UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1806

September Term, 2015

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KEVIN ROBBINS

v.

STATE OF MARYLAND

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Kehoe,
Leahy,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Alpert, J.

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Filed: August 24, 2017

In the evening of November 23, 2014, police officers, responding to a call of a possible domestic disturbance at a residence in Baltimore County, arrested Kevin Robbins, appellant. Robbins was thereafter charged with second-degree assault of a law enforcement officer, second-degree assault, resisting arrest, and trespass. He was subsequently convicted, following a bench trial in the Circuit Court for Baltimore County on an agreed statement of facts, of resisting arrest, after the State agreed to enter *nolle prosequi* as to the remaining charges.[1] Upon being sentenced to time served, he noted this appeal, raising the following question for our review:

> Did the trial court err in finding that Appellant was not privileged to resist the police action in placing him in handcuffs to take him in for emergency evaluation or otherwise arresting him?

For the reasons that follow, we shall affirm.

## BACKGROUND

### Suppression Hearing

Prior to trial, Robbins filed an omnibus motion that, among other things, requested that the circuit court "suppress all evidence obtained by police authorities as the result of an illegal search and seizure." The morning of trial, a hearing was held on that motion, although by that time, its object was apparently the purportedly "illegal" warrantless arrest

[1] Although the case was originally filed in the District Court of Maryland for Baltimore County, it was transferred to the circuit court after Robbins prayed for a jury trial.

itself, and, accordingly, the court interpreted it as a "motion to dismiss based on an illegal arrest." The following background is derived from the hearing held on that motion.

During the evening of November 23, 2014, Officer Vasold,[2] of the Baltimore County Police Department, responded to a call of a domestic disturbance at a home in the North Point section of the county. According to Officer Vasold, a "female," Shenae Locklear, called and stated that "her ex-boyfriend [i.e., Robbins] was at the location," that "an argument" ensued, that "she wanted him to leave," but that he "refused" to do so.

Upon arriving at Ms. Locklear's residence, Officer Vasold found that she and Robbins "were both in the living room." After knocking at the front door and entering the house, Officer Vasold began to speak with Ms. Locklear, while Robbins "was just pacing back and forth in the living room." Ms. Locklear informed the officer that she and Robbins had been arguing and that "she wanted him to leave."

Officer Vasold "tried talking to" Robbins, who was visibly "agitated," but he did not "want to talk to the police," nor would he agree to go "outside." Officer Vasold then waited for "backup" to arrive, while continuing to interrogate Ms. Locklear. She informed the officer that she and Robbins had a child "in common," that Robbins "did not reside there," but that, after his release, one month earlier, from incarceration in an unrelated matter, he "would just come back and forth" to her residence.

[2] Officer Vasold was identified in the record only by his surname.

Shortly thereafter, Officers Heins, Cherry, and Saladino arrived,[3] whereupon Robbins "finally" agreed to "leave the house." Robbins then proceeded to his pick-up truck, which was parked "maybe two houses up" the street from Ms. Locklear's residence. Instead of driving off, however, Robbins simply "sat in the bed of the truck," in the rain, "smoking a cigarette."

Several officers "went over and spoke to him," telling him that "he needed to leave." According to Officer Vasold, Robbins replied, "fuck you, I am not leaving here." He then declared, in the officer's words, that "he wanted the police to shoot and kill him, because he didn't want to live anymore."

Because their standing orders required the police officers, upon hearing Robbins's "death wish" statement, to transport him to a hospital for an emergency psychiatric evaluation, Officer Vasold, along with the three other officers, "tried to go hands on with him." After Officer Vasold told Robbins that he was "under arrest," he and the other officers moved to subdue him. While Officer Vasold grabbed one of Robbins's hands, the other officers struggled to gain control of his other hand, which he "was swinging . . . around." As Robbins was "flailing" his free arm around, he struck Officer Heins "in the eye."

The officers ultimately subdued Robbins and placed him under arrest. He was thereafter transported to Franklin Square Hospital for an emergency psychiatric evaluation.

[3] Officer Jacob Heins was the only officer of the three who was identified in the record by his full name.

At the conclusion of the motions hearing, the court denied Robbins's "motion to dismiss based on an illegal arrest," for two reasons: first, because Robbins "had obviously shown signs to the officers that he possibly was suffering from a psychological or psychiatric deficit, which may have caused him to be a danger to himself or others," the police "had a lawful right to place him in custody"; and second, because Robbins "refused" to comply with "a lawful order . . . to leave to prevent the disturbance of the public peace," the police officers "had a lawful duty to place him under arrest."

**Bench Trial**

Later the same day, Robbins, seeking to "preserve [for appeal] the position that he took with regard to the motions hearing," reached an agreement with the State to proceed on an agreed statement of facts. In exchange, the State would enter *nolle prosequi* as to all of the charges except resisting arrest and, "[u]pon a finding of guilt," would "recommend[] jail." Trial counsel then conducted a waiver colloquy, and the circuit court ultimately accepted Robbins's waiver of jury trial as well as the waivers of his trial rights. The State then presented a statement of facts:

> It is agreed between the [State] and the defense that on November 23rd, 2014, about eleven p.m., Officer Vasold was dispatched to 244 Saint Helena Avenue in Baltimore County for a domestic call.
>
> The caller advised her sister was being assaulted by her child's father. The officer met with Shenae Locklear. She advised she and her child's father, this defendant, Kevin Robbins, standing to my right with counsel at trial table, did engage in a verbal altercation. She wanted him to leave. She indicated there was no physical altercation.

Officer Vasold attempted to speak with the defendant in regards to what took place. The defendant told the officer he did not want to talk to the police and started to pace back and forth in the living room in a state of agitation and frustration.

Officer Vasold advised the defendant he needed to leave the location, because Miss Locklear didn't want him there. The defendant continued to pace back and forth in the living room in an agitated manner, ignoring Officer Vasold's commands.

Officer Vasold was the only officer, Your Honor, at that point on the scene. He asked the defendant to step outside, so he could speak with the officer away from Miss Locklear. He said he didn't want to speak to the police.

Again, he was told he needed to leave the location. He then left the house. At this point, Your Honor, Officers Heins and Cherry had arrived as back-up. They remained outside the house. It was in a town home. They were on the porch, outside the home.

Officer Vasold spoke with Miss Locklear inside the house at that point. She advised the argument happened because she was talking to another guy. She said they have one child in common. He stays with her, but he does not live at that location. She advised he had been incarcerated the past several months and was just released the end of October.

As Officer Vasold walked out the front door, he observed this defendant, Mr. Robbins, sitting on the back of his pick-up truck. It was pouring down rain at this point. The street was one to two houses away from Miss Locklear's residence.

Officers Vasold, Heins and Cherry were all there, as well as K-9 Officer Saladino. They all approached, told him he had to leave the location. The defendant advised he wasn't leaving. He said, quote, fuck you, and he wanted the police to shoot and kill him, because he didn't want to live any more.

Based on those [statements], that the defendant was making and he was refusing to leave, the officers told him he was under arrest and attempted to take him into custody.

> Officer Vasold was able to grab his right arm and place it behind his back. He, the defendant, took his left arm, clenched into his shirt, refusing to place it behind his back.
>
> The officers attempted to grab his left arm and put it behind his back. He continued to clench his arm. During the struggle, he was taken to the ground. All of the officers ultimately had gone to the ground with the defendant. Everyone was on the ground.
>
> The struggle, while he was on the ground, he was struggling with the police. His right arm became free. While they were trying to get control of him, Officer Heins was struck across his right eye lid by the defendant's flailing arms.
>
> He was told multiple times he was under arrest and to stop resisting and put his hands behind his back. He failed to comply with those orders. He had to be struck several times to get control of him.
>
> He did at some point stop resisting and was taken into custody. He did-- Officer Heins did have a cut above his right eye. He did not require medical attention for that injury.
>
> And the defendant, an emergency petition was completed based on the [statements] the defendant was making about wanting to be killed by the police, and he was taken to Franklin Square Hospital for evaluation.
>
> All events did occur in Baltimore County. If called to testify, the officers would identify this defendant as the individual who resisted their lawful arrest.
>
> In addition, Judge Alexander,[4] after a motions hearing, did find the arrest to be lawful and that that was a lawful arrest, that the defendant has been found to have resisted, and that would be the [statement] in support of the plea.

Trial counsel then told the court:

[4] The motions hearing and the bench trial were conducted before different judges.

> Your Honor, the only additions would be, of course, whatever the testimony was over at Judge Alexander's, the arguments made by both counsel, and of course, obviously we were objecting to the resisting arrest, as to whether or not it was a lawful arrest or not.
>
> But other than that, we would submit.

Based upon that statement of facts, the circuit court found Robbins guilty of resisting arrest. Upon receiving a sentence of time served, Robbins noted this timely appeal.

## DISCUSSION

### I.

As a preliminary matter, we first determine the scope of this appeal. Robbins insists that we should examine both the correctness of the motions court's ruling, that his arrest was legal, as well as the sufficiency of the evidence presented, at the ensuing bench trial, to sustain his conviction for resisting that arrest. Although we do not doubt that Robbins intended to preserve for appeal the former question, we think that he misapprehends the nature of his claim of an illegal arrest. In fact, the motions court correctly determined that, unlike a run-of-the-mill motion to suppress evidence, Robbins's motion was, in its words, a "motion to dismiss based on an illegal arrest."

Upon the denial of that motion to dismiss and the ensuing bench trial on an agreed statement of facts, the question of whether the motions court correctly denied the motion to dismiss became moot. If, in fact, Robbins had been subjected to an illegal arrest, then he would have been entitled to an acquittal on the charge of resisting arrest. Given that he

was convicted, then it follows that, as to the legality of that arrest, the only question before us is whether there was legally sufficient evidence that that arrest was lawful.[5]

**II.**

In reviewing the sufficiency of the evidence to sustain a conviction, we must 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The elements of the common-law crime of resisting arrest, the crime of which Robbins was convicted, are: "(1) the defendant was arrested; (2) the arrest was lawful; and (3) the defendant resisted [and] refused to submit to that arrest." *Rich v. State*, 205 Md. App. 227, 247-48 (2012) (quoting *Purnell v. State*, 375 Md. 678, 695 (2003)).[6] The only element in dispute here is whether the arrest of Robbins was lawful.

**III.**

"If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).

[5] It is uncontested in this appeal that the officers' seizure of Robbins was an arrest.

[6] The language quoted in *Purnell v. State*, 375 Md. 678, 695 (2003), which, in turn, quoted *Barnhard v. State*, 325 Md. 602, 609-10 (1992), used the term "or" instead of the term "and." In *Rich v. State*, 205 Md. App. 227 (2012), Judge Irma Raker, writing for this Court, undertook an extensive analysis of Maryland decisional law and, deeming *Barnhard*'s use of the term "or" to be "aberrant," concluded that the correct formulation of this element of the offense of resisting arrest should use the term "and," because "resistance by force or threat of force is a necessary element of the offense." *Id.* at 250.

Although probable cause "is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances," the Supreme Court has stated that, nonetheless, "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt" that is "particularized with respect to the person to be searched or seized." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citations and quotations omitted). The question before us then becomes: prior to the arrest, did the police officers have probable cause to believe that Robbins had committed a crime in their presence?

We begin with the crimes, aside from resisting arrest, with which Robbins was charged: second-degree assault of a law enforcement officer, second-degree assault, and trespass. We shall further confine our analysis to trespass, because, under the circumstances of this case, it is clear that the assault charges resulted from Robbins's actions in resisting the arrest itself and, thus, shed no light on whether, prior to that moment, the police may have had probable cause to arrest him.[7]

Criminal Law Article ("CL"), § 6-403, provides in pertinent part:

> (a) A person may not enter or cross over private property or board the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership.

[7] In any event, because "one illegally arrested may use any reasonable means to effect his escape, even to the extent of using such force as is reasonably necessary," *State v. Wiegmann*, 350 Md. 585, 601 (1998) (quoting *Sugarman v. State*, 173 Md. 52, 57 (1937)), it is clear that, had the arrest of Robbins been illegal, that illegality would be a defense against the assault charges.

> (b) A person may not remain on private property including the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so.
>
> * * *
>
> (d) This section prohibits only wanton entry on private property.
>
> * * *

"'Wanton' retains its judicially determined meaning." CL § 6-401(d). We have construed "wanton," in the context of the statutory predecessor of CL § 6-401(d), to mean "characterized by extreme recklessness and utter disregard for the rights of others." *In re Jason Allen D.*, 127 Md. App. 456, 476 (1999) (citation and quotation omitted), *overruled on other grounds by In re Antoine M.*, 394 Md. 491 (2006).

According to the statement of facts, Officer Vasold, upon arriving at the residence of Shenae Locklear, was informed that she and Robbins had engaged in a "verbal altercation" and that she "wanted him to leave." The officer subsequently, but prior to making the arrest, learned from Ms. Locklear that Robbins did "not live at that location." Nonetheless, when Officer Vasold attempted to speak with Robbins, he "told the officer he did not want to talk to the police and started to pace back and forth in the living room in a state of agitation and frustration." Moreover, when the officer advised Robbins that "he needed to leave the location, because Miss Locklear didn't want him there," Robbins "continued to pace back and forth in the living room in an agitated manner, ignoring Officer Vasold's commands."

On these facts, we have little difficulty in concluding that Officer Vasold had a "reasonable ground" to believe that Robbins was remaining "on private property . . . of another," CL § 6-403(b), namely, Ms. Locklear's residence, "after having been notified by the owner . . . not to do so," *id.*, and that, moreover, he was doing so "wanton[ly]," *id.* § (d); CL § 6-401(d), that is, recklessly and with "utter disregard for the rights of others." *In re Jason Allen D.*, 127 Md. App. at 476. Accordingly, we hold that Officer Vasold had probable cause to arrest Robbins for trespass and that the ensuing arrest was, therefore, lawful.

We further note that Officer Vasold had probable cause to arrest Robbins for an additional common-law crime, with which he was not charged: obstructing and hindering. That offense comprises four elements:

> (1) A police officer engaged in the performance of a duty;
>
> (2) An act, or perhaps an omission, by the accused which obstructs or hinders the officer in the performance of that duty;
>
> (3) Knowledge by the accused of facts comprising element (1); and
>
> (4) Intent to obstruct or hinder the officer by the act or omission constituting element (2).

*Titus v. State*, 423 Md. 548, 559 (2011) (citation and quotation omitted).

After Robbins grudgingly complied with Officer Vasold's order to leave Ms. Locklear's home, he walked a short distance to his pick-up truck. Instead of driving off, however, he sat "on the back of his pick-up truck," in "pouring[-]down rain," and, when apprised by four police officers that he must leave the vicinity, he refused to do so, replying,

"fuck you" and that "he wanted the police to shoot and kill him, because he didn't want to live any more."

Under the circumstances, the police officers were "engaged in the performance of a duty"—indeed, given the volatility exhibited by Robbins, the officers would have been remiss had they departed without ensuring that Robbins had left the scene, as otherwise, it takes little imagination to imagine that he could return to Ms. Locklear's home and escalate the situation. *See Titus*, 423 Md. at 560 (observing that the test for determining whether a police officer was performing a duty is "whether the officer is acting in good faith within the scope of his [or her] duties as an officer or is pursuing a personal intent or frolic of his [or her] own") (citation and quotation omitted).

Furthermore, in refusing to comply with the officers' lawful order, Robbins was "obstruct[ing] or hinder[ing] the officer[s] in the performance of that duty." *Id.* at 559. And, under the circumstances, it was certainly reasonable for the officers to infer that Robbins knew that the officers were "engaged in the performance of a duty" and that he intended to "obstruct or hinder the officer[s] by" ignoring their command. *Id.* We therefore conclude that one or more of the arresting officers had probable cause to believe that Robbins was obstructing or hindering.

Although the circuit court did not rely upon either of these grounds in upholding the arrest, we may rely upon them in determining whether the evidence was sufficient to sustain Robbins's conviction for resisting arrest, and we do so. *See Grant v. State*, 299 Md. 47, 53 n.3 (1984) (observing that an "appellee, in seeking an affirmance, is ordinarily entitled to assert any ground shown by the record for upholding the trial court's decision,

even though the ground was not relied on by the trial court and was perhaps not raised in the trial court by the parties"); *Robeson v. State*, 285 Md. 498, 502 (1979), *cert. denied*, 444 U.S. 1021 (1980) (observing "that where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm").[8]

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.**

[8] We note, in passing, an anomaly in Maryland law. It is clear that one of the reasons the officers actually relied upon in arresting Robbins was because he had uttered suicidal remarks in their presence. Under Health-General Article, §§ 10-622 and 10-624, the police officers were authorized to effect an involuntary seizure of Robbins for the limited purpose of transporting him to a nearby hospital for an emergency psychiatric evaluation. Because such a seizure is not an "arrest," as it is not based upon probable cause to believe that a crime was committed, *see* Criminal Procedure Article ("CP"), § 2-202, then it would seem that, although Robbins resisted that seizure, he was not thereby resisting an "arrest." Given that the officers acted lawfully in seizing him, however, it would appear that Robbins, in resisting that seizure, committed an assault against one of the officers (Officer Heins). In fact, he was charged with two counts of second-degree assault, but those charges were nolle prossed.