

Circuit Court for Baltimore City
Case No. 117284002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2841

September Term, 2018

DEVIN BARBOUR

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 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 Baltimore City, Devin Barbour, appellant, was convicted of first-degree murder, use of a handgun in the commission of a felony, and possession of a regulated firearm by a disqualified person. On appeal, Mr. Barbour contends that there was insufficient evidence to sustain his convictions. Specifically, he claims that the two witnesses who identified him as the perpetrator were so unreliable that their testimony lacked the probative value necessary to support a finding of guilt beyond a reasonable doubt. We disagree and shall affirm.

In support of his claim, Mr. Barbour relies on *Kucharzyk v. State*, 235 Md. 334 (1964), wherein the prosecuting witness, an intellectually disabled 16-year-old boy with an I.Q. of 56, gave contradictory testimony about whether the crime allegedly committed by Mr. Kucharzyk had occurred. *Id.* at 336-37. The Court of Appeals reversed Mr. Kucharzyk’s conviction for assault and battery because of insufficient evidence, holding that, “where a witness testifies to a critical fact and then gives directly contradictory testimony regarding the same critical fact, the fact finder should not be allowed to speculate and select one or the opposite version.” *Id.* at 337-38.

Both this Court and the Court of Appeals have made clear that “[t]he doctrine set forth in *Kucharzyk* is extremely limited in scope.” *Smith v. State*, 302 Md. 175, 182 (1985); *Vogel v. State*, 76 Md. App. 56, 59-60 (1988) (“Some appreciation of the limited utility of the so-called *Kucharzyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharzyk* in a criminal appeal and it has never been applied post-*Kucharzyk* in a criminal appeal”) (citation omitted). In fact, we have recently noted that: “[T]he so-called *Kucharzyk* Doctrine, if it ever lived, is dead. It has been dead for a long time. Forget

it. Damaged credibility is not necessarily inherent incredibility.” *Rothe v. State*, 242 Md. App. 272, 285 (2019).

Here, there were no internal inconsistencies in the witnesses’ testimony that rise to the level of those at issue in *Kucharczyk*. Although Mr. Barbour contends that the witnesses who identified him as the perpetrator were either biased, had a motive to lie, or had their testimony contradicted by other witnesses, determining the credibility of those witnesses was ultimately a question for the jury. Because there was sufficient evidence to sustain Mr. Barbour’s convictions, the trial court did not err in submitting the case to the jury.

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