Circuit Court for Baltimore City
Case No. 120199012

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1526

September Term, 2021

Welton Simpson Jr.

v.

STATE OF MARYLAND

Zic,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: January 26, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant Welton Simpson Jr. was convicted in the Circuit Court for Baltimore City of making a false statement to a law enforcement officer in violation of Md. Code Ann., Criminal Law §9-501, and of misconduct in office. He presents the following question for our review:

> Did the trial court err in finding sufficient evidence to convict Simpson, Jr. for false statement to a law enforcement officer under Md. Code Ann., Criminal Law § 9-501 and for misconduct in office?

We shall hold that the evidence was sufficient to sustain the verdict and we shall affirm.

I.

Appellant was indicted by the Grand Jury for Baltimore City with one count of false statement to a law enforcement officer under Md. Code Ann., Crim. Law § 9-501 and one count of misconduct in office.[1] He waived a jury trial and was convicted in a bench trial

[1] The Indictment read as follows:

> The Grand Jurors allege that [Simpson, Jr.], on January 17, 2020, in the City of Baltimore, State of Maryland, did as a duly sworn police officer for the Baltimore City Police Department unlawfully, knowingly, and corruptly commit an unlawful act in the performance of and under color of authority of his official duties, in violation of the common law, against the peace, government and dignity of the State.

At trial, the State confirmed that the misconduct in office allegation was only related to the malfeasance modality in the Bill of Particulars in which it alleged "[t]hat [Simpson, Jr.] in making and authoring verbal or written statements corruptly did an unlawful act." Bill of Particulars. The trial court noted as followed:

> The first issue is this, is that State limited in proving misconduct in office to proving an unlawful act. And specifically, the unlawful act of making a false statement under 9-501. I think the answer to that question is, yes. Inexplicably, the way that the indictment is written in this case, limits the

in the Circuit Court for Baltimore City. The court imposed a term of incarceration of thirty days, all suspended, six months' probation for the false statement, and six months' probation for misconduct in office.

On January 17, 2020, appellant, a Baltimore City Police Department Sergeant, observed a social gathering at the "Live at the A" convenience store. Attempting to disperse the crowd, appellant drove to the front of the store. The crowd did not move. Appellant exited his vehicle and approached the store to disperse the crowd, unaware that his body camera was on from a previous stop. Zayne Abdullah was exiting the store and bumped into appellant. Appellant told Mr. Abdullah to "move out of the fucking way." A verbal altercation ensued with escalating physical threats. Appellant felt spittle hit his face

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> State to that. And the Bill of Particulars, frankly, just reinforces that. Usually, it would be the other way around. The -- it would be the indictment would be very general and the Bill of Particulars would help narrow it down. Here the indictment is already narrow. I think that the purpose of the -- sort of, due process principles about indictments, where the defense has to be put on notice of what the allegations are so they can prepare a defense, I think under the specifics of this case, the defense legitimately was put on notice that what it was defending itself against was, essentially, a 9-501 violation and the misconduct in office that would arise from this unlawful conduct of violating 9-501. So I find that the State is limited itself under the indictment. (T. 9/13 62-23). Thus, in order for the evidence to be sufficient to sustain a conviction against Simpson, Jr. for misconduct in office, the State was required to provide sufficient evidence that Simpson, Jr. corruptly did an unlawful act. The specific unlawful act alleged in the Indictment, as noted by the Trial Court, is false statement to a law enforcement officer the violation of Criminal Law § 9-501. For reasons stated above, evidence of the false statement to a police officer charge was deficient as a matter of law. As such, the State similarly failed to provide sufficient evidence that Simpson, Jr. was guilty of misconduct in office.

as Abdullah spoke, and shoved Abdullah while saying "get the fuck out of my face." Mr. Abdullah shoved back, knocking off appellant's body camera.

Appellant attempted to grab Mr. Abdullah's hand to arrest him. A physical altercation ensued, and appellant and Mr. Abdullah scuffled on the sidewalk and the street. During the struggle, appellant made a Signal 13 call[2] on his radio, indicating that an officer needs immediate assistance. Several officers heard the call and came to the scene.

Sergeant Curtis arrived on the scene with his body camera on. He testified that when he arrived, he was, "investigating what's going on" and "trying to figure out exactly what happened." Mr. Abdullah was on the ground when Sgt. Curtis arrived. He immediately placed Mr. Abdullah in handcuffs, stating "I have him in custody." Mr. Abdullah stated, "I am in custody." While Mr. Abdullah remain on the ground, Sgt. Curtis asked appellant "what do you have here, man?" Appellant responded as follows:

> I walked in the store. Trying to clear them out. He wouldn't move, he was blocking the doorway. So, I pushed past him to get in the doorway. He turns, spits in my face and he pushed me. I pushed him back and the fight was on. I don't know where my camera went.

Immediately, or even at the same time, Mr. Abdullah told Ofc. Montgomery that appellant was lying about how the physical altercation began, and that appellant pushed him, slammed him on his head, and had his arm on his neck. After appellant's statement, Mr. Abdullah was put in a police car and told he was under arrest for assault of a police officer.

[2] A Signal 13 call is a code used by Baltimore City Police Officers to indicate that they are in distress and in need of immediate assistance. All available and proximate officers are required to assist.

According to Baltimore City police policy, all instances of force between a Baltimore City police officer and a civilian necessitate a use of force investigation.[3] After the officers left the scene, appellant reconvened at a police substation with Sgt. Curtis, Det. Montgomery and Sgt. Thomas Davis. Appellant made a statement to Det. Montgomery, which the detective recorded in an incident report. Appellant submitted a required Form 96 statement on the night of the incident. Appellant wrote his original statement before knowing that his body camera was on. In his original form he wrote as follows:

> I attempted to go around the suspect, but my left shoulder inadvertently brushed his left shoulder. The suspect turned and faced me encroaching on personal space and stated 'The word is excuse me' as he spit in my face at the same time. As I raised my arm to create space, I told him that he should not be even standing in the door. He immediately raised his arms and tried to shove me. I then reached to grab his arms to steady myself and take him into custody.

Subsequently, appellant learned that his body camera had been on during the altercation. After reviewing the footage, he revised his Form 96 to read as follows:

> As I attempted to go around the suspect my left shoulder inadvertently brushed his left shoulder causing me to turn and look directly at him. We engaged in a brief conversation. During this verbal exchange spittle came from the suspect's mouth in my direction. As he closed the distance between him and I, and made a verbal threat to do me harm, I leaned back slightly and raised my right arm to create space between he and I, telling him to get out of my face. He immediately shoved me and unbeknown to me knocked my BWC off of my jacket. I subsequently grabbed his left wrist and hand with my right hand in order to take him into custody.

[3] Baltimore City Police Policy 710 requires that any officer who is involved in or witnesses a use of force is compelled to complete a Force Report, Form 96.

Upon conclusion of the trial, appellant was convicted, and sentenced as set out above. The trial judge found as follows:"[I find] beyond a reasonable doubt that Sergeant Simpson deliberately and intentionally made false statements at the scene of the encounter. These false statements were material, and they were made with both the intent and the purpose of causing the police to arrest and charge Mr. Abdullah. This constitutes a violation of [CR §] 9-501."

The trial court imposed sentence and this timely appeal followed.

II.

Crim. Law § 9-501 states in relevant part:

> A person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer with intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint.

Appellant presents one issue for our review: whether the trial court erred in finding sufficient evidence that he submitted a false statement to a law enforcement officer with intent to cause an investigation or other action under Md. Code Ann., Criminal Law, § 9-501.[4] In this case, the real issue is the timing of appellant's false statements, *i.e.*, whether those statements by appellant were made or caused to make an investigation or other action.

[4] All subsequent statutory references to Md. Code Ann., Criminal Law, § 9-501 herein shall be to Crim. Law § 9-501.

Appellant's misconduct in office conviction is inseparable from the conviction for a false statement. If one falls, the other must fall.

Appellant's primary argument is not that appellant did not make a false statement but that any false statement he made was after the initiation of an investigation, and that even if he made false and intentionally deceptive statements, those statements do not violate Crim. Law § 9-501. Appellant asserts that because the substantive statements he gave to the police were after the investigation had begun, the statutory element, "to cause an investigation or other action," was not satisfied.

Appellant argues that at its core the statute is a "cry wolf" statute, intended to prevent statements which divert police efforts from other necessary pursuits. According to appellant, this statute was never intended to criminalize false statements to the police in general. Additionally, appellant asserts that without the conviction for a false statement, the conviction for misconduct in office must be reversed. His misconduct was the submission of the false statement in violation of Crim. Law § 9-501. Without this criminal act, there is no misdemeanor misconduct in office charge.

Appellant summarizes the evidence as follows:

> Simpson, Jr.'s statement to Sgt. Curtis after Abdullah's handcuffing and arrest, as officers were canvasing the area conducting their investigation was the only statement by Simpson, Jr. at the scene of Abdullah's arrest. At trial, no officer testified that Simpson, Jr. made any substantive statements with respect to Abdullah prior to the inception of the police investigation. At trial, no civilian testified that Simpson, Jr. made any substantive statements with respect to Abdullah prior to the inception of the police investigation. At the time of Simpson, Jr.'s statement to Ofc. Montgomery which ultimately served at the basis for Ofc. Montgomery's

> Incident Report and Statement of Charges, Abdullah had already been arrested and taken to Central Booking and Intake Facility. (T. 9/10 151-153). At trial, no body worn camera evidence was presented to support a claim that that Simpson, Jr. made any substantive statements with respect to Abdullah prior to the inception of the police investigation. At trial, no reports were presented to support a claim that that Simpson, Jr. made any substantive statements with respect to Abdullah prior to the inception of the police investigation.

The State argues that appellant lied to law enforcement that he had been assaulted by Mr. Abdullah. The body camera footage shows appellant shoving Mr. Abdullah and telling him to "get the fuck out of my face." Essentially the State is arguing that appellant started the altercation and then lied about its genesis when the police arrived.

The State maintains that appellant knowingly made the false statement after the police officers arrived on the scene and *before* Mr. Abdullah was arrested. The State asserts that Mr. Abdullah was not arrested until after appellant's false statements at the scene. The State argues that the police did not respond to the Signal 13 call with the intent to make an arrest. According to the State, police officers respond to Signal 13 calls prepared to take a variety of actions. The State asserts that it was appellant's false statement that led the police to arrest Mr. Abdullah. The State argues that this constitutes "other action" under the statute. The State argues that because appellant violated Crim. Law § 9-501, he is guilty also of misconduct in office.

III.

Maryland Rule 8-131(c) governs the review of an action tried without a jury, stating that "when an action has been tried without a jury, the appellate court will review the case

on both the law and the evidence." The Supreme Court of Maryland,[5] has explained that "[w]hen the trial court's order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a de novo standard of review." *Gray v. State*, 388 Md. 366, 375 (2005). In addition, this Court has stated that, "an assessment of the legal sufficiency of the evidence is not an evidentiary issue but a substantive issue, with respect to which an appellate court makes its own independent judgment." *Polk v. State*, 183 Md. App. 299, 306 (2008). We do not pay deference to the trial court but instead make the same determination on the same basis as the trial court. The appellate court will not "set aside the judgment of the trial court on the evidence unless clearly erroneous." *State v. Raines*, 326 Md. 582, 589 (1992).

In Maryland, misconduct in office is a common law misdemeanor, defined as "corrupt behavior by a public officer in the exercise of the duties of his [or her] office while acting under color of his [or her] office." *Duncan v. State*, 282 Md. 386, 387 (1978). 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). *O'Sullivan v. State*, 476 Md. 602 (2021).

In order to convict an individual under Crim. Law § 9-501, the State must prove that individual:

[5] Prior to December 14th, 2022, the Supreme Court of Maryland was known as the Maryland Court of Appeals. For clarity, we shall refer to the court by its current name.

1. Makes or causes to be made a false statement report or complaint
2. To any police officer of this State, or of any county, city or other political subdivision thereof
3. Knowing the same or any material part thereof, to be false, and
4. With intent:
    a. To deceive, and
    b. To cause an investigation or other action to be taken as a result thereof.

Thomas v. State, 9 Md. App. 94, 100 (1970).

To ascertain whether appellant is in violation of the statute, we must first define the statute's scope. In *Johnson v. State*, 75 Md. App. 621, 630 (1988), this Court considered which statements fall within the ambit of the statute. Judge Theodore Bloom, writing for this Court, engaged in an extensive review of the legislative history of the statute. He started with the seminal British case of *The King v. Manley,* 1 K.B. 529 (C.C.A.1932). The statute – formerly codified as § 150 of Article 27 of the Maryland Code – was first enacted in 1957 and was derived from *Manley*. *Johnson*, 75 Md. App. at 631-34.

In *Manley,* the defendant, Elizabeth Manley, was charged with "public mischief," a common law misdemeanor. She falsely reported to the police that she had been robbed. She provided a description of the robber to the police. *Id* at 631-32. Manley was charged because "her false report caused police officers to devote their time and services to the investigation of false allegations which deprived the public of the services of the police and rendered subjects of the king liable to suspicion, accusation, and arrest." *Id*. at 631-32. The appellate court affirmed, holding that "Manley's act constituted the misdemeanor of public mischief because the police were led to devote their time and services to the investigation of an idle charge, and . . . that members of the public or at any rate those of

them who answered a certain description, were put in peril of suspicion." *Id*. at 632 (internal citations omitted).

In 1957, the drafters of the Model Penal Code, citing *Manley*, drafted a provision that would make it a misdemeanor for an individual to either falsely implicate another person in a crime or make a false report to the police. *Johnson*, 75 Md. App. at 632-33. That same year, the Maryland General Assembly enacted Art. 27 § 150, which made "it a crime for an individual to lie to a police officer only if that individual has an intent to deceive coupled with an intent to cause an investigation or other similar action to be taken as a result of the lie." *Id.* at 634. That statute, although somewhat different from the Model Penal Code, was generally considered to be in accord with the *Manley* case. *Id.*

In *Johnson*, the defendant provided false information to the police during an investigation that was underway. The defendant was charged and convicted of violating Art. 27 §150. On appeal, he argued that the evidence was insufficient to sustain the conviction because the statute was "not directed at his conduct — giving false answers to questions propounded by the police — but [was] aimed at the making of false reports of crimes, causing the police to act upon those reports and thereby waste the time and money of the public." *Id*. at 630. This Court agreed and held that the defendant's lies to the police were not punishable under the statute. The Court held that the term "false statement" was to be strictly construed in light of the statute's legislative history. The *Johnson* court stated as follows:

> From the legislative history of §150, we are persuaded that the General Assembly, in adopting it, had no intent to criminalize conduct other than the mischief which was the subject of the

> *Manley* decision, the making of false reports to the police which cause the police to conduct investigations that divert them from their proper duties of preventing crime and investigating actual incidents of crime. We shall therefore construe § 150 as intended, and apply it only to that type of mischief, the "false alarm" to the police that is analogous to the false fire alarm. Indeed, the analogy is apparent in the tentative draft of the Model Penal Code, *supra*, which placed § 208.24 (False Reports to Law Enforcement Authorities) immediately after § 208.23 (False Alarms to Agencies of Public Safety).

Id. at 638-39. The result was that the statute proscribed false statements to a police officer, with the intent to cause an investigation or similar action. There must be both the misstatement and the intent.

The *Johnson* court cited *Sine v. State*, 40 Md. App. 628 (1978) as a classic example of the statute violation. The defendants contrived a fraudulent automobile collision to defraud their insurance company. At the scene of the supposed accident, the schemers told the police that one of the schemers was liable for the accident. After failing to recover from their insurance or U-Haul, the defendant's admitted to staging the event. The defendants were convicted of violating the statute for making a false report of the accident with the intent to deceive the police into investigating the incident as a real accident. Furthermore, their actions diverted police attention from legitimate police activity. *Manley* and *Sine* make clear that the statute prohibits false statements which generate police investigation or other actions. Maryland law is clear that for appellant to have violated the statute, he must have made a false statement to the police *before* the investigation or other action had occurred.

The Supreme Court of Maryland has held that the "other action" in the statute should be narrowly construed as action analogous to an investigation. *Choi v. State*, 316 Md. 529 at 547 (1989) ("Applying the doctrine of *ejusdem generis*, the "other action" must be of the same general nature as the initiation of an investigation."); *Johnson,* 75 Md. App. at 638 (holding that the construction of "other action" should be restricted to action similar to an investigation).

IV.

The State argues that appellant's false statement at the scene caused the arrest of Mr. Abdullah, and consequently violated the statute. The State asserts that "the [circuit] court properly found that the arrest, detention, jailing, and charging of Abdullah constituted an 'other action' under CR § 9-501." We agree with the State and the trial court. Our review of the record, including the video, make clear that Mr. Abdullah was arrested after and *because of* appellant's false statement to the police.

An arrest is defined as "the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested." *Bouldin v. State*, 276 Md. 511, 515-16 (1976). An arrest is "the detention of a known or suspected offender for the purpose of prosecuting him for a crime." *Wilkes v. State*, 364 Md. 554, 586 (2001), (quoting Barnhard v. State, 325 Md. 602, 611 (1992)). In determining whether an encounter constitutes an arrest, courts look to the totality of the circumstances, and none are

dispositive. *Ferris v. State*, 355 Md. 356 (1999). The use of handcuffs is not sufficient to constitute an arrest. *Chase v. State*, 224 Md. App. 631, 646 (2015). Courts have held that, depending upon the circumstances, the use of handcuffs is appropriate as a protective measure and does not transform a detention into an arrest. *In re David S.*, 367 Md. 523 (2002); *Trott v. State*, 138 Md. App. 89 (2002). Appellate courts in other jurisdictions agree. *See e.g.*, *People v. Chestnut*, 51 N.Y. 2d 14, 22 (1980) (finding that an officer's restriction of two men on the ground did no more than maintain the *status quo* until more information could be elicited). Furthermore, Maryland courts have added that "an arrest in general terms [is defined] as the detention of a known or suspected offender for the purpose of prosecuting him for a crime." *Belote v. Maryland*, 411 Md. 104, 117 (2009).

At first blush, it is easy to jump to the conclusion that Mr. Abdullah was under arrest before appellant made his false statement to the police. To be sure, the police handcuffed him, he was restrained on the ground, and the police officer said, "I have him in custody." The officers arriving in response to the Signal 13 call did not appear to have taken Mr. Abdullah down to the ground. And although the police put handcuffs on Mr. Abdullah, the video shows that the police officers had appellant explain the situation before they "arrested" him with the intent to prosecute him. Before Mr. Abdullah was placed into a police cruiser, and while he remained restrained on the street, the police turned to appellant and asked: "What do we have here?" Here, the officer's characterization of the status of Mr. Abdullah, *i.e.*, in custody, does not control our analysis of whether Mr. Abdullah was arrested, in the legal sense. Although Mr. Abdullah remained placed on the ground, he was not searched. He was not placed into the police cruiser. He was detained, but not arrested

until the officers heard appellant's false explanation of the encounter. *Cf. Belote v. State*, 411 Md. 104, 117 (2009).

We conclude that Mr. Abdullah was arrested *after* appellant stated falsely that he had started the encounter. We agree with the State that the police were responding not to a call for an arrest, but for a Signal 13 call---an officer in distress and in need of assistance. The State's argument is that appellant's false statement was made with the intent to initiate the "other action" under the statute, the arrest and criminal charges of Mr. Abdullah. A review of the video makes clear that the police asked appellant for his version of the event while Mr. Abdullah remained on the ground, albeit in handcuffs. Our review of the body camera footage leads us to believe that if appellant had been forthcoming regarding his instigation of the altercation, Mr. Abdullah would have never been taken to the police station and criminally charged.

We hold that appellant's false statement violated Crim. Law § 9-501. This Court has held that in order to prove misconduct in office, "the State is only required to prove that the public officer acted willfully, fraudulently, or corruptly, to sustain a conviction for misconduct in office." *Pinhero v. State*, 244 Md. App. 703, 722 (2020). Appellant's false statement was both willful and fraudulent. Consequently, appellant is guilty of misconduct.

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