

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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|---------------------------|---|------------|
| CITY OF PARMA, | : | |
| Plaintiff-Appellee, | : | |
| v. | : | No. 108740 |
| CHRISTOPHER M. RITONDARO, | : | |
| Defendant-Appellant. | : | |

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: June 10, 2021

Criminal Appeal from the Parma Municipal Court
Case No. 18CRB04487

Appearances:

Timothy G. Dobeck, Parma Chief Prosecuting Attorney,
and Gregory A. Gentile, Assistant Prosecuting Attorney,
for appellee.

Medvick & Cabe, L.L.P., and Alan M. Medvick, *for*
appellant.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant Christopher Ritondaro brings this appeal challenging his conviction for impersonating an officer. Appellant argues that his conviction was not supported by sufficient evidence and against the manifest

weight of the evidence. After a thorough review of the record and law, this court reverses the trial court's judgment, vacates appellant's conviction and sentence, and remands the matter to the trial court for further proceedings consistent with this opinion.

I. Factual and Procedural History

{¶ 2} The instant appeal pertains to appellant's involvement in an incident that occurred on October 3, 2018. Appellant was stopped by Parma Police Officer Nicholas Schuld in the early morning hours for exceeding the posted speed limit and crossing a double yellow line. Appellant previously worked as an auxiliary officer for the city of Parma, and Officer Schuld was familiar with appellant. Upon approaching appellant's vehicle, Officer Schuld detected a strong odor of alcohol and noticed that appellant's speech was slurred.

{¶ 3} When Officer Schuld approached appellant's vehicle, appellant was looking for his driver's license and told Officer Schuld he was "off duty."¹ (Tr. 18, 23-24.) Officer Schuld returned to his patrol car and radioed dispatch. When Officer Schuld returned to appellant's vehicle three minutes later, appellant was still struggling to locate his driver's license. Officer Schuld asked appellant at that time "who are you part-time with or off-duty with or whatever?" No response is indicated on the dash cam, but appellant finally located his driver's license and provided it to Officer Schuld. Officer Schuld returned to his patrol car with the

¹ Dash camera at 2:14.

driver's license. After a few more minutes, Officer Schuld approached appellant's vehicle and asked him, "you said you are 'off duty,' what department are you off duty with?" In response, appellant can be heard slurring "Garfield Heights."²

{¶ 4} Officer Schuld asked appellant, "do you have a badge, i.d. or anything like that?" Appellant responded, "yes." At Officer Schuld's request, appellant turned over his wallet. Appellant's wallet contained a Garfield Heights Police Department badge, and a Garfield Heights Police identification card. The badge contained an "AUX" designation, indicating that it was an auxiliary officer badge. Officer Schuld did not, however, notice this designation at the time of the traffic stop.

{¶ 5} When Officer Schuld saw appellant's auxiliary officer badge, he mistakenly believed that appellant was presenting himself as an actual Garfield Heights Police Officer. As a result, he returned to his cruiser and began making phone calls to verify the exact nature of appellant's employment. Officer Schuld spoke with a sergeant in his own department, Garfield Heights Police dispatch, and a sergeant with the Garfield Heights Police Department. The Garfield Heights Police Department advised Officer Schuld that appellant was, in fact, an auxiliary officer.

{¶ 6} As Officer Schuld had appellant exit his vehicle, he continued questioning appellant about his employment. He asked appellant "you're telling

² Dash camera at 9:29.

me you're a police officer?" While the dash cam is unclear, the trial court found at sentencing that appellant "nodded his head in the affirmative" to Officer Schuld's question. When Officer Schuld asked appellant "what else do you do besides being a police officer?" appellant referenced a position he held that is affiliated with the U.S. Marshals Service. Officer Schuld again contacted the Garfield Heights Police Department to inquire about appellant's employment with the U.S. Marshals Service. The Garfield Heights Police Department was not aware of any affiliation appellant had with the U.S. Marshals Service. Later on in the evening, Officer Schuld contacted the U.S. Marshals Services' Cleveland office. The representative Officer Schuld spoke with was not familiar with anyone with appellant's name working in the office. (Tr. 46.)

{¶ 7} Following the traffic stop, appellant was taken into custody and charged with the following violations of Parma Codified Ordinances ("PCO"): (1) driving under the influence (PCO 333.01(a)(1)), (2) display of unlawful plates (PCO 335.10), (3) having flashing lights (PCO 337.16), (4) driving upon the left side of the roadway (PCO 331.06), (5) impersonating a police officer (PCO 606.26(b)), (6) carrying a concealed weapon (PCO 672.02), and (7) illegal display of a law enforcement agency emblem (PCO 606.27).

{¶ 8} Appellant was charged with Counts 1-4 in Parma M.C. No. 18-TRC-12703. On May 21, 2019, appellant pled guilty to driving under the influence, and Counts 2, 3, and 4 were dismissed.

{¶ 9} Appellant was charged with Counts 5, 6, and 7 in Parma M.C. No. 18CRB04487. Appellant pled not guilty to the charges on October 3, 2018.

{¶ 10} The matter was called for a bench trial on May 21, 2019. Before trial, the prosecution moved to dismiss the carrying a concealed weapon and illegally displaying an emblem charges. The trial court dismissed these counts without prejudice. Trial proceeded on the sole charge of impersonating an officer. Each side called only one witness at trial.

{¶ 11} Officer Schuld testified on behalf of the prosecution at trial. At the close of the prosecution's case-in-chief, defense counsel moved for a Crim.R. 29 judgment of acquittal. Defense counsel argued that "there has not been any evidence that [appellant] stated that he was a U.S. Marshal or Garfield Heights police officer with the purpose to make Patrolman Schuld or any other officer believe that he was that person[.]" (Tr. 68.) The trial court denied defense counsel's motion.

{¶ 12} Appellant testified on his own behalf. He acknowledged that he was under the influence of alcohol at the time of his encounter with Officer Schuld. The effect of the alcohol he had consumed was exacerbated by his special diet and a new medication he was taking. Appellant recalled being "out of it" and "sedated" during the encounter.

{¶ 13} Appellant testified about his history of employment and the positions he held at the time of the incident, including his position as an auxiliary officer with the Garfield Heights Police Department and his position as a district security

officer with the U.S. Marshals Service's Prisoner Operations Division. Appellant denied informing Officer Schuld that he was a police officer or a Deputy U.S. Marshal during the traffic stop.

{¶ 14} Defense counsel renewed the Crim.R. 29 motion at the close of the defense's case-in-chief. The trial court denied the renewed motion.

{¶ 15} At the close of trial, on June 6, 2019, the trial court found appellant guilty on the impersonating an officer count. The trial court proceeded immediately to sentencing. The trial court sentenced appellant to 30 days in jail. The trial court suspended appellant's sentence and placed appellant on community control for 18 months. The trial court ordered appellant to complete 100 hours of community work service. Finally, the trial court ordered appellant to pay court costs and a \$250 fine. The trial court's judgment entry was journalized on June 26, 2019.

{¶ 16} On June 28, 2019, appellant, acting pro se, filed the instant appeal challenging his conviction for impersonating an officer. Appellate counsel filed a notice of appearance on appellant's behalf on October 25, 2019.

{¶ 17} Appellant assigns two errors for review:

I. Appellant's conviction was based upon insufficient evidence to sustain conviction. The trial court erred by denying appellant's Crim.R. 29 motion.

II. The verdict is against the manifest weight of the evidence.

II. Law and Analysis

{¶ 18} In his first assignment of error, appellant argues that his impersonating an officer conviction was not supported by sufficient evidence and that the trial court erred in denying defense counsel's Crim.R. 29 motion for a judgment of acquittal.

{¶ 19} Crim.R. 29 mandates that the trial court issue a judgment of acquittal where the prosecution's evidence is insufficient to sustain a conviction for the offense. Crim.R. 29(A) and sufficiency of the evidence require the same analysis. *State v. Taylor*, 8th Dist. Cuyahoga No. 100315, 2014-Ohio-3134. "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Driggins*, 8th Dist. Cuyahoga No. 98073, 2012-Ohio-5287, ¶ 101, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶ 20} The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Vickers*, 8th Dist. Cuyahoga No. 97365, 2013-Ohio-1337, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

{¶ 21} Appellant was convicted of impersonating an officer in violation of PCO 606.26(b) and R.C. 2921.51(B), which provides, "[n]o person shall

impersonate a peace officer, private police officer, investigator of the Bureau of Criminal Identification and Investigation, or Federal law enforcement officer.” R.C. 2921.51(A)(4) provides that “[i]mpersonate’ means to act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.”

{¶ 22} R.C. 2921.51(A), governing the definitions of the offense of impersonating an officer, provides,

(1) “Peace officer.” A sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this State; a member of a police force employed by a metropolitan housing authority under Ohio R.C. 3735.31(D); a member of a police force employed by a regional transit authority under Ohio R.C. 306.35(Y); a State university law enforcement officer appointed under Ohio R.C. 3345.04; a veterans’ home police officer appointed under Ohio R.C. 5907.02; a special police officer employed by a port authority under Ohio R.C. 4582.04 or 4582.28; an officer, agent or employee of the State or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority; or a State highway patrol trooper and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the State or any of its political subdivisions.

(2) “Private police officer.” Any security guard, special police officer, private detective, or other person who is privately employed in a police capacity.

(3) “Federal law enforcement officer.” An employee of the United States who serves in a position the duties of which are primarily the

investigation, apprehension, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.

(4) “Impersonate.” To act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.

(5) “Investigator of the Bureau of Criminal Identification and Investigation.” Has the same meaning as in Ohio R.C. 2903.11.

{¶ 23} As an initial matter, we note that appellant has, in fact, completed numerous law enforcement-related training and education programs, and held various law enforcement-related positions during his career. Appellant testified in detail about these programs and positions at trial.

{¶ 24} Appellant testified about the law enforcement-related educational programs he has completed:

[t]ook law enforcement Associate’s in Tri-C. A lot of security in the federal government through the Department of Homeland Security as a behavior specialist; [National Aeronautics & Space Administration (“NASA”)] law enforcement; [Ohio Peace Officer Training Academy (“OPOTA”)]; and [Federal Law Enforcement Training Center (“FLETC”)] Law Enforcement Instructor.

(Tr. 71.) Appellant testified about various law enforcement-related training programs he has completed:

Ohio Peace Officer Training; federal law enforcement training academy; multiple [Special Weapons and Tactics (“SWAT”)], tactical operators certifications, basic SWAT school; all the way up to breaching, less lethal, active law — Advanced Law Enforcement Rapid Response, which is active shooter response, through the FBI, Texas State University.

I can go on and on.

(Tr. 79.) He explained that he completed these programs to advance his career and improve himself in the law enforcement field. Furthermore, appellant asserted that he participated in “most of” these programs on duty and that the departments in which he worked sent him to the programs.

{¶ 25} Appellant has been involved in various law enforcement-related organizations. At the time of the traffic stop, appellant was a member of the Fraternal Order of Police, Lodge 8. Appellant asserted that he is a county representative for the Ohio Tactical Officers Association.³

{¶ 26} Regarding his law enforcement-related positions, appellant testified that he was employed by the Department of Homeland Security from 2004 to 2012 in a “[b]ehavior detection and analysis” capacity. He worked as a police officer in NASA’s Office of Protective Services. On the day of the incident, he had worked as a security guard at the Norma Herr Women’s Center in Cleveland; appellant is compensated for these services and he carries a weapon in performing his duties. (Tr. 92.) The record reflects that appellant previously worked as a “volunteer” auxiliary officer for the city of Parma. (Tr. 51; 168)

{¶ 27} In April 2016, appellant began working as a paid auxiliary officer, corrections officer, and bailiff with the city of Garfield Heights. Appellant was administered an oath of office as an auxiliary officer. His duties as an auxiliary officer are “to assist the full-time patrolmen on the police department; work the

³ It was in this capacity that appellant was issued the tactical 511 clothing that he was wearing at the time of the traffic stop. (Tr. 86.) The clothing was plain and did not contain any emblems, patches, badges, or insignia.

jail; any City events, security for the City events; and general law enforcement patrol.” (Tr. 73.) Appellant is compensated for his services.

{¶ 28} Appellant began working as a district security officer with the U.S. Marshals Service in March 2018. He works in the Prisoner Operations Division. In the spring of 2019, however, he was suspended from this position pending the outcome of the case. Appellant testified about his duties as a district security officer: “we handle all federal prisoners that are either arrested or need to come to court that day or need to be transported, could be picked up on a sweep from any task force operations.” (Tr. 88-89.) He explained that a district security officer is “a law enforcement position within the Marshal[s] Service. We were actually contracted to work in the office. Any court security, such as — it’s close to a bailiff duty. We will bring the prisoners in and out of court; sit [with] them at hospitals a lot.” (Tr. 89.) Appellant asserted that as a security officer, he transports prisoners and provides courtroom security. He is compensated for his services by the United States Department of Justice. (Tr. 76.)

{¶ 29} Based on the foregoing, we note that appellant does, in fact, have an extensive law enforcement background, and that he has worked in various law enforcement capacities for more than a decade. Furthermore, at the time of the traffic stop on October 3, 2018, appellant was working for both the Garfield Heights Police Department and the U.S. Marshals Service’s Prisoner Operations Division. With this background in mind, we turn to the merits of appellant’s sufficiency challenge.

{¶ 30} After reviewing the record, we find that appellant’s conviction for impersonating an officer was not supported by sufficient evidence. The city failed to prove, beyond a reasonable doubt, that appellant “impersonated” an officer as defined under R.C. 2921.51(A)(4). Specifically, the city failed to establish that appellant acted with the purpose to make Officer Schuld believe that he was a police officer or a U.S. Marshal. Rather, the city’s evidence demonstrates that appellant was answering Officer Schuld’s questions during the traffic stop and at the police station about his employment, and attempting to convey his positions as an auxiliary officer with the Garfield Heights Police Department, and a district security officer with the U.S. Marshals Service. Unfortunately, while intoxicated and slurring his words, appellant failed to clearly articulate the positions he held at the time of the incident.

{¶ 31} Officer Schuld testified that upon approaching appellant’s vehicle, he “could smell a strong odor of alcohol, slurred speech. [Appellant] — the driver was intoxicated.” (Tr. 16.) When Officer Schuld first spoke with appellant, appellant could not find his ID. After Officer Schuld went back to his police cruiser to run appellant’s license plate, he returned to appellant’s vehicle and appellant located his driver’s license. Upon further questioning by Officer Schuld regarding appellant’s employment and requests for identification, appellant presented his wallet to Officer Schuld. Appellant’s wallet contained a badge and a police ID. The badge clearly contains an “AUX” designation, indicating that it is an auxiliary

officer's badge. Officer Schuld did not, however, recognize this designation at the time of the traffic stop. (Tr. 19-20.)

{¶ 32} “A private policeman carrying identification cards and a badge in a wallet, and *showing or presenting them only under order from an arresting officer*, is not ‘displaying’ the identification under the usual meaning of the word as used in R.C. 2921.51.” (Emphasis added.) *State v. Doss*, 111 Ohio App.3d 63, 70, 675 N.E.2d 854 (8th Dist.1996), citing *State v. Oliver*, 8 Ohio Misc.2d 8, 11, 456 N.E.2d 591 (M.C.1982). In this case, appellant only presented his wallet, which contained his Garfield Heights auxiliary badge and ID, to Officer Schuld upon Officer Schuld's request. Accordingly, appellant was not “displaying” these items for purposes of R.C. 2921.51. Furthermore, the badge and ID were issued to appellant by the Garfield Heights Police Department, he did not obtain them improperly. Appellant did not impersonate a police officer under R.C. 2921.51 simply by carrying the badge and identification that had been issued to him by the Garfield Heights Police Department with which he was employed.

{¶ 33} In *Oliver*, the Hamilton Municipal Court explained,

[t]he gist of the various crimes of impersonating proscribed by R.C. 2921.51(B) through (E), like the analogous crime of impersonating a law enforcement officer under R.C. 2913.44, is the fraud of making a person believe that the actor enjoys a certain status or identity other than that which he, in actuality, possesses. *See* 28 Ohio Jurisprudence 3d 606-607, fn. 22, Criminal Law, Sections 2066-2067; and *Id.* at 608, Section 2071. While it is possible to speculate that some members of the general public may have been misled into believing that Oliver, by reason of the badge and identification documents he carried was, in truth, an official peace officer, that is not the case or the situation currently before this court.

Instead, in the case at bar there was no purpose on the defendant's part to make [a deputy sheriff] believe that [defendant] was a deputy sheriff of Hamilton County.

Oliver at 10.

{¶ 34} In the instant matter, like *Oliver*, we find that the city failed to establish, beyond a reasonable doubt, any purpose on appellant's part to make Officer Schuld believe that appellant was, in fact, a police officer or a U.S. Marshal. We cannot conclude that appellant purposely engaged in fraudulent conduct or purposely misled Officer Schuld.

{¶ 35} In fact, appellant specifically testified that he indicated he was "off duty" at the initial traffic stop for purposes of "officer safety," rather than for the purpose of getting a break from Officer Schuld. (Tr. 89-90.) Appellant explained, "[i]t's customary to let another officer know in that — if you worked in the field — that that's a safe traffic stop for him." (Tr. 132.)

{¶ 36} Aside from his position with the Garfield Heights Police Department, Officer Schuld testified that he asked appellant, "[w]hat else do you do?" (Tr. 30.) Appellant, in response to Officer Schuld's questioning, stated that he was a U.S. Marshal. Appellant did not present any badge or identification to Officer Schuld identifying himself as a U.S. Marshal. However, there was a U.S. Marshal placard on the front passenger's seat of appellant's vehicle.

{¶ 37} Officer Schuld confirmed that appellant did not "present" or hand him the placard at any time during the traffic stop, nor did appellant reference or point to the placard at any time. The placard was merely in appellant's vehicle.

Furthermore, the placard had been issued to appellant in relation to his employment as a security officer. *See Doss*, 111 Ohio App.3d at 70, 675 N.E.2d 854, citing *Oliver*, 8 Ohio Misc.2d at 11, 456 N.E.2d 591. Accordingly, appellant was not “displaying” the placard for purposes of R.C. 2921.51, and he did not impersonate a U.S. Marshal by merely possessing the placard that had been properly issued to him by the U.S. Marshals Service.

{¶ 38} The city did not present any evidence that indicated that appellant asked Officer Schuld for a “break,” to be let off with a warning, etc., on the basis that he was an officer or district security officer with the U.S. Marshals Service. Officer Schuld confirmed that during the 15 minutes between initiating the traffic stop and appellant exiting his vehicle, appellant never asked Officer Schuld to let him go or asked for any special treatment. (Tr. 50.)

{¶ 39} The city’s evidence demonstrates that appellant was intoxicated during his encounter with Officer Schuld. For instance, the transcript contains several references to appellant “mumbling” during the encounter. (Tr. 23, 26.) Although appellant claimed that he had a gun in his vehicle, no gun was recovered inside. On cross-examination, Officer Schuld confirmed that appellant was intoxicated, having trouble speaking clearly, and slurring his speech — both at the scene and during the booking process. (Tr. 51.)

{¶ 40} Appellant testified that at the time of the incident, he was on a special “ketogenic diet” that involves reduced carbohydrate and caloric intake and “a lot of fasting.” (Tr. 80.) He did not consume any food on the night of the traffic

stop. He did consume, however, whiskey on an empty stomach. He also asserted that he began taking a new medication, prescribed by his doctor, that did not mix well with the alcohol. (Tr. 90.) The night of the traffic stop was the first time he consumed alcohol while taking the medication.

{¶ 41} These circumstances — the diet, medication, and alcohol consumption — appear to have contributed to appellant’s inability to clearly and concisely articulate information about his employment to Officer Schuld. In fact, appellant testified that this combination “put [him] in a state of sedation almost.” (Tr. 90.)

{¶ 42} Aside from the Garfield Heights Police Department badge and ID, Officer Schuld testified about other “miscellaneous law enforcement credentials” that appellant had in his wallet. These “credentials” included badges, membership cards, or ID cards from Marc’s, NASA, and Cleveland Department of Public Safety. These credentials were all properly issued to appellant in relation to positions that he previously, or currently held. Officer Schuld confirmed on cross-examination that appellant did not remove any of these items from his wallet and present them to Officer Schuld. The items were merely in appellant’s wallet.

{¶ 43} After arriving at the police station, Officer Schuld *mirandized*⁴ appellant and had further discussions about “whether or not [appellant] was a Garfield Heights police officer and whether or not he was a U.S. Marshal[.]”

⁴ See *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

(Tr. 39.) Again, appellant did not affirmatively hold himself out to be a police officer or a U.S. Marshal, rather, he was merely responding to Officer Schuld's questioning. Officer Schuld testified, "I asked [appellant] if he was really a police officer; which, he replied he was. Then I asked him if he was really a U.S. Marshal; which, he stated he was." (Tr. 41.)

{¶ 44} As more time elapsed, and perhaps when appellant was thinking more clearly, appellant "walked back" the statements he made at the scene of the traffic stop about being a police officer. The video from appellant's booking was played at trial. Officer Schuld asked appellant where he worked as a police officer. Appellant responded, "I'm not." (Tr. 157.) Officer Schuld asked appellant why he claimed to be a police officer on the scene. Appellant replied, "[i]t's irrelevant" and "[l]et it go[.]" (Tr. 158-159.)

{¶ 45} Appellant testified at trial that his statement to Officer Schuld in the booking video that he was "on-duty, federal marshal" was misconstrued: "I am saying in this video, I am trying to relay — which I am having trouble doing, and there's some misconception here on the powers of working with — being a marshal with the U.S. Marshals Service. I am trying to explain here that, when on duty, we [district security officers] have the powers of a marshal." (Tr. 165.)

{¶ 46} This case is more akin to *Doss* and *Oliver* than *State v. Forgac*, 7th Dist. Mahoning No. 02-CA-57, 2003-Ohio-4462.

{¶ 47} In *Doss*, 111 Ohio App.3d 63, 675 N.E.2d 854, the defendant, a private policeman and security guard, licensed by the state and authorized to carry

a firearm, was charged and convicted of impersonating a peace officer and carrying a concealed weapon. The defendant was stopped for speeding on two occasions. During the first stop, the defendant flashed a gold police badge that said “Chief” and “[Ohio Investigation Protection Bureau],” and identified himself to the officers that initiated the traffic stop as Chief of Police. *Id.* at 65. The officers asked the defendant to produce another form of identification, and the defendant provided a business card for the Ohio Investigation Protection Bureau and a firearms permit card from the Ohio Department of Commerce. During the second stop, eight days after the first stop, one of the officers recognized the defendant’s vehicle from the first stop. During the second stop, defendant was wearing a gold police badge around his neck, which he showed to the officer. The defendant identified himself as a detective. Following the second stop, the defendant was arrested and charged. The arresting officers recovered a loaded handgun from the defendant’s shoulder holster. The defendant was wearing a blue jacket and a bulletproof vest. *Id.* at 65, 71. The arresting officers also recovered handcuffs, ammunition, two badges, and red and blue lights from the defendant’s vehicle. The defendant’s vehicle was equipped with a spotlight and siren.

{¶ 48} On appeal, this court concluded that the defendant’s convictions for impersonating an officer and carrying a concealed weapon were not supported by sufficient evidence and against the manifest weight of the evidence, and that the trial court should have granted the defense’s Crim.R. 29 motions for a judgment of acquittal. *Id.* at 67. This court explained that during the second traffic stop, the

defendant did not identify himself as, insinuate in any fashion, or hold himself out as a “peace officer” as defined in R.C. 2921.51(A)(1). *Id.* at 70. Rather, the defendant told the arresting officer that he was a detective. This court observed that a detective “is consistent with the definition of a private policeman under R.C. 2921.51(A)(2).” *Id.* Furthermore, this court held the state failed to present any evidence that the defendant “‘impersonated’ a peace officer, much less that he intended to do so.” *Id.*

In both *Doss* and *Oliver*, the only people to whom the defendants purportedly represented themselves to be peace officers were police officers. Furthermore, in both cases, the defendants took no affirmative action in asserting themselves as officers. In *Doss*, the defendant was pulled over for speeding and, upon questioning by the officers, identified himself as a detective. In *Oliver*, [8 Ohio Misc.2d 8, 456 N.E.2d 591,] the defendant was in the process of being booked for an unrelated matter when a deputy sheriff ordered the defendant to empty his pockets. The defendant complied and produced a wallet containing an identification card, which identified the defendant as a member of an organization called “International Marshal’s Patrol.” The defendant, either voluntarily or in response to questioning by the deputy, stated several times that he was a deputy sheriff but that he did not work for a governmental agency. The deputy then filed a charge against the defendant for impersonating a peace officer.

Forgac at ¶ 30.

{¶ 49} On the other hand, the defendant in *Forgac*, 7th Dist. Mahoning No. 02-CA-57, 2003-Ohio-4462, took affirmative actions in holding himself as an officer: the defendant “pulled up to the Elm Street residence in a hurry, as would a police officer responding to an emergency,” he “exited his vehicle waiving a gun around,” he “pointed the gun at the people on the porch while he yelled at them and questioned them about the screams he heard,” he identified himself as the

‘police’ to the people on the porch,” and he “identified himself as a member of the Youngstown Police Department to the officers.” *Id.* at ¶ 31. Unlike *Doss* and *Oliver*, the officers in *Forgac* did not “accidentally” encounter the defendant’s impersonation. *Forgac* at *id.*

{¶ 50} In this case, like *Doss*, 111 Ohio App.3d 63, 675 N.E.2d 854, there is no evidence that appellant impersonated a police officer or a U.S. Marshal with the purpose to deceive Officer Schuld when questioned about his employment. Like *Doss* and *Oliver*, appellant took no affirmative action in holding himself out to be an officer. He was pulled over for speeding and crossing a double yellow line and, upon questioning by Officer Schuld, referenced his employment with the Garfield Heights Police Department and the U.S. Marshals Service — organizations where appellant actually held positions at the time of the incident. As noted above, appellant only presented his wallet, containing his Garfield Heights auxiliary badge and ID, to Officer Schuld upon being ordered to do so.

{¶ 51} For all of the foregoing reasons, we find that the city failed to prove, beyond a reasonable doubt, that appellant “impersonated” an officer as defined under R.C. 2921.51(A)(4). Appellant did not affirmatively “act the part” of a police officer nor “assume the identity of,” wear a “uniform,” or “display the identification of a particular person or of a member of a class of persons” with the purpose to make Officer Schuld believe he was an officer. Rather, upon being pulled over by Officer Schuld, appellant responded to the officer’s inquiries about his current employment and auxiliary police badge, albeit not in the most coherent or

complete manner. *See State v. Gandy*, 12th Dist. Butler No. CA2002-04-097, 2002-Ohio-6678, ¶ 4 (three witnesses testified that the defendant, who was attempting to repossess an automobile, “appeared at [their] residence on three occasions, he displayed a badge, and he represented himself as a West Chester Police Officer.”).

{¶ 52} In *Doss*, this court explained that “[w]hat defendant stated to the Bratenahl police [during the traffic stop] was literally true and to be sentenced to a term of imprisonment for 5 to 15 years in these circumstances is unjust and unwarranted.” *Doss* at 72. In this case, appellant held a position, as an auxiliary officer, with the Garfield Heights Police Department. Furthermore, appellant held a position, as a district security officer, that was under the supervision of the U.S. Marshals Service. Accordingly, appellant’s assertions to Officer Schuld were, in fact, true. Any confusion about the specific or exact titles of appellant’s positions was the result of appellant’s consumption of alcohol and inability to clearly articulate complete information, rather than appellant purposely trying to deceive Officer Schuld.

{¶ 53} In *Doss*, 111 Ohio App.3d 63, 675 N.E.2d 854, this court observed, “[a]lthough we have found no appellate decisions construing the statute, it is presumed that the intent of R.C. 2921.51 was to prevent the misleading of persons who might misapprehend the power or influence of an actor by relying on the impersonation.” *Id.* at 72.

{¶ 54} In this case, we find no evidence of “impersonation,” nor reliance thereon. As noted above, Officer Schuld testified that he knew that appellant used to work as an auxiliary officer with the city of Parma. (Tr. 51.) *See Oliver*, 8 Ohio Misc.2d at 10-11, 456 N.E.2d 591 (the deputy sheriff’s own testimony demonstrated that he was not misled and never believed that the defendant was a deputy sheriff, and the deputy sheriff’s “special expertise and personal knowledge of the defendant’s non-official status totally prevented, as a matter of law, the commission of the crime of impersonating an officer with which [the defendant] is presently charged, from having been committed.”). Furthermore, Officer Schuld contacted the Garfield Heights Police Department and the U.S. Marshals Service and confirmed that appellant was not a police officer or a U.S. Marshal. No evidence exists that appellant requested any special consideration nor that Officer Schuld gave any special treatment to appellant on the night of the incident.

{¶ 55} After thoroughly reviewing the record, and for all of the forgoing reasons, we find that the city’s evidence, if believed, failed to establish all of the elements of impersonating an officer, in violation of PCO 606.26(b) and R.C. 2921.51(B), beyond a reasonable doubt. Appellant’s conviction for impersonating an officer was not supported by sufficient evidence. Appellant’s first assignment of error is sustained.

{¶ 56} Our resolution of appellant’s first assignment of error renders his second assignment of error moot. *See, e.g., In re R.G.*, 8th Dist. Cuyahoga No. 90389, 2008-Ohio-6469, ¶ 78.

{¶ 57} The trial court's judgment finding appellant guilty of impersonating an officer is reversed. Appellant's conviction for impersonating an officer is vacated. The trial court's sentence of 18 months on community control, 100 hours of community work service, and the \$250 fine are also vacated.

{¶ 58} The matter is remanded to the trial court for the limited purpose of vacating appellant's conviction and sentence, and discharging appellant.

{¶ 59} Judgment vacated and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Parma Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

MICHELLE J. SHEEHAN, P.J., and
EMANUELLA D. GROVES, J., CONCUR