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Table of Contents

THE SUPREME COURT

Constitutional Law
Right to Fair and Impartial Appellate Judges
Belton v. State 2

THE APPELLATE COURT

Criminal Law
Driving With a Revoked License – Scienter Requirement
Adkins v. State 5

Criminal Procedure
Juvenile Restoration Act
Johnson v. State 7

Family Law
Proof of Foreign Common Law Marriage
Zadnik v. Ambinder 9

Public Safety
Firearms Regulations – Disqualifying Crimes
In the Matter of McCloy 10

ATTORNEY DISCIPLINE 13

RULES ORDERS 14

UNREPORTED OPINIONS 15

361 Rowe Boulevard, Annapolis, MD 21401 **410-260-1501**

SUPREME COURT OF MARYLAND

Terrance Belton v. State of Maryland, No. 8, September Term 2022, filed May 31, 2023. Opinion by Biran, J.

Booth, Gould, and Getty, JJ., concur.

https://mdcourts.gov/data/opinions/coa/2023/8a22.pdf

CRIMINAL LAW – TRIAL – HARMLESS ERROR

CONSTITUTIONAL LAW – DUE PROCESS – RIGHT TO FAIR AND IMPARTIAL JUDGES

Facts:

On December 6, 2018, Terrance Belton and his mother, Shakiea Worsley, were involved in an altercation that led to the killing of Edward Calloway. Early that morning, Worsley arrived at the corner of South Monroe Street and McHenry Street in Baltimore City to sell drugs. Belton accompanied her. About 20 minutes later, Calloway arrived. When Calloway got out of the passenger seat of his friend's car, Belton saw Calloway point to their car and announce to his associates: "This is my block." Moments later, Calloway began to head toward Worsley and Belton, holding a bag; Calloway was known to carry a handgun in such a bag. Belton was himself armed with a concealed .45 caliber handgun.

Calloway came face to face with Belton and, gun drawn, asked Belton whether he "want[ed] some smoke" and why Belton had "come down here" to the block. Belton feared that the confrontation would get out of control, so he attempted to de-escalate and suggested to Calloway that they might settle things with a fistfight. Calloway agreed and gave his handgun to an associate, and the two separated to prepare for the fight.

Worsley, though, watched Calloway during this time, and she saw him enter a nearby corner store, where he regularly stored a second handgun. She saw Calloway fumbling for something and feared it was that weapon. Worsley preemptively attacked Calloway, though he quickly subdued her. Someone alerted Belton – at that point around the corner from the action – to the fight. Belton testified at trial that when he arrived back near the corner, he saw Calloway lifting a small handgun out of his pants and approaching Belton quickly and aggressively. Belton then shot at Calloway until Calloway dropped his gun. Two days later, Calloway died from his

wounds; Belton was charged with murder and related offenses, and Worsley was charged with being an accessory after the fact to Calloway's killing.

Belton and Worsley were tried jointly. On direct examination, when Belton testified that Calloway had said "This is my block" to his associates, the State objected, and the statement was excluded as hearsay. In closing, the State contested the existence of Calloway's second handgun but agreed that it was the central factual issue in the case. The jury found Belton not guilty of second-degree murder, finding that imperfect self-defense applied (meaning that Belton had actually feared for his life but that his fear had not been objectively reasonable). The jury found him guilty of voluntary manslaughter, use of a firearm in the commission of a crime of violence, and wearing/carrying a concealed handgun on his person. The jury found Worsley guilty of being an accessory after the fact to manslaughter. Belton and Worsley appealed their convictions.

Before the Appellate Court of Maryland, Belton contested the trial court's exclusion of Calloway's statement as hearsay, arguing that it was admissible evidence relevant to the objective reasonableness of his fear of imminent death or bodily harm. On December 28, 2021, the Appellate Court issued a reported opinion affirming Belton's and Worsley's convictions. *Belton and Worsley v. State*, 253 Md. App. 403 (2021). The court agreed with Belton that it was error to exclude Calloway's "angry comment, 'This is my block,'" because the statement was not hearsay and it was relevant to Belton's theory of self-defense. *Id*. at 417, 434-35, 451-53. However, the court concluded that the error was harmless beyond a reasonable doubt, as this statement by Calloway was just one of many pieces of evidence of Calloway's animus toward Belton and Worsley. *Id*. The Appellate Court held that Worsley had failed to preserve her claim of error for appellate review, and the court declined to notice any plain error. *Id*. at 456.

Outside of the brief resolution of Belton's and Worsley's claims of error, most of the Appellate Court's opinion concerned whether the jury should have been instructed on the doctrines of defense-of-others and self-defense, issues the Appellate Court raised *sua sponte* after the case was submitted on the briefs. The opinion opened with a literary reference to the Old English epic of Beowulf, analogizing Belton and Worsley to the monster Grendel and Grendel's Mother. *Id*. at 408-09. In a section of the opinion titled "Demythologizing 'Mother,'" the court speculated that Belton's acquittal on the murder charge was attributable to a sentimental jury's undue sympathy for Worsley as Belton's mother. *Id*. at 411.

On January 6, 2022, Belton filed a motion in the Appellate Court to recall and reconsider the reported opinion, arguing that it "lacks the appearance of impartiality by employing inappropriate and racially-charged comparisons and by degrading the appellants, the victim, and their community." Worsley joined in Belton's request. The State took no position on Belton's motion, and the Appellate Court denied Belton's motion.

Worsley did not seek further review of the Appellate Court's affirmance of her conviction. Belton filed a petition for writ of *certiorari*, which this Court granted on May 9, 2022. *Belton v. State*, 478 Md. 511 (2022).

Held: Affirmed in part and reversed in part.

The Supreme Court of Maryland affirmed Belton's conviction for wearing/carrying a concealed handgun on his person (not challenged on appeal) but reversed his convictions for manslaughter and use of a firearm in the commission of a crime of violence, ordering a new trial for Belton on those charges.

When a criminal appellant establishes error, that error cannot be deemed "harmless" unless a reviewing court can independently review the record and declare beyond a reasonable doubt that the error in no way influenced the verdict. *Gross v. State*, 481 Md. 233, 253-54 (2022); *Dorsey v. State*, 276 Md. 638, 659 (1976). The reviewing court must be satisfied that there is no reasonable possibility that the evidence (or its exclusion) may have contributed to the guilty verdict. *Dorsey*, 276 Md. at 659.

The Supreme Court of Maryland held that the State did not bear its burden to show beyond a reasonable doubt that the erroneous exclusion of the decedent's statement "This is my block" in no way influenced the jury's guilty verdicts. The excluded statement was not merely cumulative evidence of Calloway's animus toward Belton, as the Appellate Court had held. Instead, "This is my block" showed Calloway's heightened territoriality and aggression, and the statement announced his dominance to those present that day. Had the jury been permitted to hear "This is my block," it might have found that Belton reasonably understood himself to be surrounded by hostile elements who, moments earlier, had watched Calloway assert his power over the corner. The statement therefore went to the objective reasonableness of Belton's fear for his life, and the State failed to show beyond a reasonable doubt that its exclusion in no way influenced the verdict. On this basis, the Court ordered a new trial.

The Supreme Court also held that the right to fair and impartial judges – both in fact and in appearance – extends to appellate proceedings. *See Jackson v. State*, 364 Md. 192, 207 (2001); *Archer v. State*, 383 Md. 329, 356 (2004); U.S. Const., amend. VI; U.S. Const., amend. XIV; Md. Decl. Rts., Art. 21. Having decided the case on harmless error grounds, however, the Court declined to decide whether Belton's right to due process was violated. The Court offered guidance to lower courts: Appellate judges have very broad discretion to write opinions as they see fit, but they should take great care in exercising that discretion to ensure that their opinions reflect the court's impartiality.

APPELLATE COURT OF MARYLAND

Christian Eric Adkins v. State of Maryland, No. 735, September Term 2022, filed May 24, 2023. Opinion by Zarnoch, J.

https://mdcourts.gov/data/opinions/cosa/2023/0735s22.pdf

STATUTORY CONSTRUCTION – DRIVING WITH A REVOKED LICENSE – KNOWLEDGE OF REVOCATION

CRIMINAL LAW – NO JURY INSTRUCTION ON SCIENTER – HARMLESS ERROR

CRIMINAL LAW – POSTPONEMENT – NO PREJUDICE

CRIMINAL LAW – JURIES - WAIVER

Facts:

In the winter of 2021, Appellant, Christian Eric Adkins, was arrested and charged with driving under the influence, driving while impaired by alcohol, driving without a license, and driving on a revoked license. At trial, he stipulated that his driver's license was under revocation at the time he was driving and that he was properly notified of the revocation. Adkins was tried by a jury and was acquitted of driving under the influence, but convicted of the other charges and sentenced to 8 years' incarceration.

On appeal, he contends that the circuit court erred in denying him a jury instruction that knowledge of the revocation was required to convict him of the driving under revocation offense; that the court erred in denying him a postponement; and that the court improperly seated a juror who said she would "judge harshly" a case involving "alcoholism, use of alcohol, or any alcohol driving offenses."

Held: Affirmed.

Section 16-303(d) of the Transportation Article prohibits driving on a revoked license. Section 16-303(c) prohibits driving on a suspended license and has been interpreted to require proof that the defendant had knowledge of the suspension. The opinion concludes that because these provisions were enacted at the same time, shared a common purpose, and for 75 years were part of the same single sentence, they are *in pari materia*. Thus, § 16-303(d) also has a knowledge element that the State should prove and that juries should be instructed on.

The opinion concludes that the circuit court erred in denying a requested knowledge instruction for this offense. However, the appellate court also concluded that this error was harmless for a number of reasons, including the fact that the appellant stipulated that his license was under revocation at the time he was arrested.

As to the other issues in the case, the Court stated that the circuit court did not abuse its discretion in denying Adkins a postponement and did not err in sitting a juror with strong views on drunk driving. Although the juror asserted she would "judge harshly" a case involving "alcoholism, use of alcohol, or any alcohol driving offense," Adkins waived any objection to the juror's seating by, among other things, stating that the panel was acceptable.

Julian Andrew Johnson v. State of Maryland, Nos. 1924, 1926, 1929, and 1930, September Term 2021, filed May 30, 2023. Opinion by Zic, J.

https://mdcourts.gov/data/opinions/cosa/2023/1924s21.pdf

CRIMINAL PROCEDURE – "JUVENILE RESTORATION ACT"

Facts:

Between September and December 1998, when he was under the age of 18, Mr. Johnson engaged in a series of crimes that resulted in four sets of charges in the Circuit Court for Wicomico County. Mr. Johnson was charged as an adult and convicted in all four cases and was sentenced in those cases to, cumulatively, 50 years' imprisonment.

The aggregate sentence in Case No. 116 was 30 years' imprisonment (15 years each for armed robbery and first-degree assault). The aggregate sentence in Case No. 115 was 20 years' imprisonment (15 years for first-degree burglary and 5 years for use of a handgun in a felony), to be served consecutively to the sentence in Case No. 116. The sentence in Case No. 114 was 10 years' imprisonment, and the sentence in Case No. 365 was 5 years' imprisonment, both to be served concurrently to the sentence in Case No. 115.

On November 21, 2021, in the Circuit Court for Wicomico County, Mr. Johnson filed a Motion for Modification of Sentence pursuant to Criminal Procedure § 8-110, also known as the Juvenile Restoration Act ("JUVRA"), in all four cases and requested a hearing in each motion.

On January 28, 2022, the circuit court denied all four of Mr. Johnson's motions, without a hearing, for lack of JUVRA eligibility. Mr. Johnson noted timely appeals in all four cases, and the Appellate Court of Maryland granted an unopposed motion to consolidate these appeals.

Held: Affirmed in part. Reversed and remanded in part.

JUVRA provides that it applies only "to an individual who . . . was convicted as an adult for an offense committed when the individual was a minor" and who "has been imprisoned for at least 20 years for the offense." Crim. Proc. § 8-110(a). The statute, therefore, applies to individuals who have been sentenced to "at least 20 years for the offense." To determine whether an individual meets that requirement, the Court first defined "sentence" and "offense" for purposes of JUVRA. The Court held that a "sentence" for "the offense" is at least 20 years when the punishment for all counts within one case adds up to at least 20 years' incarceration. The Court reasoned, in part, that to disallow this kind of aggregation could produce absurd results, such as making JUVRA eligibility dependent on the vagaries of sentencing structure.

Also, the Court declined to read the statute to allow aggregation of sentences across multiple cases when the criminal conduct in each case was committed while the individual was a minor. The Court reasoned that the Maryland General Assembly's intent is unclear—in the statutory language, statutory context, and legislative history—as to whether such a reading of the statute is permissible.

For Case No. 116, the Appellate Court reversed the judgment of the Circuit Court for Wicomico County and remanded for the court to consider the merits of Mr. Johnson's motion. The Court held that the "sentence" for "the offense" was more than 20 years because the punishment for each of the two counts in this case was 15 years' incarceration, consecutive to one another, which adds up to 30 years' incarceration. Because Mr. Johnson has served approximately 24 years and the "sentence" for the "offense" in this case was at least 20 years, Case No. 116 is eligible for JUVRA review.

For Case Nos. 115, 114, and 365, the Appellate Court affirmed the judgments of the Circuit Court for Wicomico County. Because none of the "sentences" for the "offenses," as defined above, in Case Nos. 115, 114, and 365 were at least 20 years, these cases are not eligible for JUVRA review. Additionally, the Court noted that because JUVRA does not permit the Court to aggregate the sentences across Mr. Johnson's four cases, Mr. Johnson has only been serving time on the 30-year sentence for Case No. 116; therefore, he could not have served "at least 20 years" on any of the other three cases even if they were otherwise eligible for JUVRA review.

Thomas Zadnik v. Richard F. Ambinder, M.D., et al., No. 803, September Term 2022, filed May 23, 2023. Opinion by Beachley, J.

https://mdcourts.gov/data/opinions/cosa/2023/0803s22.pdf

WRONGFUL DEATH – STANDING – SPOUSE OF DECEASED – FOREIGN MARRIAGE

STANDARD OF REVIEW – MOTION TO DISMISS – LACK OF STANDING – REVIEWED AS SUMMARY JUDGMENT

TESTIMONY – DEAD MAN'S STATUTE – WRONGFUL DEATH

Facts:

Appellant filed a wrongful death claim against appellees alleging medical negligence in the treatment of deceased, Margaret Conway. Appellant alleged that he was Ms. Conway's common law husband under Pennsylvania law. Appellee Dr. Ambinder filed a motion to dismiss and/or for summary judgment, alleging that appellant did not have standing because he and Ms. Conway were never married. Appellant argued that he and Ms. Conway exchanged vows in Pennsylvania in 1998 creating a common law marriage in Pennsylvania, and provided an affidavit specifically describing the private ceremony.

The circuit court dismissed the case for lack of standing, ruling that appellant's testimony was not sufficient to prove a common law marriage without evidence that he and Ms. Conway had a reputation in the community of being married.

Held: Reversed.

The Court described the two modalities for proving a common law marriage in Pennsylvania. First, when direct evidence of words exchanged with the present intent of forming a marriage ("*verba in praesenti*") is available, the party alleging marriage must rely on that evidence to prove the existence of a marriage. Second, in situations where evidence of *verba in praesenti* is unavailable, a party may establish a rebuttable presumption of marriage through evidence of cohabitation and a general reputation in the community of being married.

After establishing that appellant's testimony would not be barred by the Dead Man's Statute, the Court held that Pennsylvania law allows for a party to prove the existence of a marriage solely through that party's own testimony. Because evidence of *verba in praesenti* is available through appellant's testimony, evidence of cohabitation and reputation is irrelevant except to bolster or diminish appellant's credibility. The circuit court therefore erred in granting summary judgment.

In the Matter of Mark McCloy, Case No. 673, September Term 2022. Opinion filed on May 1, 2023, by Berger, J.

https://mdcourts.gov/data/opinions/cosa/2023/0673s22.pdf

FIREARMS REGULATIONS – DISQUALIFYING CRIME – EQUIVALENT STATUTES – DUE PROCESS – MODIFICATION OF ADMINISTRATIVE DECISION – ESTOPPEL – EX POST FACTO

Facts:

This case arises from the Maryland State Police's ("MSP") denial of Mark McCloy's 2021 application for a handgun qualification license ("HQL"). In 1999, McCloy pleaded guilty to witness tampering, in violation of 18 U.S.C. § 1512(c)(1), based upon his attempts to dissuade two co-workers from participating in an Equal employment Opportunity Commission ("EEOC") proceeding against him. In 2015, McCloy submitted to the MSP an application for an HQL. After initially denying his application, the MSP reversed its decision and granted the HQL. McCloy used the HQL to purchase several handguns. In 2021, McCloy submitted another application for an HQL and was again denied, this time based on the MSP's finding that McCloy's 1999 conviction was a "disqualifying crime."

McCloy appealed the MSP's denial to the Office of Administrative Hearings ("OAH"). Prior to a hearing before an administrative law judge ("ALJ"), the MSP informed McCloy that his 1999 conviction was a "disqualifying crime" due the MSP's determination that 18 U.S.C. § 1512(c)(1) was equivalent to Section 9-305(a) of Maryland Criminal Law Article ("CR"). Following the hearing, the ALJ affirmed the MSP's denial of McCloy's HQL application, however, the ALJ's reasoning was on grounds not advanced by the MSP nor argued at the hearing. McCloy appealed the ALJ's determination to the Circuit Court for Queen Anne's County.

The circuit court determined that the ALJ erred by pursuing grounds for the denial of the HQL not argued by the MSP. Nevertheless, the circuit court ruled that the MSP correctly determined that McCloy's 1999 federal conviction was equivalent to CR § 9-305(a). Because the Maryland law was a misdemeanor offense punishable by more than two years' imprisonment, it met the definition of a "disqualifying crime." Therefore, the MSP properly denied McCloy's HQL application. Further, the circuit court ruled that McCloy was not entitled to equitable relief based on the arguments he advanced regarding ex post facto prohibitions, due process, or estoppel. Thereafter, the circuit modified and affirmed the ALJ's determination that the MSP properly denied McCloy's HQL application. McCloy appealed the circuit court's ruling to the Appellate Court of Maryland.

Held: Affirmed.

The Appellate Court of Maryland affirmed the circuit court's modification and affirmance of the ALJ's affirmance of the MSP's denial of McCloy's HQL application. In so doing, the Appellate Court of Maryland affirmed the MSP's determination that McCloy's 1999 federal conviction was a "disqualifying crime" due to 18 U.S.C. § 1512(c)(1) being equivalent to Section 9-305(a) of Maryland's Criminal Law Article, a misdemeanor statute with a penalty of more than two years' imprisonment.

In affirming the MSP's equivalency determination, the Court referenced prior precedent that required the MSP to compare McCloy's out-of-state conviction with a comparable Maryland statute in existence at the time he submitted his HQL application, and not as Maryland law existed at the time of McCloy's 1999 conviction. Building upon these prior holdings, the Appellate Court of Maryland provided a clearer standard for reviewing courts to utilize when assessing the MSP's determination that an out-of-state conviction was equivalent to a Maryland misdemeanor punishable by more than two years' imprisonment, resulting in the out-of-state conviction constituting a "disqualifying crime" that prohibits an applicant from obtaining an HQL.

In making such a statement of law, the Court held that a reviewing court must apply a two-step analysis. First, the reviewing court must determine whether a reasonable mind could conclude that the out-of-state and Maryland statutes prohibit similar conduct, based upon a comparison of the elements of the respective statutes. Next, the reviewing court must determine whether a reasonable mind could conclude that the conduct producing the applicant's out-of-state conviction would be prohibited by the purportedly "equivalent" Maryland statute. If the reviewing court answers both these inquiries in the affirmative, then the determination that the out-of-state conviction is a "disqualifying crime" should be affirmed.

Applying this standard, the Court held that, based upon a comparison of the elements of 18 U.S.C. § 1512(c)(1) and CR § 9-305(a), both statutes prohibited a defendant from intentionally attempting to interfere with another party's participation in an adjudicatory proceeding, such as the disposition of McCloy's EEOC case. Further, the Court held that McCloy's attempt to reach a monetary resolution with one co-worker to dissuade her from participating in the EEOC proceeding, and his requesting another co-worker to also not testify in that proceeding, could satisfy CR § 9-305(a) requirement that the defendant to use "corrupt means." Therefore, the Court affirmed the MSP's determination that McCloy's 1999 conviction under 18 U.S.C. § 1512(c)(1) was equivalent to CR § 9-305(a). Accordingly, the MSP correctly determined McCloy had committed a "disqualifying crime" that precluded him from obtaining an HQL.

Additionally, the Court addressed McCloy's equitable arguments. First, the Court held that the MSP's approval of McCloy's 2015 HQL application could not estop the MSP from denying his 2021 HQL application based on the MSP correctly determining, upon the most recent review of McCloy's criminal record, that his 1999 conviction was a disqualifying crime, despite the MSP not reaching this conclusion following the 2015 application.

Next, the Court held that denying McCloy's 2021 HQL application based his 1999 conviction being found equivalent to a Maryland statute that did not in exist at the time of his conviction did

not violate the *ex post facto* clauses of the Maryland and United States constitutions. The MSP's determination did not retroactively punish McCloy for his prior conduct; rather, it prohibited his current possession of a firearm, and such regulatory schemes generally do not run afoul of the *ex post facto* prohibition.

Lastly, the Court held that McCloy's due process rights were not violated due to a lack of notice prior to his 1999 guilty plea that his plea could result in denial of his ability to lawfully own a firearm in Maryland based upon the MSP's subsequent determination that his conviction was equivalent to a Maryland statute not in existence at the time of McCloy's plea. The Court noted that any such concerns may be better addressed in a post-conviction proceeding in the federal court where McCloy entered his plea, rather than in the appeal of his HQL application's denial.

ATTORNEY DISCIPLINE

*

By an Order of the Supreme Court of Maryland dated May 16, 2023, the following attorney has been indefinitely suspended:

STEPHEN ANTHONY GLESSNER

*

This is to certify that the name of

CHAUNCEY BAYARCULUS JOHNSON, SR.

has been replaced on the register of attorneys to practice law in this state as of May 25, 2023.

*

By an Order of the Supreme Court of Maryland dated May 25, 2023, the following attorney has been disbarred by consent:

JUSTIN MICHAEL WINTER

*

RULES ORDERS

*

A Rules Order pertaining to the 216th Report of the Standing Committee on Rules of Practice and Procedure was filed on May 8, 2023.

http://mdcourts.gov/sites/default/files/rules/order/ro216.pdf

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UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
A		
A1A Properties v. Cohn	1902 *	May 12, 2023
Abangma, Christopher v. Pulliam	0437	May 17, 2023
B		
Bell, Kent M. v. State	1728	May 31, 2023
Billings, Brian Michael v. State	0722	May 19, 2023
Biscotti, Michael v. State	1954 *	May 5, 2023
Blankumsee, Azaniah v. State	0213	May 18, 2023
C		
Campbell, Juwan Howard v. State	0185	May 17, 2023
Carannante, Pasquale v. Pittman	1012	May 23, 2023
Cochran, David Howard v. State	0777	May 8, 2023
Collier, Jerome v. State	0780	May 16, 2023
Cty. Comm'rs, Caroline Cty. v. Wood Farm	0806	May 23, 2023
D		
Davis, Ricky v. State	0533	May 17, 2023
Davis, Ronald v. State	0609	May 26, 2023
E		
Engles, Christopher James v. State	0128	May 1, 2023
Estate of Shand, Leonard v. City of Hyattsville	1266	May 31, 2023
F		
Fletcher, Brian Jerome v. State	0596 *	May 15, 2023
Foster, Edward G. v. State	0179	May 19, 2023
H		
Hart, Thomas W. v. Prince George's Cty. Police Dept.	0826	May 31, 2023
Holder, Justin v. Young	1145	May 26, 2023
Howard, Deronta v. Dept. of Pub. Safety & Corr. Servs.	0794	May 17, 2023

September Term 2022
*	September Term 2021

Hunt, Nicholas v. State	0485	May 8, 2023
I		
Ilkhan, Omid v. Critical Care Professionals	0280	May 9, 2023
In re: I.W.	1404	May 25, 2023
In re: J.S.	1600	May 18, 2023
In re: Su.N., Sa.N., & So.N.	1436	May 16, 2023
In the Matter of Shing, Doreen	0417 *	May 17, 2023
In the Matter of the Estate of Parikh, Dinesh O.	0807	May 18, 2023
J		
Jackson, Datwain v. State	1053	May 8, 2023
Johnson, Duane Corey v. State	0502	May 16, 2023
K		
Kochhar, Gina v. Miller, Long & Arnold Co., Inc.	0897	May 19, 2023
L		
L.Q. v. A.A.	0837	May 5, 2023
M		
Matter of Conrad, Joseph	0351	May 3, 2023
Mays, Marcellis v. State	0666	May 19, 2023
Millhouse, Anthony Lavar v. State	1606	May 31, 2023
Murdy, Benjamin Thomas v. State	0214	May 16, 2023
P		
Papa Menu, Inc. v. GW Real Estate	0698	May 15, 2023
Payne, Andrew v. Payne	0804	May 24, 2023
Petition of Md. Off. Of People's Counsel	0775	May 9, 2023
Pierce, Kevin Lee, Jr. v. State	0792	May 10, 2023
R		
Reeder, Dajuan v. State	1027	May 17, 2023
Rone, Sean Anthony v. State	0615	May 22, 2023
S		
S., Ashton v. State	0061	May 4, 2023
Sleet, Deandre v. State	0709	May 22, 2023
Sydnor, Davonne v. State	1286	May 26, 2023
T		
Thomas, Steven Anthony v. State	0657 *	May 8, 2023

September Term 2022
* September Term 2021

U

Uncle Eddie's Brokedown Palace v. Young	1457	May 26, 2023

W

Williams, Tammy v. Bd. Of Ed., Prince George's Cnty.	0480	May 16, 2023
Wozar, Mark Robert Michael v. Wozar	1842	May 24, 2023

Y

Young, Michael v. State	0830 *	May 10, 2023

September Term 2022

* September Term 2021