Circuit Court for Prince George's County
Criminal Case No. CJ17-0488

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2283

September Term, 2017

JEREMIAH CONTEH

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 13, 2018

*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.

Convicted by a jury, in the Circuit Court for Prince George's County, of second degree assault and resisting arrest, Jeremiah Conteh, appellant, presents two questions for our review, which we have reordered:

1. Was the evidence sufficient to convict Mr. Conteh of resisting arrest?

2. Did the trial court err in admitting Ms. Mebrahtu's hearsay statements?

For the following reasons, we affirm.

I.

"[E]vidence is sufficient if, viewing the evidence in the light most favorable to the State, '***any*** rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Riggins v. State*, 223 Md. App. 40, 60 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in *Jackson*). In order to convict appellant of resisting arrest, the State was required to prove: "(1) that a law enforcement officer arrested or attempted to arrest the defendant; (2) that the officer had probable cause to believe that the defendant had committed a crime, *i.e.*, that the arrest was lawful; and (3) that the defendant refused to submit to the arrest and resists by force or threat of force." *Olson v. State*, 208 Md. App. 309, 330 (2012). As we have stated, "the level of force required [ ] is not high." *DeGrange v. State*, 221 Md. App. 415, 421 (2015). "The 'force' that is required to find a defendant guilty of resisting arrest is the same as the 'offensive physical contact' that is required to find a defendant guilty of the battery variety of second degree assault." *Nicolas v. State*, 426 Md. 385, 407 (2012).

Appellant contends that the evidence showed merely that he ran from police as they attempted to arrest him. He claims that there was no evidence that he assaulted the officers,

and therefore he could not be convicted of resisting arrest. We disagree. We are satisfied that Corporal Aaron Nureni's testimony that appellant was put in leg irons during the arrest because he "was being very combative" and "kicked the officers" was sufficient to persuade the jury that Brooks resisted arrest "by force."[1]

II.

Appellant contends that the trial court improperly admitted statements made by the victim, Hana Mebrahtu, to the police officers who responded when she called 911 and stated, "my boyfriend is beating me up." Specifically, appellant contends that Mebrahtu's statements to police at the scene, in which she described the assault and identified appellant as her assailant, were inadmissible hearsay. We conclude that, because appellant did not object to the admission into evidence of recordings from the officers' body cameras, in which Mebrahtu states that appellant "got upset and started beating [her] up" and hit her with his hands, the objection was waived. *See Jackson v. State*, 230 Md. App. 450, 463-64 (2016) ("'[I]t is a long-standing rule in Maryland that any objection to the admission of

[1] Appellant asserts that the body camera recordings do not show appellant kicking the officers, and he suggests that, if he "did move his legs in a manner that [Corporal] Nureni "construed as kicking," it was an "involuntary muscle contraction" caused by the taser. These arguments go to the weight of Corporal Nureni's testimony and not to the sufficiency of the evidence. *See Pryor v. State*, 195 Md. App. 311, 329 (2010) ("the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence.") (citation omitted).

evidence is waived by the subsequent admission, without objection, of the same evidence at a later point in the proceedings.'" (citation omitted)).[2]

In any event, we agree with the State that Mebrahtu's statements to police were properly admitted pursuant to the non-hearsay purpose of establishing one of the elements of the charge of resisting arrest, that is, that the police had probable cause to arrest appellant and therefore that the arrest was lawful (*see Graves v. State*, 334 Md 30, 39 (1994) (where the lawfulness of arrest is at issue, evidence showing the basis upon which the arresting officer acted, "even if hearsay, is directly relevant and is admissible") (citation omitted). Alternatively, the statements were admissible pursuant to the hearsay exception in Md. Rule 5-801(c) ("[a] statement that is one of identification made after perceiving the person.")

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

[2] Appellant claims that no objection to the admission of the body camera recordings was necessary to preserve the objection because the issue of the admissibility of Mebrahtu's statements "had already been litigated and decided, and further objection such a short time after the trial court's rulings would have been futile." Appellant relies on a narrow exception to the contemporaneous objection rule stated in *Watson v. State*, 311 Md. 370, 372 n.1 (1988). That exception applies only in certain circumstances not present in the case before us.