Circuit Court for Baltimore City
Case No. 121088001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1146

September Term, 2022

ZANEL SANTANA,

v.

STATE OF MARYLAND,

Arthur,
Leahy,
Meredith, Timothy E.
(Senior Judge, specially assigned)

JJ.

Opinion by Leahy, J.

Filed: January 22, 2024

* This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

INTRODUCTION

In June 2019, correctional officer Zanel Santana ("Appellant" or "Mr. Santana") was on duty at the Baltimore Central Booking & Intake Center ("BCBIC") when Ms. Amber Canter refused to return to her cell. An altercation ensued, and afterward Appellant—as shown by security footage—dropped Canter's limp body to the ground, face first, after he dragged her toward her cell, causing her injury. Subsequently, Appellant falsely reported that Canter "dropped h[er] legs and fell by throwing h[er] body to the [f]loor."

For this and related conduct, Appellant was indicted in the Circuit Court for Baltimore City with first-degree assault and two counts of misconduct in office—one count arising from the assault; and another count arising from Appellant's concealment of certain alleged facts, including the assault, in his written report. Following a bench trial, the judge convicted Appellant of second-degree assault, rather than first-degree assault as he was charged. Appellant was also convicted under both counts for misconduct in office.

On appeal, Appellant presents three questions for review, which we re-order here:

I. "Was Mr. Santana improperly convicted of assault in the second degree?"

II. "Did the prosecution's proof fall short of establishing Mr. Santana's identity?"

III. "Was the evidence legally insufficient to sustain the convictions?"

First, we hold that Appellant was properly convicted of assault in the second-degree despite the fact that the indictment did not *expressly* charge him with second-degree assault

because, by statute "[a] charge of assault in the first degree also charges a defendant with assault in the second degree." Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CL") § 3-206(c).

Second, we hold that there was sufficient evidence to prove Appellant's criminal agency beyond a reasonable doubt. In particular, the security footage admitted into evidence at trial clearly showed Appellant's face and, during the trial, the judge—sitting as the finder of fact—had ample opportunity to compare Appellant's face (as he sat in the courtroom) to the security footage.

Third, we hold that the evidence at trial—most importantly including the security footage and Appellant's Use of Force Report—was sufficient for the judge to conclude, beyond a reasonable doubt, that Appellant was guilty of second-degree assault and the misconduct in office charges.

BACKGROUND

On March 29, 2021, the State indicted Appellant in the Circuit Court for Baltimore City for events that occurred "on or about June 14, 2019[.]" The indictment charged him with three counts, including a single count of assault in the first degree, and two counts of misconduct in office.

According to the indictment, on June 14, 2019, Appellant was "on duty" as a correctional officer within the Division of Pretrial Detention for the Department of Public Safety & Correctional Services ("DPSCS") at the BCBIC. Appellant responded to an incident involving "detainee Amber Canter"; specifically, another officer had "asked" Ms. Canter to "return to the housing unit" several times, but she "refused."

The indictment stated that Appellant and others "attempted to encourage" Ms. Canter to return to her housing unit but, when that failed, Appellant assaulted Ms. Canter by, among other things, using his arms to grab Canter "around [her] neck, placing [her] in an unauthorized and illegal 'choke hold.'" Ms. Canter "appeared to lose consciousness" within approximately "seven seconds after being placed in the chokehold[.]" Despite this, Appellant continued the chokehold and "drag[ged]" Ms. Canter forward. After dragging Ms. Canter for several steps, Appellant "let[] go of an unconscious Canter completely, causing Canter to hit the concrete floor directly with [her] face." After dropping Ms. Canter, Appellant and another officer "collectively drag[ged]" Ms. Canter, who was still unconscious, to her individual housing unit.

According to the indictment, Appellant and other officers who took part in the incident each submitted signed "DPSCS official Use of Force reports" (hereinafter "Use of Force Report(s)") that "conceal[ed]" use of the chokehold and the fact that Ms. Canter became unconscious. The indictment alleged that Appellant "used unauthorized and excessive force" against Ms. Canter, and that Appellant "unjustifiably committed an illegal assault" of Ms. Canter.

Based on these alleged facts, the indictment charged Appellant with first-degree assault ("Count 1") and misconduct in office charge ("Count 2") arising from his contact with Ms. Canter on June 14, 2019. The second misconduct in office charge ("Count 3")

was based on Appellant's alleged concealment of key details in the Use of Force Report.[1] Appellant was arrested and pleaded not guilty to the charges in the Circuit Court for Baltimore City.

On March 16, 2022, the parties appeared in the circuit court and, among other things, Appellant elected to proceed via a bench trial,[2] which commenced the following day. Appellant was tried over four days alongside two co-defendants—Monyette Washington ("Co-defendant Washington") and Uchenna Okeke ("Co-defendant Okeke")—each accused of participating in the events of June 14, 2019.

The State called three witnesses during its case in chief: Ms. Canter, Corrections Officer Captain Michael Ennis, and Lieutenant T. Echaunda Fleming.

The first witness, Ms. Canter, testified to events leading up to the assault on June 14, and the challenges she faced as a transgender and gay woman incarcerated in a facility for individuals of the male sex.[3, 4]

In the months leading up to the assault, Ms. Canter testified that she was "working with" the "Intelligence Department at BCBIC" to "build a case against Officer Santana" in

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[1] Co-defendants Okeke and Washington were similarly charged with two counts of misconduct in office. Unlike Appellant, they were not charged with first-degree assault.

[2] Appellant was represented by counsel.

[3] Ms. Canter testified that she had been "assaulted" and "called names," and that she was "denied certain jobs that heterosexual inmates would have the opportunity to have."

[4] Ms. Canter also acknowledged that she had previously been convicted for "malicious destruction[,]" multiple "[a]rmed robberies[,]" "car theft," and making a "false bomb threat. She had also been found guilty of various "infractions" while incarcerated; nonetheless, she asserted that her testimony was "true and honest."

"reference to Santana bringing in cell phone[s] and drugs" and "tobacco" to inmates, including to one inmate who "slept right across the hall" from Ms. Canter. At some point, Appellant learned that Ms. Canter was engaged in this activity, and in May 2019 he refused to let her "out for [her] rec" because she had "been snitching" to "Intel[,]" and told other inmates that Ms. Canter was working for the Intelligence Department. Ms. Canter reported this to the "Department of Public Safety" and, as a result, she was moved to a different "tier" that was "r[un] by" Co-defendant Okeke. Ms. Canter did not have any further interaction with Appellant until a "month" later, on June 14, 2019.

On June 14, "transportation officers" took Ms. Canter from the "MRDCC . . . back to BCBIC[,]" where her cell was located. At some point, Officer Claudia Vincent told her that she would not receive the hour of "out of cell exercise" that Ms. Canter understood she was entitled to.[5] This upset Ms. Canter and, to bring attention to the matter and attempt to speak to a supervisor, she refused to leave a "[s]ally port"[6] that led back to her cell.

Ms. Canter deliberately disobeyed several orders to return to her cell, including from Officer Vincent and Co-Defendant Washington, stating that she would not go into her cell. Ms. Canter wished to speak to a "supervisor" to obtain her recreation time. She testified

[5] Ms. Canter explained, on cross-examination, that it was not until sometime after the events of June 14 that a "captain" explained why she had been denied her recreation time. Specifically, the "facility ha[d] already been proven to not be able to safely house [her] due to the fact that [she] was assaulted on multiple occasions" and she "couldn't be at rec while the males were out at rec[.]"

[6] Ms. Canter explained that a "[s]ally port" is a "space" placed between locations of BCBIC, e.g., between "center control" and an inmate's "tier[,]" that is "able to lock and secure." Thus, if "an inmate gets off the tier and tries to go" elsewhere, "they would be unable to . . . because they would have to go through that sally port first."

that she told Co-Defendant Washington to "spray" her with "mace" because this would constitute a "use of force" that would enable her to "see a supervisor[.]"[7] Instead, Co-Defendant Washington "called for Officer Santana" to "come" to the sally port.

During Ms. Canter's testimony, the State admitted into evidence and played various video clips taken from security cameras in the vicinity of the sally port. Ms. Canter testified, as one clip was playing, that Appellant told Co-Defendant Sergeant Washington, "fuck this faggot, let's spray him and take him to his cell, we don't have time for this[.]"

When officers entered the sally port, Ms. Canter claimed, she tried to "[de-]escalate the situation[,]" including by "lower[ing]" her voice. She "proceeded to sit on the ground" after officers "put their hands on" her. She "sat on the ground Indian style with [her] hands under [her] butt" to demonstrate that she was not "combative" and did not "pose any type of threat" to the facility's staff.[8] As she "was sitting on the ground[,]" Appellant put "his foot in the lower part of [her] back kicking[9] [her] while he was asking Sergeant Washington

[7] According to Ms. Canter, when an inmate refuses to return to their cell, correctional officers have three options: (1) "deploy [their] fogger and spray . . . to gain compliance[,]" (2) "call for a lieutenant" to "try and deescalate the situation[,]" or (3) conduct a "hands-on escort" where officers grab "both sides" of the inmate's arms and "carry[]" them back to their cell.

[8] According to Ms. Canter, the Department of Corrections had a "history of claiming" an inmate was "assaultive" as "grounds" to "use force." She sat down for "[s]afety reasons," as she'd been "taught" to "sit down" if "you're in a situation and you feel that something is going to happen to you by the officers[.]"

[9] On cross-examination, Ms. Canter stated that Appellant used "force with his foot and his knee, pushing into my back to – to basically try[] to push me to get up"; this description is somewhat different than her testimony on direct that Appellant was "kicking" her.

why [do] you guys keep catering to this fucking faggot." In response, Ms. Canter "told [Appellant] please get his hands off of me, I feel unsafe"; she also "kept asking Sergeant Washington to please call for a supervisor[.]" Appellant tried to "lift" Ms. Canter but she "was too heavy for him[.]" Shortly thereafter, while Ms. Canter was still "sitting down[,]" Appellant placed himself "behind [Ms. Canter] on one knee" and "put [her] in a chokehold" with the "elbow part" of his "right arm" around her "neck area"; he "squeezed to where [she] could not breathe." According to Ms. Canter, Appellant also said to Co-Defendant Washington, "bitch, you can't control this situation, do your job or I'm going to do it for you[.]"

Ms. Canter "could not breathe" and "couldn't talk," and she attempted to break away by "scratching" Appellant's arm and "trying to pull" it away. Co-defendant Okeke "yanked" her "arm away . . . and held it." Ms. Canter testified that she then "lost consciousness and that's all I can remember." When she regained consciousness, according to Ms. Canter, she was "a little dizzy," her "head hurt extremely, extremely bad," she "had severe headaches," a "huge lump on [her] forehead," and she "couldn't really see out of" her right eye; her nose and "ear had blood" in it; and she had "urinated on [herself]."[10] As of the date of her testimony, Ms. Canter said she "still ha[d] issues with vision" and had been "diagnosed with [Post-Traumatic Stress Disorder]."

[10] State's Exhibit No. 2 admitted into evidence was a photograph of Ms. Canter taken "on that day" which showed her "[w]ith a lump on the left side of [her] head and a bruise around [her] eyes, l[ying] on a gurney[.]"

Ms. Canter was subject to cross-examination the following day. Among other things, Ms. Canter acknowledged that, while in the sally port, she told the surrounding correctional officers they would need to "use force to get [her] to [her] cell[.]"

The State's second witness was Michael Ennis, a "correctional officer captain" within the Maryland Department of Public Safety and Correctional Services ("Department") who, among other things, was the "program manager for all . . . defensive tactics training." In this role, Captain Ennis trained both correctional officers and other instructors in "the Department's Use of Force [P]olicy," as set out in the Department's "Use of Force Procedures [M]anual,"[11] and "whatever . . . approved tactics the Department has determined is appropriate for any use of force." "[E]very correctional officer" in Maryland receives training in "defensive tactics" and "use of force[,]" first as a recruit, and annually as an employee.

According to Captain Ennis, the Use of Force Procedures Manual describes when a correctional officer may use force. As stated in the Manual, "[o]nly" employees trained in the Department's Use of Force Policy are authorized to use force.[12] Ennis was never

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[11] The Department's "Use of Force Procedures Manual" was admitted into evidence as State's Exhibit 6.

[12] Captain Ennis was asked to read several sections of the Department's Use of Force Procedures Manual out loud at trial. The Manual provides, in pertinent part:

> Chapter IV – Application of Force – General
> **.01 Using Force**
> A. Employees Authorized to Use Force.

[Footnote Continued]

Only employees trained in the Department's use of force policy and procedure are authorized to use force.

B. Incidents When Force May be Used.

An employee may use force to control or stop non-compliant behavior in order to:

(1) Prevent or stop a crime from being committed;
(2) Prevent an escape from a correctional facility;
(3) Protect self or others;
(4) Prevent an inmate from self-inflicted harm;
(5) Protect property from substantial damage or destruction;
(6) Prevent, control, or stop a riot or disturbance;
(7) Require a non-compliant inmate to comply with a lawful order;
(8) Apprehend an escapee; and
(9) Preserve order and facility security.

C. Application of Force.

(1) If a situation requires the use of force, an employee shall:

(a) Use only the minimum amount of force reasonably necessary to control or stop the non-compliant behavior;

(b) Use force consistent with Department policy, procedure, and approved training related to the use of force; and

(c) Reasonably de-escalate the use of force as the non-compliant behavior decreases or stops.

(2) In a planned use of force situation, an employee may only use force when confrontation avoidance has been unsuccessful.

(3) Use of force shall be applied in accordance with the use of force continuum.

D. Use of Force – Prohibitions.

(1) An employee may not use or permit the use of force as punishment, harassment, coercion, or abuse.

(2) An employee may not use or permit the use of force contrary to approved training, policy, and procedures.

(3) An employee may not use or permit the use of excessive force.

(4) An employee found to violate the use of force policy or procedure:

(a) Shall be subject to disciplinary action, up to and including termination of employment; and

(b) May be subject to criminal prosecution, civil suit, or both.

Additionally, the Manual states:

Chapter VII – Implements of Force

[Footnote Continued]

"trained regarding any hold around the neck area[,]" and in the "last 15 years" he had never "instructed" anyone on "compliance holds or use of force techniques that would involve . . . placing a hand . . . on an inmate's neck[.]" By contrast, Ennis received annual training "on compliance holds within the Department that specifically target joint manipulation techniques such as the shoulders, elbows and wrists."

Captain Ennis also described training related to the Department's use of force reports that he had received himself and distributed to others. According to training that Ennis received, "[a]ny individual who is directly involved in or indirectly witnesses a use

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.01 Implements of Force – General

A. Only equipment and techniques approved by the Secretary, or a designee, may be used by an employee.

B. An employee using equipment or techniques to apply force shall:

(1) Be properly trained and authorized to use the specific equipment or technique;

(2) Use the equipment or technique according to policy and procedures for the specific item of equipment or technique; and

(3) Only use approved equipment or techniques.

C. [. . .]

D. If an employee is in an imminently life-threatening situation; and if the inmate cannot be stopped or controlled using Department approved equipment or Department provided training, the employee may use the most reasonable means readily available to stop or control the inmate.

of force occurring, they're responsible to report it and document it."[13, 14]

Lieutenant T. Fleming stated that he was "familiar with" the defendants because "Washington is my sergeant, and those—and Santana and Okeke are my officers." Subsequently, he affirmed that State's Exhibit 11-C constituted the Use of Force Report that Appellant submitted following the incident on June 14, 2019. Fleming also testified that correctional service officers receive "in-service training" each year that includes "a little bit on conduct" and that officers are typically reminded when "they're supposed to go" to this training.

At the conclusion of Fleming's testimony, the State rested its case and each co-defendant moved for judgment of acquittal. Appellant's counsel argued that Appellant could not be convicted of first-degree assault because no witness had "defined what a

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[13] The Use of Force Manual states:

> Chapter XI – Reporting Use of Force Incidents
> …
> **.02 Documentation**
> A. [. . .]
> B. Each employee involved in, or having direct knowledge of, a use of force situation . . . shall provide a written report of the incident to the shift commander before the involved employee goes off duty. The employee shall complete the Officer's Use of Force Incident Report without consultation with other employees and shall provide information concerning:
> (1) The role and actions of the employee in the incident; and
> (2) All observations regarding the role and actions of others involved in the incident[.]

[14] At the conclusion of Captain Ennis' testimony, a document entitled "Standards of Conduct & Internal Administrative Disciplinary Process" and the Department's "training records" for Appellant were entered into evidence as State's Exhibits 7 and 8. Additionally, the Use of Force Report completed by Appellant was admitted as State's Exhibit 11-C.

chokehold is[,]" the court could therefore not know "if what is seen on the video is a chokehold[,]" and there had been "no testimony . . . as to whether that move is unauthorized." Counsel also asserted that "Mr. Santana was never identified" during the proceedings and that, regarding the misconduct in office charge arising from the Use of Force Report, "nobody ha[d] testified that the report was in violation of the Standards of Conduct."

In response, the State asserted that Count 1, for first-degree assault, and Count 2, for misconduct in office arising from the assault, could both be proven by the security footage that showed "[Mr.]Santana put [Ms.] Canter in a hold around [her] neck area[,]" how Ms. Canter then "went unconscious[,]" and how she "was inevitably dropped on her face." According to the State, the other misconduct in office charge was adequately supported by "factual inaccuracies" in the Use of Force Report submitted by Appellant, including the absence of any "mention of any hold near the neck area" or indication that Ms. Canter's face "hit[] . . . against the cement."

The court denied Appellant's motion for judgment of acquittal, noting that Appellant had been "identified on the video by" Ms. Canter and finding that "in the light most favorable" to the State, there was "sufficient evidence" to find Appellant guilty of the charges. The court also denied the co-defendants' motions. Thereafter, all three

defendants exercised their rights to remain silent and to not present evidence in their defense, the court heard closing arguments, and the court adjourned.[15]

The judge announced his verdicts on March 22, 2022, finding Appellant guilty of second-degree assault and both misconduct in office charges.[16] In support of Appellant's guilty verdicts, the court made detailed factual findings, stating:

> [T]he [c]ourt does not find that the defendant grabbed Ms. Cant[e]r around the chest or upper torso. The [c]ourt finds that [Appellant] was frustrated by Cant[e]r's non-compliance, the [c]ourt finds that the [Appellant] placed his right arm under Ms. Cant[e]r's chin and around her

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[15] Counsel for each defendant also "renew[ed]" their respective motions for judgment of acquittal by "incorporate[ing]" the motions into their closing arguments. The judge implicitly denied these renewed motions.

[16] The court found that Co-defendants Okeke and Washington were not guilty of misconduct in office as charged under Count 1 of their respective indictments; this count had alleged that Okeke and Washington failed to follow departmental standards when moving Ms. Canter on the date of the incident, i.e., by failing to provide medical assistance immediately after Ms. Canter's face struck the floor. The court noted that the evidence did not indicate that either Okeke or Washington "saw" when Ms. Canter's "face hit the ground," and that she was "taken to medical" shortly after she reached her cell.

The court also found that Okeke and Washington were not guilty of misconduct in office as charged under Count 2 of their respective indictments. Specifically, the court stated that, under the circumstances and departmental policy, a "compliance hold[]" was a permissible action in response to Ms. Canter's conduct. The State's case was premised on the theory that an impermissible chokehold was used; however, the court found that no evidence was presented to explain "what compliance holds are and which are authorized and which are not." Likewise, the court was not "provided with a relevant definition of a chokehold, language used in the indictment." Therefore, the court could not find Okeke or Washington guilty of misconduct in office as premised on their alleged "failure to submit a report [indicating] that they placed Ms. [Canter] in a chokehold, used force against her, or committed an assault against her." Finally, the court could not find that the co-defendants "filed their [Use of Force Reports] to conceal that Ms. [Canter] became unconscious as a result of a chokehold" because there "was insufficient evidence" they "knew" she "was unconscious at that time due to the chokehold[,]" assuming a chokehold had even been deployed.

neck and placed his left hand behind her head and that these actions, described by Ms. Cant[e]r as a chokehold, did impede her ability to breathe. This [c]ourt also finds that by the time the defendant dragged Ms. Cant[e]r out of the cell area, that her body was limp. When Ms. Cant[e]r was down on her knees, [Appellant] chose to pick her up again, again having his arm around the neck and dragging her limp body forward.

This [c]ourt reviewed the incident from all of the angles presented and finds that the evidence shows that the [Appellant] intentionally dropped a limp, unmoving Ms. Cant[e]r to the ground face first, straddled her and stepped over her to look at her and that the actions of [Appelant] caused injuries to Ms. Cant[e]r. She was in his custody by his choice and the manner in which she was transported was determined by the [Appellant].

This [c]ourt does not find that at any point Ms. Cant[e]r dropped herself to the ground. On the contrary, the Court finds that the [Appellant] intentionally released Ms. Cant[e]r dropping her to the floor face first. To be clear, this [c]ourt does find that the actions of [Appellant] which led to Ms. Cant[e]r's head hitting the floor were both intentional and reckless. He had control of the situation and chose to drop her.

The lack of mistake is clear from the fact that the defendant wrote in his report that Ms. Cant[e]r threw her body to the ground which this [c]ourt finds to be inconsistent with the facts and a false statement. The body language of the [Appellant] when he dropped Ms. Cant[e]r to the ground is telling and is also another factor and indicator that the action was intentional. As the only one who saw Ms. Cant[e]r go face down, the [Appellant] stepped over her, looked down, paused and then simply grabbed her arm and dragged her down the hall.

The [c]ourt finds that when [Appellant] dropped Ms. Cant[e]r to the floor and she was injured, her face was injured, that was intentional and reckless and the [Appellant], while having the right to use force, did in fact use excessive force and intended to drop Ms. Cant[e]r and the dropping was without any lawful purpose and without the permission of Ms. Cant[e]r.

Having looked at the picture of Ms. Cant[e]r after the incident and reviewing her medical records, the [c]ourt does find that her injuries were significant and again, caused by the intentional actions of [Appellant].

But just as there is no evidence that Cant[e]r dropped herself to the ground, there is insufficient evidence to show that [Appellant] intended to cause serious physical injury that create a substantial risk of death or caused

> serious and permanent or serious and protracted loss or impairment with the function of any bodily organ. . . . The [c]ourt again determined that dropping Ms. Cant[e]r to the ground was an intentional reckless act but the [c]ourt does not find that the intent rose to the level of first degree assault[.]

Based on these facts, turning to Count 1, the court found that the State had proven "second[-]degree assault beyond a reasonable doubt." Turing to Count 2—the misconduct in office charge arising from the assault—the court found that Appellant, who was a public officer acting in his official capacity committed a corrupt act in the performance of his duties by "intentionally and recklessly dropp[ing] Ms. [Canter], causing injuries to her face and head[.]" Turning to Count 3—the misconduct in office charge arising from the alleged concealment of key details in Appellant's Use of Force Report—the court found that Appellant "acted in a corrupt manner by concealing his actions of committing an assault of Ms. [Canter] when he intentionally dropped her to the ground causing injuries to her face and head." Appellant "knew he was required to report his conduct and made a decision to not include his actual actions in the report."

Following the trial, on April 1, 2022, Appellant filed a motion for reconsideration, motion to set aside verdict, or in the alternative, motion for a new trial. The motion re-asserted that Appellant was "never identified" during trial and urged the court to set aside his guilty verdicts.[17]

[17] The motion specifically urged the court to set aside Appellant's two convictions for misconduct in office; the motion did not acknowledge that Appellant had also been found guilty of second-degree assault.

The court heard argument on the motion at the beginning of a sentencing hearing on April 29, 2022. Defense counsel again asserted that Appellant was "never identified[.]" In response, the State asserted that:

> [W]hat actually needs to be proven is called criminal agency, that can be proved . . . directly, indirectly, circumstantially, and certainly with the evidence, the video, the Court could clearly see that that was . . . [Appellant], documents with his name on it, the references to him, and you know, the recollection is that the witness specifically discussed him and we think that we've proved – we did prove criminal agency beyond a reasonable doubt.

The court denied the motion, finding that Appellant was "sufficiently" identified.

Subsequently, counsel for Appellant—for the first time—asserted that Appellant could not have been convicted of second-degree assault because Count 1 charged first-degree assault and the statute of limitations for second-degree assault had expired. The court responded that second-degree assault is an "underlying charge" of first-degree assault, that counsel failed to raise the statute of limitations issue "prior to" the guilty verdict, and that if counsel disagreed, they could "take that up to the [Appellate Court of Maryland][.]"

Having disposed of these preliminary matters, the court proceeded with the sentencing hearing. Appellant was sentenced to "three years, suspending all but 90 days" for the second-degree assault. For each of the misconduct in office convictions, the court imposed a "concurrent sentence of three years, suspending all but 90 days." The court deferred imposition of the sentence until August 11, 2022; on that date, the parties again appeared before the court, and the court determined that Appellant could serve his sentence on home detention. Appellant noted a timely appeal to this Court on September 2, 2022.

DISCUSSION

I.

Conviction for Assault in the Second Degree

A. Parties' Contentions

Before this Court, Appellant argues that his conviction for second-degree assault is improper because he was never charged with that crime. He urges that he was charged only with first-degree assault, the prosecution's "sole theory" was that he committed a first-degree assault, and the State never amended the charges to include second-degree assault.

Appellant asserts that a "'charge not contained in the indictment'" is not permitted and must be vacated. (Quoting *Johnson v. State*, 427 Md. 356, 375 (2012)). Because he did not have an "opportunity to defend against this particular charge[,]" Appellant states his conviction is improper. Appellant acknowledges that, under Maryland law, a defendant may be convicted of a "lesser included offense" even though that offense is not expressly charged in the indictment. However, he urges that, in this case, the lesser included offense doctrine does not apply because "his case was not presented to a jury[.]" (Citing *Hagans v. State*, 316 Md. 429, 447-48 (1989)). Again citing to *Hagans*, Appellant urges that the lesser included offense doctrine does not apply where the lesser offense is "remote from the offense charged" or if "it might not reasonably be obvious that the defendant faces a particular uncharged offense[.]" (Citing *Hagans*, 316 Md. at 450).

Next, Appellant asserts that the second-degree assault conviction is barred by the applicable statute of limitations. Appellant concedes that defense counsel did not raise this

issue at trial, and that it was raised for the first time at his sentencing hearing. However, he maintains that the conviction is improper because, at trial, "there was nothing to defend on second[-]degree assault." Because in his view these errors were not harmless beyond a reasonable doubt, Appellant asks this Court to vacate his conviction and sentence for assault in the second degree on Count 1. (Citing *Dorsey v. State*, 276 Md. 638, 659 (1976)).

The State acknowledges that a one-year statute of limitations applies to second-degree assault and that, in Appellant's case, the limitations period expired before he was indicted in March 2021. However, the State notes that, as recognized by this Court in *Brooks v. State*, 85 Md. App. 355 (1991), a statute of limitations defense is an affirmative defense that may be waived if not timely raised. (Citing *Brooks*, 85 Md. App. at 366). Because Appellant did not raise the statute of limitations during his trial, the State asserts that Appellant waived this issue.

Furthermore, says the State, Appellant also waived any issues related to the lesser-included-offense doctrine or the State's purported failure to specifically include second-degree assault in the indictment by failing to raise those issues at trial. Regardless, the State maintains that the lesser-included offense doctrine may apply in bench trials so long as the parties are "given an opportunity to present arguments" on the lesser-included offense at trial. (quoting *Middleton v. State*, 238 Md. App. 295, 305 (2018) (quotation omitted)). Here, the State contends that defense counsel had the opportunity to present argument related to second-degree assault, and actually defended against a second-degree assault charge when, although "counsel did not use the words 'second-degree assault,' [counsel] argued that there was no battery, i.e., no 'unlawful application of force, direct or

indirect, to the body of the victim.'" (Quoting *Lamb v. State*, 93 Md. App. 422, 446 (1992). The State also maintains that defense counsel adopted and incorporated statements made by Co-defendant Washington's counsel that touched on second-degree assault.

B. Standard of Review

Under Maryland Rule 8-131(a), this Court will "ordinarily" not consider an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). When a conviction results from a bench trial, we "review the case on both the law and the evidence." *Johnson v. State*, 245 Md. App. 46, 56 (2020) (quoting Md. Rule 8-131(c)). As we summarized in *Johnson*:

> We 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 witnesses." [Md. Rule 8-131(c)]. This provision of the Maryland Rules does not apply to evidentiary rulings, *Starke v. Starke*, 134 Md. App. 663, 668, 761 A.2d 355 (2000), nor to legal conclusions, *State v. Neger*, 427 Md. 582, 595, 50 A.3d 591 (2012) (*quoting Clancy v. King*, 405 Md. 541, 554, 954 A.2d 1092 (2008)). "For legal conclusions, we conduct a non-deferential review." *Id.*

Id. at 56-57.

We apply the "harmless-beyond-a-reasonable-doubt standard to all trial errors[.]" *Gross v. State*, 481 Md. 233, 254 (2022) (citing *Dorsey v. State*, 276 Md. 638, 659 (1976)). Under that standard:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable

> possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

Dorsey, 276 Md. at 659.

C. Legal Framework

The statute of limitations applicable to a charge of second-degree assault is one year. *See* Maryland Code (1973, 2020 Repl. Vol., 2023 Supp.), Courts and Judicial Proceedings Article ("CJP"), § 5-106(a)-(b); *see also In re Anthony R.*, 362 Md. 51, 74-75 (2000) (holding that the general one-year statute of limitations for misdemeanors in CJP Section 5-106(a) applies to second-degree assault because second-degree assault is not punishable by imprisonment in a penitentiary, which is a necessary predicate to apply exceptions to the general one-year statute of limitations that are included in subsection (b)). The "running" of a statute of limitations "must be raised" by a criminal defendant "as an affirmative defense, usually before trial and, *at the latest*, during trial, when its availability shall have become apparent." *Brooks v. State*, 85 Md. App. 355, 363 (1991) (emphasis added). If a defendant fails to timely raise the statute of limitations as an affirmative defense at trial, "the defense is waived." *Id.* at 366.

"It is well settled that a defendant charged with a greater offense can be convicted of an uncharged lesser included offense." *Williams v. State*, 200 Md. App. 73, 86 (2011) (citing *Skrivanek v. State*, 356 Md. 270, 281 (1999)). The Maryland Supreme Court summarized the policy concerns that underlie the lesser-included offense doctrine in *Smith v. State*, 412 Md. 150 (2009):

> [A] defendant may be convicted of a lesser included offense in a jury trial even though that offense was not charged, subject to some exceptions. [Citation omitted]. In *Hagans* [*v. State*, 316 Md. 429 (1989)], we cited a number of factors in reaching this conclusion, including: defendants would be protected by giving the jury an alternative to a guilty verdict on the greater offense; defendants would be prevented from going free when the prosecutor has not proven an element of the greater offense; and punishments would more accurately conform to crimes actually committed. 316 Md. at 448, 559 A.2d at 800 (citing Note, *The Lesser Included Offense Doctrine in Pennsylvania: Uncertainty in the Courts,* 84 Dick. L. Rev. 125, 126 (1979)). These factors are equally applicable to bench trials, where prosecutors and the public both have an interest in ensuring that defendants are convicted for offenses the defendants did commit, but not for offenses of which they are innocent.

Smith, 412 Md. at 169-70.

One of the recognized limitations "involves the definition of a lesser included offense." *Williams*, 200 Md. App. at 86-87 (footnote omitted). In Maryland, the "elements test," also known as the "required evidence test[,]" is used to "determine the existence of a lesser included offense." *Id.* (citing *Hagans*, 316 Md. at 449). Under this test:

> All of the elements of the lesser included offense must be included in the greater offense. Therefore, it must be impossible to commit the greater without also having committed the lesser.

Id. at 87 (quoting *Hagans*, 316 Md. at 449). Both first- and second-degree assault are statutory crimes codified at Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CL"), sections 3-201(b), 3-202, 3-203. We summarized the relationship between first- and second-degree assault in *Snyder v. State*, 210 Md. App. 370 (2013):

> To convict appellant of first-degree assault, the State must prove all the elements of assault in the second-degree, and, to elevate the offense to first-degree, at least one of the statutory aggravating factors. Statutory second-degree assault encompasses three types of common law assault and battery: (1) the "intent to frighten" assault, (2) attempted battery and (3)

> battery. . . . To prove first-degree assault, in addition to proving the elements of second-degree assault, the State must prove also that appellant either used a firearm to commit an assault, or that he intended to cause serious physical injury in the commission of the assault. [CL] § 3–203.

Snyder, 210 Md. App. at 379-80 (footnote omitted). Second-degree assault is a lesser included offense of first-degree assault under the elements test because "[t]o prove first-degree assault" the State must, among other things, "prov[e] the elements of second-degree assault[.]" *Id.*; *see also Williams*, 200 Md. App. at 87. Critically, however, the Criminal Law Article expressly provides that "[a] charge of assault in the first[-]degree also charges a defendant with assault in the second[-]degree." CL § 3-206(c). Accordingly, the charge of second-degree assault is not an "uncharged" lesser-included offense if first-degree assault is charged in an indictment.

A second limitation on the ability for a defendant to be convicted of an "uncharged" lesser-included offense involves notice and the opportunity of the defendant to present argument related to the uncharged offense. *See Smith v. State*, 412 Md. 150, 172-74 (2009); *Williams v. State*, 200 Md. App. 73, 91-92 & n.4 (2011); *Middleton v. State*, 238 Md. App. 295, 305 n.10 (2018). More specifically, "a trial court may not convict a defendant of an uncharged lesser included offense unless the parties are given an opportunity to present arguments on that offense in the trial court." *Smith*, 412 Md. at 172. The *Smith* Court

announced this rule in the context of a bench trial[18] and, with that context in mind, the Court summarized the public policy underlying the rule:

> [The rule] ensures that the trial court will have an opportunity to hear arguments on the lesser included offense, if the parties choose to make such arguments, which is consistent with the principle that a trial judge must be allowed to consider the arguments in a case. This rule also allocates the appropriate fact-finding responsibilities to the trial court, which … is best qualified to evaluate and weigh the evidence[.] Furthermore, this rule is consistent with our preference for limiting unnecessary appeals.
>
> This rule also eliminates concerns that might arise, for both the defendant and the State, if the parties are not given an opportunity to present closing arguments regarding the lesser included offense. By giving the parties a chance to present arguments that directly address the uncharged lesser included offense, this rule will provide the trial court with arguments from both parties on the lesser included offense, including whether it is even a lesser included offense at all, which will assist . . . our adversarial system.

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[18] In *Williams v. State*, 200 Md. App. 73 (2011), this Court extended the logic of *Smith* to apply to jury trials as well as bench trials. 200 Md. App. at 92. We stated that, under *Smith*, "the introduction of a lesser included offense instruction is proper, so long as the instruction is introduced before closing arguments, where the parties have the opportunity to address the offense before the fact-finder." *Id.* We explained:

> In *Smith,* the Court held that, "a trial court may not convict a defendant of an uncharged lesser included offense unless the parties are given an opportunity to present arguments on that offense in the trial court." 412 Md. at 172, 985 A.2d 1204. Though the Court's holding in *Smith* concerned bench trials, the Court continued:
>
> > This rule is consistent with our decisions in both *Hagans* [*v. State*, 316 Md. 429 (1989)] and *Brooks* [*v. State*, 314 Md. 585 (1989)], which provide the parties with an opportunity to address, in closing arguments, all the offenses that the fact-finder is considering. In *Hagans,* we allowed the trial judge to instruct the jury on an uncharged lesser included offense. 316 Md. at 455, 559 A.2d at 804. Closing arguments occur after the jury is given its instructions, so, under *Hagans*, the parties must know by closing arguments what offenses the fact-finder is considering. *See* Md. Rule 4–325(a).

Williams, 200 Md. App. at 92 n.4 (quoting *Smith*, 412 Md. at 173-74).

> This rule is consistent with our decisions in both *Hagans* [*v. State*, 316 Md. 429 (1989)] and *Brooks* [*v. State*, 314 Md. 585 (1989)], which provide the parties with an opportunity to address, in closing arguments, all the offenses that the fact-finder is considering…. In the present case, we are giving the parties in bench trials the same opportunity to present arguments to the fact-finder on uncharged lesser included offenses as we have afforded to the parties in jury trials.

Smith, 412 Md. at 173-74 (citations and footnotes omitted).

To satisfy *Smith*, it is not necessary for defense counsel to actually avail herself of an opportunity to present argument related to an uncharged lesser-included offense. *See Middleton*, 238 Md. App. at 305 n.10. Instead "all that [is] required [is] that the circuit court put the parties on notice that it intended to consider an uncharged lesser-included offense and provide an opportunity to present argument on that issue." *Id.*

D. Analysis

It is undisputed that defense counsel for Appellant failed to raise the statute of limitations at trial and, instead, raised the issue for the first time at the sentencing hearing. Accordingly, this issue is waived. *Brooks*, 85 Md. App. at 363, 366. Appellant's assertion that this issue should *not* be deemed waived because there was "nothing to defend on second[-]degree assault" is without merit because by operation of the plain language of CL § 3-206(c), second-degree assault was charged in the indictment.

Appellant's remaining contentions are also without merit. He asserts that his conviction for second-degree assault is improper because he was "never charged" with this offense. As just stated, however, second-degree assault was charged in the indictment by operation of CL § 3-206(c). Appellant's reliance on *Johnson v. State*, 427 Md. 356 (2012),

is without merit for the same reason; moreover, *Johnson* is distinguishable from the instant case because *Johnson* concerned a defendant who was convicted of assault with intent to murder, which was not a lesser-included offense of any offense that the defendant was charged with. *Id.* at 375-76. Here, second-degree assault *is* a lesser-included offense of first-degree assault under the elements test. *See Snyder*, 210 Md. App. at 379-80; *Williams*, 200 Md. App. at 87.

Appellant contends that the lesser-included offense doctrine should not apply because "his case was not presented to a jury" and because, under *Hagans v. State*, 316 Md. 429, 447 (1989), the doctrine does not apply where "the lesser included offense is remote from the offense charged, or where it might not reasonably be obvious that the defendant faces a particular uncharged offense[.]" (Quoting *Hagans*, 316 Md. at 450). By this point in our discussion, it is patent that second-degree assault is plainly not "remote" from first-degree assault.

All of these contentions fall wide of the mark. The issue Appellant raises on appeal is directly governed by CL § 3-206(c), which explicitly provides that second-degree assault *is* charged by an indictment *whenever* first-degree assault is charged. Accordingly, it was "reasonably . . . obvious" that Appellant could be convicted of second-degree assault. *See Hagans*, 316 Md. at 450. And, because second-degree assault is not an "uncharged" offense by operation of CL § 3-206(c), *Smith v. State*, 412 Md. 150 (2009), and its progeny do not apply. Regardless of the extent to which defense counsel availed themselves of the opportunity to present argument concerning second-degree assault, *see Middleton*, 238 Md.

App. at 305 n.10, defense counsel had the *opportunity* to present argument on this charge during his closing, and to elicit testimony favorable to Appellant throughout the trial.

In sum, we hold that, although the indictment in this case did not expressly charge second-degree assault, CL § 3-206(c) states clearly that second-degree assault is deemed to have been charged by an indictment *whenever* first-degree assault is charged. The record establishes that Appellant waived his statute of limitations defense by failing to raise the issue at trial. Therefore, we will affirm the judgment of the circuit court.

II.

Evidence of Identity

A. Parties' Contentions

Appellant contends that "the witnesses at trial did not adequately identify him as one of the actors involved in the June 14, 2019 incident" at BCBIC. He concedes that, at trial, Ms. Canter testified that she "recognized" Appellant as one of several correctional officers present in the courtroom, that she "knew" Appellant from the detention center, and that Appellant placed her "in a chokehold" and "squeezed" her neck "to where [she] could not breathe." In Appellant's view, the State failed to prove identify because Ms. Canter was not "asked to describe" him "by the clothing he was wearing[,]" and thus was "never identified, much less properly identified[.]"

To the contrary, the State asserts that Appellant was adequately identified because Ms. Canter, who was "familiar with [Appellant]," had "identified [Appellant] as one of the

officers" and "identified him on the surveillance video, which was played for the trial court."

B. Standard of Review

As we recently stated in *Green v. State*, 259 Md. App. 341, 372 (2023):

> "When reviewing the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State and assess whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Krikstan*, 483 Md. 43, 63 (2023) (internal quotation marks omitted) (quoting *Walker v. State*, 432 Md. 587, 614 (2013)). As this Court recently reiterated:
>
> > Our role is not to review the record in a manner that would constitute a figurative retrial of the case. This results from the unique position of the factfinder to view firsthand the evidence, hear the witnesses, and assess credibility. As such, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. Our deference to reasonable inferences drawn by the fact-finder means we resolve conflicting possible inferences in the State's favor, because we do not second-guess the jury's determination where there are competing rational inferences available.
>
> *Turenne v. State*, 258 Md. App. 224, 236 (2023) (quoting *Krikstan*, 483 Md. at 63–64).

Green, 259 Md. App. at 373.; *see also Chisum v. State*, 227 Md. App. 118, 127 (2016) (stating that "[t]he issue of legal sufficiency is precisely the same" regardless of whether a jury or a judge sits as the trier of fact). In addition to proving the elements of the crime(s) charged, it is the State's burden to prove "criminal agency" beyond a reasonable doubt, which includes proving a defendant's "presence at the scene where pertinent[.]" *State v. Simms*, 420 Md. 705, 722 (2011) (quoting *Schmitt v. State*, 140 Md. App. 1, 30 (2001)).

C. Analysis

The State introduced sufficient evidence for a rational factfinder—in this case the judge—to conclude beyond a reasonable doubt that Appellant was the individual who committed the charged crimes.

On the first day of trial, Ms. Canter testified that she could "see . . . Officer Santana" in the courtroom, whom she "kn[ew]" from an incident that occurred at BCBIC on June 14th of 2019.[19] On the second day of trial, in response to cross-examination by one of Appellant's two defense attorneys, Ms. Canter testified that Appellant was one of five officers on the "floor" at the time of her institutional transfer, which preceded the incident in the sally port:

> [DEFENSE COUNSEL]: Well, you would agree that there were only three officers on that floor when you arrived, correct?
>
> [MS. CANTER]: No, there was not.
>
> [DEFENSE COUNSEL]: There was Officer Vincent?
>
> [MS. CANTER]: Correct.
>
> [DEFENSE COUNSEL]: Officer Santana?
>
> [MS. CANTER]: Correct.
>
> [DEFENSE COUNSEL]: And Officer Okeke, correct?
>
> [MS. CANTER]: Correct. Plus the two officers that brought me up.

[19] Ms. Canter testified that she "had a prior interaction with Officer Santana" during her work "with the Intelligence Department."

Later, defense counsel showed Ms. Canter a brief portion of security footage from "the lobby" and, after playing a brief portion of the footage beginning at "5:32 seconds[,]" **[03/18/22 Tr. at 67, 70]** asked Canter whether the footage portrayed "Officer Santana" as he "trie[d] to pull you up[,]" to which Ms. Canter responded "Yes, ma'am."

Finally, on the third day of trial, Lieutenant Fleming implicitly identified Appellant as one of the three defendants present in the courtroom:

> [THE STATE]: All right. And are you familiar with the defendants here?
>
> [FLEMING]: Yes.
>
> [THE STATE]: Okay. How are you familiar with each one?
>
> [FLEMING]: She's -- well, Monyette Washington is my sergeant, and those -- and Santana and Okeke are my officers.
>
> * * *
>
> [FLEMING]: [Okeke and Appellant are] my officers, so I'm their supervisor[.]

We agree with the trial judge that Appellant "was identified on the video" by Ms. Canter. This Court has reviewed the video evidence in this case, and the face of the man who lifted, and later dropped, Ms. Canter is clearly visible. The security footage also plainly shows that this is the same man who Ms. Canter identified as "Officer Santana" when he "trie[d] to pull [her] up[.]" The trial judge had ample opportunity to compare the face of the man whom Ms. Canter identified as "Officer Santana" on video, to Appellant's face as he sat in the courtroom. Moreover, Lieutenant Fleming testified that Appellant was

one of the three defendants present in the courtroom, and as Appellant asserts in his brief, the other two defendants had already been identified separately.

For these reasons, we hold that there was sufficient evidence to prove Appellant's criminal agency beyond a reasonable doubt.

III.

Sufficiency of the Evidence

A. Parties' Contentions

According to Appellant, there was insufficient evidence introduced at trial to support any of his three convictions.

First, Appellant asserts that he should not have been convicted of second-degree assault because that offense was "uncharged[.]" We addressed this issue *supra*, and we need not do so again here.

Next, Appellant states that there was "legally insufficient" evidence to support the second-degree assault conviction. The only support that Appellant offers to support this proposition is that, in his view, the use of force on Ms. Canter was justified. As defense counsel argued at trial, Ms. Canter "wasn't complying," Appellant was "given an order to use force," and "he used appropriate force to escort" Ms. Canter to her cell. Appellant concedes he "never received or offered [sic] training in the use of any holds in the area of a person's neck," but notes "other holds targeted joints such as the shoulders, elbows and wrists."

Third, Appellant states there is legally insufficient evidence to support his conviction, under Count 2, for misconduct in office. As we noted above, this conviction

was premised on Appellant's conviction for second-degree assault. Specifically, Appellant states that "the prosecution failed to adequately prove" his "use of force" was "not fully justified." To convict a defendant of misconduct in office, the State is required to prove three elements, including "corrupt behavior." *Koushall v. State*, 479 Md. 124, 154 (2022) (quotation omitted). In this case, the State could satisfy this element by demonstrating that, through the use of force, Appellant committed either "misfeasance" or "malfeasance[.]" *See Sewell v. State*, 239 Md. App. 571, 602 (2018). Because the State "failed to adequately prove" that Appellant's use of force "was not fully justified[,]" the State could not have established either misfeasance or malfeasance and, thus, Appellant states this conviction must be reversed.

Finally, Appellant contends the State also failed to prove the "corrupt behavior" element of misconduct in office for his conviction under Count 3, which arose from his failure to provide an accurate description of events in his Use of Force Report. Appellant recounts that, at trial, defense counsel argued he acted with the "intent to move Ms. [Canter] into her cell" rather than "with an intent to harm" and, "[n]otwithstanding" the statements Appellant made "in writing [in the report] and the trial judge's factual findings based on viewing the video recording, Appellant asks this Court to consider that the report, written shortly after the incident took place, was not written with the intent to misrepresent the facts or to deceive[.]"

The State responds that Appellant's conviction for second-degree assault is proper because the testimony and evidence introduced at trial supports the judge's finding that Appellant intentionally dropped Ms. Canter's limp body, face first, to the ground. For the

same reasons, the State contends that there was sufficient evidence to convict Appellant of misconduct in office, under Count 2, which was premised on the assault. Finally, the State asserts that the evidence supports the judge's finding that Appellant's Use of Force Report—which omitted the details of the assault and, instead, claimed that Ms. Canter threw herself to the ground—was inconsistent with the facts and constituted a false statement. Therefore, the State urges that Appellant's conviction for misconduct in office under Count 3 is also proper.

B. Legal Framework

In Maryland, it is a misdemeanor in the second degree to "commit an assault." CL § 3-203(a)-(b); *see also id.* § 3-201(b) ("'Assault' means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings."); *State v. Frazier*, 469 Md. 627, 644 (2020) ("Our case law embraces three types of common law assault: '(1) intent to frighten, (2) attempted battery, and (3) battery.'") (quoting *Jones v. State*, 440 Md. 450, 455 (2014)). In *Williams v. State*, the Supreme Court of Maryland stated that "common law battery" is "the unlawful forceful touching by one person to another[.]" 457 Md. 551, 567 (2018). The Court elaborated that:

> [When battery was] a common law crime, [it] was . . . defined as the "unlawful beating of another[.]" *Kellum v. State*, 223 Md. 80, 85, 162 A.2d 473, 476 (1960). We have also defined common law battery as the "unlawful application of force to the person of another[,]" *Snowden v. State*, 321 Md. 612, 617, 583 A.2d 1056, 1059 (1991), and as "'*any* unlawful force used against the person of another, *no matter how slight*[.]'" *Edmund v. State*, 398 Md. 562, 571, 921 A.2d 264, 269 (2007) [quotation omitted]. *See also Lamb v. State*, 93 Md. App. 422, 448, 613 A.2d 402, 414 (1992) (quoting R. Perkins, *Criminal Law*, 152-153 (3d ed. 1982) (defining battery as "an application of force to the person of another 'by the aggressor himself, or by some substance which he puts in motion.'").

Id. (third and fourth alterations in original).

The Supreme Court of Maryland recently defined the offense of misconduct in office:

> "In Maryland, misconduct in office is a common law misdemeanor." *Duncan v. State*, 282 Md. 385, 387, 384 A.2d 456, 458 (1978) (footnote omitted). The elements of misconduct in office are "[1] corrupt behavior[, 2] by a public officer[, 3] in the exercise of his [or her] office or while acting under color of his or [her] office." *Id.*, 384 A.2d at 458 (citing Perkins on Criminal Law 485 (2d ed. 1969)).

Koushall v. State, 479 Md. 124, 154 (2022) (alterations supplied by *Koushall*). In this case, only the first element—corrupt behavior—is at issue. As we explained in *Sewell v. State*, "[a]lthough it is a singular offense, the crime of official misconduct covers three modes of behavior: (1) misfeasance, (2) malfeasance, and (3) nonfeasance." 239 Md. App. 571, 601, (2018) (citation omitted). "The corrupt behavior may be (1) the doing of an act which is wrongful in itself – malfeasance[;] or, (2) the doing of an act otherwise lawful in a wrongful manner – misfeasance; or (3) the omitting to do an act which is required by the duties of the office –nonfeasance." *Koushall*, 479 Md. at 154-55 (quoting *Duncan*, 282 Md. at 387). Any of these three alternatives—malfeasance, misfeasance, or nonfeasance—is sufficient to "satisfy the unitary element of corrupt behavior" in a charge of misconduct in office. *Id.* at 155 (citing *Duncan*, 282 Md. at 387 n.2); *see also Chester v. State*, 32 Md. App. 593, 603 (1976) (noting that malfeasance has been defined as "[t]he doing of an act which a person ought not to do; evil conduct; an illegal deed;-often used of official misconduct or an instance of it") (quotation omitted). *See also Sewell*, 239 Md. App. at 602 ("[A] public

officer commits malfeasance by corruptly exceeding the scope of his or her authority and commits misfeasance by acting within the scope of his or her authority but doing so corruptly.") (citations omitted).

In *Leopold v. State*, we summarized some types of conduct that may qualify as misconduct in office:

> neglect or non-performance of any positive duty imposed by law; *oppressive and wilful abuse of authority* (to be distinguished from mere error of judgment); extortion; fraud or breach of trust affecting the public, such as rendering, passing or procuring false accounts, or wilfully neglecting to account for money received, or corruptly retaining money found upon a prisoner; grossly indecorous conduct, such as sitting as a justice while drunk, or getting drunk during time of service as a grand juror.

216 Md. App. 586, 605 (2014) (quoting *Chester*, 32 Md. App. at 606; emphasis supplied by *Leopold*).

C. Analysis

As we stated previously, in reviewing the sufficiency of the evidence to support a conviction, "we view the evidence in the light most favorable to the State and assess whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Green*, 259 Md. App. at 372. (quotation omitted). In this case, the evidence at trial was sufficient to convict Appellant of second-degree assault. As described by the trial judge, who "reviewed the incident from all of the angles presented[,]" Appellant "dragged" Ms. Canter "out of the cell area[]" while her "body was limp" and, shortly thereafter, he "intentionally dropped a limp, unmoving Ms. Cant[e]r to the ground face first, straddled her and stepped over her to look at her[,]" thus causing her "significant" injuries. The evidence admitted at trial—including the security footage, Appellant's Use

of Force Report, and photos of Ms. Canter's injuries—clearly support the judge's factual assessment. Moreover, to support his finding that Appellant's conduct was intentional, the judge stated that: "The lack of mistake is clear from the fact that [Appellant] wrote in his report that Ms. Cant[e]r threw her body to the ground which this Court finds to be inconsistent with the facts and a false statement." Again, the footage admitted into evidence supports the judge's assessment that Ms. Canter did *not*, as Appellant claimed in his report, throw herself to the ground; thus, we cannot say that it was unreasonable for the judge to infer, based on Appellant's contrary description of events in his Use of Force Report, that Appellant's conduct was intentional.

In his brief, Appellant makes no attempt to explain how Ms. Canter's admittedly disobedient behavior permitted him—*lawfully*—to intentionally drop her to the ground, face first, while dragging her limp body. Instead, Appellant blandly asserts that "the evidence elicited at trial from the witnesses and the videotape . . . was legally insufficient to establish the elements of assault in the second degree" and that, under the circumstances, he was authorized to utilize compliance holds "target[ing] joints such as the shoulders, elbows and wrists." We find Appellant's contentions to be meritless, and we hold the evidence was sufficient to support his conviction for second- degree assault.

Turning to Appellant's conviction for misconduct in office under Count 2, we note once more that Appellant's only argument on appeal is that, in his view, the "prosecution did not establish misfeasance or malfeasance" because there was inadequate proof "that Mr. Santana's use of force . . . was not fully justified." We affirm Appellant's conviction on this Count for the same reasons that we affirm his conviction for second- degree assault.

Once more, Appellant makes no attempt to explain how Ms. Canter's conduct permitted him to intentionally drop her limp body, face first, to the ground. Because, as just discussed, the evidence supports the judge's finding that Appellant's conduct was intentional, it is clear that Appellant's conduct was not a mere "error of judgment[.]" *Leopold*, 216 Md. App. at 605 (emphasis removed and quotation omitted). "In the instant case, the same evidence that established unlawful use of force for the second-degree assault conviction also satisfied the corrupt behavior element." *Koushall*, 479 Md. at 155 (citing *Riley v. State*, 227 Md. App. 249, 264 n.7 (2016)); *see also Riley*, 227 Md. App. at 264 n.7 ("[T]he jury found [the defendant] guilty of second-degree assault. Thus, the assault became an act 'by a public officer in the exercise of the duties of his office' which was 'corrupt,' and that assault constituted an 'oppressive and willful abuse of authority.'") (quoting *Leopold*, 216 Md. App. at 604-05).

Finally, we conclude that there was sufficient evidence to convict Appellant of misconduct in office, under Count 3, for Appellant's concealment of key details in his Use of Force Report. As required by Chapter XI the Use of Force Policy, any officer who is "involved in" or has "direct knowledge of[] a use of force situation . . . shall provide a written report of the incident" that contains, among other things, "[t]he role and actions of the employee in the incident[.]" In his Use of Force Report, Appellant stated, in full, that:

> On June 14, 2019 Officer Z. Santana was assigned to 3 North A Dorm. At approx.. 1630hrs I Officer Santana was asked by Sgt. Washington to assist with escorting detainee Amber Canter . . . because [s]he was refusing to lock in h[er] cell. Upon my arrival, Detainee Canter was asked, ordered and advised to walk to h[er] assign cell. Detainee Canter refused all orders given. At this time I Officer Santana grabbed detainee Canter by h[er] back upper torso and began escorting detainee Canter to the assigned cell. While I

> Officer Santana was escorting detainee Canter to h[er] assigned cell [s]he then Stated "Yall going to have to drag me to my cell". Detainee Canter then dropped h[er] legs and fell by throwing h[er] body to Floor. From the floor I Officer Santana dragged detainee Canter to h[er] cell without further incident.

As we previously noted, the evidence at trial supports the judge's assessment that Appellant intentionally dropped Ms. Canter's limp, unmoving body to the ground, face first. By failing to report that conduct, and instead stating that Ms. Canter "thr[ew] h[er] body to the Floor[,]" Appellant failed to accurately report his role and actions in the incident, as required by the Use of Force Policy. Indeed, Appellant's Use of Force Report makes no mention that, at the time he dropped Ms. Canter to the ground face first, her body was limp and he had already begun to drag her. We find that the large discrepancies between Appellant's Report and the security footage clearly support the judge's finding that: "The lack of mistake is clear from the fact that [Appellant] wrote in his report that Ms. Cant[e]r threw her body to the ground which this [c]ourt finds to be inconsistent with the facts and a false statement." While Appellant "act[ed] within the scope of his . . . authority" in filing *a* report, he "d[id] so corruptly" by omitting key details and falsely claiming that Ms. Canter threw herself to the floor. *Sewell*, 239 Md. App. at 602. For these reasons, we hold that Appellant's omission and concealment of the assault in his Use of Force Report satisfied the corrupt behavior element of misconduct in office under Count 3.

For the above reasons, we affirm Appellant's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.