Circuit Court for Cecil County
Case No. 07-C-16-000229

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2183

September Term, 2017

WILLIAM KING, JR.

v.

THE NAUTI-GOOSE SALOON ET AL.

Wright,*
Graeff,
Kehoe,
JJ.

Opinion by Graeff, J.

Filed: December 4, 2019

* Wright, J., now retired, participated in the hearing and conference of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

In the early morning hours of August 24, 2013, William King, Jr., appellant, and four of his friends were in the parking lot outside the Nauti-Goose Saloon (the "Nauti-Goose"), a restaurant/bar located in Cecil County, Maryland. Trooper Richard Woollens, a Maryland State Police officer working approved secondary employment as a security officer at the Nauti-Goose, approached appellant, who was intoxicated. After Mr. King stated that he was going to stab Trooper Woollens, the trooper executed a takedown maneuver on Mr. King, which caused Mr. King to hit his head on the pavement.

In February 2016, Mr. King filed a civil suit in the Circuit Court for Cecil County, which he amended several times. He asserted multiple claims, including use of excessive force and negligent hiring, against multiple defendants. The court ultimately issued a judgment in favor of appellees: (1) 200 West Cherry Street, LLC ("Cherry Street"), the restaurant and bar that does business as the Nauti-Goose; (2) TTS Properties, Inc. ("TTS Properties"), a corporation that co-owns the premises of the Nauti-Goose; (3) Anchor Boats, Inc. ("Anchor Boats"), a corporation alleged to co-own the premises of the Nauti-Goose; (4) Trooper Woollens; and (5) the State of Maryland.

On appeal, Mr. King raises the following questions for this Court's review, which we have revised slightly, as follows:

> 1. Did the trial court err in granting summary judgment in this excessive force suit where Trooper Woollens claimed that Mr. King uttered a verbal threat, and the court therefore concluded the force was appropriate, when that threat was not heard by other individuals within earshot?
>
> 2. Did the trial court employ an impermissible analysis into Trooper Woollens' alternatives to the force employed, or purported lack thereof, when it evaluated his conduct?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

A.

Incident at the Nauti-Goose

On August 23, 2013, at approximately 6:00 p.m., Mr. King and several of his friends—William Nolan, Domenic DiSantis, Royce Dorman, Sean McComsey, and Colt Givler—boarded Mr. King's 27-foot sailboat at the Hances Point Yacht Club. They "cruis[ed] around" for a while, and at approximately 7:30 p.m., Mr. King anchored the sailboat at North East Harbor, a short distance from the Nauti-Goose. The friends then boarded a motorized dinghy that they detached from the sailboat, and Mr. King piloted the dinghy the remaining distance to the Nauti-Goose.[1] When they arrived, Mr. King docked the boat, and he and his friends entered the bar. While inside the Nauti-Goose, the friends drank alcohol and dispersed to different locations in the bar.

At approximately midnight, Mr. King was visibly intoxicated and was dancing barefoot on the dance floor. Mr. Nolan testified that all the friends were "pretty hammered" while they were inside the Nauti-Goose.

[1] Mr. King stated in his deposition that he and his friends were planning on attending "Poker Run" at the Nauti-Goose on Sunday, August 25, 2013. He described Poker Run as follows:

> It's a bunch of really expensive speed boats that they have five stops in the bay and they just go really fast to each one and they hang-out and they get a card at each stop and at the end of the day when they meet up the guy who has the best . . . hand wins. It's not a race. It's just an excuse to go ride around in fancy boats. It's fun to watch.

Mr. Dorman, who also was intoxicated, was on the second-floor deck of the restaurant and threw a beer bottle off the deck into the river. A bouncer escorted Mr. Dormman out of the bar. Moments later, Mr. DiSantis, who had observed Mr. Dorman's ejection from the bar, met up with Mr. Givler and Mr. McComsey, told them what happened, and said that they needed to leave.

Mr. DiSantis and Mr. McComsey left the Nauti-Goose and walked to the parking lot, which was located at the side of the bar approximately 50 feet from the bar entrance and 20-40 feet from the dinghy. Mr. Nolan, who had left the bar earlier because he felt ill, was sitting on a bench located at the edge of the parking lot.[2] Mr. Givler remained inside the restaurant looking for Mr. King. He eventually left, however, leaving Mr. King inside.

Mr. DiSantis and Mr. McComsey were standing a short distance from Mr. Nolan in an area with picnic tables. At some point, Mr. DiSantis grabbed two empty beer bottles from the tables and tossed them into a storm drain behind Mr. Nolan.

A bouncer at the Nauti-Goose heard the bottles shatter and approached Mr. DiSantis, Mr. McComsey, and Mr. Givler. When he asked the three friends who had thrown the bottles, Mr. Disantis did not respond. Mr. Disantis stated in his deposition that the bouncer then began acting aggressively.

[2] Mr. Nolan testified that he subsequently moved to the end of a long dock outside the Nauti-Goose. While there, he vomited and "passed out" for a while. When he woke up, Mr. King was being loaded into the ambulance.

Two or three other bouncers came to assist with the situation, including Trooper Woollens, a Maryland State Police ("MSP") officer who was working approved secondary employment. The bouncers insisted that the three friends leave the area. The friends refused because they were waiting for Mr. King to leave the restaurant, and it was not safe for them to wait in the dinghy.[3]

Around this time, Mr. King was on the deck of the Nauti-Goose and told by a bouncer that he needed to leave the bar. He resisted and began flailing his arms in protest as he was escorted down the stairs. When he and the guard reached the front door of the restaurant, he pushed the bouncer and attempted to finish the beer that was in his hand. Before he could, however, the bouncer grabbed the beer and ordered him to leave the restaurant. Mr. King again resisted, but he ultimately was ejected from the building. He then walked to the parking lot where his friends were arguing with the bouncers.

Trooper Woollens approached Mr. King and ordered him to leave. The two began to argue, and Trooper Woollens then wrapped his arms around Mr. King, raised him off the ground, and executed a takedown maneuver that caused Mr. King to hit his head on the pavement.

Nine witnesses observed Mr. King around the time that Trooper Woollens executed the takedown maneuver. We will briefly set out the description of events from each witness.

[3] Mr. Dorman testified that members in his group "got a little physical. No punching or anything, just shoving."

In a sworn affidavit, Trooper Woollens stated that, in the early morning hours of August 24, 2013, he was advised that security employees were dealing with disorderly men in the parking area. He went to the parking lot, where he "observed five white males acting in a disorderly manner," i.e., "pushing Nauti Goose security employees and not following commands to leave the premises." He approached Mr. King, "who appeared to be intoxicated," and ordered him to leave the property. Initially, Mr. King began to walk away, but he then came back to Trooper Woollens and "forcibly pushed" him. Trooper Woollens identified himself as a Maryland State Trooper and again advised Mr. King to leave the premises. Mr. King, who had a strong smell of alcohol, then "came towards [Trooper Woollens] in an aggressive manner and stated 'I don't care if you're a cop, I'll stab you.'" Trooper Woollens stated in his affidavit:

> This statement gave me concern that Mr. King had a concealed knife or sharp weapon. This fact, coupled with his aggressive behavior, his intoxication, and the fact that there were numerous other people around, led me to believe Mr. King would harm me or other people at the scene.
>
> Fearing for my safety, I wrapped my arms around Mr. King to prevent him from assaulting me. I realized the only way to gain control of Mr. King was to execute a takedown, so I executed a take-down technique taking Mr. King down to the ground. I used my weight to leverage him towards his side to take him off his feet and down to the ground. I used only enough force to take him down to the ground as fast as possible. Although Mr. King was taken off his feet, I did not pick him up and slam him. This takedown was in accordance with my training and experience provided by the Maryland State Police.

Trooper Woollens did not intend to injure Mr. King, but rather, to take him "down as quickly as possible to prevent him from assaulting me or other people at the scene." Mr. King, however, did sustain a head injury during the takedown.

Mr. DiSantis testified at his deposition that "he never saw [Mr. King] outside until [Mr. King] was on the ground." He did not observe any of the events that led to Mr. King being taken to the ground. When asked whether he heard "any back and forth between Mr. King and whoever it was that put him on the ground," Mr. DiSantis stated: "No words were spoken, to my knowledge[.]" He stated, however, that he did not hear anything because one of the bouncers put him a chokehold and he almost blacked out.

Mr. McComsey testified at his deposition that he was with the group of friends outside the bar at the time the takedown occurred. When asked what he heard and saw with respect to the incident, the following exchange ensued:

> [Mr. McComsey]: I heard [the impact]. I turned around. It was behind us.
> [Counsel]: Okay. So you didn't see what happened?
> [Mr. McComsey]: Correct.
> [Counsel]: And you didn't hear what happened, if anything was said between [Mr. King] and [Trooper Woollens]?
> [Mr. McComsey]: No.
> [Counsel]: Could you hear what was going on between the security personnel in green and the other members of your group?
>
> * * *
>
> [Mr. McComsey]: I don't remember now.
> [Counsel]: Well, you said you heard Mr. King hit the ground?
> [Mr. McComsey]: Correct.
> [Counsel]: And you said your back was to them at that point?
> [Mr. McComsey]: Yeah
> [Counsel]: So you didn't hear or see what happened and you didn't hear what precipitated that?
> [Mr. McComsey]: Correct.

Herbert P. Wilkins, Jr., a patron at the bar, observed Mr. King as he was being ejected from the bar. He described Mr. King as "acting like a donkey." He also observed Trooper Woollens approach the group outside. The trooper seemed to get everyone to

settle down. Trooper Woollens walked Mr. King off to the side, approximately 15-20 feet away. Mr. King was yelling and being "belligerent" towards Trooper Woollens, and when Mr. King "took a swing" at him, Trooper Woollens ducked and took Mr. King down to the ground.

Mr. Wilkins stated that he did not hear the conversation between Mr. King and the trooper. Following the incident, Trooper Woollens told Mr. Wilkins that Mr. King had threatened to stab him.

Stanley Bensley, a bouncer, testified that he observed Trooper Woollens attempt to arrest Mr. King outside the bar. He noted that, although there was "yelling going on" between the two, he was unable to make out what Mr. Woollens and Mr. King were saying.

Victoria Kammerer, a patron at the bar who was on the second-floor deck, testified at her deposition that she observed a bouncer push Mr. King to the ground. Mr. King "was not cooperating" with Trooper Woollens, but she did not see him attempt to punch Trooper Woollens. Although Ms. Kammerer stated that she "briefly saw" Mr. King being "slammed" to the ground by Trooper Woollens, she then said that she could not remember what she saw. Ms. Kammerer could not remember hearing any verbal exchange between Mr. King and Trooper Woollens.

Katlyn Dietz, a patron at the bar, testified that she was approximately "10-15 feet" from Mr. King when she observed Trooper Woollens "pick up" Mr. King and throw him

to the ground.[4] She described Mr. King as "belligerently drunk," but she did not observe him attempt to punch the officer. She could not hear any conversation between Trooper Woollens and Mr. King, and she did not know if Mr. King threatened Trooper Woollens. She did note that Mr. King was yelling, which "brought some attention to himself."

Mr. Dorman and Mr. Givler testified at their depositions that they observed Mr. King after he dropped to the ground. They were not able to hear any verbal exchange between Trooper Woollens and Mr. King.[5]

After Trooper Woollens executed the takedown maneuver, Mr. King was unconscious and bleeding from his ears. Trooper Woollens called his barrack and requested emergency medical services.

An ambulance took Mr. King to the hospital, where he was treated for head injuries, including a right temporal bone fracture. A blood test revealed that he had a blood alcohol concentration of 267 mg/L, with an estimate that his alcohol concentration at the time of the event was .25 percent. Dr. Yale H. Caplan, an expert witness, testified during his April 4, 2017, deposition, that a person with this blood alcohol level would be "markedly intoxicated" and have a tendency to be aggressive.

[4] At a previous deposition, Ms. Dietz testified that Trooper Woollens "body-slammed" Mr. King.

[5] Mr. Dorman testified that he was unable to hear anything because there was a lot of commotion at the time. Mr. Givler testified that, when the takedown occurred, Mr. King was "50 or 60 yards away" from where he was standing, and he was unable to hear any conversations between Mr. King and Trooper Woollens.

When Mr. King recovered, he had no memory of the events that occurred after he anchored the sailboat.

B.

Criminal Case against Mr. King

On August 24, 2013, while he was still in the hospital, Mr. King was charged with four misdemeanor counts, including assault in the second degree, trespass on private property, disorderly conduct, failure to obey a reasonable and lawful order, and resisting arrest. On April 20, 2015, Mr. King entered a plea of not guilty on an agreed statement of facts with respect to the charge of disorderly conduct. The State agreed to nol pros the remaining counts. The circuit court then imposed probation before judgment, requiring Mr. King to attend an alcohol treatment program as a condition of probation.

C.

Mr. King's Lawsuit

On May 23, 2016, Mr. King filed the Second Amended Complaint raising multiple claims against multiple parties. The circuit court subsequently dismissed Marcus Brown and the MSP as parties and dismissed the claims of false arrest, malicious prosecution, illegal arrest, false imprisonment, and deprivation of liberty.

On November 6, 2017, the State and Trooper Woollens (collectively, "State Appellees") filed a motion for summary judgment, asserting, among other things, that the material facts were undisputed, and "Trooper Woollens' use of force was reasonable and does not constitute excessive force, battery, or gross negligence." That same day, 200

West Cherry and TTS Properties (collectively, "Cherry Street Appellees") filed a motion for summary judgment, similarly asserting, among other things, that they were entitled to summary judgment on the battery, gross negligence, and negligence claims because there was no dispute of material fact and "no evidence that the force that [Trooper] Woollens used was excessive, unreasonable, or without legal justification."

In his opposition to the Defendants' motions for summary judgment, Mr. King argued, among other things, that summary judgment should be denied as to the battery, gross negligence, and excessive force counts because there was a genuine dispute of material fact regarding whether Trooper Woollens' act of slamming Mr. King's head to the ground was unreasonable.[6]

Mr. King, with respect to the excessive use of force claim, cited to the affidavit of Joseph Blaettler, a former Deputy Chief of Police for Union City, New Jersey, as evidence that Trooper Woollens' use of force was unreasonable. In this affidavit, Mr. Blaettler stated his opinion that "Trooper Woollens used excessive force when he executed the take-down of Mr. King," explaining that "[a] reasonable law enforcement officer would not take an intoxicated suspect to the ground under the circumstances alleged" in the case. Specifically, he stated:

> It is my opinion . . . that Trooper Woollens used more force than necessary in taking Mr. King to the ground. Given the facts that Mr. King

[6] The parties also discussed the counts alleging negligent hiring, training, security, and failure to warn. In that regard, Mr. King attached as exhibits documents relating to an unrelated civil suit filed on February 28, 2014, alleging that Trooper Woollens had used excessive force in arresting another individual. Based on our resolution of this case, we need not discuss these claims further.

> was unarmed and did not have the present ability to stab Trooper Woollens, despite Trooper Woollens' claim that Mr. King said he would stab Trooper Woollens, the amount of force used to take Mr. King to the ground was excessive. My opinion that Trooper Woollens used excessive force takes into account all of the foregoing materials, including, but not limited to, the factual discrepancies between Ms. Dietz where she says Trooper Woollens body slammed Mr. King by picking him up and dropping him and Trooper Woollens' denial of this fact. If the takedown was a body slam, it was excessive. If the takedown was taking Mr. King off his feet to the ground, as described by Trooper Woollens, it was excessive. The witnesses' description of the takedown, the resulting sound of the takedown, and the extent of the injuries suffered, all inform my opinion that Trooper Woollens used excessive force.

D.

January 4, 2018, Motions Hearing

On January 4, 2018, the circuit court held a hearing on the parties' motions. Counsel for the State Appellees argued that, pursuant to *Randall v. Peaco*, 175 Md. App. 320, 336–37, *cert. denied*, 401 Md. 174 (2007), a claim of excessive force with respect to a police officer "is susceptible to the grant of summary judgment in favor of" the officer. Counsel stated that the undisputed facts were that Trooper Woollens was confronted by a drunk, aggressive person, "within hands reach," threatening to stab him. Under these circumstances, no reasonable juror could conclude that Trooper Woollens' action in executing the takedown was unreasonable.

Counsel argued that the undisputed facts showed that, not only was the decision to take him down reasonable, but the takedown itself was reasonable. Although "serious injury occurred," the "seriousness of the injury does not dictate that Trooper Woollens' actions were automatically unreasonable." Counsel acknowledged that two witnesses,

i.e., Ms. Dietz and Ms. Kammerer, indicated that Mr. King was slammed to the ground, but he argued that this testimony from intoxicated witnesses did not create a dispute of fact regarding the reasonableness of the takedown because neither of those witnesses had "any use of force training" and both "admitted that they have never even seen a use of force before." Counsel argued that two people calling the takedown a "slam" did not create a dispute of fact, and a reasonable juror would still find that Trooper Woollens used reasonable force. Counsel further argued that the affidavit of Officer Blaettler did not create a dispute of fact because an expert "cannot generate disputes of fact," and his opinion, to the extent that he says a person in Trooper Woollens' position should not have used force because Mr. King did not actually have a knife, was valueless. Accordingly, counsel argued that Trooper Woollens was entitled to summary judgment on the claim of excessive force, as well as the battery claim and the gross negligence claim.

Counsel for Cherry Street Appellees also argued that the facts set forth in Trooper Woolens' affidavit were undisputed, noting that none of Mr. King's friends saw or heard the interaction between Mr. King and Trooper Woollens. Counsel argued that, in the absence of excessive force by Trooper Woollens, summary judgment was warranted on all counts.

Mr. King's counsel argued that Officer Blaettler's affidavit created a dispute of material fact regarding the need for the use of force, noting that the affidavit stated that Trooper Woollens' use of force was unreasonable because Mr. King did not have the present ability to stab Trooper Woollens. He also noted that the use of force police report

that Trooper Woollens completed after the incident stated that the reason for the use of force was to effectuate an arrest and protect "other" from harm, but he did not check the box that said he was trying to protect himself from harm.[7] Counsel argued that this created a dispute of fact because the defense was arguing that Trooper Woollens believed that he was "going to get stabbed."

Counsel claimed that, based on this Court's opinion in *Wilson v. State*, 87 Md. App. 512, *cert. denied*, 324 Md. 325 (1991), the question whether Trooper Woollens used excessive force was "generally a question for the jury," and therefore, it should not be resolved on summary judgment. Additionally, he asserted that the "disputed facts" in this case came from testimony of witnesses who were "there on the scene [but] who did not hear any threats or any statements about knives or anybody saying that they are going to stab—Mr. King saying he was going to stab anyone."

E.

Circuit Court's Ruling

The circuit court, in granting the summary judgment motions, made the following oral findings:

> Well, the Court has read all of the motions and responses and all of the attachments and exhibits attached to the motions, you know, the portions of the transcripts that have been provided, and, you know, for the reasons stated

[7] The MSP Use of Force Statistical Data Form that Trooper Woollens completed following the incident included a question labeled: "Reason force was used (Check all that apply)." Trooper Woollens checked two boxes: i.e., "To effect an arrest" and "To prevent subject from harming: other." He did not check the box: "To prevent subject from harming: trooper/officer or self."

> today and as outlined in the motions for summary judgment, I mean, the Court does find looking at the evidence in light most favorable to the plaintiff that there's really not any dispute as to material fact and the Court does believe that the force used by the officer was reasonable based upon the conduct and language of the plaintiff at the time of the events. I'm not going to recite all of those. Again, they are outlined again in the various memorandums and attachments. But using the reasonable officer standard, again, the Court finds that the conduct of the officer was reasonable based upon the threat that was immediately apparent.
>
> The Court . . . with regard to the negligent hiring claim, again, I'm not sure what, if anything, else could have been done, you know, at the time the officer was hired. I'm not even sure if there was a claim at that point. There might have been a report of an incident, but I'm sure with most law enforcement officers there's numerous reports of force being used and, without more, I don't think that would preclude someone from secondary employment serving in some type of security capacity.
>
> So, again, for reasons stated by counsel and as outlined in the various motions, the Court's going to grant the motions for summary judgment in favor of the defendant State of Maryland, Richard Woollens, 200 West Cherry Street, LLC, and TTS Properties, Inc.

Following the court's ruling, counsel for Anchor Boats made an oral motion for summary judgment. After noting that opposing counsel had no objection to this request other than the same objections he had to the other motions, the circuit court granted Anchor Boats' motion.

That same day, the circuit court entered orders granting the summary judgment motions of appellees Cherry Street, TTS Properties, Richard Woollens, and the State of Maryland. Six days later, on January 10, 2018, the circuit court entered an order granting Anchor Boats' motion for summary judgment.

This appeal followed.

STANDARD OF REVIEW

The Court of Appeals has explained the relevant standard to be applied in reviewing a grant of a motion for summary judgment, as follows:

> We review a grant of summary judgment as a matter of law. *Eng'g Mgmt Servs. v. Md. State Highway Admin.*, 375 Md. 211, 229, 825 A.2d 966, 976 (2003). "The standard for appellate review of a trial court's grant or denial of a summary judgment motion is whether the trial court was legally correct." *Sheets v. Brethren Mut. Ins. Co.*, 342 Md. 634, 638, 679 A.2d 540, 542 (1996) (citation omitted). Thus, we conduct an independent review of the record to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14, 852 A.2d 98, 105–06 (2004). "We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant." *Id.* at 14, 852 A.2d at 106 (citation omitted).

Md. Cas. Co. v. Blackstone Intern. Ltd., 442 Md. 685, 694 (2015). "On appeal from an order entering summary judgment, we review 'only the grounds upon which the trial court relied in granting summary judgment.'" *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 651 (2012) (quoting *Rodriguez v. Clarke*, 400 Md. 39, 70 (2007)), *aff'd*, 432 Md. 292 (2013).

DISCUSSION

Mr. King asserts that, "as the trial court determined, whether Woollens reasonably used force is dispositive for all of King's claims." He contends, however, that the circuit court erred in granting summary judgment against him based on its conclusion that Trooper "Woollens' use of force was reasonable."

He asserts two grounds in support of this contention. We will address each ground, in turn.

I.

First, Mr. King argues that the court's ruling, that "the conduct of the officer was reasonable based upon the threat that was immediately apparent," was improper because there was a dispute of fact whether Mr. King threatened to stab Trooper Woollens with a knife. In that regard, he points to deposition testimony of witnesses who denied hearing Mr. King make a threat. Accordingly, he asserts that a "reasonable inference to draw from th[e] record" was "that [Mr.] King made no threat," and therefore, summary judgment was improper. Mr. King asserts that the dispute of fact regarding whether Mr. King made the threat should have been "resolved by a jury, not the court."

Cherry Street and TTS Properties contend that, because there was no witness that contradicted Trooper Woollens' testimony regarding Mr. King's threat, the circuit court "correctly determined that there are no genuine disputes of material fact." The State Appellees similarly argue that there was no evidence "to contradict Trooper Woollens' sworn testimony that Mr. King threatened to stab him." They assert that, although several witnesses testified that they did not hear Mr. King make the threat, this did not create a dispute of material fact because the witnesses testified that they "could not hear *any* of the conversation between Mr. King and Trooper Woollens," and the inability to hear the conversation does not constitute "an affirmative repudiation of Trooper Woollens' testimony." Accordingly, they argue that the court properly found that there was no dispute of fact regarding Mr. King's threat to Trooper Woollens.

The Court of Appeals has made clear that the inquiry in an excessive force claim under Article 26 of the Maryland Declaration of Rights, as well as for common law claims of battery and gross negligence, "focuses on the objective reasonableness of the officer's conduct." *Richardson v. McGriff*, 361 Md. 437, 452 (2000). We consider the reasonableness of an officers' use of force "'in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.'" *Id.* at 486 (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)). *See Smith v. Bortner*, 193 Md. App. 534, 586 (2010). Because the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments" about the amount of force that is appropriate in a given situation, we avoid looking at matters with the "20/20 vision of hindsight." *Richardson*, 361 Md. at 452 (quoting *Graham*, 490 U.S. at 396–97.

This Court has noted that, in assessing whether the use of force is objectively reasonable, it is "recognized that the right to make an arrest . . . necessarily carries with it the right to use some degree of coercion," and the reasonableness of the force used includes consideration of "whether the suspect poses an immediate threat to the safety of the officers or others." *Randall*, 175 Md. App. at 331 (quoting *Graham*, 490 U.S. at 396). The reasonableness of a police officer's use of force is "susceptible to the grant of summary judgment in favor of the defendant." *Id.* at 336–37.

With that background, we will address Mr. King's contention that the circuit court erred in granting appellees' motions for summary judgment because there was a dispute

of fact regarding whether Mr. King threatened to stab Trooper Woollens. As explained below, we agree with appellees that there was no error in that regard.

Appellant notes that Ms. Kammerer testified that she did not hear Mr. King mention a knife, but she also testified that she did not remember hearing any verbal exchange between Trooper Woollens and Mr. King, and she was up on the deck and would not have been able to hear them talking in "regular conversational tones." Indeed, she specifically said that, based on her location, she would not have been able to hear Mr. King if he threatened Trooper Woollens. This testimony did not create a genuine dispute of material fact regarding Mr. King's threat to Trooper Woollens. *See* Maryland Rule 5-602 ("[A] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.").

The other witnesses on which Mr. King relies similarly did not create a genuine dispute of fact. Mr. King notes that Mr. McComsey denied hearing anything said between Mr. King and Trooper Woollens, but what he actually said was that he did not hear "**if** anything was said" between them. And although Mr. King argues that Mr. DiSantis testified that "no words were spoken" between Mr. King and Trooper Woollens, what he actually said was: "No words were spoken, **to my knowledge**." Mr. DiSantis subsequently stated that he did not hear anything because one of the bouncers put him in a "chokehold" and he almost "blacked out."

To prove a genuine dispute of material fact, the party opposing summary judgment "must do more than simply show some 'conjectural' or 'metaphysical' doubt as to that

fact." *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 291 (2018). Rather, there '"must be evidence upon which the jury could reasonably find for the plaintiff."' *Gables Constr., Inc. v. Red Coats, Inc.*, 241 Md. App. 1, 42 (quoting *Campbell v. Lake Hallowel Homeowners Ass'n*, 157 Md. App. 504, 518 (2004)), *cert. granted*, 464 Md. 25 (2019). Additionally, "while a court must resolve all inferences in favor of the party opposing summary judgment," the inferences have to be "*reasonable* ones." *Hamilton v. Kirson*, 439 Md. 501, 532 (2014) (emphasis in original) (quoting *Clea v. City of Balt.*, 312 Md. 662, 678 (1988)). As the Court of Appeals has explained:

> "It is frequently said that summary judgment should not be granted if there is the 'slightest doubt' as to the facts. Such statements are a rather misleading gloss on a rule that speaks in terms of 'genuine issue as to any material fact,' and would, if taken literally, mean that there could hardly ever be a summary judgment, for at least a slight doubt can be developed as to practically all things human. A better formulation would be that the party opposing the motion is to be given the benefit of all reasonable doubts in determining whether a genuine issue exists."

Clea, 312 Md. at 678 (quoting C. Wright, *The Law of Federal Courts* § 99, at 666–67 (1983)). *See Burwell v. Easton Memorial Hosp.*, 83 Md. App. 684, 689 (1990) (in slip and fall case, the mere fact that lettuce left on the floor was discolored did not permit a reasonable inference, on summary judgment, that it had been on the stairs long enough to be discovered and remedied).

Here, none of the witnesses on which Mr. King relies heard Mr. King and Trooper Woollens immediately prior to the takedown.[8] We agree with appellees that the witnesses' inability to hear the conversation between Mr. King and Trooper Woollens does not amount to "an affirmative repudiation of Trooper Woollens' testimony." Accordingly, the circuit court properly found that there was no genuine dispute of fact that Mr. King, an intoxicated man acting in a disorderly manner, threatened to stab Trooper Woollens.

II.

Mr. King next contends that the circuit court erred in granting appellees' motions for summary judgment because, in determining whether Trooper Woollens used reasonable force, it erroneously considered whether Trooper Woollens could have employed alternative measures. He asserts that, under Maryland law, Trooper Woollens' alternatives are "not relevant to a reasonableness analysis," and the circuit court erred in relying on Trooper "Woollens' alleged lack of alternatives."

Cherry Street Appellees contend that Mr. King's argument fails because there is nothing in the record to suggest that the circuit court "decided to grant summary judgment based upon an analysis of whether [Trooper] Woollens had alternatives[.]" Rather, the record reflects that the circuit court looked at the objective reasonableness of Trooper Woollens' use of force, which was the proper legal standard.

[8] Ms. Dietz did hear Mr. King yelling, but she could not hear any conversation. She and Ms. Kammerer also testified that Mr. King was "uncooperative" and acting "belligerently."

The State Appellees contend that the circuit court "did not employ an impermissible analysis of alternatives when evaluating Trooper Woollens' use of force." They claim that Mr. King "has not and cannot provide a single citation to anything in the record indicating that the circuit court engaged in an analysis of Trooper Woollens' alternatives." They assert that the circuit court, in fact, determined "only whether the force used was reasonable at the moment Trooper Woollens decided to use force," which is consistent with the holding in *Richardson*, 361 Md. at 452, that the proper focus concerns "the circumstances contemporaneous with the 'seizure.'"

Initially, we agree with Mr. King that, in determining whether an officer used excessive force, the availability of alternative measures is not relevant. *See Randall*, 175 Md. App. at 333–34 (The "reasonableness of a police officer's use of deadly force is not measured by what other measures the officer could have employed," and the inquiry "requires only that the seizure be objectively reasonable, not that the officer pursue the most prudent course of conduct as judged by 20/20 hindsight vision"). As the appellees point out, however, there is nothing in the court's ruling suggesting that "it engaged in an analysis of alternatives."[9]

[9] Mr. King did not argue in his brief on appeal that summary judgment was improper because, if force was justified, the force used was excessive. Instead, he argued:

> It would have been inappropriate for King's expert to opine that Woollens could have used a different takedown, used less force in slamming King's head to the ground, or not taken King to the ground at all. Simply stated, Woollens's alternatives, or lack thereof, are irrelevant under current Maryland law. The Court's reliance on Woollens's alleged lack of alternatives was improper.

In reviewing a lower court's judgment for legal error, we presume that the "trial judge knows and follows the law." *State v. Chaney*, 375 Md. 168, 181 (2003). Here, after reviewing the court's ruling, we cannot conclude that the circuit court improperly applied the law.

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO PAID BY APPELLANT.

Under these circumstances, Mr. King has waived the argument, made for the first time at oral argument, that even if the use of force was reasonable based on the threat from an intoxicated, disorderly individual, there was a dispute of fact regarding whether the amount of force used was unreasonable. *See Auto. Ins. Fund v. Baxter*, 186 Md. App. 147, 154 (2009) ("Ordinarily, we will consider as waived any issue not raised by an appellant in its opening brief.").