beginning of Mr. Ward Blake being taken to the ground?

A: He is still on his two feet.

Q: So you are saying today, now you saw him on his two feet before he was taken to the ground?

A: When I turned around, Demonte was being flipped onto the ground. He was on the ground and he was being flip onto the ground.

Q: He was on the ground and being flipped onto the ground?

A: No. He was standing on his two feet. He was being flipped onto the ground. He was being – his face was going down, the officer was taking him down onto the ground.

ground, Ms. Pollard continued recording as the officers rolled Mr. Ward-Blake onto his side because he could not walk.[7] Mr. Ward-Blake was taken to the hospital for his injuries. He suffered a fracture of two vertebrate and was diagnosed with lower body paralysis.[8]

On September 10, 2020, the Grand Jury for Prince George's County returned an indictment for the Appellant for three counts: (1) Assault in the Second Degree; (2) Reckless Endangerment; and (3) Misconduct in Office. On May 2 through May 4, 2022, a bench trial was held before the Honorable Daneeka Varner Cotton of the Circuit Court for Prince George's County. At the trial, the officers and Ms. Pollard testified to their observations on October 17, described above.

Additionally, both parties called a use of force expert to the stand. Dr. Tyrone Powers, a former Maryland State Trooper and FBI Special Agent, testified for the State. He described the Appellant's actions, taking someone down on concrete who is handcuffed and cannot break their fall, as deadly force. Dr. Powers concluded that the Appellant's actions were not objectively reasonable for a trained officer. Sergeant William Gleason of the Prince George's County Police Department testified for the defense. Sergeant Gleason said that Mr. Ward-Blake was displaying active aggression and therefore the Appellant

[7] On cross-examination, the Appellant attacked the credibility of what Ms. Pollard saw. First, immediately after this incident. Ms. Pollard refused to give a statement and said to one of the officers she did not see anything. Then on the next day, when Ms. Pollard spoke to investigators about the incident, she said that the incident was "just hands" and denied that the interaction was a "wrestling move." In this interview, Ms. Pollard also said that she saw Mr. Ward-Blake "like, bein' flipped upside . . . . Next thing you know his head goes into the concrete."

[8] Mr. Ward-Blake passed away in 2021, but his death was unrelated to the injuries received in this incident.

would have been justified in performing a takedown on the individual. He concluded that the Appellant used a lower level of force than he would have been permitted to use given Mr. Ward-Blake's actions. Both experts agreed that dropping a handcuffed individual onto the ground headfirst would be excessive or unreasonable force.

After the trial, Judge Cotton ruled from the stand, finding the Appellant guilty of all three counts. The court then sentenced the Appellant to ten years of incarceration with one year suspended for Second-Degree Assault; for five years of incarceration, all suspended, for the Reckless Endangerment count; and five years of incarceration, all suspended, for the Misconduct in Office charge. The Appellant filed an appeal shortly after.

STANDARD OF REVIEW

For a trial heard without a jury, we "will review the case on both the law and the evidence." Md. Rule 8-131(c). "[We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* There is clear error when the trial court's factual findings are not supported by competent evidence. *EBC Properties, LLC v. Urge Food Corp.*, 257 Md. App. 151, 165 (2023) (citing *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 339 (2017)). The reviewing court must be left with the "definite and firm conviction that a mistake has been committed." *Kusi v. State*, 438 Md. 362, 383 (2014) (quoting *Goodwin v. Lumbermens Mut. Cas. Co*., 199 Md. 121, 130 (1952)).

DISCUSSION

Issue 1: Sufficiency of the Evidence

A. Parties' Contentions

The Appellant's presented question is whether the trial court erred in denying the motion for judgment of acquittal. The Appellant's argument focuses on the indictment in the case, where the counts state that the Appellant "body slammed" Mr. Ward-Blake. The Appellant argues that the State did not meet their burden of showing that the Appellant performed a "body slam" on Mr. Ward-Blake.

The State argues that the evidence was sufficient to sustain all of the Appellant's convictions. Regarding the "body slam" argument, the State argues there was no variance between the indictment and the conduct they alleged and proved at trial. They assert the evidence offered by the State was sufficient for the trier of fact to determine that the Appellant "body slammed" Mr. Ward-Blake.

B. Standard of Review

We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We have consistently applied this rule when reviewing the sufficiency of evidence in a bench trial. *State v. McGagh*, 472 Md. 168, 193 (2021) (citation omitted). The issue of legal sufficiency is the same in a bench trial or a jury trial: the state must meet its burden of production. *Chisum v. State*, 227 Md. App. 118, 127 (2016).

When reviewing a case for the sufficiency of the evidence to sustain a conviction, the question is whether, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the elements of the crime beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 430–31 (2015) (quoting *Taylor v. State*,

346 Md. 452, 457 (1997)) (emphasis in original). "[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *McGagh*, 472 Md. at 194 (quoting *Taylor*, 346 Md. at 457).

We must give deference to "a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation[.]" *Manion*, 442 Md. at 431 (quoting *State v. Smith*, 374 Md. 527, 534 (2003)). The trier of fact had the opportunity to view the evidence and the witnesses firsthand and judge their credibility. *Id.* (citing *Walker v. State*, 432 Md. 587, 614 (2013)). Where there are competing rational inferences available, we do not second-guess what the trier of fact determined. *Id.* (quoting *Smith v. State*, 415 Md. 174, 183 (2010)). It is not within this court's province to determine "whether the [trier of fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Id.* (quoting *Smith*, 415 Md. at 184).

C. Analysis

Sufficiency of the Evidence for Second-Degree Assault

First, the evidence presented by the State was sufficient to convict the Appellant on all three counts. The first count was for second-degree assault, which Maryland law defines as "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." Md. Code, Crim. Law § 3-201(b); *see also* Md. Code, Crim. Law § 3-203(a) ("A person may not commit an assault."). The Appellant is alleged to have slammed Mr. Ward-Blake to the ground, which would be second-degree assault "clearly

of the battery variety." *Nicolas v. State*, 426 Md. 385, 403 (2012). "The common law elements of assault in the second degree of the battery variety are (1) the unlawful, (2) application of force, (3) to the person of another." *Koushall v. State*, 479 Md. 124, 150 (2022) (citing *Snowden v. State*, 321 Md. 612, 617 (1991)). Here, neither party disputed that there was an application of force to the person of another when the Appellant took down Mr. Ward-Blake, and the only issue at the trial was whether that application of force was unlawful.

At the time of the 2019 traffic stop, the lawfulness of use of force by a police officer was analyzed under the Fourth Amendment's objective reasonableness standard. *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 388 (1989)).[9] The objective reasonableness standard "is not capable of precise definition or mechanical application" so to apply it properly "requires careful attention to the facts and circumstances of each particular case." *Richardson v. McGriff*, 361 Md. 437, 452 (2000) (quoting *Graham*, 490 U.S. at 396). The Supreme Court of the United States has set out factors, adopted in Maryland, to help determine whether the use of force was reasonable, which include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or

[9] In 2021, the Maryland General Assembly passed the Maryland Police Accountability Act of 2021. 2021 Md. Laws ch. 60 (S.B. 71). Part of that act involved a new Maryland Use of Force Statute. *See* Md. Public Safety § 3-524. Under that statute, "A police officer may not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to: (i) prevent an imminent threat of physical injury to a person; or (ii) effectuate a legitimate law enforcement objective." *Id.* at § 3-524(d)(1). This statute was not effective until July 1, 2022. As the conduct at issue in this case took place in 2019, prior to the statute's enactment, the *Graham v. Connor* standard is still controlling.

others, and whether [the suspect is] actively resisting arrest." *Koushall*, 479 Md. at 151 (quoting *Okwa v. Harper*, 360 Md. 161, 199 (2000)).

Turning to the first factor, the crimes at issue were not severe. Mr. Ward-Blake was pulled over for having an expired plate and then it was discovered that he had a suspended license. These findings resulted in his arrest. There were additional allegations of Mr. Ward-Blake cursing and yelling at the officers, but prior to his arrest, there were no allegations of physical resistance by Mr. Ward-Blake. Judge Cotton noted that while witnesses described "belligerent" behavior, the testimony also showed that Mr. Ward-Blake "did not really physically resist throughout the incident."

The Appellant himself and Officer Gonzalez alleged that Mr. Ward-Blake struck the Appellant's head with his elbow, which would increase the severity of the crimes at issue. On this claim, we must defer to the trial court's findings on the credibility of witnesses. *Smith*, 415 Md. at 185 (citing *Tarray v. State*, 410 Md. 594, 608 (2009)). Judge Cotton said that she was unpersuaded that the Appellant's version of how Mr. Ward-Blake ended up on the ground was credible. Regarding Officer Gonzalez, Judge Cotton noted that "there were some inconsistencies as to what specifically occurred when Mr. Blake was handcuffed and subsequently landed on the ground." As a result, Judge Cotton concluded that "[t]here is no credible evidence [Mr. Ward-Blake] resisted [the Appellant] at the moment the force was used or any time before that."

By contrast, in Ms. Pollard's testimony, she said that Mr. Ward-Blake did not "throw any elbows" at any officer or try to escape. "It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to

support a conviction." *Reeves v. State*, 192 Md. App. 277, 306 (2010) (citing *Walters v. State*, 242 Md. 235, 237–38 (1966)). Therefore, Judge Cotton would have been permitted to believe the testimony of Ms. Pollard, who did not see physical resistance or a thrown elbow, over the testimony of the defense's witnesses. Based on Judge Cotton's findings on the credibility of witnesses, there were no allegations of violent actions by Mr. Ward-Blake prior to the Appellant's alleged assault. The only crimes at issue were the expired plate and suspended license, two crimes that cannot be considered severe and the factor weighs in favor of the Appellant's actions being considered unreasonable.

The second factor is whether the suspect poses an immediate threat to the safety of the officers or others. *Koushall*, 479 Md. at 151 (citation omitted). At the time of the Appellant's actions, Mr. Ward-Blake had been handcuffed and there were five other police officers on the scene. A pat down of Mr. Ward-Blake's outer clothing had already been performed, to ensure there were no weapons that could pose an immediate threat to the safety of officers. Additionally, Officer Gonzalez was about five feet behind the Appellant. Related to this factor, the State had offered the testimony of their expert, Dr. Powers, who opined that the number of officers present, the completed pat down, and the continued compliance of Mr. Ward-Blake all meant that less force needed to be used.[10] Dr. Powers

[10] In the Appellant's brief, he argues that the trial court "did not appear to credit the testimony of either expert" outside of their agreement that dropping a handcuffed individual onto the ground headfirst would be excessive or unreasonable force. First, as described in more detail below related to the second issue, the trial court is not required to explain its reasoning to arrive at a verdict. *Chisum v. State*, 227 Md. App. 118, 139 (2016). Here, Judge Cotton did not analyze every fact discussed during the trial in rendering her verdict. But Judge Cotton also did not specifically discredit the testimony of either expert

stated that when an individual is handcuffed behind their back, their "ability to resist" is "severely mitigated." Therefore, at the time of the Appellant's actions, Mr. Ward-Blake did not pose an immediate threat to the safety of officers or others.

Lastly, the third factor is whether the suspect is actively resisting arrest. *Koushall*, 479 Md. at 151 (citation omitted). As discussed above, Judge Cotton did not find the Appellant's or Officer Gonzalez's claims of Mr. Ward-Blake throwing an elbow at the Appellant's head to be credible and there were no other credible accusations of physical resistance by Mr. Ward-Blake. As a result, giving deference to the determinations of the trial court, we will not hold that Mr. Ward-Blake was actively resisting arrest at the time of the Appellant's actions.

Putting these three factors together, the Appellant's use of force was unreasonable because Mr. Ward-Blake's crimes were not severe, Mr. Ward-Blake did not pose an immediate threat, and Mr. Ward-Blake was not actively resisting arrest. Judge Cotton concluded the same, finding that the use of force by the Appellant was "unjustified and excessive." This conclusion is further supported by Dr. Powers, who testified at trial that taking someone down who is handcuffed and can not break their fall onto concrete constitutes deadly force. Since the use of force was unreasonable, Judge Cotton had sufficient evidence to conclude that the Appellant's actions were unlawful and constituted

like she did with the Appellant's testimony. On this appeal, we are looking at whether there was sufficient evidence presented at trial to support the verdict. *McGagh*, 472 Md. at 194 (quoting *Taylor*, 346 Md. at 457). The testimony of the experts was "just one factor for the circuit court to consider in reaching its ultimate determination." *Koushall*, 479 Md. at 153.

second-degree assault. We hold the evidence was sufficient for this first conviction.[11]

Use of the Phrase "Body Slammed" in the Indictment

Next, we turn to the Appellant's particular argument, that the State failed to demonstrate that Mr. Ward-Blake was "body slammed." Article 21 of the Maryland Declaration of Rights states, in part, "[T]hat in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence [sic] . . . ." Md. Const. Declaration of Rights, art. 21. The purpose of this rule is to allow the accused to be on notice of what he has to defend. *Counts v. State*, 444 Md. 52, 57–58 (2015) (quoting *Ayre v. State*, 291 Md. 155, 163 (1981)). To give adequate notice, the charging document must (1) characterize the crime and (2) "furnish the defendant with such a description of the particular act alleged as to inform [them] of the specific conduct with which [they are] charged." *Id.* at 58 (quoting *Ayre*, 291 Md. at 163). "[F]ailure of the accusation to contain information sufficient to advise the accused of the particular conduct alleged to have been committed renders the allegation subject to attack[.]" *Ayre*, 291 Md. at 164.

[11] We acknowledge that the Appellant presented a defense involving contradictory eyewitness testimony and an expert who opined that the Appellant's actions were reasonable based on a foundation of Mr. Ward-Blake's active aggression. However, it is not our role as the appellate court to determine "whether the [circuit] court's verdict is in accord with *what appears to us to be the weight of evidence*, but rather is only with whether the verdicts were supported with sufficient evidence." *Koushall*, 479 Md. at 153–54 (quoting *State v. Albrecht*, 336 Md. 475, 478–79 (1994)) (emphasis in original). Like in *Koushall*, "'we find the record replete with evidence from which the [circuit] court could have concluded that [Appellant]' acted objectively unreasonably under the circumstances." *Id.* at 154 (quoting *Albrecht*, 336 M. at 502–03). Therefore, there was sufficient evidence for Judge Cotton, based on her determinations of credibility, to support the conviction for second-degree assault.

"[T]he general rule is that matters essential to the charge must be proved as alleged in the indictment." *Green v. State*, 23 Md. App. 680, 685 (1974) (citation omitted); *see also Dzikowski v. State*, 436 Md. 430, 445 (2013) (quoting *Jones v. State*, 303 Md. 323, 336–37 (1985)) (["[T]he common law rule in this State is that the "charging document must allege the essential elements of the offense charged[.]"). When there is a material variance between what is alleged and what is proved, the judgment must be reversed.[12] *Green*, 23 Md. App. at 685.

For example, in *Counts v. State*, the State had charged petitioner with a burglary of an apartment, with Count Four stating that the property had "a value of less than $1,000." 444 Md. at 56. On the morning of trial, the prosecutor said that there was a typographical error and asked to amend Count Four to "theft of at least a thousand but less than [$]10,000." *Id.* This edit changed the misdemeanor theft charge into felony theft, increasing the penalties available to the petitioner. *Id.* at 65–66. The Supreme Court of Maryland held that the value of the stolen goods is a "necessary element" of the crime of theft. *Id.* at 63. Therefore, the amendment was improper because the change in value of goods stolen changed the character of the offense. *Id.* at 66. As a result, the case was remanded for an entry of judgment on the original misdemeanor theft charge. *Id.* at 66–67.

Additionally, in *Dzikowski v. State*, the petitioner was charged using the statutory short form for reckless endangerment. 436 Md. 430, 435–36 (2013). Then, when a bill of

[12] This issue may be preserved through a timely motion for judgment of acquittal, when the issue then becomes a matter related to the sufficiency of the evidence. *Green*, 23 Md. App. at 685. The Appellant made timely motions for judgment of acquittal and therefore preserved this issue.

particulars was requested, the State responded only with "The facts that prove Mr. Dzikowski acted recklessly are contained in discovery." *Id.* at 437. The petitioner objected that pointing to discovery is not a substitute for the bill of particulars. *Id.* at 441–42. The Supreme Court of Maryland held that the State violated criminal law entitling the defendant to a bill of particulars when that bill of particulars "simply directed the petitioner to discovery." *Id.* at 449 (citing Md. Code, Crim. Law § 3-206(d)(5)). The State failed to inform the petitioner of "the specific conduct with which he is charged." *Id.* (quoting *Ayre*, 291 Md. at 163). As a result, the case was remanded for a new trial. *Id.* at 457.

This case differs from the issues in both *Counts* and *Dzikowski*. Unlike *Counts,* this case does not concern a variance in the indictment that necessitates a new, higher charge because of confusion over the value of goods stolen. *Counts*, 444 Md. at 66. Unlike *Dzikowski*, the indictment here was not so broad as to not include a description of the "specific conduct with which [the Appellant] is charged." *Dzikowski*, 436 Md. at 449 (quoting *Ayre*, 291 Md. at 163). Instead, the Appellant's concern is that there was insufficient evidence for a trier of fact to find that the Appellant's conduct met the definition of a "body slam."

In the indictment handed down from the Prince George's County grand jury, the language "body slamming" and "body slammed" is used to describe the Appellant's conduct.[13] The Appellant cites to a dictionary definition of "body slam," which is "a

[13] Count 2 for Reckless Endangerment states in part that the Appellant "did recklessly engage in conduct, to wit: *body slamming* an individual while in handcuffs that created a substantial risk of death or serious physical injury to Demonte Wark-Blake [sic]."

wrestling throw in which the opponent's body is lifted and brought down hard to the mat." *Body Slam*, *Merriam-Webster Dictionary* (11th ed. 2019). By contrast, the State cited a different definition, which includes three variations:

1) a wrestling or judo throw in which an opponent is lifted and hurled to the mat, landing on the back.
2) a physical assault in which a person is thrown to the ground.
3) any devastating assault or onslaught:

body slam, *dictionary.com* (last visited Dec. 16, 2024), https://www.dictionary.com/browse/body-slam. We agree with the State's broader definition of "body slam" that recognizes that the term has an understood meaning out of the limited context of wrestling. Even Merriam-Webster acknowledges that this term is "sometimes used figuratively." Body slam, *Merriam-Webster* (last visited Dec. 16, 2024), https://www.merriam-webster.com/dictionary/body%20slam.

In trial, the State presented evidence describing how the Appellant took Mr. Ward-Blake to the ground. Officer Cohen testified that Mr. Ward-Blake's "feet were above his head at like a diagonal . . . . And he wasn't completely straight up and down."[14] Ms. Pollard described how Mr. Ward-Blake "was being grabbed and he was being slammed onto the

(emphasis added) Count 3 for Misconduct in Office states in part that the Appellant "while acting as a public official to wit . . . engage in corrupt behavior by doing an unlawful act, to wit: did assault Demonte Ward-Blake by *body slamming* him while Ward-Blake was handcuffed." (emphasis added)

[14] Judge Cotton found Officer Cohen's testimony to be "credible, consistent and convincing."

ground." She continued to describe it as Mr. Ward-Blake "being flipped onto the ground."[15] This matches the State's description of the event in their opening statement, where the State said, "they see Mr. Ward Blake flipped over on his head by the [Appellant], taken off his feet feet [sic] in the air, head slamming into the ground."

Under the definition of "a physical assault in which a person is thrown to the ground" the State clearly met their burden. We hold that the use of the phrase "body slam" in the indictment did not require the State proving that the Appellant performed a wrestling move, but rather that the mechanism of injury was Mr. Ward-Blake's *body* being *slammed* into the ground, which multiple witnesses testified occurred. As a result, the State met their burden of proving that the Appellant "body slammed" Mr. Ward-Blake to support the charges.

Sufficiency of the Evidence for Reckless Endangerment

The second charge was reckless endangerment, which requires the State to prove "1) that the defendant engaged in conduct that created a substantial risk of death or serious

[15] The Appellant emphasized Ms. Pollard's description of the event as not constituting a wrestling move. This was based on a statement in her interrogation with the police in which she said the incident was "just hands" and denied that the interaction was a "wrestling move." In context, the investigating officer was comparing it to a "hip roll" or a "headlock" In this same interview, Ms. Pollard also said that she saw Mr. Ward-Blake "like, bein' flipped upside . . . . Next thing you know his head goes into the concrete." Looking at the evidence in the light most favorable to the state, Ms. Pollard's in-court description of the event that was more consistent with the State's description of the event will be looked at with more favor than her responses to these interview questions. Additionally, even though Ms. Pollard did not describe the interaction as a "wrestling move," as we describe above, we do not hold that the State needed to meet a limited wrestling specific definition of "body slam."

physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly." *Perry v. State*, 229 Md. App. 687, 697 (2016) (quoting *Jones v. State*, 357 Md. 408, 427 (2000)). The testimony heard at trial established that throwing a handcuffed person onto their head created a substantial risk of death or serious injury, as Dr. Powers characterized it as "deadly force." As the trial court could determine that Dr. Power's testimony to this effect was credible, it could find that the Appellant's actions in bringing Mr. Ward-Blake to the ground constituted conduct that created a substantial risk of death or serious physical injury. As we discussed before that this conduct was unlawful, the trial court had sufficient evidence to find that a reasonable person would not have engaged in the Appellant's conduct and that the Appellant therefore acted recklessly in how he handled Mr. Ward-Blake. There was sufficient evidence to support the Appellant's conviction of reckless endangerment.

Sufficiency of the Evidence for Misconduct in Office

The third and final charge was misconduct in office, which requires the State proving "[1] corrupt behavior, [2] by a public officer, [3] in the exercise of his [or her] office or while acting under color of his or [her] office." *Koushall*, 479 Md. at 154 (quoting *Duncan v. State*, 282 Md. 385, 387 (1978)). Here, it was not disputed that the Appellant was a public officer as a Police Officer First Class of the Prince George's County Police Department and his actions occurred while he was in the exercise of his office, since he was performing a pat down search of an arrested suspect. The remaining element in dispute is whether the Appellant's actions constituted "corrupt behavior."

"The corrupt behavior may be (1) the doing of an act which is wrongful in itself –

malfeasance[;] or, (2) the doing of an act otherwise lawful in a wrongful manner – misfeasance; or, (3) the omitting to do an act which is required by the duties of the office – nonfeasance." *Koushall*, 479 Md. at 154–55 (quoting *Duncan*, 282 Md. at 387). "A member of law enforcement who commits a crime in the course of duty may satisfy 'the corrupt act [element] constituting the crime of misconduct in office.'" *Id.* at 155–56 (quoting *Duncan*, 282 Md. at 391). As explained above, there was sufficient evidence to support the crime of second-degree assault based on an unlawful use of force. So since the Appellant was committing a crime in the course of duty, there was sufficient evidence to show a corrupt act. As a result, it was reasonable for the trial judge to convict the Appellant on this third count.

Therefore, we hold there was sufficient evidence for all three of the Appellant's convictions.

Issues 2 and 3: Impermissible Inferences[16]

[16] The State made an argument in its brief that the Appellant failed to preserve his arguments regarding impermissible inferences by not objecting while the court announced its verdict. Ordinarily an objection is needed to preserve an issue for appellate review. *Rivera v. State*, 248 Md. App. 170, 177 (2020) (citing Md. Rule 4-323(c)). However, Rule 8-131 allows an appellate court to review the case on both the law and the evidence when an action has been tried without a jury. Md. Rule 8-131(c). In *Rivera v. State*, the Appellate Court of Maryland held that this statute meant that appellate courts can review issues with the sufficiency of the evidence without an objection or motion for judgment of acquittal. 248 Md. App. at 183. The contemporaneous objection rule applies to claims that the trial court relied upon matters not in evidence, and a lack of objection will fail to preserve those issues. *Id.* (citing *Bryant v. State*, 436 Md. 653, 669 (2014)).

The Appellant's arguments differ from those in *Rivera*, where the trial court referenced facts that were not in evidence while rendering its verdict. *Id.* at 175–76. Here, the Appellant's issues are with the trial court's interpretation of the facts in evidence and he argues that the facts presented in trial were insufficient to support the final ruling, as

A. Parties' Arguments

The Appellant argues that the trial court made two improper inferences when rendering its verdict. The Appellant's first issue is with the analysis of the medical records. The Appellant argues that the trial court used the extent of Mr. Ward-Blake's injuries to prove that he was body slammed, even though no expert testified to what level of force would be required to cause that level of injuries. The Appellant's second impermissible inference argument is that the trial court inferred that because she did not find the Appellant credible, the opposite of what the Appellant said happened must be true. The Appellant says that "the trial court determined Appellant's guilt based solely on the fact that his testimony was disbelieved."

Regarding the medical records, the State argues that the trial court's citation to the medical records was consistent with stipulations between the parties. Further, the State was not trying to use these injuries to prove that a body slam occurred, but rather the injuries merely helped corroborate the eyewitness testimony of the event. On the second issue, the State argues that Judge Cotton's verdict was based on existing evidence, not on disbelieving the Appellant. As a result, the State says that the testimony in trial naturally led to the verdict rendered, not just a finding of the opposite of the Appellant's testimony.

B. Requirements for Rendering a Verdict

For a trial held without a jury, the circuit court is required to "render a verdict upon

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discussed above. The Appellant contends that to reach the verdict in this case, the court improperly interpreted the facts that were in evidence, not that Judge Cotton referenced facts not in evidence. We will hold that these impermissible inference issues were properly preserved as part of the issues with the sufficiency of the evidence.

the facts and the law. Although not required, the court may state the grounds for its decision either in open court or by written memorandum." Md. Rule 4-328. Based on this rule, the trial court is not required to explain its reasoning to arrive at a verdict. *Chisum v. State*, 227 Md. App. 118, 139 (2016). "Nothing more is required under the rule for a 'verdict' other than a deliberate pronouncement of 'guilty' or 'not guilty' in light of the facts and the law." *Id.* (quoting *Pugh v. State*, 271 Md. 701, 707 (1974)).

Regarding impermissible inferences, "[t]he rule is that the [fact finder's] function is to draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." *Smith*, 374 Md. at 540 (quoting *State v. Tangari*, 688 A.2d 1335, 1341 (Conn. App. 1997)). The trial judge's findings of fact must be accepted "unless there was no legally sufficient evidence or proper inferences therefrom, from which the court could find the accused guilty beyond a reasonable doubt." *Brown v. State*, 234 Md. App. 145, 152 (2017) (quoting *Dixon v. State*, 302 Md. 447, 450–51 (1985)). Findings of fact are reviewed under the clear error standard. *Id.* (citing *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)).

Judge Cotton began her ruling by stating: "While I have considered all of the testimony and evidence for the purpose of this ruling, I, obviously, can't highlight all of it or address it all because we would be here for another three days. I'm certainly highlighting portions of it, with the understanding that I reviewed it and considered it all." Judge Cotton followed the rule set out in *Chisum*, but chose to explain some of her reasoning in coming to the verdict. The Appellant took issue with two inferences he believed Judge Cotton made coming to her ruling related to the medical records for Mr. Ward-Blake and the credibility

of his own testimony. We address each in turn.

C. Inferences Regarding the Medical Records

When discussing the medical records in her ruling, Judge Cotton said:

> I have also done a detailed review of the medical record of Demonte Ward Blake, which illustrates very serious injury which includes, but not limited to, unspecified displaced fracture of the fourth cervical vertebrate, spinal stenosis, cervical disorder at the C4, C5 level with myelopathy, over cervical displacement at C4, C5 level, unspecified injury of the left vertebrae artery, unspecified displaced fracture of the cervical vertebrae, abrasions lower left leg, traumatic subdural hemorrhage with loss of consciousness. The physical injuries suffered by Mr. Blake were both severe and numerous.

After this discussion of the medical records, Judge Cotton described how the Appellant "slammed," "threw," and "dropped" Mr. Ward-Blake to the ground. The Appellant claims that Judge Cotton used the severity of these medical injuries as proof of the Appellant's conduct even though there was no expert testimony as to the cause of these injuries.

The Maryland Rules of Evidence establish a difference between lay witness opinions and expert opinions. Lay witness opinions are those that are "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Maryland Rule 5-701. Expert testimony is needed "when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average layman[.]" *State v. Galicia*, 479 Md. 341, 389 (2022) (quoting *Johnson v. State*, 457 Md. 513, 530 (2018)). But expert testimony is not required "on matters of which the jurors would be aware by virtue of common knowledge." *Johnson*, 457 Md. at 530 (quoting *Bean v. Department of Health and Mental Hygiene*, 406 Md. 419, 432 (2008)). The court abuses its discretion when it admits evidence

through a lay witness where the foundation would need to satisfy Maryland Rule 5-702 for an expert witness. *Galicia*, 479 Md. at 389 (citing *Johnson*, 457 Md. at 530).

The Appellant cites to numerous cases concerning the need for expert testimony to establish negligence and causation in the medical malpractice context. *See, e.g.*, *Meda v. Brown*, 318 Md. 418, 428 (1990) (collecting cases). In those cases, expert testimony is needed "[b]ecause the gravamen of a medical malpractice action is the defendant's use of suitable professional skill, which is generally a topic calling for expert testimony." *Rodriguez v. Clarke*, 400 Md. 39, 71 (2007); *see also American Radiology Services, LLC v. Reiss*, 470 Md. 555, 580 (2020) ("Juries are not permitted to simply infer medical negligence in the absence of expert testimony because determinations of issues relating to breaches of standards of care and medical causation are considered to be beyond the ken of the average layperson.").

In this case, no expert testimony was provided related to the medical records. The records were entered based on a stipulation between the parties. Additionally, the parties stipulated to a few medical facts, including that "Demonte Ward-Blake was injured while involved in an interaction with officers," those injuries included "a fracture of Mr. Ward-Blake's C4 and C5 Vertebra," and Mr. Ward-Blake was diagnosed "as suffering from lower body/extremity paralysis." The parties do not dispute that Mr. Ward-Blake could walk before his interaction with the Appellant and afterwards suffered from a broken spine.

This was not a medical malpractice case, and it was not one where an expert witness was needed to prove medical negligence or causation. The Appellant frames the issue of causation as whether "Ward-Blake's injuries [were] the result of being 'body slammed' by

the Appellant[.]" However, that question overstates what evidence the State needed to prove their case. Unlike a medical malpractice case where an expert is needed to testify to the requisite level of professional skill in order to prove negligence or causation, here the charges involved assault, reckless endangerment, and misconduct in office. While the exact actions of the Appellant were in dispute, it was not in dispute that Mr. Ward-Blake's injuries were diagnosed after the alleged takedown by the Appellant. Further, the medical evidence and Mr. Ward-Blake's injuries were not the only way to prove that a body slam occurred. As we discussed above, Judge Cotton had eyewitness testimony and expert testimony on the use of force[17] to help come to that conclusion. Judge Cotton stated that "[t]he physical injuries suffered by Mr. Blake were both severe and numerous." We do not find that this conclusion goes beyond what a layperson can determine from looking at the medical records for Mr. Ward-Blake. Judge Cotton did not impermissibly rely on these medical records as proof of the Appellant's actions when there was other available testimony to reach the same conclusion. As a result, we find that there was no clear error related to an impermissible inference regarding the medical records.

D. Credibility of the Appellant

The Appellant also argues that because Judge Cotton did not find the Appellant credible, it means that Judge Cotton found the opposite of what the Appellant said to be

[17] There was also additional relevant expert testimony related to the injuries. The defense's own expert, Sergeant Gleeson, testified that he had not seen a handcuffed suspect ever suffer an injury similar to Mr. Ward-Blake's injuries during a takedown. This testimony would further support any reasonable inferences Judge Cotton made regarding the Appellant's use of force because of the uniqueness of the injuries suffered in this case compared to routine takedowns.

true. When a trier of fact disbelieves a witness' testimony, they are not permitted to infer affirmative evidence to the contrary afterwards. *Grimm v. State*, 447 Md. 482, 506 (2016) (collecting cases). "[D]isbelief is not evidence in and of itself." *Id.*

To argue that this impermissible inference occurred here, the Appellant relies on *In re Gloria H.* 410 Md. 562 (2008). The case concerned a conviction under the compulsory public school attendance law, which gave parents a duty to ensure their child attends school and assigns penalties if they fail to do so. *Id.* at 566–67 (citing Md. Code, Educ. §7-301). The appellant argued that she took her child to school, but the evidence showed that her child then did not attend class. *Id.* at 569–70. Evidence was not presented that the appellant knew that her child was not attending class, but instead showed efforts she took to ensure her child was dropped off at school or took a cab to school. *Id.* at 573–74. When the lower court made its decision, it did not believe the appellant's testimony and concluded "that the child was not attending school and the mother knew that she was not attending school and she was not encouraging her to attend school." *Id.* at 575–76. However, the fact finder's "prerogative not to believe certain testimony . . . does not constitute affirmative evidence to the contrary." *Id.* at 578 (quoting *VF Corp. v. Wrexham Aviation*, 350 Md. 693, 711 (1998)). The appellate court found that the trial court's verdict was based in substantial part on the finding that "because Appellant's 'incomprehensible' testimony lacked credibility, the opposite of her exculpatory testimony must be true." *Id.* at 579. The trial court made the error of stating that *because* the appellant lacked credibility then she must have known her daughter was not attending school, despite the lack of evidence presented for that point. *Id.* As a result, the trial court's inference was improper, and the appellant was entitled to a

new trial. *Id.*

The Appellant argues that the trial court acted in the same manner as *In re Gloria H.*, and that because the trial court did not believe the Appellant's testimony, Judge Cotton must have believed the opposite to be true. However, this case differs from *Gloria H.* The trial court there made an impermissible inference because in the absence of evidence, it inferred that the appellant had knowledge of her daughter's actions sufficient to convict the appellant. *Id.* at 575–76. Here, the trial court had eyewitness testimony to rely on to show that the Appellant assaulted Mr. Ward-Blake. The *Gloria H.* court said that the trial court is "entitled to (1) accept—or reject—*all*, *part*, or *none* of the testimony of any witness, including testimony that was not contradicted by any other witness, and (2) draw reasonable inferences from the facts that it found to be true." *Gloria H.*, 410 Md. at 577; *see also Grimm*, 447 Md. at 506 (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)) (stating same entitlement for the factfinder). Here, the trial court chose not to believe some of the Appellant's testimony, but it did not then assume the opposite of the Appellant's testimony to be true in the absence of affirmative evidence to the contrary. Instead, the trial court relied on the other evidence presented in the trial to come to its conclusion, which we detailed above when analyzing the sufficiency of the evidence.[18] As a result, we will hold

[18] The Appellant argues here that the evidence the trial court mentioned as persuasive of the Appellant's guilt was insufficient, and that because the evidence was insufficient, Judge Cotton must have believed the opposite of the Appellant's testimony to find him guilty. The Appellant says the trial court focused on Officer Cohen's testimony, Mr. Ward-Blake's lack of physical resistance, and the medical records, and he argues none of these factors show what happened moments prior to then Mr. Ward-Blake was taken to the ground. As detailed above, Officer Cohen's testimony was used to show that Mr. Ward-

that the trial court did not make an impermissible inference related to disbelieving the Appellant's testimony.

CONCLUSION

Accordingly, we affirm the judgment of the Circuit Court for Prince George's County.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

Blake was lifted into the air to the point that he was diagonal in the air. This was also corroborated by Ms. Pollard's testimony about Mr. Ward-Blake's legs being up in the air and the officer "slamming him face down into the ground." The consistent lack of physical resistance in the rest of the encounter was proper evidence for the trial court to consider in whether it was reasonable to believe that Mr. Ward-Blake would suddenly attempt to resist and try to act violently at that time, and the trial court properly found that it was unlikely Mr. Ward-Blake began to resist at that point. We previously discussed the meaning of the medical reports and that expert testimony was not necessary for the reports to have value. Together, these pieces of evidence were sufficient to support the circuit court's findings of the Appellant's guilt, as we discussed in greater detail above.