Circuit Court for Harford County
Case No. 12K-15-0417

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 539

September Term, 2017

LANCE SHELDON BAKER

v.

STATE OF MARYLAND

Wright,
Kehoe,
Reed,

JJ.

Opinion by Kehoe, J.

Filed: August 1, 2018

A jury in the Circuit Court for Harford County convicted Lance Sheldon Baker, appellant, of second degree assault and two counts of fleeing and eluding a police officer. Appellant was sentenced to ten years' incarceration with all but eight years suspended. On appeal, he contends that the trial court abused its discretion when it denied his request for a mistrial after the jury panel witnessed two uniformed officers bring him into the courtroom. We disagree and therefore affirm appellant's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2017, the State tried appellant on charges stemming from an incident that occurred on March 2, 2015, at Auto Showcase in Fallston. On the scheduled trial date, when the court clerk called appellant's case, defense counsel requested a bench conference to complain about the manner in which appellant entered the courtroom, prompting the following ruling challenged in this appeal:

> [DEFENSE COUNSEL]: Your Honor, the way that he was brought into the courtroom with two guys dressed full combat gear, chains clanging and physically escorting him into this courtroom separate from the back gave an impression that he is incarcerated. He may as well have been in stripes and handcuffs.
>
> THE COURT: Well, there was no request made that he come in some other way.
>
> [DEFENSE COUNSEL]: I did.
>
> THE COURT: You didn't. I don't think the jurors are drawing any inference about somebody because of what door they come in.
>
> [DEFENSE COUNSEL]: The man was escorted side by side and he looked like Hannibal Lecter coming in here with having two of these officers dressed in combat fatigue fatigues [sic] into the courtroom on each side of him. I

> mean, it's the appearance that somebody is a dangerous criminal coming into the courtroom.
>
> THE COURT: If you wanted him brought in some other way, you should have brought it to the Court's attention prior to that. We're going to proceed.
>
> [DEFENSE COUNSEL]: Is there something that I can put on the record?
>
> THE COURT: It's on the record. Mr. [Court Reporter] is taking it down right now. . . .
>
> [DEFENSE COUNSEL]: For the record, I'm asking for a mistrial.
>
> THE COURT: Denied.

After a jury was selected from the original jury panel, the State presented evidence that appellant, who worked at Auto Showcase, drove his black Porsche directly at a police officer who attempted to stop him, and then fled from pursuing officers by car and on foot. Maryland State Police Troopers Aaron Bates and Matthew Cappello testified that they responded in uniform to that business premises, in order to investigate the report of a crime involving appellant. According to both troopers, while they were walking through the parking lot, appellant drove a vehicle from the back of the lot, heading toward Trooper Bates. Using verbal commands and hand signals, Bates ordered appellant to stop. Although appellant briefly slowed the vehicle, he then accelerated, heading directly at Bates, who jumped out of the way in fear for his life. Two employees of Auto Showcase gave a different account of the incident, testifying that the trooper stepped into appellant's path and that appellant swerved to miss him. A surveillance video recording of the incident was played for the jury during the testimony of each witness.

The trial court granted appellant's motion for a judgment of acquittal on a first degree assault charge, and the State amended its indictment to drop the charge of assaulting a police officer in favor of a charge of second degree assault. The jury convicted appellant of second degree assault and two counts of fleeing and eluding, corresponding to separate flights on foot and by vehicle.

DISCUSSION

Appellant contends that "the trial court abused its discretion when it denied [him] relief after the jury panel witnessed two uniformed officers bringing him into the courtroom, because this conduct gave the jury the impression [he] was incarcerated and dangerous."

The State counters that appellant failed to preserve this issue for appellate review, both because defense counsel did not move to strike the venire and because "the record is insufficient to show error and to assess whether any error was harmless." Alternatively, if this Court addresses the merits of appellant's challenge, the State maintains that appellant's "entry into the courtroom accompanied by two officers in military-style clothing was neither inherently nor actually prejudicial."

For the reasons that follow, we hold that the trial court did not abuse its discretion in denying appellant's request for relief based on the challenged security measures.

Standards Governing Courtroom Security Measures

"The decision as to the method and extent of courtroom security is left to the sound discretion of the trial judge." *Miles v. State*, 365 Md. 488, 570 (2001). *See Wagner v.*

State, 213 Md. App. 419, 476 (2013). The Supreme Court has emphasized that not "every practice tending to single out the accused from everyone else in the courtroom must be struck down." *Holbrook v. Flynn*, 475 U.S. 560, 567, 106 S. Ct. 1340, 1345 (1986). "Recognizing that jurors are quite aware that the defendant appearing before them did not arrive there by choice or happenstance," that Court has "never tried, and could never hope, to eliminate from trial procedures every reminder that the State has chosen to marshal its resources against a defendant to punish him for allegedly criminal conduct." *Id*. When evaluating a challenged security measure, therefore, appellate courts should

> look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over.

Id., 475 U.S. at 572, 106 S. Ct. at 1347-48.

"It is obvious that some security is necessary or desirable in most, if not all, criminal trials. It is equally obvious that not all security measures will result in prejudice to the defendant." *Bruce v. State*, 318 Md. 706, 718 (1990)). A "reviewing court should not determine whether less stringent security measures were available to the trial court, but rather whether the measures applied were reasonable and whether they posed an unacceptable risk of prejudice to the defendant." *Hunt v. State*, 321 Md. 387, 408 (1990). "The prejudice posed by security measures, and whether a compelling state interest outweighs that prejudice, must be measured on a case by case basis." *Id*. at 410.

To be sure, some courtroom practices, including restraining a defendant in view of the jury, are so "unmistakable" and "pose such a threat to the 'fairness of the factfinding process' that they must be subjected to 'close judicial scrutiny.'" *Holbrook*, 475 U.S. at 568, 106 S. Ct. at 1345 (citations omitted). Consequently, "as a general rule, an accused has a right to be tried . . . without being shackled, chained, bound, handcuffed, gagged, or otherwise physically restrained." *Wagner v. State*, 213 Md. App. 419, 476-77 (2013) (internal quotation marks and citations omitted). *Cf. Deck v. Missouri*, 544 U.S. 622, 630, 125 S. Ct. 2007, 2013 (2005) ("Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process."); *Whittlesey v. State*, 340 Md. 30, 85 (1995) ("restraints might derogate the presumption of innocence in the eyes of the jury").

But other routine courtroom security measures, including the use of uniformed security officers inside the courtroom, are subject to a "range of inferences" and "need not be interpreted as a sign that [the defendant] is particularly dangerous or culpable." *Holbrook*, 475 Md. at 569, 106 S. Ct. at 1346. *See Bruce*, 318 at 718. In *Holbrook*, the Supreme Court held that the presence of police officers in a courtroom is not inherently prejudicial, reasoning that

> [t]he chief feature that distinguishes the use of identifiable security officers from courtroom practices we might find inherently prejudicial is the wider range of inferences that a juror might reasonably draw from the officers' presence. While shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large, the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into

> violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards.
>
> To be sure, it is possible that the sight of a security force within the courtroom might under certain conditions "create the impression in the minds of the jury that the defendant is dangerous or untrustworthy." However, "reason, principle, and common human experience," counsel against a presumption that any use of identifiable security guards in the courtroom is inherently prejudicial. In view of the variety of ways in which such guards can be deployed, we believe that a case-by-case approach is more appropriate.

Holbrook, 475 U.S. at 568-69, 106 S. Ct. at 1345.

Appellant's Challenge

Appellant contends that he "was prejudiced when he was brought into the courtroom in front of the jury panel from the back door, escorted by sheriffs on each side, because this procedure impermissibly suggested he was incarcerated and potentially dangerous." In appellant's view, the number of officers, their attire, and the manner in which they escorted appellant into the courtroom warranted dismissal of the jury panel. Although defense counsel asked only for a mistrial, appellant maintains that the trial court should have treated that request as the functional equivalent of a motion to dismiss the jury panel, because a mistrial was not possible at that point given that a jury had not yet been selected, much less sworn.

As the State points out, we are limited by the record adduced by appellant. Because we do not have a video-recording of appellant's entrance into the courtroom, we must rely solely on the transcript. According to defense counsel's proffer, two unidentified "officers," dressed in "combat fatigues" with "chains clanging," entered through a

"separate" door in the "back" of the courtroom, with appellant positioned between them. Appellant does not contend that he was restrained by handcuffs or shackles, that either officer was armed, or that they had any physical contact or verbal interaction with appellant in the presence of the jury panel. Nothing in the transcript indicates how close they were to appellant, how they moved within the courtroom, whether either or both officers remained in the courtroom, or if so, where they were positioned.

Although this sparse record does not preclude appellate review, it necessarily limits appellant's grounds for relief. Moreover, we must view the record with deference to the fact that "'the trial judge is physically on the scene, able to observe matters not usually reflected in a cold record. . . . The judge has his finger on the pulse of the trial." *Frazier v. State*, 197 Md. App. 264, 282 (2011) (quoting *State v. Cook*, 338 Md. 598, 615 (1995)).

We assume for purposes of analysis that the trial court understood defense counsel's request for a mistrial to be a request to dismiss the jury panel. However, we are not persuaded that the courtroom security measures challenged by appellant were so unreasonable or prejudicial that the trial court abused its discretion in denying such relief. Specifically, nothing in this record establishes that appellant was prejudiced by the number of "guards," their uniforms, their "escort" of appellant, or their entry into the courtroom through a "back" door, to the point that appellant could not get a fair trial.

As discussed, the Supreme Court has held that the presence of identifiable security officers in a courtroom is not inherently prejudicial, so that our focus must be on whether their use was unreasonable and actually prejudicial. *See Holbrook*, 475 U.S. at 568-69,

106 S. Ct. at 1345. Appellant does not argue that the military fatigue-style uniforms worn by the two officers were more prejudicial than other police uniforms; nor does he contend that the officers' interactions with appellant were in some way unusual. *Cf. Wiggins v. State*, 315 Md. 232, 240 (1989) (courtroom security guards wore rubber gloves based on unconfirmed suspicion that defendant had AIDS); *Frazier*, 197 Md. App. at 281-82 (defendant and sheriff "exchanged words in front of the jury"). Instead, appellant complains that allowing panel members to "speculate about the reason for the presence of multiple guards" in uniform, flanking him as he entered the courtroom through a "back" door, was "extremely prejudicial[,]" because "[t]his was an extremely close case, with two of the State's witnesses saying Mr. Baker drove toward the officer, and two other State's witnesses saying he did not drive toward the officer, but rather drove around him."

Holbrook illustrates that the presence of uniformed police officers in the courtroom generally is a reasonable security measure. In that case, the issue was whether four officers sitting in the courtroom during a joint trial of six co-defendants impinged upon due process by undermining the presumption of innocence. *See Holbrook*, 475 U.S. at 570, 106 S. Ct. at 1347. The Court answered no, explaining:

> We do not minimize the threat that a roomful of uniformed and armed policemen might pose to a defendant's chances of receiving a fair trial. But we simply cannot find an unacceptable risk of prejudice in the spectacle of four such officers quietly sitting in the first row of a courtroom's spectator section. Even had the jurors been aware that the deployment of troopers was not common practice in Rhode Island, we cannot believe that the use of the four troopers tended to brand respondent in their eyes "with an unmistakable mark of guilt." Four troopers are unlikely to have been taken as a sign of anything other than a normal official concern for the safety and order of the proceedings. Indeed, any juror who for some other reason believed

> defendants particularly dangerous might well have wondered why there were only four armed troopers for the six defendants.
>
> We note, moreover, that even were we able to discern a slight degree of prejudice attributable to the troopers' presence at respondent's trial, sufficient cause for this level of security could be found in the State's need to maintain custody over defendants who had been denied bail after an individualized determination that their presence at trial could not otherwise be ensured. Unlike a policy requiring detained defendants to wear prison garb, the deployment of troopers was intimately related to the State's legitimate interest in maintaining custody during the proceedings.

Holbrook, 475 U.S. at 570-72, 106 S. Ct. at 1347 (citations omitted).

The decision and rationale by our Court of Appeals in *Bruce*, 318 Md. at 720-22, is even more instructive, because that appeal challenged the State's use of multiple and uniformed security officers, during both jury selection and trial. The Court of Appeals held that the presence of security officers in the courtroom, including one uniformed deputy stationed near the defendant during bench conferences, was reasonable, explaining:

> Prior to jury selection, defense counsel objected to the single deputy sheriff stationed close to Appellant and requested that the deputy be required to stay on the other side of the rail. The trial judge first determined that the deputy could not overhear any conversations at the trial table. The deputy sheriff also indicated that, if he were separated from Appellant by a rail, a security risk would be posed. We believe permitting a single deputy sheriff to remain on the same side of the rail as the defendant, after ascertaining that the deputy could not overhear any conversations at the trial table, was a proper exercise of discretion.
>
> A short time later Appellant's counsel again raised the issue of security in the courtroom. Defense counsel pointed out that "I am counting at least four marshals that are in suits, plain clothes, in the courtroom, in addition to approximately two bailiffs that are in the courtroom."
>
> After the jury was selected and pre-trial motions were heard, Appellant again raised the issue of security. The complaints of courtroom security in close proximity to the defendant involved the presence of a uniformed sheriff's deputy in the courtroom and a bailiff. Counsel at that

> time did candidly acknowledge to the trial judge that "if we just were to limit it to this courtroom, what's going on in this courtroom right now, Your Honor, I would be the first one to admit that we would lose on appeal on this issue . . . ." Counsel was correct.
>
> The issue of courtroom security arose a final time when handcuffs were being removed from Appellant as the jury was being led into the courtroom. This viewing of Appellant in handcuffs by the jury was clearly inadvertent. No cautionary instruction was requested, and no motion for mistrial was made. Instead, defense counsel merely asked the court to instruct the deputies to make sure that such an incident did not recur. The trial judge agreed to so instruct the courtroom personnel. This one inadvertent viewing of Appellant in handcuffs clearly did not require the trial judge to take any action *sua sponte*, and did not result in any prejudice to defendant's right to a fair trial.
>
> In the instant case we are not confronted with an inherently prejudicial practice like shackling during trial, which can only be justified by compelling state interests in the specific case. We are also not confronted with an extensive security force so close to the defendant that it could "create the impression in the minds of the jury that the defendant is dangerous or untrustworthy."

Id. at 720-22 (citations omitted).

We agree with the State that, if the significantly more visible security measures challenged in *Bruce* did not prejudice the accused's right to a fair trial, then the trial court properly exercised its discretion in ruling that the security measures challenged by appellant did not prejudice his right to a fair trial. The presence of uniformed security officers in a courtroom is not so unexpected that jurors are likely to view them as proof that the accused is dangerous or guilty. *See Holbrook*, 475 U.S. at 570-71, 106 S. Ct. at 1347.

Furthermore, we agree with the trial court that appellant was not prejudiced by being brought into the courtroom through a back door. Members of the jury panel presumably

observed other courtroom personnel, including the judge and courtroom clerk, enter through a door in the back of the courtroom. Although the transcript does not indicate whether appellant entered through the same door, even if we assume that he did not, the record is blank regarding how appellant might have been prejudiced by using a different back door (*e.g.*, if members of the jury panel viewed other defendants in restraints or jailhouse attire using the same door).

Here, there were only two officers escorting appellant into the courtroom before voir dire began. This is far fewer and less prejudicial than the courtroom security in *Bruce*, where as many as six security officers were in the courtroom over the course of jury selection and trial. In particular, the use of two uniformed security officers to escort appellant into the courtroom is considerably less visible than the use of a uniformed officer stationed close to Bruce during all bench conferences. If the sustained deployment of more visible security personnel in *Bruce* was not prejudicial, then the security measures challenged by appellant were not unreasonable or unduly prejudicial.

For these reasons, we conclude that the trial court did not abuse its discretion in denying the relief request by defense counsel and proceeding to voir dire with the original jury panel.

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