

Circuit Court for Charles County
Case No. 08-K-17-000023

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 22

September Term, 2018

ROBERT ADOLPH SANJOSE

v.

STATE OF MARYLAND

Arthur,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 4, 2019

*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.

Following a jury trial in the Circuit Court for Charles County, Robert Sanjose, appellant, was convicted of second-degree assault. He raises two issues on appeal: (1) whether the administrative judge erred in denying his request for a continuance prior to trial because, he claims, his defense counsel had an un-waivable conflict of interest, and (2) whether there was sufficient evidence to sustain his conviction. For the reasons that follow, we shall affirm.

Several days before trial, defense counsel, an assistant public defender for the Charles County Office of the Public Defender, requested a continuance so that a panel attorney could be appointed to represent Mr. Sanjose. In support of his request, defense counsel informed the administrative judge that he had recently learned about the existence of a video wherein the victim had allegedly stated that Mr. Sanjose had “never hurt [her] physically, only emotionally.” Defense counsel indicated that the video could no longer be downloaded but that it had been viewed by three attorneys in his office, including one attorney who had previously been appointed to represent Mr. Sanjose in this case. The Deputy Public Defender for Charles County, who was also present at the hearing, asserted that, because the video was no longer available, defense counsel was “in a very awkward position because he would be potentially calling members of his own office to testify about the contents of the video.” She further claimed that this was an “un-waivable conflict.”

The administrative judge continued the hearing so that the parties could determine if the video could be recovered. When the hearing resumed, the Public Defender for Charles County appeared with defense counsel, informed the court that the video could not be located, and argued that a panel attorney was essential, “to make sure that we are

complying with our ethical obligations not to be both lawyers and witnesses in [the] case.” The administrative judge determined that defense counsel had not demonstrated the existence of a conflict of interest and denied the request for a postponement.

On appeal, Mr. Sanjose contends the failure to postpone his case so that a panel attorney could be appointed deprived him of his Sixth Amendment right to have counsel’s representation free from conflicts of interest. Specifically, he asserts that he was forced to potentially “forego effective impeachment of the complaining witnesses” because his defense counsel “could not present any defense witness who [had] formerly represented [him] and was also a staff Public Defender in the same District office.”

Although we agree that Mr. Sanjose was entitled to conflict-free representation, we are not persuaded that his defense counsel had an actual conflict of interest in this case. The only conflict alleged by Mr. Sanjose is that his defense counsel might have had to call his colleagues who had viewed the video as impeachment witnesses. However, Maryland Rule 19-303.7(b) specifically provides that an attorney may act as an advocate in a trial in which another attorney in the attorney’s firm is likely to be called as a witness unless he or she is otherwise precluded from doing so by Rule 19-301.7 (addressing conflicts of interest) or Rule 19-301.9 (addressing duties to former clients). Comment 7 to the Rule further explains that such representation is permissible even when the testifying attorney from the lawyer’s firm would be precluded from representing the client under the Rule. Thus, the fact that another assistant public defender might have been a potential witness did not, in the absence of some other conflict, require the appointment of a panel attorney.

At the hearing on the motion for postponement, neither defense counsel nor his supervisors claimed that any of the attorneys who had viewed the video had a conflict of interest that would have prohibited them from representing Mr. Sanjose other than their status as potential witnesses in the case. And Mr. Sanjose does not raise such a claim on appeal. Because the Maryland Rules of Professional Conduct would not have precluded defense counsel from calling as witnesses the attorneys who had viewed the video, Mr. Sanjose was not deprived of his right to the assistance of counsel. Consequently, the administrative judge did not err in denying the motion for a postponement.

Mr. Sanjose also claims that there was insufficient evidence to sustain his conviction for second-degree assault. However, when making his motions for judgment of acquittal in the trial court, defense counsel stated that he was “not going to make an argument” with respect to the second-degree assault charge. Consequently, this issue is not preserved for appellate review. *See Peters v. State*, 224 Md. App. 306, 354 (2015) (“[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal.” (citation omitted)).

Moreover, even if preserved, we would find no error. Viewed in a light most favorable to the State, there was sufficient evidence to sustain Mr. Sanjose’s conviction for second-degree assault based on the victim’s testimony that, without her consent, Mr. Sanjose rubbed her stomach, kissed and massaged her neck and shoulders, pinned her to the bed, and took off her pants and underwear. Although Mr. Sanjose contends that the evidence was insufficient because “there were no other witnesses to what happened” and

“no DNA or fingerprint evidence” to corroborate the victim’s testimony, those issues affect the weight of the evidence, not its sufficiency, and were for the jury to resolve.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**