

Circuit Court for Frederick County
Case No.: 10-K-17-059728

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1359

September Term, 2019

PRESTON S. GREEN

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Wells,

JJ.

Opinion by Wells, J.

Filed: December 10, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Preston S. Green, was indicted in the Circuit Court for Frederick County, Maryland and charged with possession with intent to distribute a noncontrolled substance, possession of phencyclidine (PCP), possession of drug paraphernalia, and resisting arrest. After his motion to suppress was denied, appellant was convicted by a jury on all counts. He was sentenced for possession with intent to distribute a noncontrolled substance to five years, with all but 470 days already served suspended, and three years' probation, to be followed by one year for possession of PCP, all suspended, to be followed by three years, all suspended, for resisting arrest, with no sentence imposed for possession of drug paraphernalia.

Following the circuit court's grant of a belated appeal, appellant asks this Court to address the following questions:

1. Did the trial court err in denying the motion to suppress?
2. Is the evidence insufficient to sustain the resisting arrest conviction?

For the following reasons, we shall affirm.

BACKGROUND

Hearing on the Motion to Suppress

The primary issue in this case concerns appellant, Preston Mr. Green's February 28, 2017 arrest and whether that arrest was supported by probable cause. Officer Joseph Constantine of the Frederick Police Department was the first to testify at the suppression hearing. By way of background, Officer Constantine had been employed with the police department for five years. As part of his academy training, he received eight hours of education in the detection and identification of various controlled dangerous substances

(“CDS”), including exposure to phencyclidine (“PCP”). He explained that, as part of that training, an open bottle of what his instructor identified as PCP was distributed throughout the class. At that time, the cadets were instructed to “take a whiff of what that odor smells like[.]” Officer Constantine testified that “every time I’ve been exposed to [PCP] when working, it gives me sort of a reaction” and that it makes him feel “light-headed[.]” On cross-examination, Officer Constantine said that he had never smelled ether before. He testified that he knew the odor described as being only that of PCP.

Officer Constantine received additional training in the recognition and detection of CDS. This included certification in two eight-hour courses in search and seizure and two eight-hour courses for street narcotics for street patrol. He also attended a four-day training course for narcotics investigators, an eight hour interdiction class, and a two day course in Advanced Roadside Impaired Driving Enforcement, where the students “went over different impairments that you observe in individuals that are under the influence or impaired by CDS” including PCP.

Asked to identify typical impairments by PCP, Officer Constantine testified:

A. There was a whole list of them. They provided us with a drug matrix, which is similar – it’s actually the exact same one that DREs use.¹ On that drug matrix for PCP, it goes over different impairments that you view: blank stare, slurred speech, slow slurred speech, confused, disoriented, moonwalk is one of them.

¹ Drug Recognition Expert (“DRE”) is a police officer who is trained to recognize impairment in drivers who might be under the influence of drugs and/or alcohol. DREs are certified by the Maryland State Police through a program funded by the National Highway Traffic Safety Administration (NHTSA). <https://bit.ly/3gnd2Vh> (DREs Maryland State Police website).

Q. Moonwalk, you said?

A. Yeah. There's a whole list of them.

Q. But those are the ones you're most familiar with?

A. Yes, as well as HGN is a huge one, especially vertical nystagmus.² You can view that when you're doing the field sobriety testing like on a person that's been driving.

In his experience, Officer Constantine had made approximately three to five arrests for possession and/or possession with intent to distribute PCP. Asked whether his suspicion upon arrest that a substance was PCP was confirmed, the officer replied, "I've never come across PCP or what I suspected to be PCP based on my training, knowledge and experience where it did not come back as PCP."

Turning to the events at issue, on February 28, 2017 at around 10:52 p.m., Officer Constantine was dispatched to 1313 Motter Avenue in Frederick City, Maryland, in response to a call for a shooting. He explained that, opposed to a simple call for a "discharge," a reported "shooting" mean that "there's actually a confirmed victim that has been shot." Two calls came into dispatch from two different callers for this shooting, and Officer Constantine was advised that the suspect was "a black male wearing a gray shirt and black pants."

² Horizontal Gaze Nystagmus ("HGN") Nystagmus is the medical term used to describe the involuntary jerking of the eyeballs. When someone is intoxicated by alcohol and/or certain drugs, this jerking becomes more pronounced. As such, the horizontal gaze nystagmus test is used by law enforcement agents to evaluate an individual's nystagmus in order to determine if probable cause exists in drug- or alcohol-impairment arrests. <https://bit.ly/3lMArAs> (www.fieldsobrietytests.org).

Officer Constantine was the first officer on scene. As he got out of his vehicle, he noticed a man lying face down in a grassy area. He also saw a black man walking away from the scene, “wearing a gray sweatshirt and black pants which matched the description that dispatch had advised me of the suspect.” He testified “[i]mmediately, I was thinking this was the suspect in the shooting, so I immediately went to approach the male.” Further, the officer explained “I thought a shooting had happened.”

Officer Constantine began the encounter with this individual, later identified as Mr. Green, by asking him for identification. As he was alone at the time, he did not handcuff Mr. Green. Mr. Green handed the officer his wallet in response for the request for identification. Testifying that the usual response to such a request is for someone to retrieve their identification from their wallet, Officer Constantine believed this “could be a sign of impairment because they’re not fully comprehending what’s going on, they’re not understanding what was asked of them.” However, he acknowledged that an individual may hand over their wallet because they were simply nervous or “just not thinking clearly.”

The officer then testified that, after Mr. Green handed him his wallet, they stood about a foot apart. At that point, the officer “detected the odor of PCP coming off of his person.” Mr. Green was also “staring likely blankly past me.” He explained that, based on his education and training, that this was characterized as “a thousand mile stare” and was characterized by the individual “just looking, you know, just completely out into the distance.” Officer Constantine explained that “[t]hat’s a huge indicator of PCP use, and it’s like a red flag that we’re told to look out for just as far as officer safety.” Asked to elaborate, the officer testified that, on prior occasions, he had “wrestled around several

times with subjects under the influence of PCP in the middle of the street, naked” and that “their strength is incredible.” Those encounters required “numerous officers to get them to comply,” and it “very often results in a use of force situation.”

Officer Constantine also testified that Mr. Green’s speech was “slow and slurred” and that he had “trouble concentrating on what we were talking about when we were telling him what was going on.” Slow and slurred speech is associated with both alcohol influence and PCP use. But the officer explained that the speech patterns were “slightly different” between the two types of impairment. He explained:

The speech with alcohol is just like everything’s like jumbled together with alcohol, like you can hear like a difference with alcohol, whereas with PCP, you can sort of understand what they’re saying, but it’s just very slowed and the end of the words are slurred together, whereas with alcohol, it’s just everything is kind of like -- when you have somebody that’s really intoxicated with alcohol, everything’s just slurred together as one sentence.

Officer Constantine then explained that he asked Mr. Green to remove his backpack. The purpose of that request was to place Mr. Green in handcuffs. Asked whether this was done out of a concern for officer safety, the officer replied:

Well, one, there was a shooting, so I mean we’re concerned that there’s a gun somewhere. The whole time during my initial contact with him, we could see his hands, so obviously he didn’t have a gun in his hand, but we were concerned that, you know, he might have a gun concealed on him somewhere, as well as the PCP use, I was concerned with how it was going to go with that.

Mr. Green did not comply with the request to remove his backpack. At that point, Officer Constantine and another officer, Sergeant Kevin Meyer, grabbed Mr. Green by the arms. They continued to ask Mr. Green to comply, but he did not. After several moments of trying to talk to Mr. Green, Sergeant Meyer called out “10-32” the police code indicating

the presence of a gun. Officer Constantine took a step back and got his Taser ready, while other officers forced Mr. Green to the ground and placed him in handcuffs. A pellet gun was removed from Mr. Green's waistband. In addition, the police found a bottle of suspected PCP in the Mr. Green's pocket.

Officer Constantine confirmed that he was wearing a body camera during this encounter, and footage from that recording was admitted and played during the motion hearing.³ During that portion prior to the observation of a gun on Mr. Green's person and the ensuing takedown, the officers advised Mr. Green, repeatedly, that they smelled what they said was PCP on his person, that he should take his backpack off, that he was under arrest, and that he was resisting arrest.

He further testified that the description of the suspect involved in the shooting was for "a black male wearing a gray shirt and black pants," and that Mr. Green was "a black male wearing a gray sweatshirt, which is a shirt, and black pants." He agreed that the description provided did not note the presence of a backpack.

On cross-examination, Officer Constantine addressed the manner in which Mr. Green handed over his wallet and disagreed that it was "common" for individuals to hand over their wallet in this fashion. He testified "[p]eople never hand me their whole wallet" and maintained this was a sign of "nervousness or being impaired and not comprehending fully what's going on and what's being asked of the person." He also maintained that Mr.

³ The video is included in the record on appeal, and the corresponding audio is transcribed. Several other officers, other than Officer Constantine and Sergeant Meyer were present at the scene of the encounter.

Green was “staring blankly” past the officers during the encounter. He also appeared “confused,” “upset,” but “not disoriented” during the encounter. Officer Constantine also indicated that Mr. Green “had repetitive responses” to the police, and that was “another symptom of being on PCP. He repeated his words numerous times, and he also had incomplete sentences.”

Asked whether he believed a felony had been committed in his presence, Officer Constantine testified that he believed that a shooting had occurred, and that Mr. Green matched the description given by two witnesses via police dispatch. He agreed that he later learned, after Mr. Green was arrested, that a shooting did not occur as reported.

Sergeant Meyer was the State’s next witness at the suppression hearing and, preliminarily, Mr. Green’s counsel stipulated to his qualifications with respect to the recognition and detection of CDS including PCP, with agreement by the court. Concerning the underlying incident, Sergeant Meyer assisted Officer Constantine in the stop and testified that, when he arrived, Officer Constantine advised him that Mr. Green smelled of PCP and asked him to grab Mr. Green’s right arm. Sergeant Meyer confirmed that he did so while Officer Constantine and others tried to get Mr. Green to agree to remove his backpack. Sergeant Meyer added that he was keeping Mr. Green’s arm “still so that he couldn’t move his hand or his arm,” and that, “[a]t this point, we assumed he was a shooting suspect, so we obviously weren’t going to let him gain access to a firearm if he had one.” Sergeant Meyer then testified:

Well, as I was speaking with Mr. Green, I could smell what I recognized through my training and experience as PCP coming off of his

breath, and I actually explained that to him later when we were telling him why he was getting placed under arrest.

I told him he was getting detained at first, and eventually I told him he was getting placed under arrest, we needed him to put his hands behind his back. I think I reminded him several times that if he continued to resist, he was also going to get charged with resisting arrest.

Sergeant Meyer continued that “after several minutes of trying to deescalate the situation,” because they did not want to “fight with anybody who may or may not be under the influence of PCP,” he decided to move Mr. Green’s arms behind his back. As he did so, he brushed against Mr. Green’s waistband and “felt what I thought might be a gun, so I raised his shirt up and saw the handle of a handgun.” The other officers were alerted, Mr. Green was taken to the ground, and Sergeant Meyer retrieved the suspected handgun from Mr. Green’s waistband. He clarified that he felt a hard object in Mr. Green’s waistband when he brushed past, and that he saw the handle of a handgun protruding from the waistband.

On cross-examination, Sergeant Meyer was asked if the smell on PCP on someone’s breath was enough to arrest, the sergeant testified that he was aware of case law to the contrary. He continued:

THE WITNESS: I do believe once you have other corroborating facts other than just the odor of PCP on somebody’s person like the odor of PCP also on their breath suggesting they ingested it, the actions of the individual which Officer Constantine, you know, may have observed prior to me coming up and I observed while speaking to him, I think those are corroborating facts that elevate things to probable cause.⁴

⁴ Sergeant Meyer also testified that the person lying face down on the grass was not shot and “was high on PCP.”

The testimonial portion of the hearing concluded with Mr. Green testifying on his own behalf. He explained that he was visiting a friend on the night in question. When he left the friend's house, he saw another friend on the grass, just "funning around" and "doing some stuff, some silly stuff," so he checked on him and continued on his way. The officers then approached him, asked for identification, and Mr. Green testified that he did as instructed. He agreed he handed over his wallet, but that he "made sure my ID was showing" through the clear plastic window on one side as he gave it to the officer. He testified that he was trying to understand what was going on and then, after he was asked to remove his backpack, he asked if he was under arrest. He believed his rights were being violated at the time.

Mr. Green further testified that he was being held by the arms, that he saw that the police were in uniform and were armed with firearms, and he remembered being informed that he might be tased if he did not comply. He testified that he was not told why he was under arrest. Mr. Green claimed that he spilled mouthwash in his backpack earlier that day and believed that is what the officers smelled about his person. On cross-examination, Mr. Green agreed that the police seized a vial of PCP from his person. He also agreed that PCP smells like PCP.

After hearing argument, the court denied the motion to suppress, finding as follows:

All right. Thank you. Yesterday the Court heard a motion to suppress. It was filed by the Defense alleging that the arrest of the defendant in this case was unconstitutional. The Court heard the arguments of counsel, considered relevant case law in this case, and also the evidence that was presented in this courtroom, which included a body camera videotape which contained audio of the situation involving the defendant.

The Court makes the following findings of fact. That on February 28th of 2017, if I've got the date correct, officers responded to a call that their dispatch described as a shooting. And that there was a suspect. The suspect was described as a black male wearing a gray shirt and black pants. Upon arriving at the scene the first officer, Officer Constantine observed the following. He observed what he believed to be a victim laying on the ground face down in the common area grass.

At the point he noticed this person lying in the grass he noticed approximately 50 yards away a person who turned out to be the defendant who essentially matched the admittedly light description of the subject. In other words, it was only that it was a black male wearing a gray shirt and black pants. The individual who is about 50 yards away was walking away from the man lying face down. The officer, Officer Constantine, approached the defendant in this case and began questioning him, asking him for ID.

The Court did note that the defendant did pull out his wallet and hand the wallet to the police officer. During that part of the situation the officers, one of the officers smelled the odor of PCP that he described as PCP coming from the defendant's breath.

Officer Constantine testified that he is aware of what PCP smells like. That he has been trained not only in the academy but he has smelled it numerous times during his five years as a police officer. And it's a very distinct odor that he knows and knows nothing else that smells like it. He believed, and he smelled it coming from the defendant's breath. At that point in time the defendant was wearing a backpack. [Defense Counsel] makes, or the Defense makes issue that that backpack is different than the description given by dispatch. And it was in the simple sense that the dispatch did not indicate that the person who was described as the suspect was wearing a backpack.

However, the Court didn't take much issue with that fact because a backpack can certainly be laid down, picked back up, and put on at any given time. So it was not enough of a difference in the description that would change the Court's findings in this case. At the point that the officers approached the defendant they believed he might have been involved in the, what they believed to be a shooting.

They smelled PCP on the defendant's breath. They noticed that he was, as described as staring off. Not comprehending what they were asking him to do. Consistently repeating himself and exhibiting other behaviors that the officer testified, based on his training and experience, is indicia of the

consumption of PCP. At that point they asked the defendant to take his backpack off. The defendant refused so there was an un-cooperation on the part of the defendant at that point in time.

And the Court determined from a totality of the circumstances standpoint, in other words, specifically the officers are on the scene investigating a possible shooting. They do see somebody laying on the ground, which they believe was consistent with a shooting having taken place. They saw a suspect that was described by dispatch that matched the description described by dispatch, a black male wearing a gray shirt and black pants.

When they approached him they smelled the odor of PCP, made observations of the defendant's demeanor that made them believe he might be under the influence of PCP. And also his uncooperativeness in taking the backpack off when there was a potential of a weapon being present because, again, the officers believe they were involved in a shooting. Once the situation escalated to where they were, they certainly have probable cause to search the defendant once they smelled the PCP on him.

The Court also believes they would have had probable, that they had probable cause to search him based on the information they had been given about the shooting, the person lying on the ground, and the fact that the defendant matched the description of the suspect walking away. At the point that they were beginning to search the defendant they did, one of the officers, I believe it was the sergeant or was the corporal at the time, observed the butt of a weapon sticking out from the defendant's waistband.

And the defendant was then taken to the ground and the rest of this happened. So the Court finds in the totality of the circumstances, situation that there was at the time probable cause to arrest the defendant based on the information that I just gave. And for those reasons the motion to suppress is denied. . . .

Trial

At Mr. Green's jury trial, Officer Constantine and Sergeant Meyer offered similar testimony as they did at the suppression hearing. In addition, and pertinent to the sufficiency issue raised on appeal, the jury heard that, after the decision was made to arrest Mr. Green, the police attempted to place his arms behind his back and to have Mr. Green

remove his backpack, but he refused to comply. According to Officer Constantine, Mr. Green “locked his arms up in front of him so that way we couldn’t take the backpack off the rest of the way.” Officer Constantine explained that Mr. Green “locked his arms up” and “[t]her was no moving his arms the way he had them locked up.”

Officer Constantine then testified that he released his grip on Mr. Green’s arm, asked another officer standing nearby to hold him, and then he, Officer Constantine, removed his Taser and positioned himself in front of Mr. Green in case deployment was necessary. He also testified that he heard several other officers inform Mr. Green that he was “going to be placed under arrest and he needed to cooperate.” Sergeant Meyer testified that he told Mr. Green he was under arrest and that he would be charged with resisting arrest if he did not cooperate. Despite this, according to Officer Constantine, Mr. Green kept “his arms tensed up in front of him so that way we were unable to put his arms behind his back.” Sergeant Meyer further explained that he used “a little force on his to get his arm behind his back,” testifying:

He just wouldn’t put his hands behind his back. And any sort of pressure that we put on him he was resisting with that. I mean, it was kind of a passive, well, I guess it was technically active resistance because he wasn’t allowing us to put his arms behind his back.

As the encounter progressed, and as indicated earlier in our discussion from the motions hearing, after Sergeant Meyer felt a suspected handgun in Mr. Green’s waistband and yelled out “10-32” indicating its presence, several officers were required to take Mr. Green to the ground. Sergeant Meyer explained it took “a couple of minutes of working

to get his arms behind his back and get him secured” because Mr. Green was “just stiffened up and not complying with orders.” The gun later turned out to be a pellet gun.

In addition to the pellet gun seized from his waistband, the bottle of approximately 49.8 grams of PCP recovered from his pocket, a baggy containing approximately 7.6 grams of counterfeit cocaine, and others narcotics-related paraphernalia, the police also seized a black Samsung cell phone that was laying on the ground next to Mr. Green after he was placed in handcuffs. The police obtained a search warrant for this cellphone. Text messages were extracted and examined by experts recognized by the court who opined that the messages contained therein suggested that Mr. Green was a “street level drug dealer” of controlled dangerous substances.

We may include additional facts, if needed.

DISCUSSION

I.

Mr. Green contends that the court erred in denying the motion to suppress because there was no probable cause to arrest him for possession of PCP or any other crime related to the reported shooting. The State disagrees, as do we.

Our review of a circuit court’s denial of a motion to suppress evidence is “limited to the record developed at the suppression hearing.” *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). And, the record is examined “in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.” *Norman v. State*, 452 Md. 373, 386, *cert. denied*, 138 S. Ct. 174 (2017). The trial court’s factual findings are accepted unless they are clearly erroneous,

however, when there is a constitutional challenge to a search or seizure under the Fourth Amendment, this Court performs an “‘independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.’” *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)); accord *Pacheco*, 465 Md. at 319-20.

The Supreme Court has recently reaffirmed the law of probable cause and warrantless arrests under the Fourth Amendment, stating that “[a] warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer’s presence. *District of Columbia v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 586 (2018) (citing *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001)). Further:

To determine whether an officer had probable cause for an arrest, “we examine the events leading up to the arrest, and then decide ‘whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to’ probable cause.” *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003) (quoting *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). Because probable cause “deals with probabilities and depends on the totality of the circumstances,” 540 U.S., at 371, 124 S.Ct. 795, it is “a fluid concept” that is “not readily, or even usefully, reduced to a neat set of legal rules,” *Illinois v. Gates*, 462 U.S. 213, 232, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). It “requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Id.*, at 243–244, n. 13, 103 S.Ct. 2317 (1983). Probable cause “is not a high bar.” *Kaley v. United States*, 571 U.S. —, —, 134 S.Ct. 1090, 1103, 188 L.Ed.2d 46 (2014).

D.C. v. Wesby, 138 S. Ct. at 585-86; *see also* Md. Code (2001, 2018 Repl. Vol.), § 2-202 of the Criminal Procedure Article (“Crim. Proc.”). As explained by our Court of Appeals:

Probable cause, we have frequently stated, is a nontechnical conception of a reasonable ground of a belief of guilt. A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion. Our determination of whether probable

cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge. . . . Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion.

Bailey v. State, 412 Md. 349, 374-375 (2010) (citations omitted).

There is no dispute that Mr. Green was arrested. *See generally, California v. Hodari D.*, 499 U.S. 621, 626 (1991) (“An arrest requires either physical force (as described above) or, where that is absent, submission to the assertion of authority”) (emphasis omitted). To determine whether probable cause supported that warrantless arrest, both parties direct our attention to *Bailey, supra*. In that case, a police officer on patrol at night in a high crime area observed a man standing alone in the shadows on the side of a home. *Bailey*, 412 Md. at 358-59. The officer yelled to the man and asked him if he lived at that home but received no reply. *Id.* at 359. The officer then approached the man, stopping within a few feet, and smelled a strong odor of ether which, the officer testified, is associated with PCP. *Id.* Upon smelling ether, the officer grabbed both of the subject’s hands, placed them on top of his head, and searched him. *Id.* at 360. The search revealed a three to four-inch-long vial containing a liquid that field tested to be PCP. *Id.*

The Court of Appeals held that the case escalated from an accosting or consensual encounter into a warrantless seizure and that Bailey was not free to go when the officer placed the subject’s hands on his head. *Bailey*, 412 Md. at 364-65. The Court held that this amounted to a *de facto* arrest, unsupported by probable cause. *Id.* at 374, 386. The Court stated that, although “the odor of contraband alone is sufficient to establish probable cause for a belief that contraband is present[,]” *id.* at 376-77, the officer in *Bailey* testified that

he smelled “ether,” a lawful substance, and there were no other circumstances indicating that a crime had been or was being committed. Accordingly, the Court concluded that, “[i]n the present case, the totality of the circumstances do not provide a concrete reason to associate the odor of ether with criminal activity or contraband.” *Id.* at 383.

The officers either smelled the legal odor of ether, the illegal odor of PCP, or a combination of both, coming from Mr. Green’s person. But, different from *Bailey*, here there were several factors aside from the odor of ether or PCP that supported probable cause. *First*, the police officers were called to the scene because a shooting had been reported by two different witnesses. *Second*, when Officer Constantine arrived on the scene, he saw an individual laying face down on the ground, and a man, later identified as Mr. Green who matched the description of suspected shooter, walking away from the scene. *Third*, based on the officers’ training and experience, Mr. Green exhibited signs of being impaired, probably by PCP. These signs included his “thousand-mile stare,” his slow, slurred speech, and that Mr. Green had trouble concentrating on what the officers were saying to him. Further, Mr. Green was mildly combative; he did not cooperate with the officers’ request that he remove his backpack, a reasonable precaution in light of the circumstances. We are persuaded, based on the totality of the circumstances, that the police officers had sufficient probable cause to arrest Mr. Green. Accordingly, the circuit court properly denied the motion to suppress.

II.

Mr. Green also challenges the sufficiency of the evidence to support his conviction for resisting arrest. The State responds that the evidence was sufficient, and we again concur.⁵

In considering a challenge to the sufficiency of the evidence, we ask “‘whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)); accord *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). “[W]e defer to the fact finder’s ‘resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), cert. denied, 448 Md. 726 (2016). In doing so, the jury is free to “accept all, some, or none” of a witness’s testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013), cert. denied, 437 Md. 638 (2014).

Further, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.’” *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138,

⁵ It is not clear if the grounds being asserted on appeal are the same as those that were raised at trial. There, defense counsel argued, with respect to the resisting arrest charge, that the arrest was illegal because appellant was arrested for “smelling like PCP.” Here, it appears appellate counsel is generally arguing the arrest was unsupported by probable cause. Although review of a motion for judgment of acquittal is limited to the grounds preserved at trial, see *Hobby v. State*, 436 Md. 526, 540 (2014), whereas the State does not raise a preservation argument on appeal, we shall proceed to the merits.

156 (2009)). This Court has noted that in this undertaking, “the limited question before us is not ‘whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004), *aff’d*, 387 Md. 389 (2005)). Finally, we will not reverse a conviction on the evidence “‘unless clearly erroneous.’” *State v. Manion*, 442 Md. 419, 431 (2015).

Section 9-408 (b) of the Criminal Law of Maryland provides that “[a] person may not intentionally . . . (1) resist a lawful arrest[.]” Md. Code (2002, 2012 Repl. Vol.), § 9-408(b) of the Criminal Law (“Crim. Law”) Article. We have explained that the elements that the State must prove are that: “(1) a law enforcement officer arrested, or attempted to arrest, the defendant; (2) the arrest was lawful, and; (3) the defendant refused to submit to the arrest and resisted the arrest by force.” *DeGrange v. State*, 221 Md. App. 415, 421 (2015). Mr. Green challenges the second element. This element requires that “that the officer had probable cause to believe that the defendant had committed a crime, *i.e.*, that the arrest was lawful[.]” *Olson v. State*, 208 Md. App. 309, 334 (2012) (quoting *Rich v. State*, 205 Md. App. 227, 240 (2012)). Whereas we concluded that the arrest was supported by probable cause and therefore, lawful, we hold that the evidence was sufficient to sustain Mr. Green’s conviction for resisting arrest.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**