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Recent Developments: Jack A/K/A Jack in the Bean Stalk v. State

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JACK, A/K/A JACK IN THE BEAN STALK v. STATE

(Another mythical appeal, with, of course, a mythical opinion inspired by the "non-violent" stories of Mother Goose) by Richard P. Gilbert.* The case was argued before Learned, Strait, and Wordy, JJ. *Per Curiam.*

This appeal from the Criminal Court of Baltimore challenges the judgments of that court entered on a jury's verdict as a result of several indictments handed-up[1] by the Grand Jury of Baltimore City.

Jack was charged with murder, felony-murder, assault with intent to commit murder, assault, the wilful destruction of personal property, theft of personal property having a market value of $300 or more,[2] theft of personal property having a market value of less than $300,[3] trespass, and carrying a deadly weapon openly for the purpose of injuring another.[4]

Following the presentation of evidence at a three day trial before a jury, presided over by Judge Les Hart, verdicts of guilty were returned by the jury with respect to the felony murder, assault, theft of personal property having a value of $300 or more, destruction of personal property, and carrying a deadly weapon. Judge Les Hart merged the assault conviction into the felony-murder as a lesser included offense. He also merged, into the felony-murder count, the weapon carrying charge. Judge Les Hart imposed a mandatory life sentence for the felony murder, 15 years imprisonment as to the theft conviction, to be served consecutive to the life sentence, and suspended generally the sentence with regard to the trespass. The jury's verdict with respect to all other charges was "Not guilty."

Reeling under the realization that life plus 15 years is a rather long sentence even for a rugged rascal, Jack has raced to this Court where he seeks relief.[5]

Jack contends that the Criminal Court of Baltimore erred in proceeding to trial because 1) it lacked jurisdiction because Jack was under 14 years of age at the time of the commission of the offenses; 2) it declined to waive jurisdiction to the Juvenile Court where, in view of his age, the case actually should have been tried; 3) the Criminal Court lacked jurisdiction over Jack even if he did commit the theft; 4) the search and seizure evidence should have been suppressed; 5) the evidence does not support the verdicts; 6) the jury was unconstitutionally constituted in that it was not a jury of his peers; 7) that prosecution of the assault, trespass and deadly weapons charges were barred by the statute of limitations; and 8) the trial court erred in refusing either to instruct the jury or to allow counsel to inform the jurors as to the penalties which could be imposed if Jack were found guilty of each or all the offenses with which he was charged.

Before we begin our discussion of the law applicable to the issues posited to us, we shall laconically set the stage upon which the drama giving rise to this case was played.

Jack, according to the State's evidence, learned that a person known only by the appellation "Giant" possessed a unique domesticated waterfowl, a goose that was endowed with a visceral structure that chemically altered its eggs from the normal calcium, albumen, and vitellus into solid 24 carat gold.[6] Jack stealthily climbed a bean stalk and, without permission, entered the realm of the Giant. The record reveals that Jack managed to locate the goose. Before he was able to snatch the bird from the Giant, that huge fellow, obviously through the use of his olfactory organ, detected Jack's unauthorized presence on the premises. Exclaiming, "Fee,[7] fi, fo, fum! I smell an Englishman,"[8] the Giant commenced a search of the property in order to ferret out the interloper. Fearing he would be caught "Giant-handed," Jack grabbed the goose and fled harum-scarum to the place where he had unlawfully entered the Giant's property. Jack's noisy dash toward the bean stalk attracted the attention of the Giant. With the big man in hot pursuit, Jack made his way to the bean stalk and commenced his descent. During his downward climb, the goose was, we are told, "peopled" three times.[9] Not so easily eluded, the Giant followed and started to climb down the stalk too. Jack, upon reaching the ground, unhooked an axe which he

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[1] The term "handed-up" probably has its origin in the fact that the Grand Jury, upon the completion of its daily deliberations, files, *en masse*, into Criminal Court Part 1, and literally hands up to the presiding judge the "true bills" that the Grand Jury that day returned.

[2] MD. ANN. CODE art. 27, § 342 (F)(1).

[3] MD. ANN. CODE art. 27, § 342 (F)(2).

[4] MD. ANN. CODE art. 27, § 36.

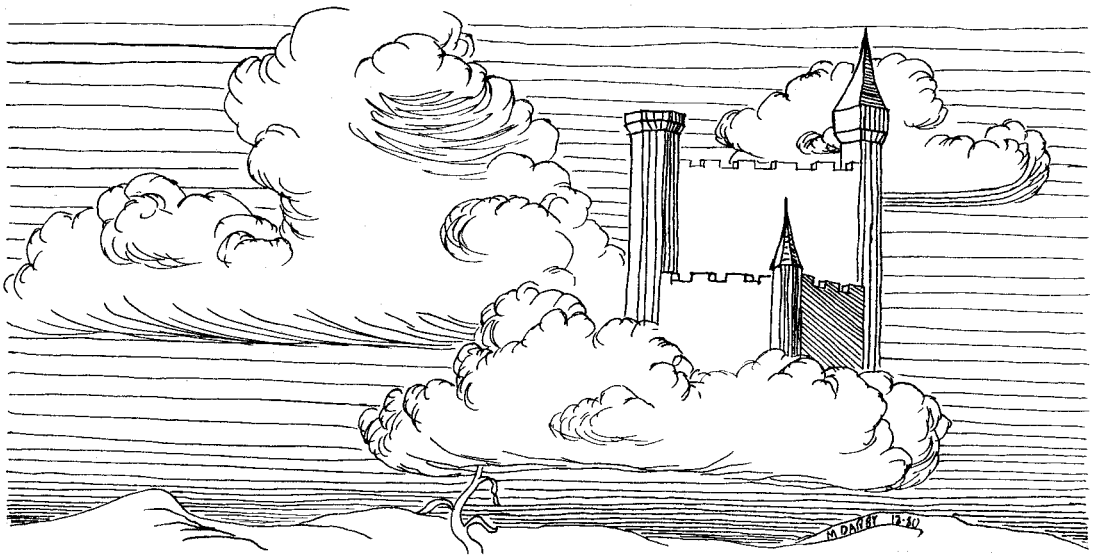
[5] We were advised on oral argument that the personal representative of the Giant has civil actions pending against Jack and Jack's mother in conversion, and against Jack for the gigantic funeral bill. Additionally, Mrs. Giant has instituted a civil action against the appellant and his mother under Lord Campbell's Act. Md. Courts and Judicial Proceedings Code Ann. § 3-904; Md. Estates and Trusts Code Ann. § 7-401 (x)(2).

[6] At today's gold prices, currently in excess of $600 per ounce, the goose is invaluable.

[7] The inadvertent use of the word "fee" should not mislead the reader to believe the Giant was a member of the bar.

[8] Seemingly, Jack was not familiar with the various advertisements by deodorant manufacturers.

[9] No charge of cruelty to animals or fowl has been lodged against Jack so we do not consider it.



had carried, unsheathed, on his belt. He chopped down the stalk. When the stalk was severed, it, naturally, toppled to earth carrying along the unfortunate Giant who clung to its strong fiber for fear of a fatal fall. The crash to earth literally knocked the life from the Giant.

Acting on information received from a telephone tip, Detective Nabber of the Baltimore City Police Department visited the house occupied by Jack and his mother. The detective informed the mother that while investigating the death of the Giant he had learned that Jack was seen in the vicinity of the crime. He told Jack's mother that he would like to talk to Jack in order to find out if Jack had witnessed anything involving the Giant. The detective did not say that he suspected Jack's involvement. In a spirit of cooperation, the mother invited Nabber into the house. While he was seated in the living room, the detective saw a goose that matched the description of the one stolen from the Giant's household. Under the guise of using the bathroom, which was located on the second floor of the home, Nabber went to the second floor. Once there, he started down the hall to the bathroom. In so doing, he passed a doorway to a bedroom. The door, the detective said, was wide open. He looked into the room and saw, in plain view, several golden eggs on the pillow of the bed. Nabber immediately left the house. He radioed the information about the golden eggs to headquarters and requested that a search and seizure warrant be obtained. Nabber continued to watch the house. An hour or so later, a team of police officers arrived with the search and seizure warrant. The warrant was served on Jack's mother, and the search was undertaken. In addition to the officers' getting the goose, they also found and seized five golden eggs and an axe. While the search was in progress, Jack returned home, and he was immediately arrested by Detective Nabber.

The Grant Jury, as we have previously noted, indicted Jack on the counts for which he was tried.

Prior to trial, Jack's attorney, Deid I. Springum, moved to suppress the evidence that was seized as a result of the execution of the search and seizure warrant. Judge Les Hart denied the motion and allowed the fruits of the search to be received into evidence at the trial on the merits.

We turn now to the questions presented by Jack, which we shall discuss in the order he has put them to us.

I.

"The Criminal Court of Baltimore lacked jurisdiction over the appellant."

The gist of Jack's argument is that Maryland Courts and Judicial Proceedings Code Ann. § 3-804(d)(1) prevents the Criminal Court from exercising jurisdiction because the record shows that Jack was under the age of 14 years at the time of the alleged offense.

Courts Art. § 3-804(d) provides in pertinent part:

> "The [juvenile] court does not have jurisdiction over:
>
> (1) A child 14 years old or older alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the [juvenile] court has been filed pursuant to § 594A of Article 27 . . . ."

Pointing to that statutory provision, Jack asserts that it is apparent that the Legislature meant that a child under the age of 14 was not subject to a court exercising criminal jurisdiction. Jack reasons that section 3-804(d) confers exclusive jurisdiction on the juvenile court in the case of any child under age 14. Neither the Criminal

Court nor a court exercising criminal jurisdiction, he argues, ordinarily possesses the necessary authority to try a child who falls within the ambit of section 3-804(d) or who has not been "waived" by the juvenile court to the court exercising criminal jurisdiction, citing *Franklin v. State,* 264 Md. 62, 285 A.2d 616 (1972); *Aye v. State,* 17 Md. App. 32, 299 A.2d 513 (1973); *Austin v. State,* 12 Md. App. 629, 630-31, 280 A.2d 17 (1971).

Inasmuch as no waiver hearing was ever held, Jack opines that the Criminal Court should not have proceeded to trial. While he acknowledges that he did not raise the issue in the trial court, Jack contends that jurisdiction may be raised initially or at any stage of the proceedings. *Carroll v. State,* 19 Md. App. 179, 181-82, 310 A.2d 161 (1973). *See also Tate v. State,* 236 Md. 312, 203 A.2d 882 (1964); *Bowen v. State,* 206 Md. 368, 111 A.2d 844 (1955); *Waldrop v. State,* 12 Md. App. 371, 278 A.2d 619 (1971); *Wheeler v. State,* 10 Md. App. 624, 272 A.2d 96 (1971).

The State concedes that there was no waiver hearing, and that the matter was taken directly before the Grand Jury, which, as we have said, returned the indictment against Jack for murder and other crimes "arising out of the same incident." They argue, however, that in light of the "aggravated circumstances" of the instant case, as disclosed by the evidence, the error in failing to hold a waiver hearing was "harmless." The State adopts that position because "it is obvious," they say, "that the facts of the case dictate waiver to the Criminal Court." The State asserts that this case "is clearly one of felony-murder, committed by the appellant, after he had stolen the goose that laid the golden eggs, in order to avoid being caught by the victim. Rather than stand trial for larceny or cruelty to animals, Jack elected to slay his victim, thus, eliminating what he believed to be the only witness to the crimes."

We do not share the view of the State or of Jack. Although it would seem that if the juvenile court had held a waiver hearing, pursuant to Courts Art. § 3-817(d), it could have waived its jurisdiction in the instant case, Courts Art. § 3-817(a)(2),[10] the courts are not at liberty to employ "short cuts" and thereby avoid the pellucid message of the people as spoken through the General Assembly. Nevertheless, the fact of the matter is that the juvenile court did not waive its original, exclusive jurisdiction, Courts Art. § 3-804(a). Therefore, the Criminal Court was without jurisdiction to proceed in the case.

Courts Art. § 3-807(a) provides:

> "A person subject to the jurisdiction of the [juvenile] court may not be prosecuted for a criminal offense committed before he reaches 18 years of age unless jurisdiction [of the juvenile court] has been waived."

The trial was a nullity. *In re Trader,* 20 Md. App. 1, 315 A.2d 528, *rev'd on other grounds,* 272 Md. 364, 325 A.2d 398 (1974).

The State's argument relative to harmless error must fall of its own weight inasmuch as the trial court did not have any jurisdiction in the case. We append that matters of jurisdiction are not within the ambit of harmless error under either *Chapman v. California,* 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); or *Dorsey v. State,* 276 Md. 638, 350 A.2d 665 (1975). Moreover, we cannot presuppose that the juvenile court will waive its jurisdiction over the appellant.

Ordinarily, we would terminate our discussion at this point inasmuch as the jurisdictional issue is dispositive of the appeal. We shall not do so in this case, however, because of the possibility that the waiver may be granted. Instead, we shall comment for the guidance of the trial court on some of the other issues raised by appellant. Md. Rule 1085. We make clear that we are not to be understood as suggesting to the juvenile court that it waive its jurisdiction in the instant case. We do not imply that it should do so.

II.

"[The trial judge] erred in refusing to 'reverse' waive the case to the juvenile court."

Jack did not move to dismiss the indictment on the ground that the Criminal Court lacked jurisdiction over the accused, Courts Art. § 3-807; Md. Rule 736 a 1, but seemingly was content at that stage to move merely for a waiver from the Criminal Court to the juvenile court. Md. Ann. Code art. 27, § 594A(a). Why Jack would rely upon that statute defies comprehension. The "reverse waiver" is applicable *only* to children who have reached their fourteenth birthday but not their eighteenth birthday at the time of the alleged commission of the crime. Reverse waiver is not applicable to a child *under the* age of 14 years.

The trial judge was correct in refusing to invoke reverse waiver, but certainly not for the reasons he assigned. He should have refused waiver because he had no jurisdiction over the accused in the first instance. Ergo, having no jurisdiction, he could not waive what he didn't have. The judge would have been justified in *sua sponte* dismissing the indictment.

III.

"The Motion to Suppress the evidence seized at the home of Jack and his mother should have been granted."

Jack, through his attorney, Deid I. Springum, moved,

[10] That section provides that the juvenile court *may* waive its jurisdiction over any child "who has not reached his 15th birthday, but who is charged with committing an act which if committed by an adult, would be punishable by death or life imprisonment."

orally, just prior to the commencement of the trial on the merits of the case, that the evidence seized pursuant to the execution of the search warrant be suppressed. Md. Rule 736 a 3. The motion set out two separate and distinct reasons. First, it was contended that Detective Nabber gained entrance to the appellant's home through coercion, deceit, and trickery. Second, that even if entry into the house was lawful, the subsequent unauthorized exploratory expedition through the house constituted an unlawful intrusion and was, thus, violative of the Fourth Amendment.

Judge Les Hart denied the motion at hand, ruling that Jack's counsel had not obeyed the crystal clear fiat of Md. Rules 736 b, 736 d, and 736 e.[11] *See Baldwin v. State,* 45 Md. App. 378, 413 A.2d 246 (1980).

The three parts of Md. Rule 736 upon which the trial judge relied, provide:

> "b. *Time for Filing Mandatory Motions.*
>
> A motion filed pursuant to section a of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 723 (Appearance—Provision for or Waiver of Counsel), except when discovery is furnished on an issue which is the subject of the motion, then the motion may be filed within five days after the discovery is furnished.
>
> . . . .
>
> d. *Content of Motions.*
>
> A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments.
>
> e. *Statement of Points and Authorities.*
>
> Every motion shall contain or be accompanied by a statement of points and citation of authorities. A response, if made, shall be filed within 15 days and be accompanied by a statement of points and citation of authorities."

When pressed by the trial court as to the reasons why he did not heed the clarion call of Rule 736, Jack's lawyer responded that because of the "press" of his "heavy trial docket," coupled with his preexisting plans to be out of the country when the motion was due, he simply did not get around to it. Moreover, he said he was not totally familiar with the rule. He contended that his client should not be penalized for the lawyer's failure.

If the latter were true, few persons would be convicted of crimes because of the unlikely occurrence of "a perfect trial." As Jim Oigan[12] often said, "there are as many perfect trial lawyers as there are perfect judges - none." The law is too vast a field for any one mind to grasp it completely. Indeed, it is doubtful that anyone knows all there is to know on any one subject of the law, although there are persons who think they do.

The Court of Appeals and this Court have repeatedly opined that the Rules of Procedure are precise rubrics to be read and followed. Both Courts would be ever grateful to the Bar if its members would remember to read and apply the rules. Had Jack's counsel properly heeded Rules 736 b and 736 d, the motions to suppress would have been heard. It *might* even have met with success, a point we need not and do not discuss because we hold that Judge Les Hart did not abuse his discretion in declining to permit the belated motion.[13] The "reasons" advanced by Mr. Springum do not constitute "good cause shown" so as to avoid Md. Rule 736 a. Since the case is being vacated, Jack lives to fight again. If there is a retrial, hopefully Jack will have profited by this appeal and will properly follow Rule 736 insofar as any motion to suppress is concerned.

IV.

"The jury was unconstitutionally constituted because it was not a jury of appellant's peers."

The essence of appellant's argument is that he is under the age of 14.[14] Jack strenuously argues that "Peers are persons who have equal standing. A jury composed of people over the age of 18 years; *see* Courts Art. § 8-104, are not equals. To be constitutionally firm the jurors who decide Jack's fate must be fourteen years old."

We think appellant reads more into a "jury of his peers" than was ever contemplated by our forefathers.

"Peers" is defined in *Black's Law Dictionary* (3d ed. 1933) to mean: "Equals; those who are a man's equals in rank and station; thus 'trial by a jury of his peers means trial by a jury of citizens.' "

[11] MD. RULE 736 a provides:

"*Mandatory Motions.*

A motion asserting one of the following matters shall be filed in conformity with this Rule. Any such matter not raised in accordance this Rule is waived, unless the court, for good cause shown, orders otherwise.

1. A defect in the institution of the prosecution;
2. A defect in the charging document, other than its failure to show jurisdiction in the court or to charge any offense which defenses can be noticed by the court at any time;
3. An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
4. An unlawfully obtained admission, statement or confession;
5. A motion for joint or separate trial of defendants or offenses."

[12] *See* Goldilocks, a/k/a Goldy Locks v. State, University of Baltimore, The Law Forum, *Vol. 10, No. 1, p. 17 (1979).*

[13] If a motion is not filed within the time prescribed in subsection b of Rule 736, it "is wavied, unless the for good cause shown, orders otherwise." *See* Baldwin v. State, *supra.*

[14] The record does not disclose Jack's age, but the State has not contested that Jack was under the age of 14.

Originally, in England, trial by "peers" meant that co-equals sat in judgment. We have carried forward that concept. Although there may be several classes of citizens in the United States, we are each other's legal peers. We have no "titled" nobility. We all come into this world, theoretically, equals. Each native born citizen has the opportunity to achieve the highest and most powerful office in the land, if not in the world, the Presidency of the United States. Other considerations, mental, financial, and physical limitations may lessen that opportunity, but the underlying theory remains. One is not born to the presidency nor to any other appointed or elected governmental office. Every person born in the United States, or every citizen[15] may achieve any governmental position given "the breaks of the game" or the fortunate "bounce of the ball."

In any event, we are each other's "peers." Hence, the jurors were the "peers" of the appellant.

There is no constitutional requirement that in order to be considered "peers" we must be of the same race, creed, color, national origin, age or economic class. See: *Wilkins v. State,* 16 Md. App. 587, 300 A.2d 411 (1973), *aff'd,* 270 Md. 62, 311 A.2d 39, *cert. denied,* 415 U.S. 992 (1973); *Hopkins v. State,* 19 Md. App. 414, 311 A.2d 483 (1973), *cert. denied,* 271 Md. 738 (1974); *Burko v. State,* 19 Md. App. 645, 313 A.2d 864 (1974), *cert. denied,* 271 Md. 732 (1974), *vacated on other grounds,* 422 U.S. 1003, 95 S.Ct. 2624, 45 L.Ed.2d 667 (1975)[16]. If all persons were to be tried before a jury of their peers, as appellant reads "peers," Presidents of the United States, Chief Justices, etc. would never be tried inasmuch as it is impossible under the laws of nature to have twelve former Presidents or Chief Justices living at any one and the same time. It would border on the insane, if indeed, it did not cross the threshold of insanity to hold that "peers" means absolute equals in *all* respects. Such a ruling would require a jury of bank robbers to adjudge the guilt *vel non* of a person charged with bank robbery, murderers to try murderers, and so on *ad infinitum, ad nauseam.* The issue of the appellant, while a classic example of psychic pyrotechnics, is devoid of anything resembling merit.

V.

"The charges of assault, trespass, and the use of a deadly weapon, in a crime of violence were barred by the Statute of Limitations."

Appellant argues that the statute of limitations, as now codified in "Courts Art. § 5-106 precludes prosecution of him for assault, trespass, and the use of a deadly weapon in a crime of violence." We disagree. The statutes of limitations are not applicable.

Notwithstanding the non-applicability of the limitation question, were the charges before us, we would reverse the convictions. We would do so for the reasons hereinafter stated.

ASSAULT

There is no crime of *assault,* although there are crimes in which assault is an element, *e.g.,* assault and battery, assault with intent to rape, murder, and rob. Assault, itself, as we explained in *Christensen v. State,* 33 Md. App. 635, 365 A.2d 562 (1975), is merely an attempt. It is not a crime until it is joined with some specified offense. Absent that offense, it is little more than a mental concept that has not reached fruition. Inasmuch as assault, *per se,* is not a crime, it follows that the criminal court did not have jurisdiction over it. *Ergo,* if the matter is pressed at any subsequent trial, it should be dismissed by the court.

TRESPASS

Section 577(a) of Article 27 of the Md. Ann. Code provides in pertinent part:

> "Any person . . . who remains upon, enters upon or crosses over the land, premises or private property, . . . of any person . . . in this State *after* having been duly notified by the owner or his agent not to do so shall be fined not more than $500. This section shall not be construed to include within its provisions the entry upon or crossing over of any land when such entry or crossing is done under a bona fide claim or right of ownership of same land, it being the intention of this section only to prohibit any wanton trespass upon private land of others."

Courts Art. § 5-106(a) bars prosecution for trespass unless it is commenced within one year after the offense was committed. The prosecution in the instant case was so instituted. Thus, section 5-106(a) is not available to shield Jack from prosecution.

The record in the matter *sub judice* is silent with respect to whether the Giant "or his agent" ever "duly notified" Jack that he was trespassing and demanded his immediate removal. Notification is an essential element of the offense. Inasmuch as it was not shown, a conviction for trespass can not stand.

THE CARRYING OF A DEADLY WEAPON

The record discloses that the "deadly weapon" that was involved in this case was the axe. An axe is not or-

[15] Of course, the federal constitution limits the office of President to the native born. It logically follows because of the "one heart beat" that the Vice-Presidency is similarly limited.

[16] *Burko* was vacated on the basis of Mullaney v. Wilbur, 42 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 588 (1975) and remanded for further consideration. As a result of the remand, we reaffirmed our prior position, Burko v. State, 28 Md. App. 732, 349 A.2d 355 (1975), *cert. denied,* 278 Md. 717 (1976), and *cert. denied,* 429 U.S. 981 (1976).

dinarily considered to be a deadly weapon any more than a baseball bat or a golf club. Yet each is capable of being an instrument of death if it is used for that purpose. The mere carrying of an axe is not a crime, and an axe is definitely not a handgun.

The charge in the matter now before us was that of carrying openly an axe with intent to do harm to another, to wit, the Giant.

The evidence established that Jack used the axe to hack down the bean stalk and thus cause the death of the Giant because of the latter's sudden stop in coming in contact with *terra firma.* The axe, however, was not used as a weapon directly against the Giant, nor was there ever an attempt to hit him with it. There is no evidence that the axe was utilized in a fashion to intimidate the Giant. There is simply no evidence contained within this record that supports the deadly weapon charge.

VI.

SUFFICIENCY OF THE EVIDENCE

Although *Burks v. United States,* 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978), barring some retrials in criminal cases where the evidence has been adjudged insufficient by an appellate court is not clearly applicable to cases where the trial was a nullity, out of our abundance of caution we shall address the issue.

To the factual predicate that we set out in the beginning of this opinion, we shall add the evidence adduced on behalf of the appellant, Jack.

According to the appellant, he had been authorized by his mother[17] to sell her cow at the best possible price. While he was proceeding to the market place he happened upon a person whose identity is not revealed. That person traded Jack a small packet of beans in exchange for the cow. The beans were allegedly magic. Proud of his success as a trader, Jack raced home and informed his mother of the "fabulous trade" he had made for the cow. After she heard how Jack had, in her opinion, been "ripped off" by some city slicker, the mother, out of disgust and in a rage, threw, a la Jim Palmer, the beans straight through the window, belt high and just inside the outside corner. The packets of beans landed with such force that the paper container broke and the beans were scattered to the winds. As luck would have it, there occurred that night a severe thunder storm. The next morning the beans were found to have taken root, sprouted and commenced an upward climb into the sky. Curious as to where the stalks led, young Jack proceeded to climb one of them. High, up past cloud cover, Jack discovered the estate of the Giant.

[17]Our search of the record fails to disclose that there is or was a husband of Jack's mother. Indubitably, Jack had a father, but whether his mother had a husband is another issue.

Having heard from his mother and others that the Giant was the reason the appellant's father did not live at home, Jack conceived the idea of seeking revenge upon the Giant.

At that point, Jack testified, a "queen-sized," but attractive woman happened along. She espied Jack despite the fact that he sought to avoid her. The woman introduced herself as Mrs. Giant. After some small talk she invited Jack to her home. Once there, she insisted upon his eating some of her tasty pies. During the course of their conversation, Mrs. Giant used, Jack said, her feminine wiles to entice him. Jack went on to tell the court that inasmuch as he could resist everything but temptation, he succumbed to her charms. While he and Mrs. Giant were occupied in satisfying their lust, he heard the ear shattering thumps of the Giant's footsteps as the Giant approached the house. Fearful that they be discovered *in flagrante delicto,* "Mrs. G" (as she had then familiarly become known to Jack) urged him to gather up his clothing and flee lest he be caught and possibly slain by the Giant. Needing little, if any, encouragement to practice the ancient art of self-preservation, Jack did as he was bid. In picking up his clothing, he said he "mistakenly gathered up" the goose in his coat. The hissing of the goose attracted the Giant's attention to Jack. Jack sped to the bean stalk with the Giant in hot pursuit. Jack related to the fact finder that he used the axe to sever the bean stalk in order to prevent the Giant's following him and possibly eventually catching up with him. Jack added that he was unaware that the goose laid golden eggs until the next morning when he found one in the bird's nest in the kitchen of his home. Jack disavowed any intent to steal the goose or to kill the Giant.

When Jack's mother testified, she, through a veil of tears and amid sobs, said that she had painted the Giant to Jack as an ogre in order to prevent his traveling to the Giant's property where Jack might learn that the Giant was really Jack's father. Unwittingly, Jack had committed patricide.

The Jury, of course, was not required to believe Jack's exculpatory statements. *Tillery v. State,* 3 Md. App. 142, 238 A.2d 125 (1968); *Pickney v. State,* 12 Md. App. 598, 283 A.2d 644 (1972). The evidence adduced by the State was sufficient to sustain the charges, if the matter was properly before the Court.

JUDGMENTS VACATED.
PURSUANT TO MD. RULE 1082 D,
COSTS NOT TO BE REALLOCATED.