Circuit Court for Baltimore City
Case No.: 621224002

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1495

September Term, 2022

CHRISTOPHER NGUYEN

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Zarnoch, Robert, A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 25, 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).

Following a bench trial in the Circuit Court for Baltimore City, Christopher Nguyen, appellant, who formerly was employed as a police officer for the Baltimore City Police Department ("BPD"), was convicted of reckless endangerment based upon his failure to act to protect a member of the public from a third-party assailant. He appeals, asking:

> Was the evidence legally insufficient to convict Nguyen of reckless endangerment?

For the following reasons, we shall affirm the judgment of the circuit court.

BACKGROUND

The evidence adduced at trial, viewed in a light most favorable to the State, showed the following. On August 12, 2020, Nguyen, a rookie BPD officer,[1] responded to a report of two men fighting inside a gold Lincoln sedan in Northeast Baltimore. He observed one man, later identified as Brown, lying face down on the sidewalk near a gold sedan, and a second man, later identified as Kenneth Somers,[2] sitting in the driver's seat of a pickup truck stopped in the middle of the roadway, talking on his cell phone. Nguyen immediately called a medic for Brown, who was bloodied and unresponsive.

Somers told Nguyen that he fought with Brown while trying to recover possession of the gold sedan, which he alleged Brown had stolen from Somers's business, stating: "the

[1] Nguyen spent nine months in the police academy, followed by three months of field training before he began patrolling on his own. He had worked patrol alone for six months at the time of this incident.

[2] Somers's name is alternately spelled as "Somers" and "Sommers" in the record. In an unreported decision of this Court in a related case, we noted that though the case caption used "Sommers," the correct spelling is "Somers." *See Sommers v. State*, No. 978, Sept. Term 2022, slip op. at 1 n.1 (filed Oct. 20, 2023). We use the correct spelling.

n[****]r stole my car." After making this remark, Somers began quickly walking towards Brown but stopped and returned to his truck.

Nguyen returned to Brown's location and asked him for identification, but Brown, who was barely conscious, did not respond. Nguyen told Brown that he had called for medics, and that they were on their way. He asked Somers to confirm that the gold sedan was the stolen vehicle and then photographed the license plate. He left Brown unattended as he returned to his police cruiser to retrieve a notepad and walked back over to Somers, who was talking on his cell phone again. Somers said into his phone: "Now he's f—king laying on the sidewalk, like the piece of worthless trash he is."

At that time, BPD Officer Franklin Phipps arrived on the scene. Officer Phipps saw Brown and immediately left to retrieve a first aid kit from his patrol car. He directed Nguyen to "stand by[.]"

Meanwhile, Somers walked toward Brown for a second time, with Nguyen following behind him. Somers bent down by Brown's face and taunted him, asking "Hey, can you see yet? Can you see? I want you to look at me real quick so you can remember me." As this was happening, Nguyen continued questioning Somers about the alleged motor vehicle theft. Somers stood back up, turned toward Nguyen, and began answering a question. At the same time, he kicked Brown swiftly in the head.

Nguyen yelled, "Hey, hey!" and put his hand on Somers's chest, saying, "That's enough, that's enough." Officer Phipps, who was returning with his first aid kit, began yelling to Somers to "turn around and put [his] hands behind [his] back." Officer Phipps threatened to tase Somers if he did not comply. Nguyen handcuffed Somers, walked him

away from Brown, searched him, and directed him to sit in the backseat of his police cruiser.

In the immediate aftermath of the incident, bystanders at the scene angrily told Nguyen and Officer Phipps that they should not have allowed Somers to walk over to Brown and assault him a second time. Nguyen called Sergeant Charles Jones and asked him to come to the scene. In that phone call, Nguyen referred to Brown as the "suspect" and to Somers as "the good person," before noting that he also was "bad."

Nguyen spoke to Somers at the scene. During that conversation, he told Somers that he understood why Somers was "pissed off" at Brown, adding, "you got to do what you got to do." Later, after Somers told Nguyen that it was "exciting" for him to beat someone up, Nguyen queried: "You ever thought about doing like any professional fighting?" He also suggested that Somers "probably would not be in cuffs if [he] didn't kick [Brown] . . . right in front of [Nguyen]."

Brown was transported to Johns Hopkins Hospital, where he was admitted and treated for three stab wounds to his head.[3]

Nguyen completed two incident reports. The first, for the crime of "aggravated assault by cutting," named Brown as the victim and Somers as the suspect. The second, for "unauthorized use," named "Crazy Kenny's Junk Cars," Somers's business, as the victim; Somers as the reporting person; and Brown as the suspect.

[3] Though the presence of "stab wounds" was not explained in the record in this case, we glean from this Court's unreported opinion in Somers's criminal appeal that he used a "rearview mirror" and an "air freshener can" in his assault on Brown. *See Sommers*, *infra,* slip op. at 4 n.3.

Somers was charged with first-degree and second-degree attempted murder, first-degree and second-degree assault, reckless endangerment, and wearing/carrying a dangerous weapon with intent to injure. *Sommers v. State*, No. 978, Sept. Term 2022, slip op. at 1 (filed Oct. 20, 2023). He was convicted of first-degree assault and reckless endangerment. This Court affirmed Somers's convictions in an unreported opinion. *Id*. The record does not reflect whether Brown was ever charged with any crimes arising from the incident.

One year later, Nguyen was charged by criminal information with reckless endangerment (count 1) and misconduct in office (count 2). He elected a bench trial, which commenced on August 15, 2022. In the State's case, it called three witnesses: Detective Vanessa Simpson, an investigator with the BPD Public Integrity Unit who conducted an internal review of the incident; Officer Phipps; and Sgt. Jones. In his case, Nguyen testified.

Detective Simpson, who was accepted as an expert in BPD training, police policies, and police procedures, testified that she had investigated police misconduct for over a decade. She identified several BPD policies that were introduced into evidence, including Policy 301, entitled "Code of Ethics" which states: "As a law enforcement officer, my fundamental duty is to serve the community, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, the peaceful against violence or disorder, and to respect the constitutional rights of all to liberty, equality, and justice."

Detective Simpson affirmed that if an officer has probable cause to believe that an individual has committed a crime, policy dictates placing that person in handcuffs. She

explained that in her view, Brown was a "detainee" because Nguyen considered him a "suspect" in the alleged car theft. Though she did not think Nguyen should have handcuffed Brown given his injuries, she explained that he could have written an arrest warrant "after the fact." Detective Simpson agreed that Nguyen was "required to safeguard the wellbeing of Mr. Brown . . . [w]hile he was in . . . police custody[.]" This included while he was lying on the ground at the crime scene "[b]ased on police policy[.]"

Detective Simpson opined that if she had been in Nguyen's place, she would have separated Somers from Brown during the investigation. If she had seen Somers approaching Brown at the crime scene, she "would have probably stood between them." She opined that a "reasonable officer" would have "placed him or herself between Mr. Brown and Mr. Somers[.]"

Officer Phipps testified that when he first arrived on the scene, it was obvious that Brown had "been assaulted[.]" He could not comment upon what "led up to" the subsequent kick because he had his back to Nguyen and Somers when Somers first approached Brown. Officer Phipps stated that if he had been the first responding officer, he would have "just kept everyone separated" and "put [himself] between all the parties involved." Based on his training and experience, he would not have allowed Somers to walk directly up to Brown, lean over, and taunt him.

Sgt. Jones testified that he responded to the scene of the incident after he received a call from Nguyen advising that he had the "victim" in the back of his patrol car and was placing him under arrest and the "suspect was en route to the hospital." His body worn camera footage was introduced into evidence. It showed that when Sgt. Jones arrived on

the scene, Officer Phipps advised him that the suspect was in Nguyen's patrol car and the victim was on the way to the hospital. Nguyen interjected, "so the victim's in my vehicle right now. He caught the suspect here and beat him up like really bad." After Sgt. Jones learned that no one had accompanied Brown to the hospital he instructed Nguyen that he should "[n]ever send a suspect off . . . without a police officer with him. Because he's a suspect."

Sgt. Jones explained that Nguyen completed two incident reports because "two crimes . . . took place on that day at that location. We had the recovery of the stole[n] auto and subsequently the ag[gravated] assault that was the result of the recovered stolen auto." Somers and Brown had a "dual role, both as a victim and as a suspect[.]"

Sgt. Jones was asked "what, if any, duty does [a] patrol officer on scene have to [an] injured person as they're lying on the ground?" He responded: "If it's within that officer[']s ability to . . . render aid if it's within their training" and "[i]f they are aware as far as who the assailant is, then to protect them from the assailant." After viewing Nguyen's body camera footage, Sgt. Jones testified that at the point in time when Somers had approached Brown and taunted him, it was apparent that his "intentions were not good."

Nguyen testified that when he responded to the scene, he quickly determined that Somers was both a "suspect and a victim at the same time due to the stolen vehicle[.]" He was "overwhelmed" because of his "lack of experience" and had "tunnel vision[.]" When Somers first began to approach Brown, Nguyen was not concerned. As Somers approached him a second time, Nguyen was "focused on taking notes" and gathering information and was "unaware of . . . Som[ers's] intentions[.]" Nguyen was surprised when Somers kicked

Brown in the head because he did "not see that coming at all." He immediately "closed the gap" between him and Somers and took him into custody. Nguyen explained that with his additional year of patrol experience, he would have handled the incident differently. He would have called for more backup units and would have separated Somers and Brown.

On cross-examination, Nguyen testified that in hindsight, he would have detained Somers. He was asked if he "had a duty to protect Mr. Brown?" He replied, "Yes," adding that he "recognize[d] that as a police officer" it was his duty to protect Brown once he "arrived on scene[.]"

The court found Nguyen guilty of reckless endangerment and not guilty of misconduct in office. Because we are concerned only with the legal sufficiency of the evidence to convict Nguyen of reckless endangerment, we need not set out the court's thorough ruling in detail. In sum, the court found that it was "essentially undisputed" that Nguyen "had a duty to protect Mr. Brown" and that the existence of this duty also was supported by Detective Simpson's expert testimony that Nguyen "was obligated to safeguard Mr. Brown whether he was a suspect or a victim, it didn't matter." The court found that a reasonable, similarly situated officer would have kept Somers away from Brown both because Somers had admittedly beaten Brown and because his conduct in Nguyen's presence evidenced continued animus towards him. In the face of Somers's angry and threatening behavior toward Brown, the court reasoned that Nguyen knew or should have known that Somers presented a continuing threat to Brown and consciously disregarded that threat when he let Somers approach Brown without impeding him.

The court sentenced Nguyen to one year, suspending the entire sentence in favor of a term of probation for 18 months. Nguyen resigned from the BPD after he was sentenced. This timely appeal followed.

STANDARD OF REVIEW

When an appellate court reviews the sufficiency of the evidence to support a criminal conviction, we "view the evidence in the light most favorable to the State and assess whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Krikstan*, 483 Md. 43, 63 (2023) (quoting *Walker v. State*, 432 Md. 587, 614 (2013)). Because this was a bench trial, we "review the case on both the law and the evidence[,]" and will not "set aside the judgment . . . on the evidence unless clearly erroneous[.]" Md. Rule 8-131(c).

DISCUSSION

The crime of reckless endangerment is codified at Md. Code, Crim. Law § 3-204, which states in relevant part that "[a] person may not recklessly: (1) engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" Crim. Law § 3-204(a)(1). The Supreme Court of Maryland has held that the "conduct" proscribed by the statute includes "the wilful failure to perform a legal duty." *State v. Kanavy*, 416 Md. 1, 10-11 (2010). To paraphrase *Kanavy*, to convict Nguyen of reckless endangerment based upon an omission, the State needed to adduce evidence from which a reasonable factfinder could find that (1) Nguyen owed a legal duty to Brown, (2) that he was aware of his obligation to perform that duty, (3) that he knew that his failure to perform that duty would create a substantial risk of death or serious physical injury to Brown, (4) that a reasonable

police officer in Nguyen's position would not have disregarded his duty and (5) that he consciously disregarded his duty. *Id*. at 12-13.

Nguyen contends that the State failed to meet its burden of production on elements 1, 3, 4, and 5. We address his contentions in turn.

a.

Nguyen's primary argument is that he was "under no legal duty to protect Brown from Som[ers]" because, in his view, there is no source in common law or statute from which that duty arises. Consequently, Nguyen asserts that he may not be held criminally liable for reckless endangerment by omission.

The State responds that the Supreme Court of Maryland has recognized a legal duty '"owed by the police by virtue of their positions as officers"' to '"protect the public,"' the breach of which is actionable in a criminal prosecution. (Quoting *Ashburn v. Anne Arundel Cnty*., 306 Md. 617, 628 (1986).) In reliance upon this broad duty, the State asserts in its brief that it need not prove a "special relationship" between Nguyen and Brown to give rise to this duty of protection, but it maintains that because Brown was both "unconscious and in police custody[,]" a special relationship did exist. At oral argument in this Court, the State appeared to narrow its position to recognize the need to show a special relationship, twice asserting that Brown's status as a detainee in custody under the Fourth Amendment was its "strongest argument" supporting a legal duty.[4]

[4] The trial court found that Nguyen, in his testimony, conceded that he owed Brown a duty of protection. In light of our holding, we need not gauge the impact of Nguyen's concession on our resolution of this legal issue. Given that the existence of a legal duty (continued…)

Caselaw in the civil context has not been kind to the State's position that a special relationship existed between Nguyen and Brown because of the latter's status as a detainee during an investigative detention for possible car theft.

In *Jones v. Maryland-National Capital Park and Planning Commission*, 82 Md. App. 314, 332 (1990), the Court said:

> We believe that a detention or a taking of charge, for purposes of establishing a special duty, is determined by the existence of a continued custodial detention instead of an investigatory detention. In respect to accident situations, we distinguish between them as follows: Investigatory detention is that period where, subsequent to an accident, the officer is investigating or awaiting the outcome of an investigation; while an *ongoing* custodial detention would not, in most instances, occur until an actual custodial arrest has occurred and perhaps not even until an appropriate *judicial* officer has made a decision to hold the driver in custody, in lieu of bond, pending a trial on such charges. It is at the point of ongoing custodial detention, at the earliest, that an arresting officer's discretionary function *might* become ministerial; for, until such time, the officer may retain the absolute sole discretion to terminate the process without any continued detention.

See also Holson v. State, 99 Md. App. 411, 418 (1994) (An officer's temporary detention does not create a special relationship.); *Kingsmill v. Szewczak*, 117 F. Supp. 3d 657, 663 (E.D. Pa. 2015) ("The hallmark of a special relationship is custody: full time severe and continuous state restriction of liberty." (quotation marks and citation omitted)); *Forrester v. Stanley*, 394 F. App'x 673 (11th Cir. 2010) (Temporary detention pursuant to *Terry v.*

was essentially undisputed at trial, however, we reject Nguyen's contention that the State waived its argument that Nguyen owed Brown a common law duty arising from his status as a detainee by not raising it below. In addition, we do not rely on department policies as a source of Nguyen's duty.

Ohio, 392 U.S. 1 (1968), does not place a person in police custody or give rise to a special relationship.).

Here, Brown was not arrested and was detained only while the officer was determining whether an auto theft had occurred. Such actions do not establish a special relationship, imposing a duty on Nguyen to protect Brown from Somers.[5]

This does not conclude the matter. The State has argued that a duty to protect Brown, enforceable in a criminal proceeding, exists even in the absence of a special relationship. We agree. Although Nguyen contends that there is no statutory or common law duty to protect, he is mistaken. *Ashburn* establishes, as a matter of Maryland common law, that police have a duty to protect the public and its breach is enforceable in a criminal proceeding.

In *Ashburn*, which is a civil case, the Supreme Court of Maryland considered whether a police officer who failed to detain a drunk driver could be liable in tort to a person later injured by that driver. 306 Md. at 618. Answering that question in the negative, the Court emphasized the general rule that a police officer is immune from civil liability "for failure to protect an individual citizen against injury caused by another citizen[.]" *Id.* at 628; *accord Jones v. State*, 425 Md. 1, 20 (2012). The well-established exception to that rule is that a "special duty" arises when a police officer affirmatively acts to protect a

[5] The addition of the fact that Brown was nearly unconscious and helpless does make the special relationship doctrine applicable here. *See Howard v. Crumlin*, 239 Md. App. 515 (2018) (Tort action dismissed because there was no allegation that the victim was aware of the officer's existence or induced into specific reliance on any affirmative act of the officer.).

specific victim or a group of individuals, inducing reliance upon police protection. *Ashburn*, 306 Md. at 631; *accord Muthukumarana v. Montgomery Cnty*., 370 Md. 447, 487 (2002). Further, the Supreme Court recognized that "the 'duty' owed by the police by virtue of their positions as officers is a duty to protect the public, and *the breach of that duty is most properly actionable by the public in the form of criminal prosecution* or administrative disposition." *Ashburn*, 306 Md. at 628 (emphasis added).

In mostly policy-based arguments, Nguyen essentially contends that *Ashburn* does not mean what it says or contains implied limitations. He argues that *Ashburn* cannot support a criminal conviction based on "a general, undefined duty" to protect the public; that to support criminal liability an *additional* statute or common law principle must be found to impose criminal liability on the officer; that the policy limiting civil liability of an officer should apply with greater force in the criminal context and if not, the result would be illogical; that the Court should not break new ground or alter the common law, but defer to the General Assembly on this issue.

To recognize *Ashburn*'s articulation of a criminally enforceable duty to protect the public, does not break new ground or alter the common law. Nguyen's proffer of an additional statutory or common law duty would break new ground because *Ashburn* makes no such suggestion. Finally, there is nothing illogical in *Ashburn*'s dichotomy between

immunity for an officer in a civil action brought by an individual and a recognition that the criminal law affords some protection for the public.[6]

In short, *Ashburn* means what it says.[7] Thus, a legal duty, grounded in common law and enforceable in a criminal proceeding, requires a police officer to protect a member of the public or suffer for its breach.

Our reliance on *Ashburn* does not open the door to a parade of police prosecutions. Most failure to protect allegations would likely be resolved in administrative disciplinary proceedings. A criminal prosecution would probably be sought in only the most egregious of cases. It is also noteworthy that the finding of a legal duty to protect does not automatically equate with a conviction for reckless endangerment. It is only one of a number of elements to be proven when an act of omission is the premise for the prosecution.

b.

We now turn to the sufficiency of the evidence to show that Nguyen had a reckless mental state, *i.e.*, that he knew of a risk to Brown posed by Somers and consciously disregarded it (comprising elements 3 and 5 under *Kanavy*). Nguyen maintains that the "evidence here did not permit rational findings that . . . Nguyen knew his failure to

[6] For example, the United States Supreme Court has recognized immunity for state legislators in civil actions, but not from federal prosecutions. *See United States v. Gillock*, 445 U.S. 360 (1980).

[7] *Ashburn*, authored by Judge Harry Cole, suggests a criminal remedy, not once but three times. 306 Md. at 628-30. Moreover, subsequent appellate decisions reiterate this. *See, e.g., Jones, supra,* 82 Md. App. at 327; and *Howard*, 239 Md. App. at 523.

somehow impede or restrain Som[ers]" placed Brown at risk of death or serious physical injury to Brown. He emphasizes that though Nguyen knew that Somers had "fought with Brown" before he arrived on the scene, Somers never threatened Brown or otherwise revealed his intent "to *further* assault Brown." (Emphasis in original.) He maintains that the trial court improperly relied upon *State v. Albrecht*, 336 Md. 475 (1994), a case which supports his position.

In *Albrecht*, the Supreme Court of Maryland considered a legal sufficiency challenge to criminal convictions for involuntary manslaughter and reckless endangerment against a former police officer. *Id*. at 477-78. Albrecht and his partner had responded to a call for a stabbing and learned that one of the suspects in the stabbing had left in a car driven by a woman, Garnett, and that he might be armed with a gun. *Id*. at 479. After a brief pursuit, Albrecht spotted one the suspects with Garnett standing next to her car in front of a playground in a residential neighborhood, while a second suspect was visible in the backseat. *Id*. at 480. Garnett's hands were visible and she was holding a bag of chips. *Id*. As Albrecht exited his police car, he ordered the three people to freeze and to show their hands. *Id.* at 481. He removed his shotgun, loaded it with a shotgun shell, racked the gun, and pointed it at Garnett. *Id.* The weapon discharged, and a bullet struck Garnett in the chest, killing her. *Id.*

Because the trial court found that Albrecht did not intentionally shoot Garnett, the central issue at trial was recklessness, *i.e.*, whether Albrecht's conduct was a gross and wanton deviation from reasonable conduct. *Id*. at 483. The trial court found that Albrecht's conduct in pointing the shotgun at Garnett, in the immediate vicinity of several innocent

bystanders, was unreasonable and was grossly negligent given that she posed no threat. *Id*. at 484-85.

On appeal, this Court reversed, concluding that because Albrecht did not act intentionally, there was no other legally sufficient evidence to support a finding that he had the requisite state of mind to support a guilty verdict. *Albrecht v. State*, 97 Md. App. 630, 688 (1993). On *certiorari* review of that decision, the Supreme Court reversed this Court. After an extensive review of the evidence in the light most favorable to the State, the Court held that the State adduced sufficient evidence from which a rational factfinder could have concluded that a reasonable police officer "would not have acted as Albrecht did . . ., in drawing and racking a shotgun fitted with a bandolier and bringing it to bear, with his finger on the trigger, on an unarmed individual who did not present a threat to the officer or to any third parties," with bystanders nearby. *Albrecht*, 336 Md. at 505 (emphasis omitted).

Nguyen asserts that unlike in *Albrecht*, where it was "readily inferable" that an officer who handles a loaded weapon is aware that it may discharge, here, it was not rationally inferable that Nguyen knew that Somers posed a threat of death or serious injury. We disagree.

Viewing the evidence in the light most favorable to the State, we believe it establishes that when Nguyen arrived at the scene, he observed that Brown had been severely beaten and needed immediate medical attention. Somers told Nguyen that he had beaten Brown, referred to Brown by a racial slur and called him a "piece of worthless trash[.]" A rational inference could be drawn from Somers's conduct that he believed that his actions were justified, and that Brown was deserving of the attack. After making those

comments, Somers approached Brown, bent down close to his face, and taunted him. Sgt. Jones testified that based upon his review of Nguyen's body camera footage, it was clear to him *before* Somers kicked Brown that Somers's "intentions were not good." This evidence supported a rational finding that Nguyen knew that Somers remained an ongoing threat to Brown. In the face of Somers's increasingly aggressive behavior towards Brown, Nguyen continued to investigate an alleged property crime. Nguyen's failure to impede Somers from approaching Brown and his failure to restrain Somers when he began taunting Brown supported a finding that Nguyen consciously disregarded that risk.[8]

c.

We now turn to whether the evidence was legally sufficient to support a finding that Nguyen's failure to keep Somers separated from Brown was a gross departure from the standard of conduct that a reasonable, similarly situated police officer would observe (element 4 under *Kanavy*). *See Albrecht*, 336 Md. at 501 (noting that standard of conduct when defendant is a police officer is measured against that of a "reasonable police officer similarly situated").

In *State v. Pagotto*, 361 Md. 528, 534-38 (2000), the Supreme Court of Maryland reversed a police officer's convictions for involuntary manslaughter and reckless

[8] We agree with the State that Nguyen's remarks to Sgt. Jones and to Somers after Somers assaulted Brown for a second time also are evidence of Nguyen's reckless mental state. As recounted in the facts, Nguyen continued to view Somers as the "good person" despite having witnessed him kick a helpless Brown in the head and appeared to justify Somers's violent attack on Brown to recover a motor vehicle. This was evidence from which a rational factfinder could conclude that Nguyen was indifferent to the threat posed by Somers because he did not view Brown as a victim at all.

endangerment grounded in the shooting death of a suspect fleeing a pretextual traffic stop. The State maintained that Pagotto's conduct was grossly negligent because he violated police policies by "(1) closing on the victim with his gun drawn; (2) attempting a one-armed vehicular extrication with his gun in the other hand; and (3) placing his trigger finger on the slide of the gun, rather than under the trigger guard as he approached the decedent's car." *Id*. at 538-39 (footnote omitted). The Court rejected each of these alternative bases for a finding of criminal negligence, concluding that the violation of BPD policies were not such gross deviations from the actions of an ordinary police officer given the "tense, uncertain, and rapidly evolving" circumstances of the shooting. *Id*. at 555-56 (quotation marks and citation omitted).

Nguyen maintains that the evidence in this case was far weaker because the BPD policies introduced into evidence were "little more than platitudes[.]" The State adduced significant testimony, however, that Nguyen's conduct was a gross deviation from the standard of conduct of a reasonable, similarly situated officer. Detective Simpson opined that "a reasonable officer" would have "placed him or herself between Mr. Brown and Mr. Somers[.]" Sgt. Jones testified that Nguyen should not have permitted Somers to approach Brown and should have ordered him to stay back or physically impeded his approach. Significantly, Officer Phipps, who also was a rookie officer, testified that based upon his training and experience on August 12, 2020, he would not have allowed Somers to walk up to Brown, lean over him, and taunt him. The trial court reasonably found from this evidence and from its review of the body camera footage that whether it was Nguyen's "first day on the job or . . . one hundred thousandth day on the job, it's just not reasonable"

for him to do "nothing" when Somers approached Brown and began taunting him. We agree that the evidence supported a rational finding that Nguyen's inaction in the face of the known assailant of a helpless victim closing in on that victim and aggressively taunting him was a gross departure from the standard of conduct of a reasonable officer similarly situated to him.

d.

For all these reasons, we hold that Nguyen owed Brown a common law duty of protection, enforceable in a criminal prosecution. Nguyen does not argue on appeal that he was unaware of his obligation to protect Brown, a duty which he conceded in his testimony at trial. The evidence further supported a rational inference that Nguyen knew that Somers posed a continuing threat of serious bodily injury to Brown based upon his comments to Nguyen at the scene and his aggressive conduct in approaching Brown; that a reasonable officer in Nguyen's position would have impeded Somers's approach or, at the very least, intervened when Somers began taunting him; and that Nguyen consciously disregarded that risk, focusing instead upon an alleged property crime committed by Brown. We affirm his conviction for reckless endangerment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.