UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1168

September Term, 2013

MARK JOHNSON

v.

STATE OF MARYLAND

Krauser, C. J.,
Graeff,
Leahy,
JJ.

PER CURIAM

Filed: September 6, 2016

Accused of walking onto his apartment balcony, while naked, and loudly screaming "they're trying to kill me," after the police arrived at his apartment to investigate a domestic violence complaint, and then struggling with the police and hitting one of the officers, as they attempted to arrest him, appellant, Mark Johnson, was convicted of disorderly conduct, indecent exposure, resisting arrest, and second-degree assault, following a bench trial in the Circuit Court for Prince George's County. On appeal, Johnson contends: (1) that the evidence was not sufficient to support his disorderly conduct conviction because the State failed to prove that his conduct "offend[ed], disturb[ed], incite[d], or tend[ed] to incite" others, *Livingston v. State*, 192 Md. App. 553, 570 (2010) (citations omitted); (2) that the evidence was not sufficient to support his indecent exposure conviction because the State failed to prove that his public exposure was "observed, or was likely to have been observed by one or more persons," *Wisneski v. State*, 398 Md. 578, 593 (2007); and (3) that the evidence was not sufficient to support his second-degree assault conviction because the State failed to prove that he intended to strike the officer. Johnson also claims that, (4) because the police lacked probable cause to arrest him for disturbing the peace and indecent exposure, the actions he took to resist the arrest, including striking the officer, were legally justified and, for that reason as well, that the evidence was not sufficient to support his convictions for resisting arrest and second-degree assault. For the reasons that follow, we affirm.

In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant's convictions, we "review the case on both the law and the evidence," but will not "set aside the judgement . . . on the evidence unless clearly erroneous." Maryland Rule

8–131(c). "We review sufficiency of the evidence to determine 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." *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted). Moreover, the issue of legal sufficiency of the evidence in a bench trial "is not concerned with the [trial court's] findings of fact based on the evidence or the adequacy of the factfindings to support a verdict . . . [but] only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place." *Chisum v. State*, 227 Md. App. 118, 129-30 (2016).

Viewing "the evidence in the light most favorable to the State," *see White*, 217 Md. App. at 713, as we are required to do, we conclude that the State presented sufficient evidence to support Johnson's convictions. The officers' testimony established that, when they tried to speak with Johnson inside his apartment, he clenched his fists, removed all his clothes and refused to put them back on, and then walked out onto the balcony of his apartment while still naked, and screamed "they're trying to kill me" so loudly that multiple people came out of their apartments to see what was happening. Based on this evidence, the trial court could reasonably find that Johnson exposed his body in a manner that was likely to have been seen by others and that his words and actions both "disturb[ed]" and "tend[ed] to incite" the persons who came outside, given his declaration that a violent crime was about to be committed, namely, his own murder by police. Accordingly, the trial court did not err in convicting Johnson of indecent exposure and disturbing the peace.

Moreover, the State presented sufficient evidence that Johnson intended to hit the officer when, while resisting arrest, Johnson swung his arm backward and hit the officer in the forearm. Although Johnson was not looking directly at the officer when he swung his arm, the trial court could reasonably find that his contact with the officer was intentional, and not accidental, based on the officers' testimony that Johnson was acting "aggressively" and "belligerent[ly]" before the arrest, was trying to avoid being handcuffed when he swung his arm backward, and had punched and grabbed the officer who was trying to handcuff him at other times during the encounter. *See Jones v. State*, 213 Md. App. 208, 218 (2013) ("In determining a defendant's intent, the trier of fact can infer the requisite intent from surrounding circumstances such as the accused's acts, conduct and words." (internal quotation marks and citation omitted)).

Finally, for the same reasons that we find the evidence sufficient to support appellant's convictions for disturbing the peace and indecent exposure, the officers possessed probable cause to arrest appellant for those offenses and therefore, he was not entitled to resist the arrest.

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