Amicus Curiarum

VOLUME 36
ISSUE 12 DECEMBER 2019

A Publication of the Office of the State Reporter

Table of Contents

COURT OF APPEALS

COURT OF SPECIAL APPEALS

Return to ToC

COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Kenneth Steven Kaufman, Misc. Docket AG No. 26, September Term 2018, filed November 22, 2019. Opinion by Hotten, J.

https://www.courts.state.md.us/data/opinions/coa/2019/26a18ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel ("Petitioner"), filed a Petition for Disciplinary and Remedial Action with the Court of Appeals, alleging that Kenneth Steven Kaufman violated Maryland Attorneys' Rules of Professional Conduct ("MARPC") 19-301.1 (Competence), 19-301.2 (Scope of Representation), 19-301.3 (Diligence), 19-301.4 (Communication), 19-301.5 (Fees), 19-301.16 (Declining or Terminating Representation), 19-308.1 (Bar Admission and Disciplinary Matters), and 19-308.4 (Misconduct). The charges stemmed from his representation of a client in a dispute over a real estate commission. In light of the Rule violations, Petitioner recommended that Mr. Kaufman be indefinitely suspended from the practice of law.

In representing his former client, Mr. Kaufman failed to communicate regarding the status of her case, ignored her numerous attempts to contact him regarding the case, failed to respond to or oppose motions for summary judgment filed by the defendants in the case, failed to appear on behalf of his client at two hearings, failed to inform the client that her case was dismissed, failed to inform her that the defendants were seeking punitive sanctions, and failed to participate in the attorney grievance proceeding.

Upon receiving the complaint against Mr. Kaufman, Bar Counsel notified him of the allegations. During the investigation into the merits of the allegations against him, Mr. Kaufman never responded to Bar Counsel's repeated lawful requests for information. At the evidentiary hearing before the Hearing Judge, Mr. Kaufman failed to appear. He also failed to respond to the Petition and Petitioner's Request for Admission of Facts. Subsequently, the Hearing Judge deemed the requests admitted and entered Petitioner's Admission of Facts into evidence. At the conclusion of the hearing, the Hearing Judge found by clear and convincing evidence that Mr. Kaufman violated MARPC 19-301.1, 19-301.2, 19-301.3, 19-301.4, 19-301.5, 19-301.16, 19-

308.1, and 19-308.4 because he failed to pursue his client's legal matter in a meaningful way. Mr. Kaufman and Bar Counsel did not file exceptions to the Hearing Judge's findings of fact and conclusions of law.

Held: Disbarred.

The Court of Appeals upheld the Hearing Judge's findings of fact as conclusively established because Mr. Kaufman did not file any exceptions. Considering the numerous Rule violations arising out of this representation and the extent to which Mr. Kaufman evaded and ignored Bar Counsel during the investigation, the Court of Appeals determined disbarment was the appropriate sanction. The Court observed that during the representation of his client, Mr. Kaufman demonstrated an indifference and disrespect to the interests of his client, the attorney grievance process, and the legal profession. This indifference continued during Petitioner's investigation. Accordingly, the Court of Appeals disbarred Mr. Kaufman.

Return to ToC

Credible Behavioral Health, Inc. v. Emmanuel Johnson, No. 19, September Term 2019, filed November 20, 2019. Opinion by Greene, J.

https://www.mdcourts.gov/data/opinions/coa/2019/19a19.pdf

APPEAL AND ERROR—JUDGE AS FACTFINDER BELOW

CONTRACTS—CONSTRUCTION AND OPERATION—GENERAL RULES OF CONSTRUCTION

Facts:

Petitioner, Credible Behavioral Health, Inc. ("Credible") offers a tuition loan program to its employees. Under the program, Credible loans funds to its employees to assist them in paying tuition for undergraduate, graduate, or post-graduate certificate programs. The amount that an employee participating in the program must repay is dependent upon the length of time he or she maintains employment with Credible following the attainment of a degree or certificate.

In 2016, Respondent, Emmanuel Johnson, entered into Credible's tuition loan program and borrowed $12,529 to fund his education. The parties entered into a promissory note to memorialize the agreement. Paragraph 1(a) of the promissory note contained a repayment provision that outlines the amount the employee must repay depending upon how long he or she is employed by Credible after completing his or her education. The provision repeatedly uses the phrase "[i]f you terminate employment with the Company[.]"

Credible fired Mr. Johnson in December of 2017. At that time, Mr. Johnson had not yet obtained his degree. As a result, Credible brought an action in the District Court of Maryland sitting in Montgomery County seeking repayment of the debt. The district court engaged in contract interpretation and concluded that the term "[i]f you terminate employment" only encompassed situations in which employees quit and not ones in which employees were fired. Therefore, the district court concluded that Mr. Johnson was not required to repay the debt, because he was fired. Credible then appealed the district court's judgment to the Circuit Court for Montgomery County.

The circuit court heard the appeal on the record under Maryland Rule 7–102(b) and held a hearing on February 15, 2019. In a written opinion and order dated March 7, 2019, the circuit court found that the district court "was [not] clearly erroneous in its interpretation of the promissory note at issue in this case" and therefore affirmed its judgment. Credible then petitioned the Court of Appeals for writ of certiorari, which the Court granted on June 7, 2019. *Credible Behavioral Health, Inc. v. Johnson*, 464 Md. 7, 210 A.3d 182 (2019). In its petition, Credible asked the Court to determine: (i) whether the circuit court erroneously applied Maryland Rule 7–113(f) when it reviewed the district court's interpretation of the promissory

note for clear error; and (ii) whether the circuit court erred in its interpretation of the promissory note.

Held: Reversed.

The Court of Appeals first held that, when the circuit court reviews a judgment of the district court under Maryland Rule 7–113(f), the circuit court reviews the district court's factual determinations for clear error and its legal conclusions *de novo*. The Court reviewed its earlier interpretations of Maryland Rule 1386—the predecessor to Rule 7–113(f) and concluded that, historically, in an appeal on the record, circuit courts have reviewed the district court's legal conclusions *de novo*. The Court also reviewed precedent on Rule 8–131(c), the appellate analog of Rule 7–113(f), which supported its conclusion. Because the interpretation of a contract is a legal endeavor, the Court held that the circuit court erred by applying the incorrect standard of review to the district court's legal conclusions.

Second, the Court of Appeals held that, under the promissory note at issue, Credible's employees are required to repay the loan in accordance with the repayment schedule set forth in Paragraph 1(a) in both situations where an employee is fired or quits. The Court noted that the final part of Paragraph 1(a) constitutes an independent obligation to repay the loan. Further, the Court explained that the interpretation advanced by Mr. Johnson, *i.e.* that repayment was only required in situations where an employee quits, defies Maryland's common sense approach to contract interpretation, is inconsistent with the parties intent in entering the agreement, jettisons substantive portions of the final part of Paragraph 1(a), and unjustifiably treats employees Credible fires more favorably than those who quit. Therefore, the Court reversed the judgment of the Circuit Court for Montgomery County.

Joshua A. Sabisch v. Stephen T. Moyer et al. Department of Public Safety and Correctional Services, No. 6, September Term 2019, filed November 20, 2019. Opinion by Watts, J.

https://www.mdcourts.gov/data/opinions/coa/2019/6a19.pdf

PETITION FOR WRIT OF HABEAS CORPUS – MD. CODE ANN., CTS. & JUD. PROC. (1974, 2013 REPL. VOL., 2015 SUPP.) ("CJ") § 3-702(a) – "COMMITTED, DETAINED, CONFINED, OR RESTRAINED FROM [] LAWFUL LIBERTY WITHIN [] STATE" – PROBATION

Facts:

Following a bench trial in the District Court of Maryland, sitting in Baltimore County, Joshua Sabisch, Petitioner, was found guilty of fourth-degree sex offense. The District Court stayed the entry of judgment and offered Sabisch probation before judgment ("PBJ") with conditions, which he accepted. Five months later, Sabisch appeared before the District Court for a violation of probation hearing, and the District Court found that Sabisch had violated his probation. The District Court modified the conditions of probation to be "unsupervised" to accommodate Sabisch's desire to move from Maryland to Michigan. Sabisch thereafter moved to Michigan. Sabisch subsequently filed in the Circuit Court for Baltimore County a petition for a writ of habeas corpus, alleging that the terms of his probation constituted an unlawful restraint on his liberty and raising various grounds for relief related to the proceedings in the District Court. Stephen T. Moyer, Secretary of the Maryland Department of Public Safety and Correctional Services, Joseph F. Clocker, Director of Parole and Probation, and Ashley Jung, Sabisch's probation agent (collectively, "Respondents"), identified in the petition as the respondents, opposed the petition. At a hearing on the petition, the circuit court denied the petition. Sabisch appealed, and, in an unreported opinion, the Court of Special Appeals granted Respondents' motion to dismiss, holding that, at the time that Sabisch filed the petition for a writ of habeas corpus, he was neither physically restrained nor within the State. Thereafter, Sabisch filed a petition for a writ of *certiorari*, which the Court of Appeals granted.

Held: Affirmed.

The Court of Appeals held that, under the plain language of Md. Code Ann., Cts. & Jud. Proc. (1974, 2013 Repl. Vol., 2015 Supp.) ("CJ") § 3-702(a), to be eligible to petition for a writ of habeas corpus, a person must be "committed, detained, confined, or restrained from his [or her] lawful liberty within the State[,]" nothing more and nothing less. The Court stated that, by its plain language, CJ § 3-702(a) governs who may petition for a writ of habeas corpus, providing that a person who is "committed, detained, confined, or restrained from his [or her] lawful liberty within the State" may petition for a writ of habeas corpus so that "the cause of the commitment,

detainer, confinement, or restraint may be inquired into." In other words, to be eligible to pursue habeas corpus relief, a person must be "committed, detained, confined, or restrained . . . within the State[.]" Key to eligibility to seek a petition for a writ of habeas corpus is that the person is being committed, detained, confined, or restrained within Maryland. Indeed, it is clear from CJ § 3-702(a)'s plain language that "[a] person [must be] committed, detained, confined, or restrained from his [or her] lawful liberty **within the State**[,]" i.e., the person must be committed, detained, confined, or restrained **in Maryland**. (Emphasis added). The Court concluded that, put simply, read to its logical conclusion, CJ § 3-702(a) means that, to be eligible to seek habeas corpus relief in Maryland, a person must be experiencing commitment, detention, confinement, or restraint within Maryland.

The Court of Appeals held that, in this case, when the petition for a writ of habeas corpus was filed, Sabisch, who was on unsupervised probation and living in Michigan, was not committed, detained, confined, or restrained from his lawful liberty in Maryland. Stated otherwise, under the circumstances of this case, when Sabisch filed his habeas corpus petition, he was not significantly restrained from his lawful liberty in Maryland, and thus was not eligible to seek habeas corpus relief in Maryland pursuant to CJ § 3-702(a).

The Court of Appeals concluded that, consistent with the historic purpose of the writ of habeas corpus, the plain language of CJ § 3-702(a) does not limit eligibility for habeas corpus relief to those in physical custody. Under the plain language of CJ § 3-702(a), a petition for a writ of habeas corpus is not foreclosed where a person is placed on probation with conditions that significantly restrict or restrain the person's lawful liberty within the State. The Court acknowledged that, in the past, Maryland case law held that the scope of persons entitled to seek habeas corpus relief was narrow and limited to those who were in actual or physical restraint in the State. Indeed, in the past, the Court had expressly declined to extend the availability of habeas corpus relief to parolees and persons released on bail. Nevertheless, the plain language of CJ § 3-702(a) is not so limiting. Thus, to the extent that, in *Hendershott v. Young*, 209 Md. 257, 262, 120 A.2d 915, 917 (1956), and *McGloin v. Warden of Md. House of Corr.*, 215 Md. 630, 631, 137 A.2d 659, 660 (1958), the Court had held that physical custody within the State is necessary for habeas corpus relief, in light of later case law from the United States Supreme Court, the Court overruled those cases and held that people who are committed, detained, or confined within the State or persons on probation with conditions that significantly restrain the person's lawful liberty within the State are entitled to seek habeas corpus relief. Under CJ § 3-702(a)'s plain language, to be eligible to seek habeas corpus relief, a person must be committed, detained, confined, or restrained in the State, which may involve physical custody or other significant restrictions of a person's lawful liberty within the State.

COURT OF SPECIAL APPEALS

Gannett Fleming, Inc. v. Corman Construction, Inc., No. 2827, September Term 2018, filed November 21, 2019. Opinion by Kehoe, J.

https://mdcourts.gov/data/opinions/cosa/2019/2827s18.pdf

ALTERNATIVE DISPUTE RESOLUTION – PETITIONS TO STAY ARBITRATION PROCEEDINGS – THE LIMITED ROLE OF THE COURT

ALTERNATIVE DISPUTE RESOLUTION – EXISTENCE OF AGREEMENT TO ARBITRATE "IN FACT" – STATUTES OF LIMITATIONS AND WAIVER OF RIGHT TO ARBITRATE

ALTERNATIVE DISPUTE RESOLUTION – EXISTENCE OF AGREEMENT TO ARBITRATE – SUBSTANTIVE ARBITRABILITY

Facts:

To prepare bids for highway-construction projects in North Carolina, an engineering firm and a builder entered into a "teaming agreement." Under this agreement, the engineering firm provided material quantity and cost estimates for the project, which the builder used to calculate the total bid costs submitted to the North Carolina Department of Transportation. After one of the submitted bids was successful, the two companies entered into a "design subcontract," which outlined their duties as they worked to complete the awarded project.

The teaming agreement did not contain an arbitration clause, but the subsequent design contract did. That clause provided that all disputes "aris[ing] out of or relate[d] to [the design subcontract] or its breach" would be subject to the subcontract's three-phase dispute-resolution procedures. The clause did not provide any limitations period.

While construction was ongoing, the builder realized that the engineering firm had underestimated the quantity of materials needed to complete the project; the cost to complete the project would be much higher than expected. To settle this potential claim, the parties entered direct discussions (step one of the three-phase dispute-resolution process) and, later, mediation (step two). When this did not resolve the dispute, the builder made a demand for arbitration (step three).

The engineering firm filed a petition to stay arbitration in the Circuit Court for Anne Arundel County, arguing that (1) the builder's right to arbitration had been waived, since the same claim, if brought in a judicial forum, would be time-barred by Maryland's three-year statute of limitations; and (2) that the builder's claim related solely to services performed under the teaming agreement and thus fell outside the substantive scope of the arbitration clause in the design subcontract. The circuit court disagreed and denied the petition to stay arbitration.

Held: Affirmed.

The issues before the Court of Special Appeals were (1) whether a demand for arbitration is untimely—and thus the right to arbitration waived—if it is not made within the limitations period defined by Md. Code, § 5-101 of the Courts and Judicial Proceedings Article; and (2) whether the circuit court, applying the Fourth Circuit's "significant relationship" test, erred in determining the dispute at issue was substantively arbitrable.

The Court of Special Appeals held that although a party to an arbitration agreement may, by act or omission, waive a right to arbitration, the right to arbitrate is not waived simply because the same claim, if brought before a court, would be time-barred by Md. Code, § 5-101 of the Courts and Judicial Proceedings Article. If parties wish for the three-year statute of limitations to render demands for arbitration untimely—and thus the right to arbitration waived—they must specifically provide for this in their contract. The statute does not, of its own force, reach arbitration proceedings, which are not "civil action[s] at law."

Applying the substantive-arbitrability framework outlined in *Gold Coast Mall, Inc. v. Larmar Corp*., 298 Md. 96 (1983)—and not the Fourth Circuit's "significant relationship" test, applied in *Griggs v. Evans*, 205 Md. App. 64 (2012)—the Court also concluded that the dispute did not clearly fall outside the arbitration provision's substantive scope. The scope of the parties' agreement to arbitrate extends to all disputes "relat[ing] to" the design subcontract or its breach. Because the dispute about alleged cost overruns, caused by a breach of the teaming agreement, appears to be related to the design subcontract's performance or breach, the dispute falls within the substantive scope of the arbitration clause. Even if there were room to disagree, the dispute at least arguably falls within the scope of the arbitration clause, which means, under *Gold Coast Mall*, that the ultimate arbitrability decision is best left to the arbitrator.

Return to ToC

Latoya Bonte Elzey v. State of Maryland, No. 1131, September Term 2018, filed November 22, 2019. Opinion by Raker, J.

https://www.mdcourts.gov/data/opinions/cosa/2019/1131s18.pdf

CRIMINAL LAW – BATTERED OR ABUSED WOMEN, SPOUSES, OR DOMESTIC PARTNERS

HOMICIDE – SELF-DEFENSE

Facts:

Appellant Latoya Bonte Elzey appealed her conviction of, *inter alia*, voluntary manslaughter for the death of her boyfriend as a result of a knife wound inflicted upon the decedent while they fought. The central issue at trial was whether appellant acted in self-defense. Appellant argued that she acted reasonably under the circumstances as she experienced them because she suffered from Battered Spouse Syndrome. Appellant presented expert testimony that she suffered from the syndrome. On appeal, appellant raised the issue of the correctness of the jury instruction on Battered Spouse Syndrome.

Appellant had proposed to instruct the jury on it as follows:

> "If you find, based on the testimony presented, that the defendant suffered from Battered Woman's Syndrome, you may consider how the effects of this condition may have altered the defendant's mental state. Specifically, you may consider this evidence in deciding whether the defendant actually believed that she needed to defend herself against an imminent threat and whether that belief was reasonable based on all the facts and circumstances as they have been made known to you by the evidence and the testimony in this case.
>
> You may consider whether the presence of Battered Woman's Syndrome altered the defendant's perceptions and beliefs, including her perceptions and beliefs about the danger of the threat posed to her and that the danger was imminent.
>
> You must determine the reasonableness of the defendant's belief and actions based on those beliefs in light of the circumstances as they appeared to the defendant at the time of the killing, and as they are evaluated by you now. Reasonableness is based both on the defendant's beliefs and on your evaluation as to their reasonableness.
>
> If the defendant presents credible evidence of self-defense, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you have a reasonable doubt as to whether or not the defendant acted in self-defense, your verdict must be not guilty."

Instead, the court instructed the jury using the instruction on "Self-Defense: Battered Woman Syndrome" in § 8.13(G) of DAVID E. AARONSON, MARYLAND CRIMINAL JURY INSTRUCTIONS AND COMMENTARY (2014–2015 ed. 2015) as follows:

> "Ladies and gentlemen, you have heard evidence that the Defendant was a victim of repeated physical and psychological abuse. You have also heard from an expert witness *that a person who is a victim of repeated physical and psychological abuse by a victim may suffer from a psychological condition called Battered Spouse Syndrome*. You have also heard expert testimony that the Defendant exhibits the characteristics consistent with Battered Spouse Syndrome. *You must determine, based upon a consideration of all the evidence, whether the Defendant was a victim of repeated physical and psychological abuse by the victim, and if so whether she suffered from Battered Spouse Syndrome*.
>
> If you determine that the Defendant suffered from Battered Spouse Syndrome then you should consider this evidence for the purpose of explaining the Defendant's motive or state of mind, or both, and her beliefs and perceptions at the time of the commission of the alleged offense in order to determine whether the requirements of self-defense exist. Specifically you may consider this evidence in determining: one, whether the Defendant actually believed in the necessity to use deadly force to defend herself against imminent or immediate danger of serious bodily harm or death; two, the reasonableness of the Defendant's belief that she was in imminent or immediate danger of serious physical harm or death. In assessing reasonableness the issue is whether a reasonable person in the Defendant's circumstances would have perceived or seen a threat of serious physical harm or death. Three, the reasonableness of the force used by the Defendant in response to the perceived threat; and four, in evaluating the believability or credibility of the Defendant's testimony.
>
> Evidence of Battered Spouse Syndrome is not in itself a defense to the crime of murder in the first and second degree, assault in the first and second degree and reckless endangerment. It has been admitted to assist you in determining whether the requirements of self-defense are present in this case."

Before the Court of Special Appeals, appellant argued that the trial court's instruction on Battered Spouse Syndrome was an incorrect statement of the law for two reasons. First, appellant argued that the court's instruction incorrectly *required the jury to make a predicate finding* that the defendant was the subject of repeated physical and psychological abuse by the victim *before* it could consider expert testimony on Battered Spouse Syndrome. Second, appellant argued that the court's instruction was confusing and likely led the jury to believe erroneously that evidence of *past* abuse by others was legally irrelevant for explaining appellant's motive or state of mind. The State argued that the court's instruction was legally correct and clear.

Held: Reversed.

The Court of Special Appeals held that the trial court's instruction on Battered Spouse Syndrome erroneously instructed the jury, before it could consider the defense of self-defense and Battered Spouse Syndrome, to *first* find that the defendant was the subject of repeated physical and psychological abuse by the victim.

The Maryland Battered Spouse Syndrome statute—Maryland Code, Courts and Judicial Proceedings Article, § 10-916CJP(b)—addresses *admissibility* of the evidence and provides that a trial court may admit evidence of abuse notwithstanding traditional notions of self-defense, both imperfect and perfect. Once the court determines that the defendant has adequately raised the issue of Battered Spouse Syndrome, which is a question of law, the court has the discretion to admit the evidence of repeated abuse of the defendant by the victim and expert testimony on Battered Spouse Syndrome. In the instant case, the court admitted expert testimony that appellant suffered from Battered Spouse Syndrome.

The Court held that the jury can then consider that evidence as it bears on the defense of self-defense without first making (and agreeing upon) a predicate finding that the defendant was the subject of repeated physical and psychological abuse *by the victim*.

Additionally, the Court held that the trial court's instruction sent mixed messages to the jury. It held that the court's instruction was unclear and potentially misleading as to what, if any, effect *past* abuse may have had on appellant's state of mind, even though the court had admitted appellant's expert witness testimony on her past abuse and its effect on her state of mind.

Return to ToC

Dale K. Byrd v. State of Maryland, No. 682, September Term 2018, filed November 1, 2019. Opinion by Salmon, J.

https://www.courts.state.md.us/data/opinions/cosa/2019/0682s18.pdf

CRIMINAL LAW – CORAM NOBIS RELIEF

CRIMINAL LAW – DISCOVERY

Facts:

On March 11, 2011, Dale K. Byrd ("Byrd") pleaded guilty in the Circuit Court for Baltimore City, in two separate cases, to possession of heroin with the intent to distribute. In the first case, the Baltimore City police officer who observed Byrd exchanging money for suspected heroin was police detective Daniel Hersl ("Hersl"). In the second drug distribution case, the observing officer was Baltimore City police officer Thomas Wilson ("Wilson"). When Byrd pleaded guilty to those drug charges, he did so based on an ABA plea agreement in which it was agreed that he would receive concurrent sentences of twelve years' incarceration, with all but four years suspended in lieu of three years' probation.

Almost seven years later, after Byrd had completed his sentence and probation, he filed a petition for writ of error coram nobis. The major issue presented by Byrd's petition was whether Byrd had been denied a constitutional or fundamental right when he pled guilty to the two heroin drug distribution charges. Byrd contended that there was such a denial because, prior to the date that he entered the guilty pleas, the State failed to advise him of past dishonest conduct, in other cases, by Wilson and Hersl. At the coram nobis hearing, Byrd was the only witness who was called to testify. In his testimony he swore that if he had known that Wilson and Hersl "both had honesty related findings or dishonesty findings, in their background, he would not had pled guilty. Counsel for Byrd argued that the contents of Wilson and Hersl's personnel file and/or their internal affairs files, showing past acts of dishonesty, undermined their credibility. According to Byrd, the State was obliged to give Byrd such impeaching information prior to the entry of the guilty pleas. Counsel for Byrd maintained that because the impeaching evidence was not divulged, the plea was not made knowingly, voluntarily or intelligently. The State contended, relying on *United States v. Ruiz*, 536 U.S. 622, 628 (2002), that the right to impeachment information is a trial right and does not have any bearing on weather a plea is made knowingly, intelligently or voluntarily. The circuit court agreed with the State and denied Byrd's petition.

Held: Affirmed.

On appeal, Byrd claimed that his guilty plea was induced by material misrepresentation because "the State implicitly held out [Wilson and Hersl] as credible witnesses who were untarnished by findings to the contrary." In rejecting that contention, the Court of Special Appeals relied on *Ruiz*, *supra* and its progeny. The Supreme Court, in Ruiz, held that the right to impeaching evidence, which was the type of evidence upon which Byrd relied in his petition, was a trial right. According to *Ruiz*, a defendant who pleads guilty is not entitled to discovery of information that is merely impeaching. On the other hand, a defendant who pleads guilty is entitled to any exculpatory evidence that the State may have. The Court of Special Appeals, defined exculpatory evidence, for *Brady v. Maryland* purposes, as evidence that goes to the heart of the defendant's guilt or innocence, while impeachment evidence is that which has the potential to alter the jury's assessment of the credibility of a significant prosecution witness (citing *United States v. Abellino*, 136 F.3d 249, 255 (Second Circuit 1998)). In the case *sub judice*, the alleged prior dishonest conduct on the part of Wilson and Hersl, did not involve the subject case and was merely impeaching. Thus, Byrd's counsel had no right to believe that "the State implicitly held out [Wilson and Hersl] as credible witnesses who were untarnished by findings to the contrary." The Court of Special Appeals more specifically held: "We reject appellant's argument that the *Ruiz* case, "when viewed in light of Maryland's recognition that impeachment evidence may be as material as exculpatory evidence, does not foreclose the possibility of a rare case in which the failure to disclose impeachment evidence could invalidate a plea."

Byrd also contended, based primarily on *United States v. Fisher*, 711 F.3d 460 (4th Cir. 2013), that the subject case is one of those "rare cases" when a guilty plea can be set aside due to the State's failure to supply defense counsel, prior to a guilty plea, with evidence that is merely impeaching. The Court distinguished *Fisher*, a case that involved a corrupt police officer named Mark Lunsford. Lunsford obtained a search warrant of the defendant's house based on information received from a "confidential informant" whom Lunsford characterized as "reliable" and one who "had previously provided [Lunsford] with information that led to numerous arrests for narcotic violations." Lunsford obtained the search warrant based entirely on the information supplied by the confidential informant. After Fisher entered a guilty plea, defense counsel learned that Lunsford had admitted to FBI investigators that the confidential informant he identified in his affidavit had no connection to Fisher's case and that another individual was the real informant. The U.S. District Court denied Fisher's motion to vacate the judgment but, on appeal, two members of the United States Court of Appeals for the Fourth Circuit reversed on the grounds that Lunsford's underlying pre-plea misconduct rendered Fisher's plea involuntary under *Brady v. Maryland* and *Brady v. United States*. In reversing Fisher's conviction, the majority held that Fisher's due process rights had been violated under "these egregious circumstances." According to the majority opinion in *Fisher*, the defendant was "deceived into making the plea, and the deception prevented his plea from being a true act of his own volition. In support of its decision, the *Fisher* majority opined that allowing defendant's guilty plea to stand where a police officer intentionally lies in a search warrant affidavit undermines confidence in our judicial system."

The Court of Special Appeals, after discussing in detail the dissent filed by Judge Agee in the *Fisher* case, concluded that even if the Court were to assume, arguendo, that the *Fisher* majority

was correct in its interpretation of what constitutes a "voluntary" guilty plea, the results in the subject case would not change. The Court explained that the reasoning set forth by the *Fisher* majority simply did not apply in a case like this one where the alleged misconduct on the part of the two police officers had no relationship to the subject case. This stood in stark contrast to the situation in *Fisher* where the misconduct of Lunsford went to the heart of the prosecution's case. Additionally, as the *Fisher* Court pointed out, that case involved "highly uncommon circumstances" in which gross police misconduct occurred and the misconduct reflected on the integrity of the prosecution as a whole. The Court of Special Appeals stated that the "same is not true where Byrd proved, at most, that Wilson and Hersl had acted dishonestly in the past but that this dishonesty did not reflect on Byrd's guilt or on the State's "prosecution as a whole." Lastly, and most importantly, in Byrd's case there was no affirmative misrepresentation by the prosecutors regarding the crimes to which Byrd pled guilty.

Return to ToC

Murray Myers v. State of Maryland, No. 2933, September Term 2018, filed November 6, 2019. Opinion by Moylan, J.

https://mdcourts.gov/data/opinions/cosa/2019/2933s18.pdf

SUPPRESSION HEARING LAW – WAS THERE A DISCOVERY VIOLATION? – SANCTIONS AND WINDFALLS

THE PERMISSIBILITY OF A LINE OF QUESTIONING

Facts:

On December 12, 2017, at approximately 3:44 a.m., a burglary was committed at an SPCA-operated animal clinic at 4007 Falls Road in Baltimore City. Two security cameras recorded the crime. The first camera was located at the clinic, while the second was affixed to the Red Fish Liquor Store. Footage from the first camera depicted one individual pacing in front of the clinic, while a second individual ("the burglar") entered the clinic, grabbed a cash register, and fled. Upon viewing this footage, Detective William Nickles was unable to identify the burglar because a hoody obscured his face. The liquor store's camera did, however, capture an image of the burglar's face. Upon viewing footage from that camera, Det. Nickles immediately identified the burglar as the appellant, Murray Myers. Myers was arrested and charged with, and ultimately convicted of, second-degree burglary, conspiracy to commit second-degree burglary, and theft of more than $100 but less than $1,500.

Myers moved to suppress Det. Nickles's pre-trial identification, contending, inter alia, that the State violated its discovery obligation under Maryland Rule 4–263(d)(7)(B) by furnishing the defense with false and inadequate information regarding the basis on which the identification was made. Specifically, Myers argued that the State (i) inaccurately represented that Det. Nickles had attended high school with Myers and (ii) failed to disclose that Det. Nickles had known Myers "from the neighborhood" and that they had mutual friends. The court denied Myers's motion. After the court had done so, the defense requested a postponement. Counsel explained:

> I have pictures … of individuals who look like Mr. Myers and have been convicted of burglaries and thefts and even have addresses in the Hampden area.
>
> ….
>
> [W]e've asked that an investigator be contracted in this case that can go through the file … and then introduce in the defense's case-in-chief facts … that there are multiple other individuals fitting the same physical characteristics, age, race, gender, in the Hampden area, with burglaries to be able to let the jury know that there are these other individuals that were not investigated and when you look at

> the pictures it is very hard to determine who is who because they all look very similar.

The court denied counsel's request.

At trial, Det. Nickles testified that he was "[o]ne hundred percent positive" that Myers was the individual depicted in the liquor store footage. On cross-examination, defense counsel repeatedly attempted to ask Det. Nickles whether he was familiar with Nicholas Zissimos—a middle-aged man who (i) was Caucasian, (ii) lived in the Hampden area, (iii) had previously been convicted of burglary, and (iv) resembled Myers. After sustaining the State's objections to those questions, the court instructed defense counsel to "[d]iscontinue that line of questioning."

Held: Affirmed.

The Court of Special Appeals held that the circuit court did not abuse its discretion in finding that Myers was not prejudiced by an alleged "discovery violation." Even if a discovery violation had occurred, the court did not abuse its discretion in declining to impose the radical sanction of excluding Det. Nickles's identification. The Court also held that the circuit court did not abuse its discretion in restricting the scope of defense counsel's cross-examination of Det. Nickles, as that line of question could reasonably have been construed as having elicited "a conjectural inference as to the commission of the crime by another."[1] *Taneja v. State*, 231 Md. App. 1, 12 (2016).

On appeal, Myers first contends that the trial court erred when it denied his motion to suppress Det. Nickles's pre-trial identification. In support of this contention, he relies, in large part, on evidence adduced at trial. In reviewing the court's denial of that motion, however, the Court considers *only* the record of the suppression hearing.

The purpose of discovery law and of sanctions for violations thereof is "to assist defendants in preparing their defense and to protect them from unfair surprise." *Williams v. State*, 364 Md. 160, 172 (2001). Myers suffered no "unfair surprise" as a result of the State's erroneous assumption that Det. Nickles attended high school with Myers. It was, after all, Myers who informed defense counsel that that could not have been the case because he had never attended high school. Similarly, Myers would have been as fully knowledgeable about the details of the acquaintanceship as would have been Det. Nickels.

Myers misinterprets *Williams*, *supra*, as requiring that, when an individual makes a confirmatory identification based on a prior acquaintanceship, the State detail the history of that relationship. In *Williams*, the Court of Appeals held that the State had committed a discovery violation when

[1] Myers raised a third issue on appeal. That contention was not preserved for appellate review and the Court declined to notice "plain error."

it misrepresented that a surveilling officer was unable to identify the appellant when he was, in fact, able to do so. In this case, by contrast, there was no question that Det. Nickles had identified Myers.

Even if a discovery violation had occurred, the court would not have abused its discretion by declining to suppress the identification. A trial court has discretion *both* to select an appropriate sanction *and* to decide whether a sanction is necessary in the first place. In fashioning a sanction, moreover, "the court should impose the least severe sanction that is consistent with the purpose of the discovery rules." *Thomas v. State*, 397 Md. 557, 571 (2007). Accordingly, the exclusion of evidence is a strongly disfavored sanction.

Myers further contends that the trial court violated his Sixth Amendment right and Article 21 of the Maryland Declaration of Rights when it prohibited defense counsel from cross-examining Det. Nickles regarding his familiarity with specific Hampden residents with criminal histories who resembled Myers. In so contending, Myers argues that the purpose of this line of questioning had been to challenge the reliability of Det. Nickles's confirmatory identification of Myers.

The Court of Special Appeals will not disturb a trial court's ruling on the admissibility of evidence absent a clear abuse of discretion. The determination of the purpose for which evidence is offered is likewise a discretionary decision on the part of the trial judge which the Court will overrule only "'where no reasonable person would take the view adopted by the trial court.'" *Peterson v. State*, 196 Md. App. 563, 584 (2010). Accordingly, where evidence reasonably may be construed as having been offered for two purposes—one legitimate and the other illegitimate—the Court will defer to the ruling of the trial judge.

In this case, the trial judge could reasonably have concluded that defense counsel's line of questioning was not for the legitimate purpose of challenging the reliability of a confirmatory identification, but for the illegitimate purpose of "'merely cast[ing] a bare suspicion upon another or rais[ing] a conjectural inference as to the commission of the crime by another.'" *Taneja*, 231 Md. App. at 12 (2016). Myers did not merely ask Det. Nickles to distinguish between the person depicted on the security tape and photographs of men with similar facial characteristics. Rather, he asked the detective to distinguish between the person depicted on the tape and men with similar facial characteristics who resided in the Hampden area and had criminal records for burglary. While the men's criminal records and places of residence would have had no bearing on the defense's ability to challenge the reliability of Det. Nickles's identification, these factors may well have suggested to the jury that one or more of the Hampden-based burglars in the photographs was actually the culprit. This, coupled with basis for defense counsel's request for a postponement, suggests that the purpose of counsel's line of questioning had been to "cast[] a bare suspicion upon another." *Id*. at 12.

Return to ToC

Siamak Paydar v. State of Maryland, No. 2673, September Term 2018, filed November 22, 2019. Opinion by Kenney, J.

https://mdcourts.gov/data/opinions/cosa/2019/2673s18.pdf

EVIDENCE – HEARSAY – PUBLIC RECORDS EXCEPTION – WHEN OFFERED AGAINST AN ACCUSED IN A CRIMINAL ACTION

EVIDENCE – HEARSAY – PUBLIC RECORDS EXCEPTION – BODY CAMERA RECORDINGS BY A LAW ENFORCEMENT PERSON

EVIDENCE – HEARSAY – PUBLIC RECORDS EXCEPTION – BODY CAMERA RECORDINGS BY A LAW ENFORCEMENT PERSON – HEARSAY WITHIN HEARSAY

CRIMINAL LAW – HARMLESS AND REVERSIBLE ERROR – BOLSTERING THE CREDIBILITY OF A KEY WITNESS

Facts:

Appellant and his wife had a domestic dispute that allegedly turned violent. She testified that she escaped to a neighbor's house where she remained until police officers arrived. The responding police officers recorded, on their body cameras, the wife's statements regarding the incident.

Appellant was subsequently indicated and charged with attempted murder, kidnapping, and first-degree assault. At a jury trial, over appellant's continuing hearsay objection, the State was permitted to play portions of the body camera recording containing the wife's statements. The court admitted the body camera recording as an exception to the hearsay rule under Md. Rule 5-803(b)(8)(D), a hearsay exception pertaining to electronic recordings of matters made by body camera.

After a three-day trial and deliberating over the course of two days, a jury reached a partial verdict, finding appellant guilty of false imprisonment and first-degree assault. The jury was unable to reach a unanimous verdict with respect to attempted murder and kidnapping, and the court declared a mistrial with respect to those charges.

On appeal, appellant challenged the admission of the body camera recording containing the wife's hearsay statements.

Held: Reversed and remanded.

Md. Rule 5-803(b)(8), commonly referred to as the "public records exception," permits admission of hearsay statements contained within public records and reports. Under the

exception, information in a public agency record of "matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report" would ordinarily be admissible. Md. Rule 5-803(b)(8)(A)(ii). But, under Md. Rule 5-803(b)(8)(C), sometimes referred to as the "law enforcement exception," a "record of matters observed by a law enforcement person is not admissible . . . when offered against an accused in a criminal action."

Md. Rule 5-803(b)(8)(D) permits a recording from a body camera worn by a law enforcement person to be "offered against an accused" if the recording: (1) is made contemporaneously; (2) is properly authenticated; (3) is otherwise trustworthy; and (4) any hearsay statements within the recording fall within an independent hearsay exception under Md. Rule 5-805. Although the last requirement is not expressly articulated in Md. Rule 5-803(b)(8)(D), it is subject to Md. Rule 5-805, which provides that "[i]f one or more hearsay statements are contained within another hearsay statement, each must fall within an exception to the hearsay rule in order not to be excluded by that rule."

The circuit court interpreted Md. Rule 5-803(b)(8)(D) as categorically permitting the admission of the body camera recording and the statements within it. But Md. Rule 5-803(b)(8)(D) should not be read as broadening the types of admissible hearsay. For a body camera recording to be admissible, the party offering the evidence must establish a hearsay exception for the statements contained therein. The wife's hearsay statements were offered for the truth of the matter asserted, and, in the absence of qualifying under another exception to the hearsay rule, they were not admissible under Md. Rule 5-803(b)(8)(D).

The admission of the body camera recording was not harmless error because the State used it to bolster the credibility of a key witness in the State's case. When credibility of a key witness is an issue, an error affecting the jury's ability to assess a witness's credibility is not harmless error.

Return to ToC

Eric Wise v. State of Maryland, No. 2206, September Term 2018, filed November 20, 2019. Opinion by Harrell, J.

https://www.mdcourts.gov/data/opinions/cosa/2019/2206s18.pdf

EVIDENCE – HEARSAY – PRIOR INCONSISTENT STATEMENTS – POSITIVE CONTRADICTIONS IN TESTIMONY THAT ARE A RESULT OF ACTUAL MEMORY LOSS

APPELLATE PROCEDURE – PRESERVATION – MARYLAND RULE 4-323(a) – PRESERVATION OF OBJECTION MADE IN LIMINE AT TRIAL

Facts:

On 17 December 2012, Edward Bruce Thomas was murdered in Baltimore. Byron Harris witnessed the crime and identified Eric Wise as a perpetrator. Harris identified Wise on a photo array provided by police and wrote a narrative of the events he witnessed on the back of the array.

In July 2015, prior to Wise's trial, Harris was the victim of an assault that resulted in his hospitalization for a traumatic brain injury. Harris suffered subsequently from problems.

Wise was charged with murder in the first degree, conspiracy to commit murder in the second degree, assault in the first and second degrees, use of a firearm in the commission of a crime of violence, and wearing, carrying or transporting a handgun. Prior to Wise's trial, the circuit court held a hearing to determine certain issues, including whether Harris was competent to testify as a result of his memory difficulties. The judge ruled, over the objection of Wise, that Harris was competent to testify despite obvious difficulties with memory.

At Wise's September 2017 trial, Harris was called to the stand as a State's witness. Following a narrative answer from Harris that conflated events from the day Thomas was murdered and the day Harris was injured, the State attempted to introduce the written statement on the back of the photo array as a prior inconsistent statement.

Wise objected to the admission of the written statement, claiming that prior inconsistent statements under *Nance v. State*, 331 Md. 549 (1993), may be admitted as direct evidence of guilt only when the in-trial testimony is a positive contradiction or inconsistent impliedly with a prior statement by the witness and that Harris' testimony qualified as neither. Pointing to *Corbett v. State*, 130 Md. App. 408 (2000), Wise objected on the grounds that implied inconsistency is not present when the witness has actual, rather than feigned, memory loss.

The Court ruled that the written statement could come in as a prior inconsistent statement. Wise was convicted ultimately of assault in the first degree, use of a firearm in the commission of a crime of violence, and wearing, carrying or transporting a handgun.

Held: Affirmed.

The Court of Special Appeals determined that, while *Corbett* does not permit an implied inconsistency to arise from cases of actual memory loss, this case involved a positive contradiction and Harris' statement was admissible under *Nance*.

The Court concluded that Harris' statement contained material contradictions with the statement provided to the police years earlier, which satisfies *Nance* as a positive contradiction. The fact that there is a positive contradiction, regardless of the reason, means the statement may come into evidence as a prior inconsistent statement. The Court distinguished *Corbett*, where the witness claimed a lack of memory rather than providing a narrative answer.

The Court held also that Wise had not preserved properly his pretrial *in limine* objection to the competency of Harris because of his memory loss/difficulties. Wise claimed that, although the challenge was not renewed at trial expressly, as required by *Klauenberg v. State*, 355 Md. 528 (1999), the issue was preserved by careful reference back to the grounds of the objection made pretrial, relying on *Walter v. State*, 239 Md. App. 168 (2018).

The Court did not find such careful references back. Distinguishing *Walter*, the Court found that the legal reasons for objecting to the competency of Harris were not renewed at trial. Further, the Court found that general mention of memory issues and the pretrial hearing, without more context were not sufficient to put the judge on notice that the *in limine* objection was being renewed.

Return to ToC

Kennard Carter v. State of Maryland, No. 478, September Term 2018, filed November 14, 2019. Opinion by Reed, J.

https://mdcourts.gov/data/opinions/cosa/2019/0478s18.pdf

ARREST – NECESSITY FOR CAUSE FOR ARREST

ARREST – WHAT CONSTITUTES A SEIZURE OR DETENTION

CRIMINAL LAW – ATTENUATION OR DISSIPATION PURGING TAINT

Facts:

On October 2, 2017, at approximately 8:00 p.m., six Maryland Transit Authority ("MTA") officers gathered on the Mount Royal station platform and waited for the train to arrive in order to conduct a fare inspection. Fare inspections, also referred to as "fare sweeps," are used by MTA officers to check whether passengers have committed the crime of not paying their fare. Furthermore, when later asked, Corporal Latoya Russel ("Corporal Russell") answered in the affirmative that fare inspections are also "an apparatus to be able to check people for warrants."

As a Light Rail Train arrived at the Mount Royal station on October 2, 2017, an officer boarded each of the four train cars. Each officer broadcasted an announcement that they were about to conduct a fair inspection and instructed passengers that officers were checking tickets. The officers then proceeded to ask every passenger onboard for their ticket.

Kennard Carter ("Appellant") was travelling in one of the train cars boarded by MTA officers. After Corporal Russell boarded Appellant's car, Appellant approached Corporal Russell and informed her that he did not have a ticket. Corporal Russell then instructed Appellant to get off of the train and directed him to Officer Zachary Tobin ("Officer Tobin"), who was waiting on the platform.

Once the train left the Mount Royal station, Officer Tobin collected Appellant's name, date of birth, and social security number. Officer Tobin then provided that information to MTA dispatch, who informed Officer Tobin that Appellant had a possible positive arrest warrant. At that time, Appellant attempted to get up from the bench where he had been sitting and leave the platform, prompting three officers to tackle Appellant. During the ensuing melee, Officer Tobin yelled that Appellant had a gun. In response, Corporal Russell utilized her taser to subdue Appellant until Officer Tobin was able to fully handcuff Appellant.

Appellant was charged with (1) possession of a firearm after having been convicted of a crime of violence; (2) possession of a firearm after having been convicted of a disqualifying crime; (3) wearing, carrying, and transporting a handgun on his person; (4) possession of a controlled dangerous substance (cocaine); and (5) resisting arrest. Prior to trial, defense counsel stipulated that Appellant had a prior conviction that disqualified him from possessing a weapon.

At trial, Appellant's counsel filed a Motion to Suppress physical evidence seized by MTA officers subsequent to Appellant being removed from a Light Rail Train. The Motion claimed that Appellant's Fourth Amendment right to be free from unreasonable searches and seizures had been violated. Following the suppression hearing, the circuit court denied Appellant's Motion to Suppress, ruling that Corporal Russell had "engaged in a mere accosting by announcing the fare inspection, and therefore [her] inquiry did not require Fourth Amendment justification." The trial court further reasoned that "after the fare inspection was announced, [Appellant] voluntarily approached Corporal Russell" to confess he did not have a fare ticket, thus providing MTA officers probable cause to detain him and conduct the warrant check which ultimately led to his arrest.

On March 26, 2018, a jury in the Circuit Court for Baltimore City convicted Appellant of Counts 1, 3, and 5. Appellant was then sentenced to ten (10) years' imprisonment as to Count 1, suspending all but a mandatory minimum of five years without the possibility of parole, and to concurrent three-year (3) terms on Counts 3 and 5, with three (3) years' supervised probation.

Held: Reversed.

Appellant appealed to the Court of Special appeals to determine (1) whether the trial court erred in denying Appellant's Motion to Suppress.

The Court of Special Appeals concluded that although Appellant was not restrained physically by the MTA officers when they entered the Light Rail Train, Corporal Russell's show of authority, as well as the presence of multiple officers outside the train car, implied to a reasonable person that individuals were not free to leave prior to providing proof of a fare ticket. In conducting the fare inspection, Corporal Russell moved about the car in a way that prevented anyone from exiting without first encountering her, effectively trapping all patrons inside the train car. The Court rejects the State's argument that the fare inspections are voluntary under the principle of implied consent, as reasonable patrons might not understand that by simply traveling on the Light Rail, they may be subject to suspicionless seizures resulting in warrant checks. The Court of Special Appeals concluded that in this case, the intervening circumstance of discovering Appellant's outstanding arrest warrant weighs against suppression. However, the temporal proximity of the MTA officers' search of Appellant weighs in favor of suppression. Likewise, the flagrant use of fare inspections by MTA officers to conduct warrant searches leads this Court to conclude that the attenuation doctrine is not applicable, and the fruits of the MTA officers' search should have been suppressed.

Return to ToC

Anthony Thomas Hughes v. State of Maryland, Nos. 325 and 331, September Term 2017, filed November 7, 2019. Opinion by Sharer, J.

https://www.courts.state.md.us/data/opinions/cosa/2019/0325s17.pdf

CRIMINAL PROCEDURE – APPEALS – ILLEGAL SENTENCE – SCOPE OF REVIEW

CRIMINAL PROCEDURE – POST-CONVICTION – ILLEGAL SENTENCE – REMEDY – BENEFIT OF THE BARGAIN

Facts:

Anthony Thomas Hughes was charged in a 25-count indictment relating to violent offenses involving four victims.

Prior to re-trial, after reversal, Hughes entered a binding guilty plea to five counts of the 25-count indictment, in exchange for a sentencing cap of 75 years, all of which was to be suspended but 45 years on the attempted murder count. Sentences on the other four counts were to be either suspended or to run concurrently to the attempted murder count, with all remaining counts to be *nol prossed*. The court accepted the binding plea agreement. At sentencing, in addition to the agreed-upon sentence, the State asked for, and the court imposed, a suspended 25-year sentence for the first-degree assault count, consecutive to the sentence on the attempted murder count, and concurrent sentences for the three remaining counts. This resulted in an aggregate sentence of 100 years with all but 45 years suspended. Hughes made no objection at sentencing and did not appeal.

Ten years later, following an unsuccessful motion to correct illegal sentence, in a post-conviction proceeding, Hughes challenged the legality of the 25-year consecutive sentence as exceeding the terms of the binding plea agreement and sought to withdraw the entire plea agreement or, alternatively, specifically enforce the plea. The post-conviction court agreed that the sentence was illegal because it exceeded the sentencing cap permitted by the plea. Rather than vacating the entire plea agreement as Hughes sought, the court vacated the sentence and conviction for only the non-conforming count of the plea agreement.

Hughes appealed the post-conviction court's grant of only partial relief, challenging only the court's choice of remedies and not its underlying determination that the sentence was illegal. To limit what the Court of Special Appeals could review on appeal, Hughes asserted that since the post-conviction court's determination that the sentence was illegal was not being challenged, it is not subject to the Court's review.

Held: Affirmed.

The Court of Special Appeals preliminarily held that when there is a challenge to the choice of remedies afforded for an illegal sentence, an appellate court may review both the remedy and the underlying determination of the illegality of the sentence. Pursuant to Maryland Rule 8-131(a), appellate courts have the authority to review any matter raised in or decided by lower courts. As such, the post-conviction court's finding that the sentence imposed for one count in a five-count plea agreement exceeded the terms of the plea agreement, and was therefore illegal, was subject to review when Hughes challenged whether the remedy afforded by the post-conviction court to correct the illegality was appropriate.

Affirming the order of the Circuit Court for Carroll County, the Court of Special Appeals held that striking the conviction and sentence of only the non-conforming count corrected the illegality and restored Hughes to the benefit of his bargain under the plea agreement, while preserving the finality of the unchallenged and legal sentences on the four remaining counts of the plea.

Pursuant to Maryland Rule 4-345(a), a court "may correct an illegal sentence at any time." While a post-conviction challenge to the legality of only a single sentence for one count of a multi-count plea agreement may be corrected at any time, it does not require a court to strike the entire plea agreement to correct the illegality.

The resolution in Hughes' favor was legally correct and was an equitable and reasonable remedy.

Return to ToC

Natella Azizova v. Muzaffar Suleymanov, No. 2338, September Term 2018, filed November 21, 2019. Opinion by Battaglia, J.

https://mdcourts.gov/data/opinions/cosa/2019/2338s18.pdf

CHILD CUSTODY – BEST INTEREST OF THE CHILD – GENDER BIAS IN JUDICIAL DECISION MAKING

Facts:

Mother and Father lived together with their child, born in March of 2016, in Hagerstown, until December of 2016, when Mother and child left to live with Mother's parents in Georgia. Father filed a petition for custody of the child. Mother filed a counter-complaint for custody, requesting that she be awarded sole legal and physical custody of the child.

A Family Magistrate heard the matter and issued Proposed Findings and Recommendations, which recommended that Mother be granted sole legal custody and primary physical custody of the child, while providing Father visitation rights.

A judge sitting in the Circuit Court for Washington County, after considering the factors pertinent to custody determinations, disagreed and awarded Father primary physical custody of the child. The judge concluded that the best interest of the child would be served by awarding Father primary physical custody, because Mother was unfit to parent, primarily, based upon her youth, her decision to enroll in school, her decision to work part-time and an isolated instance of intoxication at a concert in Atlantic City, New Jersey. The judge awarded the parents joint legal custody of the child and provided Mother visitation rights.

Held: Vacated and remanded.

The Court of Special Appeals held that the trial judge abused her discretion in awarding Father primary physical custody based upon finding that Mother was unfit to parent, a finding predicated on the judge's stereotypes about the fragility of infancy and the mother's youth, her part-time work and enrollment in school, as well as an incident of drunkenness in which the father was involved but the child was not present. The judge misapplied the best interest of the child standard and failed to articulate how Mother's choices directly and adversely impacted the well-being of the child. Furthermore, the judge's comment, inferring that it was inappropriate for a mother to work or attend school absent financial necessity when she had a young child at home lacked support in the record and demonstrated gender bias in her decision making.

Return to ToC

Leonard Poe v. IESI MD Corporation, No. 559, September Term 2018, filed November 20, 2019. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2019/0559s18.pdf

MARYLAND WAGE AND HOUR LAW—OVERTIME FOR "DAY-RATE" EMPLOYEES

Facts:

Leonard Poe was employed by a trash-hauling business. His employer paid him a day rate: a fixed amount of money per day, without regard to the number of hours worked. Poe received overtime pay when he worked more than 40 hours per workweek.

Poe sued the employer in the Circuit Court for Prince George's County, claiming that the employer failed to pay all overtime compensation due to him under State law. The circuit court granted the employer's motion for summary judgment. Poe appealed.

Held: Affirmed.

The Court of Special Appeals held that, under the Maryland Wage and Hour Law, a day-rate employee is entitled to extra half-time pay (i.e., an extra 50% of the regular hourly rate) for each hour worked in excess of 40 in one workweek. The Court determined that, because the employer had paid the employee all overtime compensation due to him under State law, the employer was entitled to judgment in its favor.

Under the Maryland Wage and Hour Law, employees are entitled to an overtime wage of at least 1.5 times the employee's usual hourly wage for each hour that the employee works in excess of 40 hours during one workweek. This provision parallels the overtime requirement of the federal Fair Labor Standards Act. Regulations adopted by the Maryland Department of Labor state that an employee's regular hourly rate is determined by dividing the total compensation for employment in one week by the total number of hours worked in that week. Maryland has no statute or regulation expressly stating how to calculate overtime pay when an employee receives compensation at a "day rate" (i.e., a fixed amount of money per day worked, without regard to the number of hours worked).

A long-standing regulation of the United States Department of Labor explains how to calculate overtime under the Fair Labor Standards Act when an employee is paid at a day rate. It provides that: the employee's regular rate of pay is determined by dividing all sums received at the day rate by the total hours actually worked; the employee is then entitled to extra half-time pay (i.e., an extra 50% of the regular hourly rate) for each hour worked in excess of 40 in one workweek. The employee has already received 100% of the regular hourly rate for all hours worked, because the day rate wages compensate the employee for all hours worked, including the overtime hours.

Even though the federal regulation was not controlling, the federal regulation was persuasive authority because it interpreted a federal statute that mirrors the Maryland statute.

Return to ToC

Ryan Pulliam v. Dyck-O'Neal, Inc., No. 1080, September Term 2018, filed November 1, 2019. Opinion by Nazarian, J.

https://www.courts.state.md.us/data/opinions/cosa/2019/1080s18.pdf

REAL PROPERTY – FORECLOSURE – DEFICIENCY JUDGMENT

Facts:

Ryan Pulliam purchased a home in September 2006 after taking out a substantial loan with a 7.125% interest rate, enforceable through a promissory note. He defaulted on the loan in 2009 and the lender started foreclosure proceedings in the Circuit Court for Prince George's County. The foreclosure was uncontested. The house was sold at a foreclosure sale for less than the balance of the debt.

The promissory note was transferred a couple times before landing with Dyck-O'Neal, Inc. ("DONI"). DONI filed a motion for a deficiency decree in 2017 in the foreclosure case under Maryland Rule 14-216(b), seeking to attach the judgment to Mr. Pulliam. Mr. Pulliam opposed the motion, arguing under numerous theories that DONI could not enforce the note. The court entered a deficiency judgment against Mr. Pulliam and he appealed to this Court. First, Mr. Pulliam argued that the deficiency judgment should be vacated because the court failed to construe the requirements of Rule 14-216 strictly. Second, he argued that DONI failed to support its motion for deficiency judgment with admissible evidence. Third, he argued that the judgment was based on an incorrect calculation of Mr. Pulliam's debt.

Held: Vacated and remanded.

Vacated and remanded with directions to enter judgment correcting a math error in the deficiency judgment calculation.

The Court of Special Appeals vacated the judgment to allow the trial court to correct a math error in the calculation of the deficiency judgment. But the Court reviewed the process for enforcing a promissory note in a deficiency judgment action after foreclosure proceedings have finished and found that the court properly entered judgment against Mr. Pulliam. First, during foreclosure proceedings, parties have multiple opportunities to file exceptions: when the order to docket is filed; when the court ratifies the sale of the property; and when the auditor's report is filed. However, a debtor cannot dispute details regarding the foreclosure proceedings during deficiency judgment proceedings after failing to contest the foreclosure. As this Court stated in *Jones v. Rosenberg*, "[t]he effect of a final ratification of sale is *res judicata* as to the validity of such sale . . . ." 178 Md. App. 54, 72 (2008). Mr. Pulliam failed to file exceptions at any stage

during the foreclosure proceedings. He made no claim of fraud or illegality to this Court, and accordingly his claims regarding the validity of the sale were barred.

Second, DONI properly followed the procedures for a deficiency judgment set forth in Rule 14-216(b) when it served the motion under the Rule, and it filed its motion within three years of the final ratification of the auditor's report in the foreclosure proceedings.

Third, DONI provided sufficient support for its motion. The motion for deficiency decree was filed, as the Rules contemplate, in the foreclosure action. Most of the supporting information was already established. The only fact not already in the record was DONI's interest in the promissory note, which was supported in the deficiency judgment proceedings by two notarized Assignments of Note. The Assignments were admissible non-hearsay verbal acts and the circuit court did not err in considering them.

Return to ToC

Damien A. Macias v. Summit Management, Inc., No. 1130, September Term 2018, filed November 21, 2019. Opinion by Leahy, J.

https://mdcourts.gov/data/opinions/cosa/2019/1130s18.pdf

NEGLIGENCE – PREMISES LIABILITY – FORSEEABILITY – DUTY TO INVITEES - NOTICE

Facts:

Eight-year-old Damien Macias and his brother climbed atop a stonework sign located on the grounds of the Waters House condominium complex, where his grandparents owned a condominium unit. When the boys went to dismount, they held onto the edge of a flat stone inset. The flat stone dislodged from the larger stonework holding it, causing the boys to fall to the ground, and the flat stone to fall on top of Damien.

Damien, and his father as next friend, filed a negligence action in the Circuit Court for Montgomery County against the Council of Unit Owners of Waters House Condominium and Summit Management, Inc. (collectively, the "Appellees"). The circuit court granted summary judgment in favor of Appellees. The court ruled that Damien was a bare licensee when he climbed the community sign because he was on it without the consent of the owner. The court also held, however, that even if Appellees owed Damien a greater duty of care, summary judgment was appropriate because (after close of discovery) there was no evidence that Appellees had notice that the children had been climbing on the sign or reason to suspect that the sign was dangerous or defective. Damien and his father noted a timely appeal challenging the grant of summary judgment.

Held: Affirmed.

The Court of Special Appeals reached three holdings. First, condominium unit owners and their guests occupy the legal status of invitee when they are in the common areas of the complex over which the condominium association maintains control. Barring any agreements or waivers to the contrary, the condominium association is bound to exercise reasonable and ordinary care to keep the premises safe for the invitee and to protect the invitee from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for his or her own safety, will not discover. Accordingly, Damien was an invitee on the common grounds of the condominium complex.

Second, Damien did not lose his status as an invitee to become a trespasser when he climbed atop the community sign located in the common area, which he climbed numerous times in the past, and where there was no evidence of any direction that children should not play on or around the sign.

Third, summary judgment was appropriate because there was no evidence presented that Appellees had actual or constructive notice of a dangerous condition. There was no basis in the record to conclude that Appellees should have known that the flat stone sign was likely to fall from its framework, or that Appellees could have discovered such a defect through the use of reasonable care. As a result, a jury would not have been able to infer that Damien's accident could have been prevented through Appellees' use of reasonable care, and Appellees could not have been found negligent as a matter of law.

Return to ToC

Uninsured Employers' Fund v. Tyson Farms, Inc., et al., No. 1057, September Term 2018, filed November 22, 2019. Opinion by Wright, J.

Gould, J., dissents.

https://mdcourts.gov/data/opinions/cosa/2019/1057s18.pdf

WORKERS' COMPENSATION – NATURE AND GROUNDS OF EMPLOYER'S LIABILITY – IN GENERAL

Facts:

In early 2009, Mauro Jimenez Garcia ("Mr. Garcia") was employed by Terry Ung ("Mr. Ung") to perform routine maintenance work on Mr. Ung's chicken farm. Mr. Ung was, at the time, under contract with Tyson Farms, and the chickens raised on the farm were considered Tyson's Property.

When Mr. Ung became ill and eventually died at the end of 2009, ownership of the farm passed to Lee Ung ("Mrs. Ung"). Mrs. Ung had no insight as to how to run a chicken farm. Consequently, representatives from Tyson taught Mr. Garcia how to operate the farm. The Tyson employees instructed Mr. Garcia on various aspects of the chicken production process, including how to care for the chickens, and how to maintain an adequate living environment for the animals. Mr. Garcia began to reside at the farm pursuant to Tyson's requirement that someone be present twenty-four hours a day, seven days a week to ensure its proper operation.

Mrs. Ung sold the farm to Dai K. Nguyen ("Mr. Nguyen") in 2013. Mr. Nguyen, like Mrs. Ung, knew nothing about chicken farming, and consequently contracted with Tyson as an absentee owner. The contract was contingent upon Mr. Garcia being retained as resident manager of the farm.

As part of their contractual relationship, Mr. Nguyen and Tyson entered into a broiler production contract, establishing obligations for both parties and requiring Mr. Nguyen to implement Tyson's recommended management practices. Tyson retained the unilateral right to terminate the relationship upon default by Mr. Nguyen, in which case Tyson would have the power to take immediate possession of chickens, feed, and medication, and to utilize Mr. Nguyen's farm to complete the production process at Mr. Nguyen's expense. Tyson maintained significant oversight of the farm, visiting one to three times per week to ensure all standards were being met. Tyson would coordinate directly with Mr. Garcia, rather than Mr. Nguyen, if something needed to be addressed.

In April of 2014, Mr. Garcia was found to be occupationally disabled, suffering from hypersensitivity pneumonitis and interstitial disease. Mr. Garcia initially filed a claim against Mr. Nguyen under the Workers' Compensation Act, but later learned that Mr. Nguyen did not

have Workers' Compensation insurance. As such, the Uninsured Employers' Fund ("UEF") was added as a party and Tyson was impleaded into the claim.

A hearing before the Commission took place on March 3, 2016. The Commission declared that Mr. Garcia's occupational disease arose out of employment, and that Mr. Nguyen and Tyson were co-employers. On March 28, 2016, Tyson appealed to the Circuit Court for Worcester County, challenging the Commission's determination that it was a co-employer. A two-day jury trial ensued, and at the end of the presentation of evidence, both UEF and Tyson filed motions for judgment. Both were denied by the circuit court. The jury returned a verdict that Tyson was not a co-employer of Mr. Garcia at the time he sustained his injuries. UEF subsequently filed for appeal.

Held: Reversed.

UEF presented one issue on appeal: whether the circuit court erred in denying its motion for judgment. The Court of Special Appeals concluded that the circuit court erred by failing to grant UEF's motion for judgment, and that Tyson was, in fact, a co-employer. The Court reasoned that, given the significant degree of control that Tyson maintained over Mr. Garcia, there was more than sufficient evidence to establish that an employment relationship existed as a matter of law. As such, the circuit court erred by submitting the matter to the jury.

Montgomery County, Maryland v. Anthony G. Cochran and Andrew Bowen, Nos. 662 & 2930, September Term 2018, filed November 1, 2019. Opinion by Nazarian, J.

https://www.courts.state.md.us/data/opinions/cosa/2019/0662s18.pdf

WORKERS' COMPENSATION – OCCUPATIONAL DEAFNESS – CALCULATION OF TOTAL AVERAGE HEARING LOSS – MEANING OF "LOWEST MEASURED LOSSES" IN LE § 9-650(b)(2)(i)

WORKERS' COMPENSATION – OCCUPATIONAL DEAFNESS – CALCULATION OF TOTAL AVERAGE HEARING LOSS – CALCULATION OF DEDUCTION FOR "EACH YEAR OF THE COVERED EMPLOYEE'S AGE OVER 50 AT THE TIME OF THE LAST EXPOSURE TO INDUSTRIAL NOISE" UNDER LE § 9-650(b)(3)

WORKERS' COMPENSATION – PERMANENT PARTIAL DISABILITY BENEFITS – OCCUPATIONAL DISEASE – DISABLEMENT REQUIREMENT UNDER LE § 9-502 – TINNITUS – "OTHER CASES" LOSS UNDER LE § 9-627(k)

Facts:

Anthony Cochran and Andrew Bowen were firefighters for Montgomery County for over thirty years. Both developed hearing loss from exposure to loud noises they encountered repeatedly on the job. They also developed tinnitus, a condition commonly described as a ringing in the ears. Several years after retiring, they filed claims for workers compensation benefits for their hearing loss and, in Mr. Bowen's case, tinnitus as well. The Maryland Workers' Compensation Commission (the "Commission") awarded benefits to both. The County filed separate petitions for judicial review in the Circuit Court for Montgomery County. The circuit court agreed with the Commission and granted judgment in the firefighters' favor. The County appealed.

Held:

Judgment in Mr. Cochran's case affirmed. Judgment in Mr. Bowen's case affirmed in part and reversed in part. Specifically, the Court of Special Appeals affirmed the Commission's compensation awards to Mr. Cochran and Mr. Bowen for occupational deafness but reversed the award of permanent partial disability benefits to Mr. Bowen for tinnitus.

First, the Court affirmed the Commission's calculation of Mr. Cochran's total average hearing loss under LE § 9-650(b)(2)(i). The Commission did not err in using the results of Mr. Cochran's earlier-in-time audiogram, which showed more hearing loss than his later audiogram. The term "lowest measured losses" in LE § 9-650(b)(2)(i) does not direct the Commission to use the

lowest hearing losses ever tested and recorded for an occupational deafness claimant. Instead, it sets forth a procedure and formula for calculating the level of a claimant's hearing loss during a single audiogram, and doesn't dictate which results among multiple audiograms the Commission must select.

Second, the Court affirmed the Commission's calculation under LE § 9-650(b)(3) of the deduction from each firefighter's total average hearing loss to account for the average amount of hearing loss from non-occupational causes. The Commission did not err in calculating the deduction by counting the number of years between each firefighter's 50th birthday and the respective dates each retired. The date of a claimant's "last exposure to industrial noise" under LE § 9-650(b)(3) is not the date his audiogram was performed, under the plain language of the statute. Instead, it is the date of his last exposure to harmful noise at work, and the Commission did not err in determining that date to be the firefighters' respective retirement dates.

Third, the Court reversed the Commission's award of permanent partial disability benefits to Mr. Bowen for his tinnitus. Whereas compensation for occupational deafness may be awarded without a showing of disablement, a showing of disablement is required for compensation for other occupational diseases. Because tinnitus is not compensable as part of occupational deafness under LE § 9-505 and § 9-650 under the plain language of those statutes and because Mr. Bowen made no showing of disablement from his tinnitus, the Commission erred in awarding permanent partial disability benefits. But the Commission's categorization of tinnitus as an "unscheduled" or "other cases" loss under LE § 9-627(k) was not in error.

Return to ToC

ATTORNEY DISCIPLINE

*

This is to certify that the name of

EDWARD DORSEY ELLIS ROLLINS, III

has been replaced upon the register of attorneys in this State as of November 1, 2019, by Order of the Court dated October 23, 2019.

*

By an Order of the Court of Appeals dated November 20, 2019, the resignation of the following attorney from the further practice of law has been accepted and his name has been stricken from the register of attorneys in this State:

CIJI SHAWANDRA DODDS

*

By an Order of the Court of Appeals dated November 20, 2019, the following attorney has been indefinitely suspended:

OLEKANMA ARNNETTE EKEKWE

*

By an Order of the Court of Appeals dated November 20, 2019, the following attorney has been indefinitely suspended by consent:

CHARLES JOSEPH RYAN, III

*

By an Opinion and Order of the Court of Appeals dated November 22, 2019, the following attorney has been disbarred:

KENNETH STEVEN KAUFMAN

*

Return to ToC

JUDICIAL APPOINTMENTS

*

On October 31, 2019, the Governor announced the appointment of **Erich Michael Bean** to the District Court for Allegany County. Judge Bean was sworn in on November 6, 2019 and fills the vacancy created by the retirement of the Hon. Edward A. Malloy, Jr.

*

On October 23, 2019, the Governor announced the appointment of **Andrew S. Rappaport** to the Circuit Court for Calvert County. Judge Rappaport was sworn in on November 8, 2019 and fills the vacancy created by the elevation of the Hon. E. Gregory Wells to the Court of Special Appeals.

*

On October 23, 2019, the Governor announced the appointment of **Mark W. Carmean** to the Circuit Court for Calvert County. Judge Carmean was sworn in on November 15, 2019 and fills the vacancy created by the retirement of the Hon. Marjorie L. Clagett.

*

Return to ToC

RULES ORDERS AND REPORTS

*

A Rules Order pertaining to the 201st Report of the Standing Committee on Rules of Practice and Procedure was filed on November 19, 2019.

http://www.courts.state.md.us/sites/default/files/rules/order/ro201.pdf

*

Return to ToC

UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
1051 Southern, LLC v. S.F.C.	1080 **	November 13, 2019
A.		
Amer. Ass'n of Univ. Profs. v. Mont. Comm. Coll.	1051 *	November 5, 2019
B.		
Baird-Alleyne, Marva v. Ward	0325 *	November 12, 2019
Baltimore Ave, LLC v. Rauda	0587 *	November 8, 2019
Barbour, Devin v. State	2841 *	November 6, 2019
Benson, Michael v. Aldi, Inc.	0779 *	November 5, 2019
Blue, Clayton T. v. State	0711 *	November 7, 2019
Boswell-Johnson, Daron v. State	1116 *	November 7, 2019
Briscoe, Rodney v. State	0803 *	November 21, 2019
Butchok, Richard v. Shannon	1153 *	November 12, 2019
Butler, Isiah v. State	1059 *	November 8, 2019
Byus, Natasha M. v. Byus	2284 *	November 22, 2019
C.		
Carriker, Adam v. Pro-Football, Inc.	2122 *	November 14, 2019
Clark, Anthony, Jr. v. State	0710 *	November 27, 2019
Cooper, Jeremy v. DLLR	0444 *	November 26, 2019
Crescendo Bioscience v. Meso Scale Diagnostics	0350 *	November 15, 2019
D.		
Davis, Pallittia Ann v. Meharry Medical College	0527 **	November 18, 2019
Dawson, Adam Michael v. State	2545 *	November 26, 2019
Dennis, William, H. v. Beckett Green Condo.	2147 *	November 6, 2019

September Term 2019
* September Term 2018
** September Term 2017
*** September Term 2016
† September Term 2015
†† September Term 2013

Donnelly, V. Charles v. State, et al.	1187 *	November 14, 2019
Donnelly, V. Charles v. State, et al.	2151 ***	November 14, 2019
Dorchy, Lucretia v. Hsieh	2281 *	November 27, 2019
Dorsey, Tremayne Middleton v. State	2704 *	November 18, 2019
E.		
Exum, Eric Ricardo v. State	2378 *	November 8, 2019
F.		
France, Jeffrey v. Md. Parole Commission	0185 *	November 25, 2019
Fuentes, Jorge A. v. State	2849 *	November 21, 2019
G.		
Geppi, Stephen A. v. Pineau	1363 **	November 14, 2019
Green, Donte v. Grant	0846 *	November 18, 2019
Grieber, John R., Jr. v. Castruccio	0791 *	November 27, 2019
H.		
Hassan, Ali Ishmael v. State	0374 *	November 15, 2019
Hoffman, Lisa Jean v. Hoffman	0870 *	November 5, 2019
Hoffman, Nicholas Kyle v. State	2514 *	November 5, 2019
Hunt, Ronnie v. State	2429 **	November 26, 2019
Hurst, Shelby Lynn v. Mudd	0562 *	November 14, 2019
I.		
In re: D.W.	2927 *	November 6, 2019
In re: K.S.-W., K.F.S.-W., P.S.-W., J.W., & Z.W.	0631	November 12, 2019
In re: S.G.	2010 *	November 19, 2019
In the Matter of Meddings	2096 *	November 4, 2019
J.		
JFW Trust v. Tagala	1029 *	November 18, 2019
Jones, Lambertine, Jr. v. Bardon, Inc.	0877 *	November 5, 2019
Jones, Wilbert Leroy v. State	3272 *	November 8, 2019
Jones, William Leon v. State	3081 *	November 26, 2019
K.		
Kaufman, Richard v. Kaufman	2186 *	November 21, 2019

September Term 2019
* September Term 2018
** September Term 2017
*** September Term 2016
† September Term 2015
†† September Term 2013

Keys, Thomas Lee v. State	2609 *	November 8, 2019
Kranz, William Louis v. State	0785 ††	November 25, 2019
L.		
Lappi, Eric v. Nenkam	2373 *	November 4, 2019
Lee, Devin v. State	2385 **	November 20, 2019
Leonard, Jamie Anthony v. State	2380 *	November 13, 2019
Love, Ramonta v. State	2821 *	November 20, 2019
M.		
Malik, Ishtaq v. Malik	0669 *	November 7, 2019
Markovic, Nenad v. Fishman	2251 *	November 26, 2019
Markovic, Nenad v. Rahaman	2252 *	November 26, 2019
McCann, Christopher v. State	3273 *	November 8, 2019
McMillian, Taylor v. State	2886 *	November 25, 2019
Mejia, Matilde v. Urge Food Corp.	1155 *	November 19, 2019
Miller, Diana v. Johns Hopkins Health Sys. Corp.	2527 *	November 19, 2019
Miller, Treyvon Alonta v. State	0188 *	November 6, 2019
Mitchell, Herbert v. State	3000 *	November 26, 2019
Moses, Sharandall Monte v. State	2695 *	November 26, 2019
Mwabira-Simera, Samuel v. Morgan State Univ.	0283 *	November 7, 2019
N.		
New Colony Village HOA v. Shaw	2335 *	November 20, 2019
P.		
Page, Anthony Keith v. State	2634 *	November 7, 2019
Paralegal Consultants v. Edward J. Brown, LLC	2057 *	November 13, 2019
Peamon, Richard v. PEP Boys	2244 *	November 13, 2019
Physicians for Social Responsibility v. Hogan	2552 †	November 13, 2019
Presberry, Anthony J. v. State	3275 *	November 8, 2019
Q.		
Quarstein, Pamela A. v. Still Pond TIC Interests Buyers	0179 *	November 12, 2019
Quintanilla, Robert Anthony v. State	1122 *	November 6, 2019
R.		
Radford, Gary, Jr. v. State	2922 *	November 8, 2019

September Term 2019
* September Term 2018
** September Term 2017
*** September Term 2016
† September Term 2015
†† September Term 2013

Rious, Willie James v. State	3259 *	November 15, 2019
Robinson, Willam Edgar, Jr. v. State	2809 *	November 18, 2019
Rosenzweig, Jason v. Dept. of Planning & Zoning	2348 *	November 19, 2019
S.		
Sanchez-Reyes, Ayronn v. State	2224 *	November 26, 2019
Sanford, Sean v. State	3271 *	November 13, 2019
Savage, Anthony v. State	3444 *	November 13, 2019
Savage, William v. State	3445 *	November 13, 2019
Smiley, Marcus Lee v. State	1053 *	November 25, 2019
Smith, Ikiem Radon v. State	2311 *	November 8, 2019
Smith, Tramonta Allen Jamar v. State	3220 *	November 13, 2019
Smith, William L. v. Citizens Financial Group	1022 *	November 13, 2019
Sollers, Tamara v. DLLR	2232 *	November 6, 2019
Speight, Angela v. Williams	3311 *	November 4, 2019
State v. Parks, Christina Renee	0239 *	November 4, 2019
T.		
Tapia, Enrique v. State	2428 *	November 5, 2019
Tchama, Alabdjou A. v. O'Sullivan	1160 *	November 7, 2019
Terry, Travis Devon v. State	2621 *	November 15, 2019
Thomas, Micaa v. Grant	1049 *	November 15, 2019
Thomas, Patrick Joseph v. State	1115 ***	November 25, 2019
Toure, Morifere v. Md. Insurance Comm'r	0135 *	November 6, 2019
W.		
Walker, James T. v. Centre Insurance	1036 *	November 14, 2019
Wharton, Garrick Levin, Jr. v. State	0988 *	November 7, 2019
Williams, Artez v. State	2885 *	November 6, 2019
Williams, Gregg Allan v. State	2513 *	November 7, 2019
Williams, Leslie Eugene v. State	3001 *	November 8, 2019

September Term 2019
* September Term 2018
** September Term 2017
*** September Term 2016
† September Term 2015
†† September Term 2013