

Circuit Court for Baltimore County
Case No. C-03-CR-22-000572

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 0464

September Term, 2023

DEVIN MOORE

v.

STATE OF MARYLAND

Zic,
Tang,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: October 15, 2024

*This is an unreported opinion. This 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).

The appellant, Devin Moore, was convicted in the Circuit Court for Baltimore County by a jury, presided over by Judge Michael Barranco, of false imprisonment, second-degree assault, and two counts of impersonating a police officer. He was sentenced to a term of twenty years with all but six suspended for false imprisonment, a concurrent five-year term for the assault, and concurrent two-year terms for each of the convictions for impersonating a police officer. On this appeal, the appellant raises two contentions: They are:

- 1. that the evidence was not legally sufficient to support the convictions for false imprisonment and for impersonating a police officer; and**
- 2. that the court erred by convicting him of two separate charges of impersonating a police officer.**

The Background

The crimes all occurred at shortly after midnight on January 19, 2022 at a private home on Arroyo Lane in the Gwynn Oak neighborhood of Baltimore County. The appellant led a team of four agents from a bail bonds company in an attempt to serve a warrant on one Devontae Coleman who had failed to appear at some official proceeding. On several occasions during the course of the trial, this group of agents from the bail bondsman's office were referred to as "bounty hunters." The fugitive, Devontae Coleman, did not reside at the Arroyo Lane address and was not there when the bail bond agents arrived. Present, however, was Unique Coleman, a resident of the home and the sister of Devontae Coleman. Also present was Larry Sparrow, the live-in boyfriend of Unique Coleman. Larry Sparrow was the ultimate victim of both the false imprisonment and the assault.

Sparrow testified that when he heard a knock on the door at approximately midnight, he grabbed his twelve-gauge shotgun, brought it near the door, and audibly cocked it. The appellant testified that when the team heard the racking of the gun, they retreated from the door. The appellant instructed one of his team members, Isaiah Johnson, to call the police. Johnson did so. Two Baltimore County Police Officers, Sara Elizabeth Byron and Bryan Brown, responded within minutes and took full control of the scene.

Sparrow testified that immediately after racking his shotgun, he heard, very faintly, the words, “Police, police.” Immediately after he heard the word, “Police,” he put the shotgun away in a closet where he regularly stored it and opened the front door. No one was there immediately in front of him. When he then stepped outside, he saw “three males bunched up together on the steps pointing guns at us screaming, telling us to come out of the house.” Both Sparrow and Unique Coleman did so. Sparrow was handcuffed and sat down on the steps while some of the appellant’s team went into the house.

The bail agents placed Sparrow, still handcuffed, into the back of an Acura MDX, owned by one of the bail bond team, Isaiah Johnson, to await the arrival of the police. Sparrow further testified that throughout that entire scenario, he thought the appellant was a police officer. It was only when the Baltimore County police officers removed his handcuffs that he realized that the appellant was not a police officer.

When the Baltimore County Police arrived on the scene, Sparrow was handcuffed in the Acura. The exchange between the Baltimore County Police and the team of bail bond agents was all very amicable.

Legal Sufficiency Of The Evidence

The appellant challenges the legal sufficiency of the evidence to support his conviction in two regards. He contends that the evidence was not legally sufficient to support his conviction for the false imprisonment of Sparrow. He also contends that the evidence was not legally sufficient to support a conviction for impersonating a police officer. The appellant does not challenge the legal sufficiency of the evidence to support his conviction for a second-degree assault of Sparrow.

In handling the other legal sufficiency challenges, we are guided by the reviewing standard clearly set out by this Court in Love v. State, 257 Md. App. 704, 725, 294 A.3d 206 (2023):

“In and out of consciousness” presents two binary possibilities. There is thus one version of the evidence more favorable to the appellant and another version of the evidence more favorable to the State. That might be a tough call for a factfinder, but it is a “slam dunk” for the appellate review of legal sufficiency. Faced with such a diametric dichotomy of versions, we must look to the controlling standard of appellate review. Under it, of course, we are enjoined to accept that version of the evidence “**most favorable to the prosecution.**” That version of the evidence pursuant to which the prosecution wins is self-evidently more favorable to the prosecution than that version of the evidence pursuant to which the prosecution loses. “In and out” becomes “In.” Accepting that version of the evidence, as we must, the appellant at the moment of the kicking was conscious, the act of kicking was voluntary, and the State prevails. The controlling standard of the appellate review permits no less. Q.E.D.

(Emphasis supplied.)

A. False Imprisonment

At the conclusion of the case, Judge Barranco gave the following standard Pattern Jury Instructions to the jury on the crime of False Imprisonment:

The defendant is charged with the crime of false imprisonment. False imprisonment is the confinement or detention of a person against that person's will and without legal justification accomplished by force or threat of force or deception.

In order to convict the defendant of false imprisonment, the State must prove [1] that the defendant confined or detained Larry Sparrow [2] that Larry Sparrow was confined or detained against his will [and 3] that the confinement or detention was accomplished by force or threat of force or deception, and that there was...no legal justification...for the confinement or detention.

(Emphasis supplied.)

The evidence established unequivocally that the appellant, while armed with what appeared to be a handgun, ordered Sparrow out of his house, placed Sparrow in handcuffs, and then detained Sparrow in the backseat of the Acura MDX belonging to one of the members of the appellant's team, where Sparrow remained detained until released following the arrival of the actual Baltimore County Police officers. It was also clear that neither the appellant nor any member of the appellant's team of bail bonds employees had any legal authority or other good reason to detain Sparrow. This evidence, ipso facto, supports the conviction for false imprisonment.

It is difficult to understand how the appellant can in all candor argue otherwise. When at the end of the State's case motions were being made for judgments of acquittal, the appellant's primary focus was on obtaining a judgment of acquittal for the then still pending charge of kidnapping. In concentrating on his main anti-kidnapping argument that the appellant did not move Sparrow any appreciable distance away from where he was

originally located, the appellant did not seriously challenge any other lesser included charges such as the assault on Sparrow or the false imprisonment of Sparrow:

THE COURT: Okay. Mr. Herman, you're going to make a Motion for Acquittal?

MR. HERMAN: I do, your Honor.

Motion - - I make a Motion for Acquittal as to the top count of kidnapping. There's absolutely no evidence whatsoever that anyone kidnapped Mr. Sparrow.

Maybe they falsely imprisoned him, maybe it was an assault, but it certainly was not about the intent of carrying him or concealing him in any way, shape or form.

The evidence has been repeatedly that they only took him from the apartment to the Acura where he was seated in the back seat of the vehicle.

(Emphasis supplied.)

In that same argument and within a moment afterward, the appellant conceded that the evidence “generated” a case of false imprisonment, although he disdainfully dismissed it as “so incidental:”

[T]he transport and the handcuffing is so incidental and are crimes in and of themselves, so just because that the top count of kidnapping should go away doesn't mean that he's not criminally exposed on the assault or the false arrest or false imprisonment charges, which I submitted to you are generated by the factual disputes in this case but not kidnapping.

(Emphasis supplied). On this contention, we are content to rely upon the appellant's assessment of the false imprisonment offense. He admits it was “generated by the factual disputes in this case.”

B. Impersonating A Police Officer

The appellant also challenges the legal sufficiency of the evidence to support a conviction for impersonating a police officer. The Maryland Code, Public Safety Article, Section 3-502(b) (c) and (d) expressly prohibits the following conduct:

Impersonating police officer prohibited

(b) A person may not, with fraudulent design on person or property, falsely represent that the person is a police officer, special police officer, sheriff, deputy sheriff, or constable.

Wearing police articles prohibited

(c) Except as provided in subsection (e) of this section, a person may not have, use, wear, or display a uniform, shield, button, ornament, badge, identification, or shoulder patch adopted by the Department of State Police to be worn by its members, insignia, or emblem of office, as is worn by a police officer, sheriff, deputy sheriff, or constable.

Imitations of police articles prohibited

(d) A person may not, for the purpose of deception, have a simulation or imitation of an article described in subsection (c) of this section as is worn by a police officer, sheriff, deputy sheriff, or constable.

The conduct of the appellant throughout this entire incident established irrefutably that he was impersonating a police officer in order to command the compliance of both Sparrow and Unique Coleman. When Sparrow and Coleman initially responded to the knock on the door, they heard the appellant (or one of the members of his team) announce their presence with the words, “Police. Police.” Dutifully, they opened the door.

The appellant’s dress communicated his intention to be taken for a policeman. He was wearing a tactical vest with a patch on the front that prominently displayed the word, “OFFICER.” The vest read, “Agent” on the back. The appellant was also wearing a police-style badge which said, “Special Police.” The appellant was also wearing a holster and was

armed with a replica Glock BB gun. He was wearing tactical pants and a black raid-style vest. The members of his team were similarly attired.

When Sparrow and Unique Coleman first stepped out of their front door, the appellant or other members of his team trained their guns on them and ordered them out of the house. The appellant and other members of his team entered the home and recovered Sparrow's shotgun. The appellant announced to Sparrow that Sparrow was on his way to jail. The team handcuffed Sparrow and placed him in the back of the Acura.

When the appellant had showed up at the home on the preceding day, the appellant announced that they had a warrant for the arrest of Devontae Coleman. Over the course of both days, Sparrow operated on the assumption that the appellant was a police officer.

We hold that the evidence bountifully established that the appellant was in every way intending to convey the impression to Sparrow that he was a duly authorized police officer. As the appellant argues that there might be some possibility of a doubt, we refer again to Love v. State, 257 Md. App. at 722-23:

This Court on appeal will view the evidence in the light most favorable to the prosecution. We will now apply that controlling standard of appellate review to the specific legal sufficiency arguments before us. As we do so, we remind ourselves that the articulation of that standard of appellate review is not some ritualistic paying of lip service to the standard at the beginning of an appellate opinion or the beginning of an appellate argument that may thereafter be conveniently ignored. It is not ritualistic. It is not a mere opening exercise. It is the articulation of the controlling standard that must be precisely remembered and must be rigorously adhered to at every stage of the review that follows.

(Emphasis supplied.)

In his appellate brief, the appellant argues at great length that the jury may have relied on one detail of the State’s case but may have disbelieved other portions of it. The quick disposition of such suppositions about what this jury might have done is the clear statement by this Court in Chisum v. State, 227 Md. App. 118, 130, 132 A.3d 882 (2016):

The burden of production is not concerned with what a factfinder...does with the evidence. It is concerned, in the abstract, with what any judge or any jury, anywhere, could have done with the evidence.

(Emphasis supplied.) *See also* State v. Manion, 442 Md. 419, 431, 112 A.3d 506 (2015); State v. Albrecht, 336 Md. 475, 478, 649 A.2d 336 (1994).

Multiple Charges Of Impersonating An Officer

The appellant was convicted of two counts of impersonating a police officer. The Fourth Count charged the appellant with impersonating a police officer before Larry Sparrow on January 19, 2022. The Sixth Count charged him with impersonating a police officer before Unique Coleman on both January 18, 2022 and January 19, 2022. As the State candidly acknowledges, its purpose in adding the second charge (Count Six) to the indictment was not to distinguish the significant behavior of the appellant and his team at approximately midnight on January 19 from the relatively insignificant behavior of the appellant on January 18. The purpose of the second charge was not in any way to distinguish January 18 from January 19, but to distinguish Unique Coleman from Larry Sparrow as a target of the impersonation. The Fourth Count, for instance, does not even mention Unique Coleman. The primary function of the Sixth Count is not so much to add January 18 to the narrative as it is to add Unique Coleman to the narrative.

It was the State’s position at trial that having two targets of the appellant’s impersonation of an officer amounted to two distinct violations of the law prohibiting such an impersonation. The double convictions were based not on two separate dates for the appellant’s act of impersonating but rather upon two separate targets of the impersonation, two targets of his act of impersonation performed on January 19.

Very commendably, the State fully acknowledges that the multiple convictions for impersonating a police officer in this case was erroneous. For the crime of impersonating a police officer the appropriate unit of prosecution is the behavior of the defendant in his act of impersonation. It is not the number of auditors to his performance nor even the number of targets of his performance. The criminal behavior of the appellant consisted of a single scenario of impersonation and not upon multiple scenarios, upon a single performance and not upon multiple performances.

As the Maryland Supreme Court announced in Nicolas v. State, 426 Md. 385, 400, 44 A.3d 396 (2012):

[I]n situations where there is a factual ambiguity regarding whether the convictions arose out of the same act or transaction, “that ambiguity is resolved in favor of the defendant.”

See also State v. Frazier, 469 Md. 627, 642, 231 A.3d 482 (2020).

Accepting the State’s concession, we will accordingly reverse the appellant’s conviction for impersonating a police officer pursuant to Count Six.

JUDGMENT OF CONVICTION FOR FALSE IMPRISONMENT AFFIRMED; JUDGMENT OF CONVICTION FOR IMPERSONATING A POLICE OFFICER PURSUANT TO COUNT FOUR AFFIRMED; JUDGMENT OF CONVICTION FOR IMPERSONATING A POLICE OFFICER PURSUANT TO COUNT SIX REVERSED. COSTS TO BE DIVIDED EQUALLY BETWEEN THE APPELLANT AND BALTIMORE COUNTY.

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

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0464s23cn.pdf>