Circuit Court for Baltimore City
Case No. 112193023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2768

September Term, 2014

CHRISTOPHER COLE

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: November 14, 2017

*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. *See* Md. Rule 1-104.

After a jury trial in the Circuit Court for Baltimore City, Christopher Cole was convicted of possession of heroin and possession of heroin with intent to distribute. He was sentenced to a term of imprisonment of ten years without the possibility of parole. Appellant presents two issues, which we have reworded:

> 1. Did the trial court err when it denied appellant's motion for a new trial based upon the fact that the jurors had cell phones or other prohibited electronic devices in the jury deliberation room?
>
> 2. Was the evidence sufficient to sustain appellant's convictions?

Because the answer to both questions is "yes," we will reverse the convictions and remand this case to the circuit court for further proceedings. However, before addressing the merits of this appeal, we must deal with a preliminary matter.

I. The Filing of the Notice of Appeal

Appellant was sentenced on December 19, 2014, and his notice of appeal was filed more than thirty days later, on February 27, 2015. On March 4, 2015, the circuit court issued an order requiring appellant to "show cause in writing . . . why the notice of appeal should not be stricken." On March 24, 2015, the circuit court entered an order stating that "upon consideration of petitioner's response to [the] show cause order," the notice of appeal "is received as timely." The response to the show cause order was not in the record.

After receipt of the record in this case, this Court issued its own show cause order, noting that "the legal and factual basis of the trial court's order" was unclear from the

then-existing record, and requiring appellant to show cause why his appeal should not be dismissed. Additionally, we ordered appellant to provide us with a copy of the response to the circuit court's show cause order. Appellant's appellate counsel investigated the matter and eventually was able to discover that the response to the circuit court's show cause order had been a letter from appellant's trial counsel to the court. In the letter, trial counsel stated that he had timely filed a notice of appeal but that the notice had been filed under an incorrect indictment number. Appellate counsel provided this Court with a copy of the letter on July 14, 2017, together with a written verification from the circuit court judge that the letter had been the basis for the decision to accept the appeal as timely filed. On July 31, 2017, this Court issued an order stating that our "Show Cause Order is satisfied and the appeal shall proceed." Additionally, we will supplement the record with the letter in question.[1]

II. Electronic Devices in the Jury Deliberation Room

After his convictions, appellant filed a motion for a new trial. In it, he asserted that appellant's rights "guaranteed under Md. Rule 16-110(d)" were violated because the jurors' electronic devices[2] were not taken from them while they were deliberating. The

[1] Specifically, the letter is dated March 18, 2015 and is from Donald Daneman, Esquire, to the Honorable Timothy J. Doory, Circuit Court for Baltimore City. The letter also contains a handwritten notation from Judge Doory dated July 13, 2017.

[2] At the time of trial, former Md. Rule 16-110 barred electronic devices from jury deliberation rooms. For the purposes of the rule, an "electronic device" was defined as:

court denied the motion. On appeal, he asserts that the trial court abused its discretion in doing so. The following information will give context to the parties' contentions.

Prior to opening statements, the court informed the jury as follows:

> There is a new court rule that no electronic devices will be allowed in the jury room once deliberations begin. So you're welcome today, you know, you have your cell phones and everything but at the end of all of the testimony and when you are a jury about to decide and deliberate we have a black box that we have to collect any kind of electronic device. That means cell phones, iPads, laptops, anything. So I'm just giving you some notice that you may not want to bring every electronic device to court but we are going to see where we are today.

After the close of evidence, the court reiterated its prohibition against cell phones and related devices in the deliberation room:

> During your deliberations you must decide this case based only on the evidence that you and your fellow jurors heard together in this courtroom. You must not do any outside research or investigation. Do not use any outside sources such as books, electronic devices, computers or phones to do research about this case even if you believe the information would be helpful.

> (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means.

Former Rule 16-110 was readopted in an amended form as Rule 16-208, effective July 1, 2016. 2016 amendments to the rule are not relevant to this appeal.

> While you are deliberating you cannot have in the jury room any computers, cell phones or other electronic devices and you must not communicate with anyone outside the jury room. If there are breaks in deliberations, I may allow you to communicate with your family or friends but do not communicate about the case or your deliberations.

The jury then heard the remaining procedural and substantive instructions. After the court concluded its instructions, the prosecutor and defense counsel made their respective closing arguments. The court excused the alternate jurors, and gave some additional instructions. These instructions included a reminder to the jury that "no electronic devices are allowed during deliberations," and direction to place their cell phones, iPads and similar devices in a box in the court room. The jury retired to deliberate at 3:56 p.m.

Later, the court excused the jury for the evening. The court again told the jury that:

> we're going to distribute your electronic devices back to you for this evening but please remember if you bring like Kindle or any other things that we're going to have to collect them first thing before you begin your deliberations tomorrow, okay. So at this time, lady and gentlemen of the jury, if you wouldn't mind going back up to the jury room, collect your belongings. We'll distribute your electronics. Thank you.

The next morning, the jury began its deliberations at about 10 a.m. At 11:10 a.m., the court informed counsel and appellant that "I've been told we have a verdict now." The transcript states:

(Whereupon, the clerk approached the bench.)

> THE CLERK: Your Honor, in the midst of everything that was taking place, we forgot to retrieve their cell phones.
>
> THE COURT: Oh, my gosh. Let's bring them out.

THE CLERK: Okay.

THE CLERK: You ready for the jury, Your Honor?

THE COURT: Yes, please.

(Whereupon, the jury entered the courtroom at 11:12 a.m.)

The court then took the verdict, and the jury found appellant guilty of possession of heroin and possession of heroin with the intent to distribute. After the jury was polled and hearkened to their verdict, the trial court excused the jury:

> THE COURT: Ladies and gentlemen, Baltimore City jury duty is one day or one trial. You've managed to do one trial in a day and a half and I want to commend you for performing your civic duty admirably. You are now excused for 2014 and we will see you in 2015. Wait, we called the jury [commissioner's office] to see if you can get paid today but they're not going to be able to pay you until twelve o'clock. It's 11:15 now. So you are welcome to go down and wait or maybe if you sweet talk somebody down there, they'll give you your fifteen dollars and you can go on your way but you're now officially excused from jury duty. Thank you.
>
> (Whereupon, the jury was excused.)
>
> THE COURT: Counsel and Mr. Cole, can you come up here please.
>
> (Whereupon, Counsel and the Defendant approached the bench and the following ensued:)
>
> THE COURT: Okay. I do have to apprise you that I was just apprised probably a minute before this jury came out that we did not collect the cell phones this morning at ten. Now, you know, I've told them they can't look up anything but I have to let everybody know that, okay.
>
> [DEFENSE COUNSEL]: Well, I would make a motion for a mistrial because the rules provide that they can't take them up.

> [PROSECUTOR]: Well, that's actually not a Maryland rule. That's a local rule, okay.[3] So I don't think it's basis for a mistrial, Your Honor.

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[3] The prosecutor was incorrect. Rule 16-110 became effective on January 1, 2011. *See* Rules Order, 165th Report (October 20, 2010). Former Rule 16-110 was readopted in an amended form as Rule 16-208, effective July 1, 2016. For the purposes of this appeal, the two rules are substantively identical.

Current Rule 16-208 states in pertinent part:

> **(a) Definitions.**
>
> In this Rule the following definitions apply:
>
> . . . .
>
> (2) Electronic Device. "Electronic device" means (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means. "Electronic device" does not include court equipment used by judicial officials or personnel.
>
> . . . .
>
> **(b) Possession and Use of Electronic Devices.**
>
> . . . .
>
> [(2)](D) Jury Deliberation Room. An electronic device may not be brought into a jury deliberation room.
>
> . . . .
>
> **(c) Violation of Rule.**
>
> (1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.
>
> (2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in

> THE COURT: Why don't we do this. I'm going to reset any kind of disposition. Look into the matter. Research it and see.
> [DEFENSE COUNSEL]: Okay. So I'm going to file a motion for new trial in any event and I was going to ask for a PSI.

After some discussion about appellant's bail status, the court returned to the issue of the electronic devices in the jury room:

> THE COURT: I'm not changing anything right now because I don't know if this is grounds for the Court finding manifest necessity for mistrial. I'm not sure because it's never happened to me before.
>
> [PROSECUTOR]: Well, Your Honor, it can't be a mistrial at this point because the trial is completed. It might be grounds for a new trial.

The court indicated it would research the issue, and also directed defense counsel to "investigate your request for new trial." The following then concluded the discussion of this issue on the record in open court:

> THE COURT: Right, I apprised counsel that this morning when the jury came to deliberate at approximately ten a.m. there was a lot of other matters going on and we inadvertently forgot to collect the cell phones and electronic devices. I apprised everybody present and you have made a motion for mistrial and you're going to file a motion for a new trial and we will research and investigate and render our opinion on the 25th.
>
> [DEFENSE COUNSEL]: Thank you.
>
> THE COURT: Okay.
>
> [PROSECUTOR]: Thank you.

> contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.
>
> . . . .

Within ten days of the verdict, appellant filed a motion for new trial pursuant to Maryland Rule 4-331(a). As trial counsel indicated, the motion argued that Maryland Rule 16-110 was violated because the jurors took their electronic devices into the deliberation room. The circuit court denied the motion in a written order without comment.

To this Court, appellant again asserts that permitting jurors to have cell phones and similar devices in the jury deliberation room contravened former Maryland Rule 16-110. Appellant compares this error to an instance of juror misconduct, alleging that failure to collect the cell phones was presumptively prejudicial and implicated his right to a fair and impartial jury. Appellant further asserts that the court's failure to *voir dire* the jury concerning the violation of the rule denied the court of sufficient information to properly grant or deny a mistrial.

For its part, the State does not contest the fact that there was a violation of former Rule 16-110. Instead, the State points out that appellant never asked the court to *voir dire* the jury, making that claim unpreserved. As to the merits, the State notes that the sanctions for a violation of Maryland Rule 16-110 do not include a mistrial. The State further replies that there was no evidence of juror misconduct in this case because there was no evidence that any member of the jury actually used an electronic device while the jury was deliberating.

A.

We will first address appellant's contention that the violation of former Rule 16-110 entitled him to a new trial without a showing of prejudice. Appellant's contention is unpersuasive.

Former Rule 16-110(b)(2)(D) provided that "[a]n electronic device may not be brought into a jury deliberation room." An "electronic device" includes cell phones. Md. Rule 16-110(a)(2). The rule sets forth the following sanctions for a violation:

> (1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.
>
> (2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

Md. Rule 16-110 (c).

The correct interpretation of the Maryland Rules is a matter of law. *State v. Taylor*, 431 Md. 615, 630 (2013). "When interpreting the Maryland Rules, we look to the ordinary rules of statutory construction." *King v. State*, 407 Md. 682, 698 (2009). Those rules dictate that we begin with the plain language of the statute or rule, as the case may be. Appellant contends that the rule indicates that the bailiff's failure to collect cell phones from the jurors created a presumption of prejudice to him that warranted a new trial. We do not agree.

The plain language of the former Rule 16-110 stated that the rule could be violated when a juror brought a cell phone or other electronic device into the jury deliberation room. However, the only sanctions set out in the former rule were temporary confiscation of the device in question and, in cases of willful violations, imposition of an order of contempt. There was nothing in the rule that authorized a trial court to grant a mistrial or a new trial to a defendant when a juror violated the rule. As such, we agree with the State's assertion that "[t]he evident purpose of the rule is to provide trial courts with the authority to confiscate devices and make findings of contempt, not to provide a ground for a mistrial motion."[4]

There is nothing in the language of the rule that provides guidance as to how a court should address the effect of a juror's violation of the prohibition on bringing electronic devices into a jury deliberation room. There is, however, a well-developed body of case law on the issue, which we will now review.

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[4] Even if a statute or rule is unambiguous, we may nonetheless review the legislative history "as a check of our reading of a statute's plain language." *Phillips v. State*, 451 Md. 180, 197 (2017). We have reviewed the legislative history of former Rule 16-110, which consists of the Minutes of the Maryland Court of Appeals' Standing Committee on Rules of Practice and Procedure. The minutes of the Rules Committee reflect that various versions of former Rule 16-110 were discussed by the Committee at its October 2, 2009, March 5, 2010, and June 17, 2010 meetings. The minutes of those meetings do not indicate that the Rules Committee considered whether a violation of the proposed rule would warrant a mistrial or similar remedy if jurors violated the rule.

B.

A criminal defendant's right to be tried by an impartial jury "is one of the most fundamental rights under both the United States Constitution and the Maryland Declaration of Rights." *Dillard v. State*, 415 Md. 445, 454 (2010) (quotation marks and citation omitted); *see also Jenkins v. State*, 375 Md. 284, 300 (2003). "Implicit in the right to an impartial jury trial is the right to have the jury's verdict be 'based solely on the evidence presented in the case.'" *Johnson v. State*, 423 Md. 137, 148 (2011) (quoting *Couser v. State*, 282 Md. 125, 138 (1978)).

"Juror misconduct" occurs when a juror takes some action that prevents a party from receiving a fair and impartial trial, with the factual basis for the verdict consisting of the evidence introduced at trial. *See Wardlaw v. State*, 185 Md. App. 440, 452 (2009). The use of an electronic device by a juror to access information that is not in evidence in order to decide guilt or innocence is juror misconduct and is presumptively prejudicial. *See Johnson*, 423 Md. at 153 (A juror's accessing a disabled cell phone to obtain information that supported a witness's version of a contested event created "an obvious potential for prejudice" to defendant.); *Wardlaw*, 185 Md. App. at 453 (A juror's conducting independent internet research as to whether a witness's psychological condition affected her credibility "constituted egregious misconduct. . . . and was presumptively prejudicial to the State or [the defendant.]"). As we explained in *Wardlaw*:

> We must zealously guard against any actions or situations which would raise the slightest suspicion that the jury in a criminal case had been

> [improperly] influenced ... so as to be favorable to either the State or the defendant. Any lesser degree of vigilance would foster suspicion and distrust and risk erosion of the public's confidence in the integrity of our jury system.

185 Md. App. at 452 (quoting *Butler and Lowery v. State*, 392 Md. 169, 180 (2006)).

This Court reviews a trial court's rulings on a motion for a mistrial or a new trial on the basis of juror misconduct for an abuse of discretion. *Jenkins*, 375 Md. at 298-99. Absent an abuse of discretion, an appellate court will not interfere with the trial court's decision, because the "trial judge is in the best position to evaluate whether a defendant's right to an impartial jury has been compromised[.]" *Summers v. State*, 152 Md. App. 362, 375 (2003);

Of course, juror misconduct does not inevitably warrant a mistrial or new trial. As the Court of Appeals has explained:

> The range of juror misconduct varies, as does the form and scope of the court's response to it. To be sure, some instances of juror misconduct so clearly and irreparably prejudice the defendant's right to be tried by an impartial jury that the only remedy is mistrial. Often, though, the extreme remedy of mistrial is not mandated. Indeed, depending upon the nature, scope, and timing of the misconduct, the judge may have one or more reasonable means of curing any possible prejudice to the defendant. Given the particular situation confronting the court, a curative instruction or replacement of the miscreant juror with an alternate juror might suffice to remedy the misconduct.

Johnson, 423 Md. at 149.

Appellant suggests that the trial court erred by dismissing the jury and not conducting an adequate investigation upon learning, before taking the verdict, that cell phones were

not collected and apparently were taken into the jury deliberation room. Appellant concedes that he did not request the trial court to make such an inquiry, but he also asserts that the trial court was required to conduct such an inquiry *sua sponte*. The State disagrees. We believe that appellant has the better side of the argument.

The law in Maryland is clear that, when the court is confronted by a motion for a mistrial based upon an assertion of juror misconduct, and regardless of whether a party so requests, the court must conduct a *voir dire* of the jury to determine the facts before ruling on the motion under two circumstances. *Nash v. State*, 439 Md. 53, 69 (2014).

The first is when "a juror's actions constitute misconduct sufficient to raise a presumption of prejudice that must be rebutted before a mistrial motion may be denied." *Id.* (citation and quotation marks omitted).

The second scenario occurs when "a material and relevant fact regarding a juror's conduct is unknown or obscure and must be resolved before a trial judge has sufficient information to determine whether the presumption of prejudice attached to the [conduct] or to rule on [the] motion for a mistrial." *Id.*

Other decisions make the same point. In *Johnson*, 423 Md. at 154, the Court stated:

> To be sure, there is no way of knowing whether further investigation would have supplied enough information to permit the court to remedy the juror's misconduct short of granting a mistrial. We are certain, though, that what the court opted to do in the present case [*i.e.* giving a corrective instruction but not conducting a *voir dire*] fell short of what was necessary before the court could have properly exercised its discretion to deny the requested mistrial.

In *Dillard,* 415 Md. at 457, the Court explained:

> Without a *voir dire* examination of the jurors to determine the intent or sub-text of their comments and whether they had discussed the issue of Dillard's guilt or innocence, the trial judge did not have sufficient information to determine whether the presumption of prejudice attached to the contact . . . . Thus, the trial judge's failure to clarify the factual scenario . . . constituted an abuse of discretion."

Finally, this Court stated in *Wardlaw*, 185 Md. App. at 453:

> In this case, the trial court did not *voir dire* the jury, but instead gave a curative instruction admonishing the jury not to conduct outside research and reminding them that they were to render a verdict based only on the evidence presented at trial. It was error for the court to do so, because a specific inquiry into the thought processes of the jury was the only method of ascertaining whether the information about ODD, acquired through the juror's internet research, improperly and irreparably influenced the jury's deliberative process to the prejudice of appellant or the State.

Returning to the present case, the trial court was informed by the bailiff that he or she had forgotten to take the juror's cell phones from them prior to beginning deliberation on the day that the jury rendered its verdict. That the jurors took cell phones and similar electronic devices into the jury deliberation room is not, in and of itself, grounds for a mistrial or a new trial—it is possible that none of the jurors used any such device while they were deliberating. But there are other possibilities, and one of them is that a juror used an electronic device to access the internet for information that was not admitted into evidence.

Because the court failed to inform counsel of the problem prior to dismissing the jury, defense counsel cannot be faulted for failing to ask the court to *voir dire* the by-

then-departed jurors. Moreover, as *Nash* and others cases teach, under the circumstances confronting it, the court was obligated to *voir dire* the jurors even if neither party requested it to do so.[5]

By failing to *voir dire* the jury after learning of the problem, the trial court deprived itself of the ability to consider the motion for a new trial on its merits. The court's eventual decision to deny the motion was based only upon speculation. Appellant's right to a fair trial was compromised. We will reverse the convictions and remand this case for a new trial or other appropriate proceedings.

III. The Sufficiency of the Evidence

Our decision does not moot appellant's challenge to the sufficiency of the evidence against him because, if the evidence was legally insufficient, retrial is barred by operation of the federal and state prohibitions against double jeopardy. *See, e.g., Ware v. State,* 360 Md. 650, 708–09 (2000); *Thompson v. State*, 229 Md. App. 385, 412 (2016). Assessing an insufficient evidence argument requires us to decide 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. We do not retry the case. Furthermore, we defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.

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[5] We are dealing with a motion for a new trial not a motion for a mistrial. But the trial court did not inform counsel of the problem until after the jury had rendered its verdict. In that context, we see no reason why the obligations imposed upon a trial court by *Nash* and other cases in the event of a motion for a mistrial should not apply in this case.

Thompson, 229 Md. App. at 412 (quotation marks, citations, and brackets omitted). With this standard in mind, we summarize the evidence.

Baltimore City Police Department Detective Christopher Schreyer testified that he had been a police officer with the Department for fifteen and a half years and that, in his experience as a narcotics officer, he had participated in over a thousand arrests in cases involving controlled dangerous substances. Schreyer testified that he had received specialized training in narcotics, including a forty hour in-service class for the recognition and identification of street-level drug sales. He was accepted as an expert witness in the sale, distribution, and packaging of street-level narcotics.

Schreyer testified that, on June 19, 2012, at approximately 4:30 p.m., he was conducting covert surveillance from a vacant house located in the 2300 block of West Lanvale Street in Baltimore. At around 4:30 p.m., the detective saw appellant, wearing a green "button up" or "button down" shirt, blue jeans, and a black and white baseball hat, loitering up and down the street. Schreyer related that, after several minutes, a female approached appellant. They engaged in brief conversation, after which appellant walked into the high grass in front of 2306 West Lanvale Street. Detective Schreyer saw appellant bend down into the grass and retrieve some small objects. Appellant then exchanged those objects with the female for currency. The female then left the area.

Schreyer further related that a man approached appellant a few minutes later. Again, there was a brief conversation, and appellant returned to the tall grass in front of 2306

West Lanvale, bent down, and retrieved several small objects. Appellant then handed those objects over to the other male in exchange for currency. That male then left the area.

From these observations, Detective Schreyer opined to the jury that appellant was engaged in illegal narcotics distribution and that the tall grass in front of the 2306 West Lanvale property contained a hidden stash of illegal narcotics. Schreyer called for other police officers to respond and directed Sergeant Michael Smith to the area where the suspected stash was concealed in the long grass.

Schreyer testified that he made these observations over the course of approximately a fifteen to twenty minute time frame and that he never lost sight of appellant during that time. Schreyer was certain that appellant was wearing a green shirt with a button-down collar at that time. Schreyer testified that appellant was the same person he observed and identified to the arrest team.

After appellant was arrested, he was transported to Central Booking. Detective Schreyer testified that he did not believe that appellant was permitted to go home and change his shirt after his arrest. Schreyer acknowledged that appellant was wearing an orange T-shirt when he was photographed at Central Booking. A photograph of appellant wearing an orange T-shirt was admitted into evidence. Schreyer agreed that the shirt in the photograph was not the same shirt that he saw appellant wearing when appellant was arrested. In fact, Schreyer confirmed that he never saw appellant wearing an orange shirt.

On further cross-examination, Schreyer testified that he was approximately thirty feet away when he made his observations, his view was "clear and unobstructed," and there was no traffic in the area. On redirect examination, Schreyer testified that he did not transport appellant to Central Booking and that "it could take hours" between the time of an arrest and the time a booking photograph is taken: "I mean, it depends on how busy Central Booking is. It depends. It can take a long time."

The State's second witness was Baltimore City Police Department Sergeant Michael Smith, a nineteen year veteran of the Department. His experience and training was very similar to Schreyer's. He testified that he was part of the enforcement team that included Schreyer and other officers on the day of appellant's arrest. Smith told the jury that, after speaking to Schreyer, he responded to the area in question and found a ziplock bag containing one white vial and two plastic "twists" of suspected narcotics from a ground stash. Smith opined that these narcotics were for purposes of distribution because "[s]omebody who is a user of heroin or cocaine is not going to just leave their drugs laying in the grass." Police also recovered $40 from appellant's person and $520 from appellant's car.

Sergeant Smith testified that appellant was the person who had been arrested in connection with this case. Sergeant Smith could not remember what color shirt appellant was wearing when he was arrested. Smith did not recall seeing appellant wearing an

orange shirt, and testified that, to the best of his recollection, appellant was wearing a button down shirt when he was arrested.

On cross-examination, defense counsel showed Sergeant Smith the booking photograph. Smith testified that the photograph was of appellant, and that appellant was wearing an orange shirt. Smith also agreed that this photograph was taken on the same day appellant was placed under arrest.

Finally, the parties stipulated that the substance recovered in this case was tested and determined to be heroin. Appellant did not present any evidence.

The State's case, which included witness testimony as to the purported sales of heroin, would ordinarily be legally sufficient to establish guilt. *Archer v. State*, 383 Md. 329, 372 (2004); *Reeves v. State*, 192 Md. App. 277, 306 (2010). Appellant, however, argues that there was an irreconcilable discrepancy in the State case—Schreyer testified that appellant was wearing a green button-down shirt when he was arrested; Smith testified that appellant was wearing a shirt with buttons when he was arrested; but appellant's booking photograph depicted him as wearing an orange T-shirt.

Appellant is correct that there was an inconsistency between the testimony of the two police officers and the booking photograph. But this inconsistency goes to the probative weight, not the legal sufficiency, of the officer's testimony. "Weighing the credibility of witnesses and resolving conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998); *accord State v. Smith*, 374 Md. 527, 533-34

(2003). Moreover, the fact finder "possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation,'" and an appellate court "must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004). One reasonable inference from the evidence might be that the police had arrested the wrong person. But another reasonable inference could be that appellant discarded his green shirt in the period between his arrest and his booking photograph. And, of course, both witnesses made in-court identifications of appellant.

Ultimately, it was for the jury to consider any discrepancies in the evidence, including issues of credibility, in reaching their verdict. We conclude that a rational fact finder could have accepted the police officers' identification of appellant and that the evidence was sufficient to sustain the convictions.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE REVERSED AND THIS CASE IS REMANDED TO IT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.