

Circuit Court for Prince George's County
Case No. CAL-18-28613

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0678

September Term, 2020

ESTATE OF ASSHAMS MANLEY, ET AL.,

v.

PRINCE GEORGE'S COUNTY
MARYLAND, ET AL.,

Fader, CJ,
Friedman,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: June 14, 2021

*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.

This is an appeal from a defense judgment rendered by the Circuit Court for Prince George's County in a wrongful death suit brought by appellant, Alberta Manley,¹ against appellees, Prince George's County Maryland and Brian Bell.² On January 21 and 22, 2020, a jury trial was held and after appellant rested her case, appellees moved for judgment, which the court granted. On January 31, 2020, appellant filed a motion for a new trial and on August 06, 2020, the court entered an order denying appellant's motion. Appellant timely appealed and presented five questions for our review, which we have rephrased and condensed:³

1. Did the circuit court err in granting appellees' motion for judgment?

BACKGROUND

On August 14, 2015, at approximately 11:30 p.m., Asshams Manley was shot by Officer Brian Bell during an incident arising from a traffic accident. The following day, he unfortunately succumbed to his injuries. His mother, Alberta Manley, on behalf of his

¹ Alberta Manley filed this case in her capacity as personal representative for the Estate of Asshams Manley.

² At the onset of the case, appellant voluntarily dismissed her claims against Nicholas Cicale and Edward Finn.

³ Appellant's issues were phrased as follows:

1. Did the trial court err in granting the defense motion for judgment?
2. Did the trial court err in making findings of fact?
3. Did the trial court err in failing to consider the evidence in the light most favorable to appellant, the plaintiff below?
4. Did the trial court usurp the province of the jury?
5. Did the circuit court err in ruling that appellee was entitled to qualified immunity?

estate, filed a wrongful death complaint against appellees on August 13, 2018, in the Circuit Court for Prince George’s County. A two-day jury trial was held on January 21 and 22, 2020, where Biko Manley, appellant, and Officer Brian Bell testified.

Biko Manley, Asshams’ younger brother, was in the area of the accident and testified, “we had an accident in front of Popeye’s, [Asshams Manley] ran behind the Popeye’s outlet there, he got shot.”⁴

[PLAINTIFF’S ATTORNEY]: —Mr. Manley. And do you know where it was that [Asshams Manley] got shot?

[BIKO]: No.

[PLAINTIFF’S ATTORNEY]: Okay. Do you know where Officer Bell was when he shot him?

[BIKO]: Yes.

[PLAINTIFF’S ATTORNEY]: How is it that you know one but not the other?

[BIKO]: Because I—once my brother ran, he ran behind the outlet, I couldn’t see him. I see him come out of his position when he was going to ask him with other people, can I ask him a question?

[PLAINTIFF’S ATTORNEY]: No, but you can tell the ladies and gentlemen of the jury what you saw.

[BIKO]: Okay. We had got in a car accident, he ran straight for my brother went past the car accident and shot at him.

⁴ During cross-examination of Biko Manley, he admitted that he was not in the vehicle when the accident occurred. Asshams Manley and an unidentified female were the sole occupants.

[PLAINTIFF'S ATTORNEY]: So if I understood you correctly, Officer Bell drove past—

[BIKO]: The car accident, yes.

[PLAINTIFF'S ATTORNEY]: —the car accident.

[BIKO]: Yes.

* * *

[PLAINTIFF'S ATTORNEY]: Can you describe what you saw Officer Bell do when he got into his cruiser?

[BIKO]: He was over here in his cruiser, he never hopped in his cruiser, he just—he drove, he was driving wild through the traffic on the other side of the road, once he see—he asks somebody where my brother ran to, and then once the person told him, he ran, opened the door and shot.

[PLAINTIFF'S ATTORNEY]: Can you estimate how many seconds elapsed between the time that he opened his door and the time that he shot [Asshams] Manley?

[BIKO]: As soon as he opened the door, about two or three seconds, he fired.

[PLAINTIFF'S ATTORNEY]: Was [Asshams] Manley anywhere near, as far as you could see, [Biko Manley] when Mr. Bell fired the shot?

[BIKO]: No, sir.

[PLAINTIFF'S ATTORNEY]: What part of the shooting did you see?

[BIKO]: Whatcha mean what part?

[PLAINTIFF'S ATTORNEY]: Let me rephrase. Can you describe what it was that you saw when you saw the gun—the shots fired?

[BIKO]: I'm looking at the officer move, he opened his door, boom, boom, boom, boom, boom. I run across the street I see my brother covered in blood.

[PLAINTIFF'S ATTORNEY]: Could you see the gun when he fired it?

[BIKO]: Yes, I seen the sparks from the gun.

[PLAINTIFF'S ATTORNEY]: How far did you have to run in order to—

[BIKO]: I was at the gas station. I ran to the side street right from the gas station.

[PLAINTIFF'S ATTORNEY]: And what distance was that?

[BIKO]: Like the gas station right here, and like two—like say you got four lanes on the street, you got to run across four lanes to get across the other side of the street.

The following testimony took place during cross-examination.

[DEFENSE ATTORNEY]: After the accident, your brother ran away, right?

[BIKO]: Yes.

[DEFENSE ATTORNEY]: And you said that he only ran about ten feet?

[BIKO]: Yes.

[DEFENSE ATTORNEY]: Isn't it true that he actually ran behind the Popeye's and then up the street to another intersection?

[BIKO]: Yeah, the side street is connected to the outlet almost.

* * *

- [DEFENSE ATTORNEY]: Okay. Isn't it fair to say that ten feet would be about from where Madame Clerk is sitting until this railing?
- [BIKO]: Yeah, that's about almost ten feet, I'm sorry.
- [DEFENSE ATTORNEY]: So was it only ten feet that he ran?
- [BIKO]: No, it was more than ten feet that he ran.
- [DEFENSE ATTORNEY]: So it was a longer distance—
- [BIKO]: Yeah.
- [DEFENSE ATTORNEY]: —that he ran?
Right. And you testified just now that you didn't know where Asshams was when Asshams got shot, right?
- [BIKO]: Whatcha mean?
- [DEFENSE ATTORNEY]: I'm sorry, did you say to [plaintiff's attorney] that you did not know where Asshams was when he was shot?
- [BIKO]: No, I told you he was in the grass, I was across the street looking.
- [DEFENSE ATTORNEY]: Okay. Well, you were across the street, but you were actually still at the gas station, right?
- [BIKO]: Yeah, you could see all that from right there.
- [DEFENSE ATTORNEY]: Isn't it true that when you spoke with police officers that night, you said you did not see because it was too far away?
- [BIKO]: I didn't want to talk to them, because they weren't telling me nothing.

[DEFENSE ATTORNEY]: I understand. Didn't you tell the police that you did not see Asshams get shot because you were too far away?

[BIKO]: I did see what happened, but I was trying to see what was going on.

[DEFENSE ATTORNEY]: Okay. The question still is, [Biko Manley], did you tell the police that you did not see Asshams get shot?

[BIKO]: Yes, I told them that.

* * *

[BIKO]: Pull the—can you pull out the paperwork out please—

* * *

[BIKO]: —because I wrote a statement about my brother got shot, because this is over five years, I been having anxiety attacks and all that.

When questioned, Biko Manley confirmed that it was his statement and that it was taken on August 15, 2015. He stated an officer wrote down his responses to the questions posed and he then signed his initials on the responses. When asked, he testified that the answers were his. In his statement he denied seeing the shooting, stating: “No, it was too dark, I couldn't see over there.” He contended, “I said no because y'all didn't tell me nothing.” On redirect examination, Biko Manley testified that although he initialed his responses to the questions asked in the August 15, 2015 statement, he did not read the answers because he was just trying to leave.

Biko Manley was also questioned about his deposition testimony:

[DEFENSE ATTORNEY]: Isn't it true that on June 12th, 2019 you testified in your deposition you were asked, "Did you see your brother attack the police officer" And your answer was no.

[BIKO]: Honest to God truth, I can't even remember. Y'all interviewed me so many times I can't remember, I done been through a family crisis, like all I keep remember is my brother covered in blood, I can't remember everything.

* * *

[DEFENSE ATTORNEY]: [Biko] Manley, [plaintiff's attorney] asked you when he was asking you questions if you saw who shot Asshams and you pointed at Brian Bell, correct?

[BIKO]: Yes.

[DEFENSE ATTORNEY]: And isn't it also correct, however, that on August 8th, 2019 when you were giving sworn testimony in deposition you were asked what did the officer look like and you testified under oath that he was a white man with a short haircut.

[BIKO]: There was multiple police on the scene, I had to make sure.

[DEFENSE ATTORNEY]: Is it correct that you testified under oath when asked who shot—

[BIKO]: I don't remember.

THE CLERK: Defendant's Exhibit 2 marked for identification.

(Whereupon, Defendant's Exhibit No.2 was marked for identification)

[DEFENSE ATTORNEY]: Thank you.

[DEFENSE ATTORNEY]: So, [Biko] Manley, I just want to make sure I understand, are you saying that you don't remember what you said on August 8th of 2019 about a white officer being the one that shot your brother?

[BIKO]: I can't remember, ma'am, I'm sorry.

[DEFENSE ATTORNEY]: Okay. You can't remember what you said. Okay.

Appellees then sought the admission of a redacted version of the deposition which the court granted, over appellant's objection and pages 39 and 40 were entered. Transcribed on those pages was the following question by the defense to Biko, "[w]hat did that officer look like?" and Biko's response was: "[h]e was a—he was a white man, short haircut."

On the second day of trial, Alberta Manley testified. During cross-examination, she acknowledged that her son, Biko Manley never told her that he witnessed the shooting.

[DEFENSE ATTORNEY]: Biko never told you that he saw Asshams get shot, did he?

[APPELLANT]: He—

* * *

[APPELLANT]: He told me he heard the shots.

* * *

[DEFENSE ATTORNEY]: And, in fact, when you wrote and swore to your interrogatory answers you said that no witnesses were known to you to the shooting, correct?

[APPELLANT]: That's what I was told.

When questioned about her deposition testimony, appellant stated she did not recall her testimony. When asked about a portion of her deposition testimony where she stated, “I have no indication of that, nor does his brother, because his brother was not there.” She ultimately responded, “[h]e wasn’t there when the officer and my son were in those woods and again only God knows what happened in those woods between that officer and my son”

At the conclusion of Ms. Manley’s testimony, appellant rested her case and appellees moved for judgment. Following a recess by the court, appellant requested to reopen their case, which was granted, and appellant elected to call Officer Brian Bell as a witness.

Officer Bell testified that he was initially in the area conducting a traffic stop when he heard a car accident. After hearing the accident, he called the police radio dispatcher to make notification that an accident had occurred and to request medical assistance. Prior to calling, he observed damage to one of the vehicles involved in the accident that was parked in the middle of the intersection. He also observed Asshams Manley crouched next to the vehicle. Officer Bell stated that Asshams Manley “immediately [took] off running” towards the east “behind the Popeye’s and back towards the strip mall, there’s a seafood establishment or business back towards a wooded area.”

Officer Bell lost sight of Asshams Manley after “he had run behind the establishment and I was on the opposing—opposite side.” The officer stated that he “advised my dispatcher, went over public safety communications that I had one individual taking off from the scene of the accident.” Officer Bell canceled the traffic stop he was

engaged in, entered his police cruiser in order to locate Asshams Manley and found him “coming out of the wood line.”

[OFFICER BELL]: . . . So as—if I can describe it. As he’s coming out of the—toward the side of the wood line he’s about to go into the wood line, at which I gave verbal commands, let me see your hands, so.

[PLAINTIFF’S ATTORNEY]: How far away was he when you first saw him?

[OFFICER BELL]: Approximately 30 feet or so.

[PLAINTIFF’S ATTORNEY]: When you gave the verbal commands how far was he?

[OFFICER BELL]: We were closing distance, he was walking towards me as I’m giving verbal demands and I, at some point in time, was walking towards him as well giving verbal commands.

* * *

[PLAINTIFF’S ATTORNEY]: How close was he to you when you drew your service weapon?

[OFFICER BELL]: I’d say approximately—I’d say distance maybe 20 feet, 20, 15 feet.

[PLAINTIFF’S ATTORNEY]: When you drew your handgun, what if anything, did you do with it?

[OFFICER BELL]: I aimed it at the—[Asshams] Manley.

[PLAINTIFF’S ATTORNEY]: Okay. When you aimed it at him, was he looking away from you, was he looking towards you?

[OFFICER BELL]: He was looking towards me.

[PLAINTIFF'S ATTORNEY]: Could you tell whether or not he saw the handgun in your hand?

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: How could you tell?

[OFFICER BELL]: As he's walking towards me, he's—I'm giving verbal commands and he's speaking gibberish or incoherently, so at one point in time, I had took a few steps back because he's closing distance fast and from my training, within 20 feet it could be an officer safety issue, so I'm trying to one, get off the tracks where I'm not directly in the line of—if he—if there is something to actually follow suit with that. But also additionally, I have less reactionary gap space if I actually continue to walk towards him.

[PLAINTIFF'S ATTORNEY]: Did there come a time when he dropped to one knee?

[OFFICER BELL]: Yes. After—yes.

[PLAINTIFF'S ATTORNEY]: And did there come a time when he dropped to one knee and raised his arms?

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: At that point, did you still have your handgun pointed at him?

[OFFICER BELL]: As I have my firearm in my right hand, and I advised my public safety communications dispatcher that I had one at gunpoint.

[PLAINTIFF'S ATTORNEY]: Okay. So at that moment, you still had the handgun pointed at him, correct?

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: When he dropped to one knee and put his hands up, could you see his hands?

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: Could you see whether or not there were any weapons in his hands?

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: Were there any weapons in his hands?

[OFFICER BELL]: When he lunged and grabbed my firearm, there was.

[PLAINTIFF'S ATTORNEY]: All right. Did you understand that I was asking you a question about—

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: —the point before he supposedly lunged at you, when he showed you his hands.

[OFFICER BELL]: Yes.

[PLAINTIFF'S ATTORNEY]: Okay. So when he showed you his hands, did he have any weapons in his hands?

[OFFICER BELL]: No, no, sir.

[PLAINTIFF'S ATTORNEY]: All right. At the point where you have the gun trained on him and you advised the dispatcher and he was dropped to one knee and had his hands up, how close were you to him?

[OFFICER BELL]: I would say about ten feet.

[PLAINTIFF'S ATTORNEY]: Did there come a time when you tried to circle around behind him to handcuff him?

- [OFFICER BELL]: Yes, sir.
- [PLAINTIFF'S ATTORNEY]: And your goal at that point was to effect an arrest, correct?
- [OFFICER BELL]: Was to affect an arrest or also to walk around so he would not see my position or—yeah, pretty much, yes, positioning and, yes, to affect an arrest, yes, sir.
- [PLAINTIFF'S ATTORNEY]: Okay. So you had him at gunpoint and—did you have the handcuffs with you?
- [OFFICER BELL]: Yes, sir.
- [PLAINTIFF'S ATTORNEY]: Okay. And was it your intention to go around him to put handcuffs on behind him?
- [OFFICER BELL]: Yes, sir.
- [PLAINTIFF'S ATTORNEY]: Did anything prevent you from putting handcuffs on him?
- [OFFICER BELL]: Yes, sir.
- [PLAINTIFF'S ATTORNEY]: What was that?
- [OFFICER BELL]: [Asshams] Manley had lunged up and grabbed my firearm that was in my hand.
- [PLAINTIFF'S ATTORNEY]: From a distance of ten feet?
- [OFFICER BELL]: Yes, my arms are fully extended out, so that actually closes the space in a distance.
- [PLAINTIFF'S ATTORNEY]: If I understood your testimony correctly and if I saw what you did, for the record, is it the case that you demonstrated for the jury that you had both arms extended and both hands on the gun?
- [OFFICER BELL]: Yes.

* * *

[PLAINTIFF'S ATTORNEY]: Once he grabbed the firearm, what happened?

[OFFICER BELL]: A struggle ensued, he begins to raise me off of my feet to where I'm on my tippy toes and pointed the gun upward. So we're at this point in time we're both fighting or tussling for my firearm.

[PLAINTIFF'S ATTORNEY]: And have any shots been fired at this point?

[OFFICER BELL]: Yes. At the time when he had the initial contact, when he grabbed the firearm, that's when the initial shot was fired.

* * *

[PLAINTIFF'S ATTORNEY]: What happened immediately after you fired your weapon?

[OFFICER BELL]: After we're fighting for my weapon, he's—I'm on my tippy toes at which point in time, I'm raising up off the ground, I pulled my—I lowered my center of gravity and pulled my weight down, which we went down to the ground.

[PLAINTIFF'S ATTORNEY]: And then what happened?

[OFFICER BELL]: And then from there, we're on the ground and he's head butting me.

[PLAINTIFF'S ATTORNEY]: Then what happened?

[OFFICER BELL]: So he's—he's head butting me from there—sorry. He's head butting me, I feel my wrist turning back towards me, I feel my wrists turning back towards me, so I'm moving my body to compensate for

lack of upper body strength, so I'm turning my body against my hand, so everything can still be parallel, so I won't lose my grip.

[PLAINTIFF'S ATTORNEY]: What happened next?

[OFFICER BELL]: From there, we are fighting, we are continuing to fighting which is grunting and growling and he's head butting me, he's peeling my hands back trying to take my firearm from out of my hand. And then just at that point in time it was just a struggle until units arrived on scene.

[PLAINTIFF'S ATTORNEY]: How long did that struggle last?

[OFFICER BELL]: Possibly three minutes.

[PLAINTIFF'S ATTORNEY]: What other units arrived on the scene?

[OFFICER BELL]: There were multiple units that arrived on the scene.

On cross-examination, Officer Bell described Asshams Manley as being larger, taller, and stronger than him and appeared to be about a hundred pounds heavier than him. He also testified that because of his experience as an officer, when he encountered Asshams Manley, who was speaking "gibberish or something incomprehensible" he was concerned that Asshams Manley might be under the influence of alcohol or drugs or have mental health issues. When asked if Asshams Manley's speech impacted his "decision to draw [his] weapon and continue to give him commands" he responded "[y]es." Officer Bell further described Manley as being non-compliant. When he asked Asshams Manley to show his hands, Manley did not respond and continued to walk towards him. Asshams Manley eventually complied with his order to get on the ground, but only on one knee. As

Officer Bell moved closer to Asshams Manley to put handcuffs on him, Officer Bell testified that Asshams Manley lunged and tried to take control of his gun attempting to point it in his “abdomen area” and a struggle ensued. During the struggle, Bell was not initially aware that Asshams Manley had been shot or injured as he continued to struggle with the officer. When backup officers arrived at the scene, Officer Bell was able to move from underneath Mr. Manley, who continued to refuse to comply with other officers’ commands.

Following Officer Bell’s testimony, appellants again rested their case, and appellees renewed their motion for a defense judgment. The court heard arguments of counsel and ruled:

THE COURT: Okay. All right. All right. So the [c]ourt is going to make the following findings of fact of law, in taking the evidence most favorable to the plaintiff

* * *

THE COURT: That’s—it sort of—in some ways it makes it easier for me. All right. But I’m making a finding of findings of fact.⁵ So to me, which is not in dispute, again, there was an accident. Mr. Asshams Manley runs from the scene of the accident. The officer is in close proximity, he doesn’t actually see the accident, but he hears a noise and he sees Asshams crouched behind a vehicle crouching, I don’t think it really—it could be relevant, but I don’t think it’s that important to define. Anyway, he sees somebody run from the scene. That’s just—he sees somebody run—he believes, which I think is reasonable, it’s not uncontradicted that he sees somebody run from the scene.

⁵ Even though the trial judge states that he is making findings of facts, his ultimate decision-making process reflects that he found as a matter of law that appellant had not met her burden of proof, taking the evidence in the light most favorable to her.

He has under Maryland law, I do believe, a right to what is— [the defense attorney], a right to—he has a right to investigate what’s happening. He sees an accident He has a right to do an investigatory stop.

I find that as a matter of law. Biko can’t really speak to that, except the portion where he says two seconds after this occurred he shot, I saw the sparks. Setting aside for this hearing, for this motion the impeachment about his prior inconsistent statement, even taken at its face value, so he had—I believe he had a right to make a lawful stop, at least an investigatory stop.

The defendant testified that he made—that Asshams was coming towards him, he made commands for him to stop, he didn’t obey the command, and in his mind for officer safety he pulled out his weapon, pointed towards Asshams and Asshams is still coming at him.

At about ten feet, he has his arms extended with the gun, he’s rating him in, and that’s when he says Asshams lunged at him, grabbed the gun, and that’s when the defendant says he put two hands on the gun and that’s—he talked about the tussle, he talked about the size of Asshams and his size and strength of Asshams.

So whether or not he was intending to put him under arrest at that point in time, but in any event, at the time he’s not obeying his commands. The [c]ourt also believes at that point in time it did rise to the level of failing to obey a lawful order at that point in time, and as a matter of law, there was grounds at that point in time to make an arrest if that’s what he chose to do.

The officer testified that he was in fear of serious physical—imminent serious physical injury, these are my words and/or death. That is that his firearm was going to be taken from him.

One, he was going to be shot and the other one is firearm would be taken from him. When he said his firearm taken from him, I think it’s still the same or the other, if a person physically takes a firearm from a police officer I think it’s reasonable to believe to prevent that because if that person gets his service weapon he’ll shoot the police officer.

So also as a matter of law that that was a reasonable belief. And therefore, that he was—it's reasonable for him to use deadly force in this case. And I think the Defense Exhibit 11 is important, because [plaintiff's attorney] is right in the aspects, it's really the province of the jury to assess credibility; however, to me when there's a factual issue that I believe in this case, and this puts the dredlocks in the slide of the weapon, and really that contradicts factually Biko testifying that he fired two seconds after he got out of the car.

In this case, the [c]ourt cannot find any other way, any other way in which that could have occurred, and certainly no evidence

* * *

THE COURT: Well, you know what, Mr.—I think the record is clear from my aspect and any other issues will have to be resolved on appeal. I think it's—I mean, I think it's also clear that the—taking the evidence most favorable to the plaintiff that the plaintiff hasn't met their burden in this case and—so anybody else—someone else will have to review what I've said and done and decide if we do this all over again. Thank you.

STANDARD OF REVIEW

Maryland Rule 2-519 governs motions for judgments and provides:

- (a) **Generally.** A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.
- (b) **Disposition.** When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any

other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.

Md. Rules 2-519(a)–(b).

DISCUSSION

Appellant argues the trial court’s ruling “invaded the province of the jury and deprived [a]ppellant of his trial by jury.” Appellant contends that Biko Manley’s testimony was clear “that he saw Bell conduct a summary execution” and a “jury could well have inferred that the testimony of Biko Manley established the liability of [a]ppellee Bell.” Appellant also asserts that Officer Bell did not have authority to conduct a stop on Asshams Manley. Appellees, on the other hand, argue that Biko Manley’s testimony was not “clear, competent and credible and did not generate even a scintilla of dispute of fact.” They contend that Officer Bell properly conducted an investigatory stop.

The Maryland Transportation Code §20-103(a)–(b) requires a driver involved in an accident to remain at the scene. A person convicted of a violation of this section is guilty of a misdemeanor and “subject to imprisonment . . .” Md. Code Ann., Transp. § 20-103(c). In *Terry v. Ohio*, the Supreme Court, in addressing the validity of investigatory stops, stated:

One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.

392 U.S. 1, 22 (1968). “[A]n investigatory stop typically is justified where there is some objective manifestation that the person stopped is, or is about to be, engaged in criminal

activity.” *Longshore v. State*, 399 Md. 486, 507 (2007). “[I]f, under the totality of the circumstances, a police officer has a particularized and objective basis for suspecting criminal activity by the person stopped, then the stop and temporary detention is justified.” *Id.*

In the case at bar, Officer Bell was well within his authority to conduct an investigatory stop. He observed the immediate damage to a vehicle from a traffic accident, no driver behind the wheel and an individual crouched next to the car, who immediately ran from the scene. It is undisputed that Asshams Manley caused the accident and it is also undisputed that he fled the scene. Under these circumstances, the actions of Asshams Manley gave rise to reasonable suspicion, which is “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

Appellant also argues the court erred in granting the motion for judgment, stating that the trial court usurped the province of the jury, made findings of fact and failed to consider the evidence in the light most favorable to appellant. On review, we analyze “the trial court’s decision to grant or deny a motion for judgment in a civil case without deference.” *Est. of Blair by Blair v. Austin*, 469 Md. 1, 17 (2020) (quoting *Sugarman v. Liles*, 460 Md. 396, 413 (2018)). “We assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made.” *Orwick v. Moldawer*, 150 Md. App. 528, 531 (2003). “If there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied.” *Id.*

In *Estate of Blair by Blair v. Austin*, a jury convicted Officer Austin of using excessive force, after the court denied Officer Austin’s motion for judgment. On appeal to this Court, we reversed the trial court’s decision after our review of the video camera evidence. *Id.* at 14–15. The Court of Appeals then reversed, holding that this Court “erred when it substituted its judgment for the factual findings and verdict of the jury regarding Officer Austin’s excessive use of force, for that of its own, based on its own independent evaluation of the video camera evidence.” *Id.* at 28. The Court stated:

Here, the evidence, including the video evidence, permitted several inferences and interpretations. On the question of excessive force, Officer Austin and the Estate produced expert witnesses who expressed conflicting opinions. As such, it was for the jury to weigh and evaluate the level of risk generated by the interaction between Officer Austin and Mr. Blair, the options relative to the levels of force available to Officer Austin in response to the interaction, and the level of force an objectively reasonable officer would have used under the circumstances.

Id. at 18.

Unlike in *Estate of Blair by Blair*, the evidence in the present case does not lead to multiple interpretations. Here, the trial consisted of the testimony of three individuals. First, Alberta Manley, who was not present during the incident and thus, could not provide any details regarding the actions of her son, Asshams, or the officer. She did, however, testify that Biko Manley told her that he did not witness the shooting. Next, Biko Manley testified, but gave several inconsistent versions of the shooting, including a statement that he did not witness the incident, a statement that he saw the officer open his patrol car door and began shooting, that “[he] could see all that from [his position at the gas station]” and a statement where he described the officer who shot his brother as a white male with short

hair.

We note that an aerial exhibit shows a building in between the gas station and the wooded area where the struggle occurred. While Biko Manley also repeatedly testified that he only saw Officer Bell, assuming the validity of his observations, he then also could not have seen whether his brother was actually struck by the officer who supposedly fired his weapon from his patrol car door or whether the two men engaged in a struggle for a gun. We note, importantly, that a photograph of Officer Brian Bell clearly depicts him as an African American male of medium complexion and not the white male identified by Biko Manley at the deposition. Also, in addition to the testimony of Officer Bell regarding the struggle, one of Asshams Manley’s dreadlocks was found lodged in the officer’s gun.

Normally, “the question of a witness’s credibility is left to the [fact finder].” *Yacko v. Mitchell*, 249 Md. App. 640, 684–85 (2021) (quoting *N.B.S., Inc. v. Harvey*, 121 Md. App. 334, 343 (1998)). “[M]inor discrepancies in testimony do not create a material issue of fact in an excessive force claim . . .” *Anderson v. Russell*, 247 F.3d 125, 131 (4th Cir. 2001). However, testimony may be rejected as not credible if it is legally impossible. The Court of Appeals has instructed that a “court should disregard any testimony that attempts to establish something physically impossible within common knowledge and experience, or something contrary to indisputable scientific principles or laws of nature within the court’s judicial knowledge.” *Yacko*, 249 Md. App. at 684 (quoting *York Motor Exp. Co. v. State, for Use of Hawk*, 195 Md. 525, 534–35 (1950)).

In *Yacko*, we reiterated the holdings in *Ray v. Bassil*, 30 Md. App. 550, (1976) and *Tippett v. Quade*, 19 Md. App. 49 (1973) regarding legal impossibility. We stated in *Ray*,

that “a witness’s testimony that the plaintiff was in a crosswalk when injured was ‘not credible’ and ‘legally impossible’ because there was no crosswalk near where the plaintiff was struck.” *Id.* at 685 (quoting *Ray*, Md. App. at 562). As for *Tippett*, we held “that the plaintiff’s unsupported and uncertain testimony that the accident might have taken place on the shoulder approaches . . . the outer limits of credibility because uncontroverted physical evidence showed that the accident took place in the traveled portion of the road.” *Id.* (internal quotations omitted).

Here, it is clear from the aerial view as well as the fact that this occurred at approximately 11:30 pm, that it was impossible for Biko Manley to witness what transpired because of the time of night and also, because there was an entire building blocking his view from his position at the gas station. Further, as noted by the trial judge, the dreadlocks found in the slide of the weapon “contradicts factually Biko testifying that [the officer] fired two seconds after he got out of the car.” We also note that it would have been impossible for Biko Manley to mistake the racial identity or physical features of the officer involved in the incident, an African American male of medium complexion for that of an individual whose features were markedly different, a white male with short hair. As stated above, while minor discrepancies do not create issues, factual impossibilities are viewed quite differently. After examining the entirety of this record, we hold the trial court did not err in granting the motion for judgment.

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