UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1096

September Term, 2013

WAYNE KASEY

v.

STATE OF MARYLAND

Meredith,
Woodward,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 21, 2015

After a jury trial in the Circuit Court for Baltimore City, Wayne Kasey, Jr., appellant, was convicted of three counts of second-degree assault and three counts of false imprisonment.[1] For each conviction of second-degree assault, Kasey was sentenced to incarceration for a term of ten years, with all but three years suspended, each to run concurrent to each other. For each count of false imprisonment, he was sentenced to incarceration for a term of fifteen years, with all but three years suspended, also to run concurrent to each other and to the sentences imposed for second-degree assault. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court erred in instructing the jury. For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

There is no significant dispute about the underlying facts of this case. On November 1, 2011, Thomas Whittle lived at 554 Pressman Street in West Baltimore with his twin brother, Timothy Whittle, Kevin Tanner, Antonio Brown, and others. Between 9:00 and 10:00 p.m., Thomas Boyles[2], Willie Boyles and Darius Bell were on their way to visit a friend when they decided to stop by 554 Pressman Street so that Thomas Boyles could visit

[1] Kasey was tried with a co-defendant, De Mon Harris, who is not a party to this appeal.

[2] The name Boyles is also spelled "Bulls" and "Bowles" throughout the record, but we shall use this spelling for consistency.

some of his co-workers, who lived there. Thomas Boyles went to the door and Willie Boyles and Darius Bell remained in the car.

While Thomas Boyles was standing at the front door, a white Nissan Altima pulled up and three men jumped out of it. Willie Boyles thought the men were police officers and observed that at least one was wearing a gold badge. The men, one of whom had a gun, pulled Willie Boyles and Darius Bell out of their car and threw them up against a wall. Initially, they faced the wall while the men searched them. After they were searched, the men told them to turn around and then examined their identification cards. Willie Boyles identified Kasey as the man who carried a gun, wore a gold badge, and searched him. He thought he recognized Kasey from high school, but when he asked if they knew each other, Kasey just smiled. After searching Willie Boyles and Darius Bell, the men turned their attention to Thomas Boyles.

While Thomas Boyles was at the front door of 554 Pressman Street speaking to Tanner, Kasey went up behind him with a gun and announced, "[w]e [sic] the police. Come step outside." Kasey was wearing a black police-type vest with a badge. The men said they were going to check to see if there were any warrants out for anyone. As they were checking everyone's identification cards, one of the armed men told the third man who was with them that someone had run out of the back door of the house. The third man walked to the back of the house to check. Thereafter, the men who had been searched were told they could go inside the house.

Kevin Tanner testified that he opened the door to let Thomas Boyles in, and was speaking with Boyles, when he saw a man with a gun in the middle of the street. The man told Tanner and one of the Whittles, who was on the first floor of the house, to come outside and stand against the wall with their hands up and their legs spread. Tanner then saw that there were three men, two of whom carried guns. He thought the men were police officers because of their demeanor and because they asked for identification and had everyone stand up against the wall. One of the men, who did not have a gun, went through everyone's pockets. He took a partial pack of Newport 100 cigarettes from Tanner's back pocket, but when he found out that Tanner did not have any money, he told him to go back inside and sit on the sofa. Later, one of the men with a gun came up to the house, but did not enter, and asked Tanner who had run out the back door. Tanner knew that Antonio Brown had run out, but told the man that no one had done so. The man told Tanner that he knew he was lying and said, "[i]f I ever see you on the streets again, I'm going to make life real hard for you. I'm going to make life real miserable for you."

Thomas Whittle testified that when he looked out his front door, he saw a man with a gold semi-automatic gun holding some of his friends against a wall. The man, whom he identified as Kasey, was wearing dark clothes, a gold police badge, and a holster, and was carrying a walkie talkie. Thomas Whittle thought Kasey was a police officer. Another man, whom Thomas Whittle identified as Kasey's co-defendant, De Mon Harris, was searching

the people who were up against the wall. The third man was standing nearby "looking out" and not "doing too much."

Thomas Whittle asked what was going on, and Kasey told him to "freeze," put his hands up, and show his identification. Thomas Whittle showed his identification and then Kasey put his gun in his holster and told him to go back in the house. Harris continued to search the others, check their identification, and go through their pockets. Thomas Whittle saw money and cigarettes on the ground, but did not see the men take anything. Shortly thereafter, Thomas Whittle went back outside and asked Kasey why he was at the house, but Kasey only responded that he had seen someone run out of the back door.

Timothy Whittle was on the third floor of the house with his girlfriend when he heard a commotion. He went to the first floor and saw his twin brother, who said that the police were outside. Timothy Whittle looked out the front door and saw Thomas Boyles, Willie Boyles, Kevin Tanner, and a man named Darius, whom he had never met before, standing against a wall being frisked by three men who appeared to be police officers. Timothy Whittle asked why the police were at the house, and one of the three men responded, "[w]e the police; don't nobody run from the police." The man explained that there had been drug activity "going on here." Timothy Whittle's brother told him to "shut up," and one of the men told him to go back inside the house or he would get locked up. Timothy Whittle said that there were no drugs in the house and he invited the man to "come in, and check my house if you want." Kasey told the two other men with him to "stand down" and "check for

ID." He then entered the house saying, "[w]e the police, shouldn't nobody have run from the police." According to Thomas Whittle, Kasey searched the house "like he was a police officer."

Timothy and Thomas Whittle walked Kasey through the house to the back door. Kasey had a flashlight and a walkie talkie. The Whittles' roommate, Antonio Brown, who lived in the back part of the first floor, was not there. Timothy Whittle assumed that Brown was the individual who had run out the back door. Kasey spoke of the person who had run out the back door saying, "[i]f I was the police and I had a gun I would have shot him." Kasey checked the alley and the back gates and then returned to the house and walked with the Whittles back to the living room. There, they saw Kevin Tanner sitting on the couch. He was shaking and appeared to be scared. Kasey told Tanner, "[i]f I catch you on the Avenue, I'm a make your day a very bad day." Timothy Whittle understood that "the Avenue" was a reference to Pennsylvania Avenue.

At that point, Kasey acted like he was getting a call on his walkie talkie. He then said that they got their suspect. One or two of the men drove off in the white Altima heading toward Pennsylvania Avenue and those not in the car ran in the same direction.

About a minute after the three men left, Antonio Brown started banging on the back door. According to Thomas Whittle, Brown had run out the back door when the men arrived at the house, but to his knowledge, Brown did not have any outstanding warrants.

The Whittles and their roommates and friends had a conversation about what had happened. Willie Boyles said that he had had forty to fifty dollars in his pocket and that his money was missing. Thomas Boyles checked his money and noticed that he was missing twenty dollars. Timothy Whittle was suspicious about Kasey because he had a yellow badge, there was no one talking back over the walkie talkie, and, as they walked through the house, Kasey did not call for backup. In addition, Kasey walked between the Whittle brothers without any apparent concern about being ambushed, which the men did not think a real police officer would do. Willie Boyles thought it was odd that the men did not cover the back door, thereby allowing one of the occupants of the house to run out that door and up the street. He also thought it was odd that the gun he saw was chrome in color because "police don't usually carry guns that color[.]"

They decided that the men were not police officers because "police don't take your money and leave[.]" They called 911 and reported the incident. When the police arrived, the men gave them a description of two of the suspects and their vehicle, which was a white Nissan Altima with tinted windows and missing hubcaps. Baltimore City Police Officer David Jones put out a call for officers to be on the lookout for the vehicle. Shortly thereafter, other officers stopped a vehicle that fit the description.

The victims were taken to the location where the Altima had been stopped, and they identified Kasey and two others as the men who had come to the Pressman Street house with guns earlier that night. According to Baltimore City Police Detective Bradley Hood, the

three men in the Altima had badges around their necks and wore "duty belts and gun holsters" that were "similar to what [ ] patrol officers wear in the Baltimore Police Department." Harris wore a ballistics vest and had a Winchester knife, a two-way radio, law enforcement strength pepper spray, and gloves. A"silver and black handgun, with a magazine in the well of the gun, a gold fugitive badge, a radio microphone, a night stick, black gloves, a flashlight, a gun holster, handcuffs, keys, and a cell phone" were recovered from the Altima. Officers also recovered two other guns. The guns were eventually shown to be two starter pistols and an air gun. In addition, police recovered a tactical vest with a patch bearing the words "fugitive recovery agent" and a black folder containing numerous court documents. No cigarettes or money were recovered from Kasey, but one of the other men had a roll of currency in his pocket.

After the men were arrested, they were interviewed by Detective Hood. Kasey stated that they were fugitive recovery agents, or bounty hunters, and that they were in the vicinity looking for persons who were wanted, but he was not able to provide specific names and addresses for the people they were looking for. Harris stated that they asked individuals for their identification and then ran that information through the Maryland Case Search using their cell phones. Detective Hood was unable to obtain verification of Kasey and Harris's employment as fugitive recovery agents.

Kasey's mother, Cheryl Kasey, was the sole witness to testify on Kasey's behalf. She stated that Kasey founded KC's Fugitive Recovery and Protective Services in 2007. She

said he had two employees, Dante Driggs and Kasey's co-defendant, Harris. Kasey had taken courses on apprehending fugitives and "surveillance strategies." He owned vests, flashlights, books, magazines, and other supplies. Cheryl Kasey also stated that her son was an agent for Global Surety Services, Inc. Kasey and his fiancé owned a couple of cars, including the white Altima.

We shall provide additional facts as necessary in our discussion of the issues presented.

DISCUSSION

Kasey contends that the trial court erred in its instruction to the jury on the law governing bounty hunters, or fugitive recovery agents,[3] and its supplemental instruction on mistake of fact and mistake of law in the context of a bounty hunter's efforts to apprehend a fugitive. Specifically, he argues that because he asserted, as an affirmative defense, that he was acting as a fugitive recovery agent, the State bore the burden of proving that he was aware that his conduct was unwarranted. He maintains that because the jury instruction and supplemental instruction failed to apprise the jury that the State bore this burden, the court erroneously relieved the State of its burden of proving each element of second-degree assault and false imprisonment beyond a reasonable doubt. Kasey asserts that the supplemental

[3] The terms "bounty hunter" and "fugitive recovery agent," which are used interchangeably in this case, refer to a person seeking to recapture a defendant who has been released on bail.

instruction on mistake of fact and mistake of law failed to resolve this problem and further worsened the situation. We disagree and explain.

A. Standard of Review

We review a trial court's decision whether to grant a jury instruction under an abuse of discretion standard. *Cost v. State*, 417 Md. 360, 368-69 (2010). As the Court of Appeals stated in *Cost*, on review, jury instructions:

> "[M]ust be read together and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate. Reversal is not required where the jury instructions, taken as a whole, sufficiently protect[ed] the defendant's rights and adequately covered the theory of the defense."

Id. (quoting *Fleming v. State*, 373 Md. 426, 433 (2003)).

B. Jury Instructions Given

During the course of the trial, the judge asked counsel to provide legal authority pertaining to bail bondsmen and fugitive recovery in Maryland to aid in the court's preparation of a jury instruction on those topics. After receiving authority from counsel, the court, relying primarily on our opinion in *Herd v. State*, 125 Md. App. 77 (1999), instructed the jury, over objection, as follows:

> Now, you have heard evidence that the Defendants were acting as fugitive recovery agents, or bounty hunters, on behalf of a bail bondsman in connection with this incident. You have also heard testimony about the law that applies to bail bondsmen and their agents in Maryland. As with factual issues, it is for you to decide what happened and what, if anything, the Defendants were doing. I will instruct you on the law that applies to bail

bondsmen and their agents so you can understand the legal context in which you are considering the factual issues.

As I've already told you, when a defendant is charged with a crime, he or she is presumed to be innocent. After the initial arrest a defendant is sometimes released on his own recognizance or sometimes held without bail, but more often a bail is set that a defendant may post to gain his release pending trial. The bail serves as an incentive for a defendant to appear for trial. If he fails to appear the bail may be forfeited.

A defendant may post bail himself, or a family member or other person may post the bail for a defendant, but in most cases in our system a defendant is also permitted to have the bail posted by a professional bail bondsman. The bail bondsman charges a fee to a defendant and in exchange guarantees to the court that a defendant will appear for trial. The bail bondsman becomes a defendant's surety.

If a defendant fails to appear the bail bondsman must pay the amount of the bail, or bond, to the court. Because the bail bondsman is guaranteeing that defendant will appear for trial, the bail bondsman has the authority to seize a defendant and to deliver him to the court. The bail bondsman may do that before or after a defendant fails to appear in court. The bail bondsman may use reasonable force to seize a defendant and may hold the defendant for the time between seizing him and delivering him to the court. The bail bondsman may even enter the home of a defendant, by force, to seize him. Although he may seize and hold the defendant, the bail bondsman may not use unnecessary force against the defendant or steal from a defendant.

The bail bondsman may do all of these things himself or through an agent. The agent of a bail bondsman is sometimes called a bounty hunter, or a fugitive recovery agent. Maryland does not require any specific licensing or training to serve as a bounty hunter or fugitive recovery agent.

The authority of a bail bondsman or his agent to seize a defendant arises from the relationship between the two of them. By agreeing to have the bail bondsman guarantee his appearance at trial, a defendant has consented to the bail bondsman or the bail bondsman's agent seizing him for that purpose. A defendant has even consented to the use of reasonable force by the bail bondsman or his agent.

> The authority of the bail bondsman or his agent exists only with respect to a defendant, and does not extend to third parties. Thus, the bail bondsman or his agent may not seize, imprison or use force against a third party, except, perhaps, if that third party is interfering directly with the bail bondsman's or the agent's apprehension of a specific defendant.
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> A bail bondsman or his agent also may not conduct his activities against the public, generally, hoping to identify people who are subject to warrants. The authority is specific to a defendant and must be targeted at that defendant. With respect to all third parties other than a defendant, the bail bondsman and his agents stand in the same relationship as an ordinary citizen.

During the course of deliberations, the jury sent several notes to the court, one of which asked:

> Are the defendants legally justified if they initially thought that they were justified working under the law legally when they did their actions, but found out later that their justification was not valid?

In response, the court instructed the jury, over defense objections, on the concepts of mistake of fact and mistake of law, as follows:

> Now mistake of fact is a defense in this case and any other case. You are required to find the Defendant not guilty if three things are true. First, that the Defendant actually believed whatever the fact was that was mistaken. Second, that the Defendant's belief and actions were reasonable under the circumstances. And third, that the Defendant did not commit the particular crime that is alleged and under your consideration – did not intend to commit the crime and the Defendant's conduct would not have amounted to commission of the crime if the mistake in fact had been as the Defendant believed it to be true. That is, if the facts were true as the defendant thought them to be, the conduct would not amount to the commission of a crime.
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> Now to convict the Defendant, the [S]tate would have to prove beyond a reasonable doubt that any one of those three requirements was not true and the three requirements again are that the Defendant actually believed a certain

factual circumstance, that that belief and the actions were reasonable under the circumstances, and that the Defendant did not intend to commit the crime that you are considering.

Now let me try to give this an illustration in the context of your questions and the context of this case. One of your questions relates to I think whether the Defendants believed that they were apprehending or pursuing a particular person. The answer to that question is they would not necessarily have to have a name. That is, any information that specifically identifies the person as someone who is subject to a bail bond and therefore subject to their authority would be sufficient.

So, for example, they might have a photograph or they might have a specific address combined with a description or something of that sort that to a reasonable person would be sufficient to identify that particular person.

Now an example of a mistake of fact would be if you found that they were in fact pursuing a particular person and that they thought that they had caught that person. So as fugitive recovery agents, they put that person in custody, maybe handcuffed him, maybe not, but actually took that person into custody and then discovered later that they had the wrong person. That although this person fit the description or looked like the photograph that it was in fact the wrong person.

In those circumstances, if each of these – those three elements were true, you may conclude that they had made a mistake of fact. That is, that they reasonably believed they had the right person and they had the authority to detain that person or to take him into custody and that they were operating based on that mistake of fact and in all those circumstances you might find them not guilty of a particular offense based on that mistake.

That contrasts with a mistake of law and the best way to describe a mistake of law is that we are all deemed to know what it is that is legal and illegal and if we make a mistake that we find out later about what is legal and illegal, we can't have our conduct excused by the fact of that mistake.

So for example if you were to conclude that the Defendants actually thought they had the authority to just stop and arrest anyone they wanted and then later figure out whether that person is subject to their authority or not, even if you thought that in good faith that is what they believed, that they had

> that authority, as I've instructed you on the law a bounty hunter or fugitive recovery agent in fact does not have that authority. Has authority only with respect to the person that has – had the bond posted for him and is the subject of that relationship with the bail bondsman. So in that situation that mistake of law, that is, thinking that they had authority much broader than they actually did have would not necessarily excuse their conduct.
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> It is a complicated concept, but that is the distinction between a mistake of fact which can be a defense to the commission of a crime and a mistake of law which is generally not a defense to the commission of a crime.

C. *Herd v. State*

As both parties refer us to *Herd v. State,* 125 Md. App. 77 (1999), in support of their respective arguments, a review of that case is in order. *Herd* proceeded to trial on an agreed statement of facts that revealed that Herd was, at all times relevant to the case, employed by a bail bondsman. *Herd*, 125 Md. App. at 81. His duties included the apprehension and arrest of fugitives. *Id.* Herd was advised by his employer that James Askins had failed to appear for trial and that a warrant had been issued for his arrest. *Id.* Herd and two other bail bondsmen went to Askins's last known address, where they were advised by an unidentified female that he was staying at 924 Abbott Court. *Id.* at 82. Herd and the other men went to that address and knocked on the door, but no one answered. *Id.* One of the men heard the sound of a radio coming from within the house and saw signs of movement in the blinds on a second story window. *Id.* At that point, Herd and the two men with him broke the lock off the front door with an axe and entered the residence. After searching the house, the men realized that no one was inside. *Id.*

During the course of the forcible entry into 924 Abbott Street, Michelle Reed, the lawful resident of that address, returned home with her children. *Id.* Herd and his companions asked Reed to enter the residence to answer some questions. *Id.* She asked if they had a search warrant and identification. *Id.* They did not provide either, but advised Reed that they were "from the fugitive unit." *Id.* Reed noticed that the men were armed and that at least one of them was wearing a bullet proof vest. *Id.* The men showed Reed a photograph of Askins and asked if she knew him, but she replied that she did not. *Id.* The men continued to search Reed's residence. *Id.* At some point, the men asked Reed how much she paid for childcare, and offered to pay her that amount. *Id*. at 83. Reed refused to take the money. *Id.*

Herd was convicted of fourth-degree burglary. At trial, he asserted as a defense, that, as a licensed bail bondsman, he reasonably believed that he was entitled to enter the premises at 924 Abbott Street.

In deciding *Herd*, we reviewed the law pertaining to a bail bondsman's authority to search for and to arrest a fugitive defendant for whom bond has been posted. We recognized that the "concept of guaranteeing the appearance of an accused at trial by having a surety post bail or collateral on his behalf is a longstanding part of Anglo-American law." *Id.* at 110. When a defendant is arrested, he or she might enter into a bond or obligation with a surety to insure his or her appearance in court. *Id.* As part of the bail agreement, a bondsman obtains broad powers over his principal, that is, a defendant who has entered into

a contractual agreement concerning bail with a bondsman. *Id.* Because the law supposes the principal to be always in the custody of the bondsman, the latter "may take him at any time, and in any place." *Id.* at 111 (quoting *Commonwealth v. Brickett*, 8 Pick. 138, 25 Mass. 138, 140 (1829)(emphasis omitted)).

In *Herd*, we cited a number of authorities from other jurisdictions explaining that when bail is given, the principal is delivered to the custody of the surety, who may seize him and break and enter his house for that purpose. *Id.* at 111-12. In addition, we noted:

> Of particular significance to the common law of Maryland was the observation of Lewis Hochheimer, *Law of Crimes and Criminal Procedure*, § 120, pp. 84-85 (1897)(footnotes omitted):
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> > **Power of Sureties**. – The sureties are the keepers of the accused. They may, without process, at any time, within or without the territory of the state having jurisdiction over the offense, reseize and deliver him up. *They* may delegate a third person to do this, for which purpose, according to some cases, the authority must be in writing, or may obtain the assistance of a sheriff, constable, or other peace officer, and *may break open doors*, no unnecessary violence being permissible.

Id. at 112 (emphasis in *Herd*).

Maryland law allows a bail bondsman to apprehend a fugitive even in another jurisdiction, and allows him to physically haul the fugitive back to Maryland. We noted in *Herd* that this right arises from the nature of the bail. *Id.* at 113 (relying on *Frasher v. State*, 8 Md. App. 439, 445 (1970)). We also addressed the issue of the power, prerogatives, and authority of a bail bondsman over third persons or with respect to the property of third

persons. *Id.* at 114. Recognizing that "the case law on the prerogative of a bailbondsman *vis-a-vis* a third-person property owner is skimpy," we stated:

> the decided trend is that the bondsman lacks the broad authority over a third person that he possesses with respect to the fugitive who has violated the conditions of his bail. The pivotal difference is that the defendant who agreed to the terms of the bail bond has contracted away rights that he would otherwise possess *vis-a-vis* the bondsman, whereas a third person has not contracted away any rights.

Id. at 115. *See also State v. Portnoy*, 718 P.2d 805, 811 (Wash. App. 1986)(no authority for proposition that bondsman may sweep from his path third parties who are blocking search for principal, without liability to the criminal law); *State v. Burhans*, 89 P.3d 629, 636 (Kan. 2004)(use of force against third party was unreasonable and unprotected by bondsman's privilege). We concluded that the "legal conclusion that a bailbondsman is generally entitled to enter, without consent by the homeowner, the home of a third person in an effort to apprehend a fugitive is almost certainly an unreasonable legal conclusion." *Herd*, 125 Md. App. at 118-19.

In addition, there are factual limitations on a bail bondsman's "utilization of so free-wheeling a law." *Id.* at 119-120. A bail bondsman has "to have some reasonable basis for concluding that the fugitive" is inside a residence, "either as a new resident or as the guest of the existing resident," before entering in an attempt to recapture him. *Id.* at 120. For this reason, in *Herd*, we affirmed the trial court's finding that the belief of the bondsmen that Askins was in the house was not reasonable under the circumstances. In reaching that

conclusion, we pointed out that the bondsmen did not corroborate the tip they received about where Askins was living. *Id.* at 121-22. In addition, when the bondsmen were confronted by Reed, they affirmatively misrepresented themselves as members of the fugitive squad of the Baltimore City Police Department and offered Reed money, ostensibly to compensate her for daycare expenses, "but inferentially to pay for the broken door." *Id.* at 123-24. The misrepresentation and the offer of payment "were indications that [Herd] and his confederates may not even have believed subjectively that their intrusion was reasonable." *Id.* at 124.

D. Kasey's Entitlement to Conduct Certain Activities

Relying on *Herd*, Kasey maintains that because he asserted the defense that he was working as a bounty hunter, the State shouldered the burden of affirmatively proving, beyond a reasonable doubt, that he was aware that his conduct was unwarranted. In *Herd*, however, the bounty hunters believed that they were in the home of the fugitive they were seeking. In the instant case, Kasey did not, and could not have had, a reasonable belief that he was at the home of a principal. There was no evidence that Kasey was searching for a particular individual on the night of the incident, nor was there any evidence that any person he was searching for lived at 554 Pressman Street. Although a bounty hunter can stop a principal, there is no authority that allows a bounty hunter to stop third parties, search them, or check their identification for the purpose of ascertaining if warrants have been issued for them. "The pivotal difference is that the defendant who agreed to the terms of the bail bond

has contracted away rights that he would otherwise possess *vis-a-vis* the bondsman, whereas a third person has not contracted away any rights." *Herd*, 125 Md. App. at 115. Mere evidence that Kasey was acting as a bounty hunter was not sufficient to burst the bubble of the presumption that relieves the State from "the costly and inefficient burden of disproving in a vacuum rarely asserted defenses[.]" *Herd*, 125 Md. App. at 99.

E.

Kasey argues that the trial court's supplemental instructions on mistake of fact and mistake of law were erroneous for several reasons. He asserts that the mistake of fact instruction was not particularized to the charges and did not clarify what the State was required to prove as to each charge. He also argues that the mistake of fact instruction did not sufficiently instruct the jury that the State was required to prove that Kasey was aware that his conduct was unwarranted. With regard to the mistake of law instruction, Kasey contends that it was not appropriate because the law governing the authority of bounty hunters *vis-a-vis* third parties is not entirely resolved and, therefore, the jury should have decided to what extent a mistake of law on the part of a bounty hunter may operate as a defense to criminal charges. Finally, Kasey asserts that the trial court's illustration of how a mistake of fact or mistake of law might apply under the circumstances of this particular case invaded the province of the jury. These assertions are without merit.

1. Mistake of Fact

With respect to Kasey's argument that the mistake of fact instruction was not sufficiently particularized to the charges and did not sufficiently address that the State was required to prove that he was aware that his conduct was unwarranted, we have already noted that his understanding of *Herd* is misplaced. In that case, the issue was whether the bounty hunters had a reasonable belief that they were lawfully in the home of the bail bondsman's principal. As we noted, Herd would not have been criminally liable if the Abbott Court address had, in fact, been the domicile of the bail bondsman's principal.

In the instant case, however, the State was not required to prove that Kasey was aware that his conduct was unwarranted because Kasey did not have, and could not have had, a reasonable belief that it was lawful to detain at gunpoint, search, or check the identifications of third parties with whom there was no bail-related contractual agreement.

Moreover, the circumstances of this case indicate that Kasey displayed a subjective belief that his actions were unreasonable. Tanner testified that Kasey announced, "we the police." Timothy Whittle asked why the police were at the house, and one of the three men responded, "[w]e the police; don't nobody run from the police." The man explained that there had been drug activity "going on here." Kasey told the two other men with him to "stand down" and "check for ID." He then entered the house saying, "[w]e the police, shouldn't nobody have run from the police." According to Thomas Whittle, Kasey searched the house "like he was a police officer." The undisputed evidence established that Kasey

wore a gold badge and a holster with a gun in it and conducted himself as a police officer. The fact that Kasey, like Herd, masqueraded as a police officer, demonstrated a subjective belief that his actions were not reasonable. The trial court did not abuse its discretion in declining to adopt and incorporate Kasey's interpretation of *Herd* into the jury instructions.

2. Mistake of Law

The following discussion in *Herd* disposes of Kasey's mistake of law argument:

> If the appellant's defense had been that he was mistaken as to what the law entitled him to do but that it was nonetheless a reasonable mistake, the materiality of such a defense would be highly problematic.
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> * * *
>
> "[*I*]*gnorance of the law ordinarily does not give immunity from punishment for crime*, for every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. . . . In other words, *a person who commits an act which the law declares to be criminal cannot be excused from punishment upon the theory that he misconstrued or misapplied the law."*

Herd, 125 Md. App. at 119 n. 12 (quoting *Hopkins v. State*, 193 Md. 489, 498-99 (1949)(citations omitted))(emphasis in *Herd*).

Although Kasey had the legal authority, arising from a contractual relationship pertaining to bail, to enter into the dwelling of a bail bondsman's principal without permission, he did not have the authority to detain, search, hold at gunpoint, or enter the home of individuals over whom he did not have such authority. We find no support in the record for Kasey's assertion that the trial court's illustration of how a mistake of fact or

mistake of law might apply under the circumstances of this particular case invaded the province of the jury.

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