Circuit Court for Cecil County
Case No. C-07-CR-19-000726

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 644

September Term, 2022

ALAINA JEAN MARIE ROBBINS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: April 17, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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

Just because you can
Doesn't mean you should
Just because you can
Doesn't mean you should
Just because you can
Doesn't mean you should
If it don't do nobody
Don't do nobody no good[1]

This is Alaina Jean Marie Robbins's second appeal from convictions arising from incidents occurring on April 16, 2019. As we explained the first time the case was here, *Robbins v. State*, No. 651, Sept. Term 2020 (App. Ct. Md. filed Sept. 13, 2021) (unreported opinion), Ms. Robbins, while suffering from "an acute episode of mental health crisis," "took a knife and rifle, and ran out into a Cecil County roadway." *Id.*, slip op. at 1. After the situation was resolved, she was taken to the Cecil County Sheriff's Office, detained there for about twenty-five minutes, then transported to the hospital. The Sheriffs defused the situation in the roadway well and nobody was hurt or threatened.

While inside the Sheriff's Office, officers alleged that Ms. Robbins—a small woman who, again, was in mental health crisis—assaulted them as they moved her through the Sheriff's Office and to the hospital. She was charged with thirty-five counts (not a typo) including assault, reckless endangerment, malicious destruction of property, illegal possession of a rifle, attempted escape, and possession of controlled paraphernalia. She was convicted of ten counts and sentenced to concurrent terms of fifteen years for each count of first-degree assault and ten years for each count of second-degree assault. And in

[1] Rachelle Garniez, "Just Because You Can," performed by Catherine Russell, from *Inside This Heart of Mine* (World Village, 2010).

her first appeal, we reversed the convictions—we reversed the four counts of first-degree assault on the ground that the evidence was insufficient as a matter of law to support them, and we reversed the rest, and remanded for further proceedings, because the State withheld the surveillance video that captured her time in the Sheriff's Office, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

The State tried Ms. Robbins again, and after a one-day bench trial, she was convicted of eight counts: resisting arrest, one count of second-degree assault against the arresting officer on the roadway, five counts of second-degree assault that occurred in the Sheriff's Office against five individual officers, and malicious destruction of property for damage to the doorframe of a police cruiser during her transport to the hospital. She was sentenced to concurrent terms of time served for resisting arrest and second-degree assault on the roadway. For the second-degree assault convictions inside the Sheriff's Office, she received five five-year sentences, to run *consecutively*, and all suspended, plus a five-year term of probation.

In this appeal, Ms. Robbins asks us to reverse her convictions again for three reasons: *first*, because the trial court erred in accepting her jury trial waiver; *second*, because the evidence was insufficient to sustain her convictions for resisting arrest and second-degree assault; and *third*, because the trial court erred in returning a guilty verdict on both resisting arrest and second-degree assault against her arresting officer on the roadway. For the reasons we explain, we are constrained to affirm the court's acceptance of Ms. Robbins's jury trial waiver and to affirm the convictions for resisting arrest in the

roadway and all five counts of second-degree assault at the Sheriff's Office. We vacate Ms. Robbins's conviction for second-degree assault against the officer during her arrest on the roadway because it should have been merged into the resisting arrest conviction.

But although the result after her second trial is better for Ms. Robbins than it was after the first, that doesn't mean that the final result here is humane or good. It isn't. This case was grossly overcharged and over-prosecuted from the start, and the (admittedly legal) convictions and sentences that now hang over Ms. Robbins effectively criminalized her mental health crisis for no legitimate public safety purpose. Once the situation was defused—as it was, quickly and effectively—the public safety focus should have been on getting her help, not punishing the minor impacts the officers sustained in fulfilling their duties. We are affirming the convictions and sentences because the law requires us to do so, not because we view them as the right outcome.

I. BACKGROUND

A. The First Trial And Appeal.

The context of this appeal warrants a brief review of Ms. Robbins's first trial and our unreported opinion in her first appeal.

A few years before the incidents at issue, Ms. Robbins was the victim of a brutal sexual assault that involved a gun. That assault left her with post-traumatic stress syndrome (PTSD), and it triggered the mental health crisis underlying the events of April 16, 2019:

> On April 16, 2019, around 3:00 pm, Ms. Robbins was cleaning the house she shared with a friend when she found a gun hidden in a stack of blankets. This discovery triggered her PTSD, and

> she instantly wanted to remove it from the house. She picked up the gun and ran into the road.

Robbins, slip op. at 2.

Again, the deputies arrived and persuaded Ms. Robbins quickly to drop her weapons. But as she was being arrested in the roadway, Ms. Robbins believed that the deputies weren't actually police; she "became combative, and the deputies had to restrain her after she started kicking." *Id.* at 3. Once at the Sheriff's Office, Ms. Robbins testified that she felt trapped and thought the deputies were going to kill her. *Id.* at 4. Based on her behavior in the Sheriff's Office cell, the deputies "became concerned for her safety and welfare" and decided to transport her to the hospital. *Id.* And as they attempted to remove Ms. Robbins from her cell and take her to the hospital, she "resisted having handcuffs put on her again." *Id.* at 5. She had a syringe in her hand, *id.*, and "yelled that she had hepatitis and AIDS," *id.* at 6.

Ms. Robbins was indicted on thirty-five counts of first-degree and second-degree assault, reckless endangerment, use of a firearm on the commission of a crime of violence, resisting arrest, malicious destruction of property, unlawfully possessing a shotgun, attempted second-degree escape, and possession of drug paraphernalia. After a two-day jury trial on January 21 and 22, 2020,[2] Ms. Robbins was convicted of ten charges—four counts of first-degree assault, three counts of second-degree assault, resisting arrest,

[2] On June 10, 2019, the circuit court ordered a competency evaluation to be performed on Ms. Robbins by the Department of Health, which found Ms. Robbins competent to stand trial and ineligible to plead not criminally responsible.

attempted escape, and malicious destruction of property. Her convictions "were grounded entirely in . . . trial testimony." *Id.* at 18. Then, ten days after trial, the State produced surveillance video of the events that occurred at the Sheriff's Office, after claiming all along that the video didn't exist. Ms. Robbins moved for a new trial, but the circuit court denied the motion.

In her first appeal, we reversed her first-degree assault convictions for legal insufficiency, reversed her remaining convictions because of the *Brady* violation, and remanded the case for further proceedings. *Id.* at 20. We held that "Ms. Robbins's first-degree assault convictions were based solely on the testimony and credibility of the police officers, and the testimony didn't establish harm or intent," *id.* at 9, not least because the State conceded that none of the officers involved suffered any serious physical injury. As a result, we held, the evidence was insufficient to allow "a rational juror to have reached the conclusion that Ms. Robbins intended to cause the officers serious physical injury." *Id.* at 14.

We then reversed her remaining convictions because the video evidence was *Brady* material that the State had failed to produce. *Id.* at 14. We held as well that the "video would have been favorable to Ms. Robbins":

> [I]t is not our role to weigh the evidence, but we struggle to square the officers' description of events with the video we watched; it may be that a new jury would reach the same conclusion after viewing the video as the first one did without seeing it, but we cannot say with any confidence that that would have to be the case. And to the extent that the video cast doubt on the credibility of the officers' testimony about the events it captured, as it absolutely could, a jury readily could

> doubt the officers' testimony on other matters as well. We hold, therefore, that the prosecutors violated *Brady* by failing to produce the Sheriff's Office video to defense counsel before trial.

Id. at 18. Because her second-degree assault, resisting arrest, attempted escape, and malicious destruction of property convictions relied solely on officer testimony, we reversed all of them given the impeachment value of the surveillance video. *Id.* at 18 n.5.

B. The Second Trial.

Although the whole situation flowed from an acute episode of mental health crisis, and despite the questions about whether the deputies suffered any discernible injuries, the State elected nevertheless to re-try Ms. Robbins on the remaining charges (our insufficiency holding precluded re-trial for first-degree assault). The case was set to be held a second time before the same trial judge. But on January 19, 2022, Ms. Robbins filed a motion for recusal "in order that [she] might get a fresh start with a new tribunal who could hear the case anew." Her case was reassigned to a new trial judge.

At a May 2, 2022 pretrial hearing, the court found that Ms. Robbins waived her right to a jury trial and her bench trial proceeded the next day. The State called seven officers to testify. This time, each officer took pains to describe their attempts to arrest or detain Ms. Robbins as a "struggle," and to characterize her as "combative" and "actively resisting[.]" And in contrast to their testimony at the first trial, each described minor injuries that they discovered after the incidents. This time around, they claimed to have suffered scratches and abrasions to their arms and "puncture[s]" or "laceration[s] to their hands," and two officers claimed that Ms. Robbins spit on them. The State also offered six

exhibits, all admitted without objection: photographs of objects recovered from Ms. Robbins at the Sheriff's Office, photographs of minor injuries to one deputy's forearms and hand, and the Sheriff's Office video covering the time Ms. Robbins was there.

Cross-examination by Ms. Robbins's counsel about the Sheriff's Office assault charges focused largely on whether the needle part of the syringe was ever recovered (it wasn't), whether the officers ever lost control over Ms. Robbins's hands during their attempt to handcuff her (they didn't), how long it took to handcuff her, and whether she was handcuffed before officers realized that she held a syringe (the testimony was conflicting). During Corporal Joseph Brewer's cross-examination, he had difficulty remembering whether Ms. Robbins was handcuffed when the syringe was discovered, so the State asked the court to take judicial notice of the trial transcripts from Ms. Robbins's first trial. Counsel for Ms. Robbins objected, arguing "I don't think that it's appropriate. I think if there's specific questions, we're in a new trial, ask the questions." The court agreed, ruling that "the decision to be made should be based upon the evidence that's elicited today," and the trial transcripts were excluded.

At the close of the State's case, Ms. Robbins's counsel conceded there was enough evidence to proceed with the charge for second-degree assault on the arresting officer, Deputy Caleb Griffitts, on the roadway, malicious destruction of property, and "potentially" resisting arrest, but argued for judgment of acquittal on the remaining counts. The trial court granted Ms. Robbins's motion for judgment of acquittal on some counts, leaving only the "straight second degree assault" charges, resisting arrest, attempted

escape, and malicious destruction of property.

Ms. Robbins didn't put on any evidence at trial, although she offered (and the court admitted) the verdict sheet from the first trial to show the counts on which she was acquitted during the first trial.

In closing, the State argued that as to resisting arrest, Ms. Robbins reasonably understood that she was under arrest and that she kicked Deputy Griffitts in the chest when officers attempted to put her in the back of the patrol vehicle. The State argued as to each of the six counts of second-degree assault that although the needle part of the syringe was never found, "whatever remnant of the needle was on that syringe was enough to break skin" on two officers, and that she fought with "such force" that she intentionally assaulted or at least committed "reckless act[s] that result[ed] in a battery."

Ms. Robbins's counsel countered that "offensive behavior . . . is not a crime," adding that "[t]he question is, did in fact, in this case, did she . . . intend to assault these officers[?]" Counsel adopted his arguments from his motions for judgment of acquittal (where he conceded three counts), adding only that the State didn't establish that the actions underlying the resisting arrest charges occurred in Cecil County. He then argued, based on the video, that "[i]t is clear that [officers] immediately immobilize[d] both of her arms. It is clear that they fairly quickly g[o]t her handcuffed." Since Ms. Robbins was immobilized, he argued, she couldn't commit an assault. Lastly, he argued that "[n]one of those officers testified that in fact, their injuries were a result of something that she did" and it is speculation that Ms. Robbins intended to assault or injure the officers.

The court then found Ms. Robbins guilty on eight counts—one count of second-degree assault against Deputy Griffitts on the roadway; resisting arrest on the roadway; malicious destruction of property; and five counts of second-degree assault in the Sheriff's Office against Deputy Griffitts, Sergeant Michael Kalinsky, Corporal Brewer, Detective Charles Dix, and Deputy Max Vivino. The court acquitted her of escape. The trial court then sentenced Ms. Robbins to concurrent terms of time-served for resisting arrest and second-degree assault against Deputy Griffitts on the roadway. For malicious destruction of property, she received a sixty-day sentence, concurrent and all suspended. And for the second-degree assault convictions inside the Sheriff's Office, she received five five-year sentences, to run *consecutively*, all suspended, plus a five-year term of probation.

This timely appeal followed. Additional facts are discussed below.

II. DISCUSSION

This appeal presents three issues:[3] *first*, whether the trial court erred when it

[3] Ms. Robbins phrased her Questions Presented as follows:

> 1. Did the trial court err in accepting Ms. Robbins' jury trial waiver without ensuring that her waiver was made voluntarily?
>
> 2. Is the evidence sufficient to sustain the convictions for resisting arrest and second-degree assault against Deputy Griffitts on the roadway?
>
> 3. Is the evidence sufficient to sustain the five convictions for second-degree assault in the Cecil County Sheriff's Office?
>
> 4. Did the trial court err in returning a guilty verdict on both resisting arrest and second-degree assault against Deputy

Continued . . .

accepted Ms. Robbins's jury waiver; *second*, whether there was sufficient evidence that she had the requisite mental state to support her convictions; and *third*, whether the trial court erred in convicting Ms. Robbins of both resisting arrest and second-degree assault against Deputy Griffitts during the incident in the roadway. We affirm the convictions except for the second-degree assault on the roadway, which we vacate because it should have been merged into the resisting arrest conviction.

A. The Circuit Court Did Not Abuse Its Discretion When It Accepted Ms. Robbins's Waiver Of A Jury Trial.[4]

The *first* issue Ms. Robbins raises on appeal involves the voluntariness of her jury trial waiver. She argues that three factual triggers required an on-the-record inquiry by the

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Griffitts?

The State phrased its Questions Presented as follows:

> 1. Did the circuit court properly accept Robbins's waiver of a jury trial?
>
> 2. To the extent preserved, is the evidence legally sufficient to sustain Robbins's convictions for second-degree assault and resisting arrest?
>
> 3. Should this Court merge Robbins's sentence for second-degree assault of Deputy Griffitts at Old Elk Neck Road with her sentence for resisting arrest?

[4] Ms. Robbins concedes that she failed to raise the issue in the circuit court, but we agree with her that insofar as she claims a constitutional violation of her right to a jury trial (rather than a violation of Maryland Rule 4-246, which must be preserved), a contemporaneous objection was not required to preserve her claim. *See Hammond v. State*, 257 Md. App. 99, 121 (2023) ("Unlike a claim that the procedure in Rule 4-246(b) was not followed, a claim of a constitutional violation of the right to a jury trial does not require an objection to preserve the claim." (*citing Biddle v. State*, 40 Md. App. 399, 407 (1978)).

trial court into whether she was waiving a jury voluntarily: (1) "when defense counsel spoke as though the decision whether to waive the right to a jury trial was his to make"; (2) Ms. Robbins's counsel "stating, in open court, that Ms. Robbins 'need[ed]' to waive her right to a jury trial" because "defense counsel placed Ms. Robbins in a position of very little agency over her decision and also required that she part ways with the advice of her attorney if she did wish to elect a jury trial"; and (3) "the fact that Ms. Robbins suffers from mental illness." The State contends that Ms. Robbins waived her right to a jury voluntarily and that "[t]here is no indication in the record that, at the time of her waiver, [Ms.] Robbins was suffering from a mental health episode that impaired her ability to make a voluntary choice." We agree with the State that the record reveals that Ms. Robbins waived her right to a jury trial knowingly and voluntarily.

The right to a jury trial is protected by the U.S. Constitution and the Maryland Declaration of Rights. U.S. Const. amend VI; Md. Const. Decl. of Rts. Art. 21, 24. To satisfy due process standards, "the waiver of a jury trial, a fundamental right, must constitute 'an intentional relinquishment or abandonment of a known right or privilege.'" *Robinson v. State*, 67 Md. App. 445, 454 (1986) (*quoting Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). There is no requirement that the circuit court "explicitly . . . ask a defendant whether his or her waiver decision was induced or coerced, unless there appears some factual trigger on the record, which brings into legitimate question voluntariness." *Kang v. State*, 393 Md. 97, 110 (2006); *see also Aguilera v. State*, 193 Md. App. 426, 442 (2010) ("an explicit inquiry regarding the voluntariness of the waiver is not required, absent a

factual trigger"). "'Whether there is an intelligent, competent waiver must depend on the unique facts and circumstances of each case.'" *Hammond v. State*, 257 Md. App. 99, 121 (2023) (*quoting Valiton v. State*, 119 Md. App. 139, 148 (1998)).

The day before trial, the parties appeared for a pretrial hearing that included the following discussion:

> [COUNSEL FOR MS. ROBBINS]: We are not even close to resolving this. I indicated to [the prosecutor] that I was going to be waiving a jury this afternoon. This will be a court trial.
>
> THE COURT: Okay.
>
> [COUNSEL FOR MS. ROBBINS]: And we will do that here in just a second.
>
> THE COURT: Okay.
>
> * * *
>
> [COUNSEL FOR MS. ROBBINS]: Ms. Robbins?
>
> [MS. ROBBINS]: Yes?
>
> [COUNSEL FOR MS. ROBBINS]: One thing we need to go over here this afternoon, before we start trial tomorrow. There are two different ways that you can try this case if you plead not guilty. You can do a court trial, which I have indicated to Judge Davis that we are going to do. But you also have a right to a jury trial. And I need to explain that to you on the record because you need to waive that right. I am going to suggest to you that you waive that right.
>
> [MS. ROBBINS]: Okay.
>
> [COUNSEL FOR MS. ROBBINS]: So a jury consists of 12 people . . . selected [from] the motor vehicle rolls here in Cecil County. You and I could participate in the selection along with the judge and along with the State's attorney. We could ask them questions in order to attempt to try and find a fair and impartial jury.
>
> Those 12 people, in order to convict you, would have to agree unanimously, beyond a reasonable doubt, that you were guilty of something before they could find you guilty. In other words,

> the verdict has to be 12 to nothing. It can't be 11 to 1, 10 to 2. It has to be 12 to nothing.
>
> Do you understand what a jury is and what their function is?
>
> [MS. ROBBINS]: Yes, I do.
>
> [COUNSEL FOR MS. ROBBINS]: And are you willing to waive your right to be tried by a jury and have your case tried by Judge Davis tomorrow?
>
> [MS. ROBBINS]: Yes.
>
> THE COURT: All right. And it doesn't change the standard of proof or the State's—the State still has to meet the same burden. It is just as opposed to 12 people going back there and talking about it and figuring it all out, it is going to be one person who will hear it. And then 12 people having to agree, usually, I can make my own mind up.
>
> [MS. ROBBINS]: Right.
>
> THE COURT: But 12 people would have to, like [defense counsel] said, all—
>
> [MS. ROBBINS]: Right.
>
> THE COURT:—agree as one way.
>
> [MS. ROBBINS]: Okay.
>
> THE COURT: All right. So with that understanding, the Court will note the waiver of a jury. I will advise the jury clerk as to the jury being waived. . . .

Ms. Robbins argues that the on-the-record statements by her trial counsel improperly put her "in a position of very little agency over her decision and also required that she part ways with the advice of her attorney if she did wish to elect a jury trial." However, "[w]e may presume, when an attorney states in court that the defendant wants to waive the right to a jury trial, that the attorney has advised of the advantages and disadvantages of having the case evaluated by a judge instead of a jury." *Hammond*, 257 Md. App. at 123 (*citing Kang*, 163 Md. App. at 36). Rather than undermining the circuit

court's conclusion that Ms. Robbins waived her right to a jury trial voluntarily, defense counsel's statements demonstrate that Ms. Robbins had been advised of her rights and had discussed the strategic advantages of waiver with counsel. This was Ms. Robbins's second trial—the record reveals that she insisted on a different trial judge for her new trial, and other statements made by her counsel on the record demonstrate the understanding that the right belonged to Ms. Robbins. For example, her counsel informed her that she "also ha[d] a right to a jury trial. And I need to explain that to you on the record because you need to waive that right." Taken in context, we don't read defense counsel's statements, even if somewhat imprecise, as triggering an inquiry into whether Ms. Robbins waived her jury trial rights voluntarily.

As to Ms. Robbins's mental health history, a general assertion that she has one, without more, fails as well to rise to the level of a "factual trigger." In *Hammond,* the defendant argued that the court should have inquired whether he was under the influence of drugs or alcohol because he was charged with drug offenses and had a criminal history of drug offenses. *Id.* We held that "[p]rior involvement in drug-related offenses does not, by itself, constitute a factual trigger requiring a specific inquiry into the voluntariness of the waiver." *Id.* at 124. Similarly, a mental health diagnosis, including history of "an *acute* episode of mental health crisis" giving rise to the charges at issue, don't constitute a factual trigger requiring a specific inquiry into the voluntariness of the waiver three years after the acute episode. *Robbins*, slip op. at 1 (emphasis added). We defer instead to the court's observations of Ms. Robbins's "demeanor, tone, facial expressions, gestures, or other

indicia" of voluntariness. *Hammond*, 257 Md. App. at 123 (citation omitted). Her answers at the pre-trial hearing disclosed no sign of uncertainty about her waiver decision, and her responses didn't trigger further inquiry into her mental health status at the time of trial. On the contrary, the court stated on the record that she appeared to be "doing well." On this record, we defer to the trial court's ability to observe Ms. Robbins and find no error in its decision to accept Ms. Robbins's jury trial waiver.

B. There Was Sufficient Evidence To Sustain Ms. Robbins's Convictions For Resisting Arrest And Second-Degree Assault.

Ms. Robbins argues *second* that the evidence presented by the State at trial was insufficient to support her convictions for resisting arrest and second-degree assault because it failed to support a finding "that Ms. Robbins acted with the requisite intent . . . while she was on the roadway" and "that Ms. Robbins had the requisite intent to cause an offensive physical contact or physical harm to any of the officers" at the Sheriff's Office. Viewing the limited evidence before the court in this second trial in the light most favorable to the State, as we must at this posture, we are constrained to affirm the convictions.

Bench trials are governed by Maryland Rule 8-131(c), which provides that "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." We view the evidence in the light most favorable to the State, the prevailing party here. *Thomas v. State*, 143 Md. App. 97, 121 (2002). "We are mindful that, in an appeal based upon insufficiency of evidence, it is not the function

of the appellate court to undertake a review of the record that would amount to a retrial of the case." *State v. Pagotto*, 361 Md. 528, 533 (2000) (*citing State v. Albrecht*, 336 Md. 475, 478 (1994)). And thus, we "determine whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Fuentes v. State*, 454 Md. 296, 307 (2017) (*quoting McKenzie v. State*, 407 Md. 120, 136 (2008)); *see also Rivera v. State*, 248 Md. App. 170, 178 (2020).

1. Resisting arrest on the roadway.[5]

To uphold the conviction for resisting arrest, the State must have produced (and the court admitted) evidence that could support a jury finding that a law enforcement officer arrested or attempted to arrest Ms. Robbins, that Ms. Robbins knew that a law enforcement officer arrested her or was attempting to arrest her, that Ms. Robbins intentionally refused to submit to the arrest and resisted the arrest by force or threat of force, and that the arrest was lawful. Md. Crim. Pattern Jury Instructions ("MPJI-Cr") 4:27.1 (2022); *see also* Md. Code (2002, 2021 Repl. Vol.), § 9-408 of the Criminal Law Article ("CR"). That standard was met here.

At trial, Deputy Ryan Stewart testified that he was off duty when he happened upon Ms. Robbins in the roadway while driving fellow off-duty officer Corporal Johnathan Pristash home. He testified that he saw Ms. Robbins wielding a rifle in the street, and at

[5] Ms. Robbins also challenges the sufficiency of the evidence to support her conviction for second-degree assault against Deputy Griffitts on the roadway. But because, as we discuss later, that conviction merges into her resisting arrest conviction, *see* Section II.C below, we need only determine whether the evidence regarding the roadway incident is sufficient for resisting arrest.

first, that Ms. Robbins didn't comply with his command to drop the gun. Once he gave commands over the loudspeaker, Ms. Robbins "dropped the firearm and started walking towards [them] with her hands in the air." Upon being ordered, Ms. Robbins dropped to her knees, but "drew a knife from her right pocket." She then complied in dropping the knife, but pulled away and resisted being handcuffed, not believing they were really officers.

Deputy Stewart stated that upon being detained, "[Ms. Robbins] was combative and was kicking and thrashing around." He added that "Ms. Robbins was pulling at [his] clothing and scratching [his] arms as she was trying to free herself from custody." Ms. Robbins appeared "upset at times especially when she was placed into custody," and she said that she didn't believe he and Corporal Pristash were really cops. Both officers were off duty and wearing plain clothes, but Deputy Stewart identified himself as an officer "[m]ultiple times," showed Ms. Robbins his badge, and drove a marked patrol vehicle with "Sheriff" on the sides, hood, and rear of the vehicle.

Deputy Griffitts testified that while placing Ms. Robbins into the patrol car during her arrest in the roadway, "she was very combative, at which time when we were struggling to get her in the car, she used her legs as leverage to prevent us from getting [her] in the car. I was then kicked in the chest by [Ms. Robbins]." He said that they were able to get her in leg shackles to "minimize the chance of an assault."

Detective Charles Dix also responded to the call at Old Elk Neck Road while he was field training Deputy Griffitts. He assisted in Ms. Robbins's arrest, and when they

"attempted to put her in the back of the vehicle . . . , she was extremely irate and combative the entire time . . . ." He stated that "she continued to use her feet to avoid us placing her" in the back of the patrol vehicle, so they placed her in leg shackles. Detective Dix stated, "After getting the leg shackles and a struggle, we were eventually successful in putting her in."

Corporal Pristash, Sergeant Kalinsky, and Corporal Joseph Brewer all corroborated the arresting officers' account of Ms. Robbins's behavior during her arrest. Corporal Pristash stated that "as she was placed in handcuffs we began to bring her back to [Deputy] Stewart's patrol vehicle, . . . she began to struggle with us, and we just had to place her on the ground and just hold her down on the ground until . . . uniform[ed] personnel could get there." Corporal Brewer "observed Ms. Robbins being extremely irate and combative. She was kicking [and] flailing" at the scene of her arrest while officers tried to get her into the patrol vehicle. Sergeant Kalinsky stated that when he arrived at the scene "[Ms. Robbins] had already been cuffed, but she was actively resisting, yelling and screaming."

2. Second-degree assault against Deputy Griffitts, Sergeant Kalinsky, Corporal Brewer, Detective Dix, and Deputy Vivino at the Sheriff's Office.

Second-degree assault is defined as "causing offensive physical contact to another person." MPJI-Cr 4:01; *Lamb v. State*, 93 Md. App. 422, 442 (1992) (discussing the definition of assault and citing MPJI-Cr 4:01 with approval). The State must prove that Ms. Robbins caused offensive physical contact or physical harm to each officer-victim, that the contact was the result of an intentional or reckless act and was not accidental, and that the

contact was not consensual. MPJI-Cr 4:01. Under the pattern jury instruction, "'[r]eckless act' means conduct that, under all circumstances, shows a conscious disregard of the consequences to other people and is a gross departure from the standard of conduct that a law-abiding person would observe." *See also Albrecht*, 336 Md. at 501; *Duckworth v. State*, 323 Md. 532, 540–44 (1991) (recognizing unintended battery).

Second-degree assault is a general intent crime, meaning that the State needed only to prove that Ms. Robbins intended to do the immediate act, without regard to conscious purpose or design of accomplishing a specific or more remote result. *See generally Genies v. State*, 426 Md. 148, 159 (2012) (explaining that general criminal intent is "simply the intent to do an immediate act" (*quoting Chow v. State*, 393 Md. 431, 464 (2006)); *Lamb*, 93 Md. App. at 455 ("An unintended battery . . . requires only a general intent to do 1) the criminally negligent act or 2) the unlawful act, with no thought being necessary as to the consequences of such act."). So unlike the first-degree assault charges we reversed after the first trial, which required proof that she intentionally caused or attempted to cause serious physical injury to the deputies, *see* CR § 3-202(b)(1), the State needed only to prove this time that Ms. Robbins intended to cause an offensive, non-consented physical contact. That's a much lower burden (notwithstanding the much longer sentence that resulted), and it was met here, if barely.

Sergeant Kalinsky, the supervising officer who made the decision to transport Ms. Robbins to the hospital, testified that Ms. Robbins's behavior showed that she needed hospitalization "because she posed a danger to herself at that point in the cell." He referred

specifically to her taking her bra off and rubbing her wrists on the frame of the cell door. At this point in Sergeant Kalinsky's testimony, the surveillance video of Ms. Robbins in the Sheriff's Office was played for the court. The video simultaneously shows views from several cameras, but the relevant viewpoint showed the cell in which Ms. Robbins was detained as well as the hallway in front of the cell. Ms. Robbins's behavior in the cell included pacing, banging on the cell door, removing items from her bra and pockets, and disrobing. Once she was removed forcibly from the cell by officers and brought into the hallway, the view is obscured by poor lighting and the five officers standing over Ms. Robbins. The video doesn't contain any audio, although she appears to be shouting for officers to open the door.

Sergeant Kalinsky testified that as he opened the door to Ms. Robbins's cell, "[i]nitially she starts to come out of the cell, like to push towards the deputies. And then she stops and pulls back to go back into the cell." Once she was pulled out into the hallway, Sergeant Kalinsky testified that the officers tried "to turn her onto her stomach to be able to handcuff her and she was actively resisting . . . at that point, trying to pull her hands away and basically flailing on the floor making it exceedingly difficult to try and get her onto her stomach to get the cuffs on." He stated that he held one of her wrists "as we continued to struggle with her on the floor" at which point Corporal Brewer said, "[W]atch out she has CDS in her vagina." "We continued struggling and at some point," he believed, Deputy Dix "yelled out there was a syringe. Eventually all of us were able to get her arms behind her back and get the handcuffs on her." Ms. Robbins also yelled that she had AIDS

and hepatitis. He testified that as a result of the struggle to handcuff and transport Ms. Robbins he "had a puncture" on his "lower right wrist."

On cross, Sergeant Kalinsky admitted that he never actually saw a needle, only the barrel, that a needle was never recovered to his knowledge, and that he threw away the gloves he wore that day that he claims were torn. Sergeant Kalinsky confirmed that he didn't let go of Ms. Robbins's wrist during the struggle to put handcuffs on her.

Deputy Max Vivino stated that once Ms. Robbins's cell door was open she "came towards us in like an aggressive manner." He recalled "trying to restrain the feet or legs" and the officers struggling to secure Ms. Robbins's hands behind her back. He remembered "a deputy yelling that she had a needle" and observed "a hypodermic syringe" in her hand. He saw "the clear part of it" that was sticking out of her hand, but he could not see the needle part and assumed "her hand was wrapped around the syringe needle." He stated that she was handcuffed eventually. He was not wearing gloves and stated, "I remember looking down at my hands and I had a puncture in my right pinky on the inside." Deputy Vivino confirmed that there was no finding that he contracted AIDS or hepatitis as a result of the incident.

Detective Dix testified that he helped put Ms. Robbins into the Sheriff's Office holding cell and then removed her from the cell for transport to the hospital. Upon removing her from the cell, he "grabbed her left arm and tried to gain control" to put her back in handcuffs and leg shackles. He described a "severe struggle" to subdue her, including that "Corporal Brewer scream[ed] needle." In resisting, she kicked her feet and

threw her arms. He recognized a "hypodermic syringe in her left hand" which he "had to remove one finger at a time to try to get the needle out of her hands . . . ." Deputy Griffitts assisted in grabbing the syringe and removing it from her left hand. The officers eventually got Ms. Robbins in handcuffs and Detective Dix noticed scratch marks on his right forearm. Detective Dix testified that he maintained a hold on Ms. Robbins's left wrist until handcuffs were put on, and that a needle wasn't observed until after she was placed in cuffs.

Corporal Brewer stated that from the vehicle to the Sheriff's Office holding cell, "[Ms. Robbins] continued in her combative nature, kicking, flailing, screaming, a lot of profanity at each" of the officers and described her resistance to being transported from the Sheriff's Office to the hospital. He stated that he stood at the front of her holding cell door and when it opened, "Ms. Robbins came out very quickly." At that point "she tried to retreat back into the cell" but he "grab[bed] one of her arms to help extract her from the cell." "She continued to flail, kick, scream" and officers "were able to get her to the . . . ground inside the hallway . . . ." Because she was naked, it was "difficult" for officers "to gain control of her initially." He stated that he "noticed that she had a hypodermic syringe in her left hand" that was being held by another officer and that "she had something inside her vaginal area." When Ms. Robbins arrived at the hospital, Corporal Brewer stated that when he opened her rear passenger door, Ms. Robbins spit on his "facial area" and shoulder. He stated also that he "was kicked a few times . . . in the abdominal area while inside the holding cell" area.

Deputy Griffitts testified that he was also involved in the Sheriff's Office incident.

He remembered hearing that "she had a needle in hand" and that Detective Dix "was attempting to pry it out of her hand," at which time he observed it, grabbed it, and threw it away from everybody. As a result of the incident, Deputy Griffitts testified that he suffered "a minor laceration" on the lower palm of his left hand, along with scratches on his forearm and inner elbow. He "was also spit on at Union Hospital" on the arm.

The State offered photographs of money recovered from Ms. Robbins, a photo of the syringe recovered from the Sherriff's Office hallway (with no visible needle), a photograph of Deputy Griffitts's hand showing the "minor laceration on the palm area" not visible in the photograph, Deputy Griffitts's right arm showing "a small abrasion," and a photo of his opposite arm showing a scratch to his inner forearm. The surveillance video from inside the Sheriff's Office was also admitted without objection.

3. A reasonable fact finder could find that Ms. Robbins had the requisite intent.

As to both the roadway and the Sheriff's Office incidents, Ms. Robbins argues that the "uncontradicted evidence from the State's own witnesses showed only that Ms. Robbins was experiencing an acute mental health episode and was therefore unable to formulate any intent whatsoever." The State counters that "reasonable inferences . . . can be drawn from [Ms.] Robbins's conduct" that she intentionally refused to submit to the arrest, and adds that "there was no evidence before the fact finder that [Ms.] Robbins was 'experiencing an acute mental health episode . . . .'"

This latter point is important. For reasons we cannot discern, defense counsel put on no evidence of Ms. Robbins's mental health crisis during the second trial *and*—

successfully—*opposed* the admission of the mental health evidence admitted during the first trial. In her briefs in this appeal, Ms. Robbins tries to rely on evidence of her mental state that was not before the court in this bench trial, even citing to her testimony in the first trial that her second trial counsel kept out. This left the second trial court, the one we're reviewing now, to draw inferences only from the testimony about her *conduct*. And without the broader mental state context, we cannot dispute that the evidence of Ms. Robbins's conduct *at this trial* could support reasonable inferences that she intended to make non-consented contact with the officers. Again, we cannot understand why counsel fought the admission of evidence from the first trial and then declined to put on any new evidence of Ms. Robbins's mental health crisis. Those decisions left out critical context and, importantly, explanations for Ms. Robbins's actions that challenged the inferences the State sought to draw and left the trial court an unobstructed and, to put it bluntly, skewed view of the deputies' perceptions and conclusions.

Ms. Robbins complied with officers early on in their encounter on the roadway. She appeared distressed in the surveillance video, but somewhat in control of her actions, and in control enough to commit immediate acts (*i.e.*, resist being handcuffed) without the conscious purpose of accomplishing a specific or more remote result (*i.e.*, injuring the officers). Counsel for Ms. Robbins even acknowledged in his closing that "the testimony this time was much more muted," but counsel never cross-examined the officers to challenge their assertions about her state of mind or her intentions:

> [W]hat the [Appellate Court] said [in the first appeal] was that when you compare and contrast the video that the Court did

> not have in the previous trial with the testimony of the officers, there is no way, in their mind, that a rational jury could have put those two things together. Now I can tell you, that is one of the reasons that I almost let the transcript go in. Because the State's Attorney's Office did a good job. The testimony this time was much more muted. They didn't have her flailing around and kicking and weaponizing some sort of needle.

The trial court found that Ms. Robbins flailed and kicked, and that "her active resisting at that point would be considered reckless acts that caused the injuries to the officer[s]." And from the evidence before the second trial court, the court could reasonably have inferred that Ms. Robbins intended to kick, strike, and spit on the officer-victims. Viewing the evidence in the light most favorable to the State, as we must here, we are constrained to conclude that the evidence could support an inference that Ms. Robbins had the requisite intent to commit resisting arrest on the roadway and second-degree assault at the Sheriff's Office.

C. The Parties Agree That The Resisting Arrest And Second-Degree Assault Of Deputy Griffitts On The Roadway Merge.

For the *third* issue, the parties agree that Ms. Robbins's sentence for second-degree assault against Deputy Griffitts on the roadway merges into her sentence for resisting arrest because they are based on the same conduct. And so do we. The legality of a sentence is a question of law subject to *de novo* review. *State v. Crawley*, 455 Md. 52, 66 (2017). "It is undisputed that second-degree assault merges into resisting arrest under the required evidence test if the convictions were based on the same acts of the defendant." *Butler v. State*, 255 Md. App. 477, 498 (2022) (*citing Nicolas v. State*, 426 Md. 385, 407 (2012)). Such a scenario is presented where "the assaultive conduct was against a law enforcement

agent attempting to effectuate an arrest." *Id.* at 501.

Here, the State argued the second-degree assault and resisting arrest counts together and the court found that "in an attempt to arrest Ms. Robbins, there is kicking" and Deputy Griffitts was "kicked in the chest while he was trying to arrest [Ms. Robbins]." Under those circumstances, the convictions merge. The second-degree assault conviction should have been merged into the resisting arrest conviction, and we find that the court erred in imposing separate sentences for these offenses. Because, however, the circuit court sentenced Ms. Robbins to concurrent terms of time served for these offenses, a remand for resentencing is unnecessary.

D. This Case Was Over-Charged And Over-Prosecuted, And The End Result Is Legal But Not Right.

We have affirmed all but one of the convictions and, effectively, the full sentence imposed in this case. The law requires those results. Our decisions should not, however, be read to convey any sense that the ultimate outcome here is right. Far from it. The charges, trials, and resulting sentence in this case have needlessly and cruelly criminalized the acute mental health crisis that Ms. Robbins suffered on April 16, 2019, and to no productive end. We recognize that the authority to charge and prosecute Ms. Robbins lies in the hands of others, and that our role as an appellate court is limited to reviewing the constitutional, legal, and procedural bases of decisions that parties bring before us. Even so, we cannot come away from this case—now before us a second time—feeling that the outcome here is right.

To be sure, it is worth recognizing again that the initial manifestations of Ms. Robbins's mental health crisis could have presented some danger to the citizens of Cecil County and that the deputies did an effective job of disarming Ms. Robbins in the roadway and defusing that potential danger. We recognize as well that the relatively minor charges flowing from the roadway phase of that day's incidents represent a rational reaction to that potential danger and the deputies' efforts to address it. Indeed, that's the part of the case where the assault charge merges into the resisting arrest charge, and where the legal analysis tracks a proportional criminal law response.

From that point on, though, the charges and prosecutorial decisions defy any sense of proportion. By the time she arrived with deputies to the Sheriff's Office, Ms. Robbins had been fully disarmed. She remained in acute mental health crisis. She was scared and didn't believe that the officers were officers. She posed no danger to the deputies whatsoever—she went into the cell, she was seriously outnumbered, she eventually was naked, and she couldn't have escaped or threatened the officers even if she had wanted to. Yes, it took some work to get Ms. Robbins out of the cell and to the hospital. But getting her out of the cell and to the hospital was their job. The deputies were in charge the entire time, and their barely discernible physical injuries represented a rational occupational hazard, and not remotely a criminal assault.

The decision to prosecute Ms. Robbins for assaulting the deputies during her stop at the Sheriff's Office at all can be viewed only as punishment for her failure to comply obediently with the officers' directives, even though everyone learned in the first trial that

her reactions were a function of her mental health crisis. The charged assaults arise as the victims—five deputy Sheriffs—hauled an unarmed naked woman out of a jail cell. The first round of charges was incredibly aggressive—five counts of first-degree assault when none of the officers could even tell a story of serious physical injury? Those convictions, and the resulting *fifteen-year* prison sentence, failed after the first appeal; the rest were reversed because of the State's flagrant *Brady* violation. At that point, the State could have said that enough was enough and focused its prosecutorial attention and resources elsewhere.

Instead, they tried Ms. Robbins again. The deputies did a better job of describing their injuries, and the second-degree assault charges required less of them than the first-degree assault charges had at the first trial. Ms. Robbins's counsel failed inexplicably to develop the context for her reactions to the deputies, even in the form already admitted in the first trial, or to cross-examine the deputies' conflicting accounts of events between the two trials. The resulting sentence seems better in some ways, not least because it was all suspended save for time served. But she still has five *consecutive* five-year suspended sentences hanging over her head and, although currently at liberty, she stands one non-technical probation violation away from exposure to a quarter-century in prison. This whole saga punished Ms. Robbins severely while making nobody in Cecil County any safer. What was the point, other than to punish a citizen whose mental health crisis required law enforcement officers to do their jobs?

Just because the State could charge Ms. Robbins this aggressively and secure

convictions doesn't mean it should have. This is a situation where discretion—or, more precisely, a decision not to use the State's discretionary power—would have been the better part of valor. In our admittedly gratuitous appellate opinion, Ms. Robbins was grossly over-charged, over-prosecuted, and over-sentenced when what she really needed was help. The convictions are, save for the merged assault conviction, affirmed, but our legal analysis of these proceedings should not be read as endorsing the decisions to charge and prosecute this case in this manner or a holding that the result is humane or proportionate. And although it feels like an ineffectual gesture in light of the broader disposition, we exercise our discretion under Maryland Rule 8-607(a) to assess the full costs on appeal to Cecil County.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED IN PART AND VACATED IN PART. COSTS TO BE PAID BY CECIL COUNTY.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0644s22cn.pdf