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http://www.mdcourts.gov/opinions/coa/2016/9a15ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

On behalf of the Attorney Grievance Commission, Petitioner, Bar Counsel filed with the Court of Appeals a "Petition for Disciplinary or Remedial Action," alleging that the United States Court of Appeals for the Fourth Circuit ("the Fourth Circuit") had suspended Mark Howard Allenbaugh ("Allenbaugh"), Respondent, from the practice of law before the Fourth Circuit for two years, based on his failure to competently and diligently represent a client and to respond to court orders. Bar Counsel also filed a second Petition for Disciplinary or Remedial Action, alleging that Allenbaugh had engaged in misconduct in representing a client in an immigration matter. In separate orders, the Court of Appeals designated the same hearing judge to hear the reciprocal discipline matter and the immigration matter. Bar Counsel filed a motion to consolidate the two pending attorney discipline proceedings, which the Court of Appeals granted.

The hearing judge conducted a hearing and found the following facts as to the reciprocal discipline matter. Allenbaugh, a member of the Fourth Circuit's Criminal Justice Act Panel, was appointed to represent a client in a criminal appeal. The Fourth Circuit directed Allenbaugh to file a brief and joint appendix by a certain deadline. Allenbaugh filed a motion to extend the deadline, which the Fourth Circuit granted. Allenbaugh filed a second motion to extend the deadline, which the Fourth Circuit deferred pending the filing of the brief and joint appendix. Allenbaugh never filed the brief and joint appendix. Allenbaugh filed a third motion to extend the deadline, which the Fourth Circuit denied. On two occasions, Allenbaugh promised the Clerk of the Court that he would file the brief and joint appendix by a certain date, but failed to follow through. The Fourth Circuit's Standing Panel on Attorney Discipline ("the Standing Panel") ordered Allenbaugh to show cause why his appointment as counsel in the criminal appeal should not be struck, and why his membership on the Criminal Justice Act Panel should not be struck. Allenbaugh failed to respond to the show cause order. The Standing Panel struck

Allenbaugh's appointment as counsel in the criminal appeal and his membership on the Criminal Justice Act Panel, and ordered Allenbaugh to show cause why additional discipline should not be imposed. Allenbaugh failed to respond to the show cause order. The Fourth Circuit suspended Allenbaugh from the practice of law in that Court for two years and fined Allenbaugh $2,000.

As to the reciprocal discipline matter, the hearing judge concluded that Allenbaugh had violated Maryland Lawyers' Rules of Professional Conduct ("MLRPC") 1.1 (Competence), 1.3 (Diligence), 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party and Attorney), 8.1(b) (Disciplinary Matters), 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice), and 8.4(a) (Violating the MLRPC).

The hearing judge found the following facts as to the immigration matter. A Canadian citizen entered the United States on a non-immigrant, temporary visa and retained Allenbaugh to obtain visas, permanent residency, and Social Security cards. The client paid Allenbaugh $5,000, which Allenbaugh did not deposit in an attorney trust account, despite not having the client's written consent for Allenbaugh to deposit the funds in an account other than an attorney trust account. Allenbaugh agreed to obtain an L-1 visa for the client, despite the circumstance that the client was ineligible for an L-1 visa. The client's wife and daughters entered the United States on non-immigrant, temporary visas. The client's wife returned to Canada and was subsequently denied re-entry into the United States because she did not have the proper type of visa and because she had stayed in the United States after her prior visa expired. The client requested assistance from Allenbaugh, who did nothing to help with the client's wife's inadmissibility to the United States. The client and his daughters returned to Canada, and face being found inadmissible if they attempt to re-enter the United States. Aside from advising the client to find a job in California that paid a six-figure salary to facilitate the immigration process, Allenbaugh provided no further assistance to the client and did not respond to the client's requests for updates.

After the client filed a complaint against Allenbaugh, Bar Counsel requested a response by a certain deadline. Allenbaugh requested and was granted an extension, but failed to respond by then. Bar Counsel again requested a response. In a letter, Allenbaugh briefly summarized his representation of the client and requested another extension, which Bar Counsel granted. Allenbaugh again failed to meet the deadline. Bar Counsel again requested a response, and Allenbaugh again failed to respond. Bar Counsel yet again requested a response, and Allenbaugh again briefly summarized his representation of the client. Bar Counsel requested certain documents, which Allenbaugh failed to provide. An investigator for Bar Counsel made two appointments with Allenbaugh, who failed to keep either appointment.

As to the immigration matter, the hearing judge concluded that Allenbaugh had violated MLRPC 1.1 (Competence), 1.4(a)(2) (Communication), 1.5(a) (Reasonable Fees), 1.15(a), 1.15(c) (Safekeeping Property), 8.1(b) (Disciplinary Matters), 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice), and 8.4(a) (Violating the MLRPC).

The Court of Appeals heard oral argument, at which Allenbaugh failed to appear. The Court issued a *per curiam* order in which it disbarred Allenbaugh.

Held: Disbarment is the appropriate sanction

The Court of Appeals upheld the hearing judge's conclusions of law and explained why disbarment was the appropriate sanction for Allenbaugh's misconduct. The Court stated that, as to the reciprocal discipline matter, Allenbaugh disregarded his client's interest, failed to comply with court orders, and failed to do the very work that he was appointed to do—file a brief and joint appendix. The Court stated that, as to the immigration matter, Allenbaugh failed to represent the client competently and diligently, charged unreasonable fees, failed to place fees in trust, failed to respond to Bar Counsel, and caused harm to the client and his family, who may be prevented from re-entering the United States. As to both matters, the Court noted the need to protect potential future clients from such misconduct. The Court determined that Allenbaugh's misconduct was aggravated by seven aggravating factors: (1) a pattern of misconduct; (2) multiple violations of the MLRPC; (3) bad faith obstruction of the attorney discipline proceeding; (4) a refusal to acknowledge the misconduct's wrongful nature; (5) the victim's vulnerability; (6) substantial experience in the practice of law; and (7) indifference to making restitution or rectifying the misconduct's consequences. The Court observed that Allenbaugh had failed to establish any mitigating factors. In sum, the Court concluded that the flagrancy of Allenbaugh's misconduct in the reciprocal discipline matter and the immigration matter, along with the multitude of aggravating factors, warranted disbarment.

Attorney Grievance Commission of Maryland v. Shakaira Simone Mollock, Misc. Docket AG No. 54, September Term 2015, filed September 30, 2016. Opinion by Getty, J.

http://www.mdcourts.gov/opinions/coa/2016/54a15ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland ("Petitioner"), by Glenn M. Grossman, Bar Counsel, and Lydia E. Lawless, Assistant Bar Counsel, filed a Petition for Disciplinary or Remedial Action and after the disciplinary hearing recommended that we disbar Respondent for violating the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"). The Petition alleged that Respondent, based on her representation of Michael C. King and Marlow Bates, had violated several rules of the MLRPC: Rule 1.1 (Competence); Rule 1.3 (Diligence); Rule 1.4(a) and (b) (Communication); Rule 1.5(a) and (b) (Fees); Rule 1.15(a), (c), and (e) (Safekeeping Property); Rule 1.16(d) (Declining or Terminating Representation); Rule 8.1(a) and (b) (Bar Admissions and Disciplinary Matters); and Rule 8.4(a), (c), and (d) (Misconduct). The Court of Appeals referred the Petition to the Honorable Robert E. Cahill of the Circuit Court for Baltimore County for an evidentiary hearing and to issue findings of fact and recommended conclusions of law.

The hearing judge found that Respondent accepted fees from both clients, failed to place the fees in an attorney trust account, and refused to return the fees despite performing little to no work of value. In addition, Respondent made misrepresentations to her clients regarding the status of their cases, and failed to respond to numerous requests for information during Bar Counsel's investigation. Moreover, Respondent submitted falsified evidence to Bar Counsel in an effort to cover up her lack of diligence and competence. Thus, the hearing judge determined that Respondent violated MLRPC 1.1, 1.3, 1.4(a) and (b), 1.5(a), 1.15(a), (c), and (e), 1.16(d), 8.1(a) and (b), and 8.4(a), (c), and (d).

Held: Disbarment is the appropriate sanction

There was clear and convincing evidence to support the hearing judge's conclusions and the Court upheld the violations. The Court disbarred Respondent because her numerous misrepresentations to both clients and Bar Counsel, along with her failure to return the clients' unearned fees, demonstrated intentional dishonest conduct. Therefore, the Court issued its *per curiam* order disbarring Respondent on September 9, 2016.

Attorney Grievance Commission of Maryland v. Steven Lee Shockett, Misc. Docket AG No. 19, September Term 2015, filed October 5, 2016. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2016/19a15ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland ("AGC"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action ("Petition") against Respondent Steven Lee Shockett. Bar Counsel charged Shockett with violating the Maryland Lawyers' Rules of Professional Conduct ("MLRPC") in his capacity as attorney for Thankamma Indukumar, Tony Alvarez, Jr., and David Leader. Specifically, Bar Counsel alleged that Shockett violated the following rules: (1) MLRPC 1.4(a)–(b) (Communication); (2) MLRPC 1.15(a) (Safekeeping Property); (3) MLRPC 8.1(b) (Bar Admission and Disciplinary Matters); and (4) MLRPC 8.4(a)–(d) (Misconduct).

Shockett was admitted to the Maryland Bar in December 1985. On March 14, 2014, he was decertified from the practice of law in Maryland because he failed to pay his annual assessment to the Client Protection Fund. The AGC's investigation of Shockett was triggered by the complaints of Thankamma Indukumar, Tony Alvarez, Jr., and David Leader. As to each complaint, the hearing judge made the following findings of fact by clear and convincing evidence:

In 2012, Thankamma Indukumar retained Shockett to create a trust to benefit her grandchildren. Indukumar signed an Irrevocable Trust Agreement ("the Agreement") naming Shockett as the trustee, and shortly thereafter she gave Shockett $50,000 to place into the trust. In February 2014, Shockett informed Indukumar and her husband, Pakkunilathu Indukumar, that the value of the trust had grown to $62,500.00, and asked them if he could withdraw the funds to purchase gold and notes. The Indukumars directed Shockett to leave the funds in the trust and requested an account statement from Chapin Davis. The statement showed that as of December 31, 2013, the trust account had a balance of $102.57. The hearing judge found that Shockett removed no less than $61,077.71 from the Indukumars' account without their authorization.

After the Indukumars contacted Shockett about the missing funds, he initially agreed to return the money to the trust. Shockett, however, stopped responding to Thankamma's e-mails, and never returned any of the missing funds. On June 26, 2014, Thankamma filed suit against Shockett in the Circuit Court for Baltimore City. On the same day, she filed a complaint against Shockett with the AGC through her attorney, John A. Hayden, III, Esq.

In December 2013, Tony Alvarez retained Shockett to represent him in his divorce action and paid Shockett a $5,000 retainer. Shockett told Alvarez that he had drafted and filed a Complaint

for Absolute Divorce and served it on Alvarez's wife. Shockett also informed Alvarez that a hearing would likely be scheduled for April or May 2014. In fact, Shockett neither filed a complaint nor served one on Alvarez's wife. Alvarez has not heard from Shockett since February 2014. On May 1, 2014, Alvarez filed a complaint with the AGC.

David Leader retained Shockett in 2013 to represent him in Financial Industry Regulatory Authority ("FINRA") arbitration. Leader's previous attorney referred him to Shockett, and Leader then authorized the attorney to transfer his $2,500 retainer to Shockett. On or about December 30, 2013, Shockett sent Leader a copy of a proposed complaint, but Shockett never filed the complaint. Leader has not heard from Shockett since March 4, 2014. On April 17, 2014, Leader filed a complaint against Shockett with the AGC.

The hearing judge found by clear and convincing evidence that Shockett violated MLRPC 1.4(a)(1)–(3) and (b), 1.15(a), and 8.4(a)–(d). She found that Shockett did not violate MLRPC 8.1(b). Bar Counsel took exception to the hearing judge's finding that only one aggravating factor—multiple violations of the MLRPC—applied in this case.

Held: Disbarment is the appropriate sanction.

The Court of Appeals held that clear and convincing evidence supported the hearing judge's conclusion that Shockett violated MLRPC 1.4(a)(1)–(3) and (b); 1.15(a); and 8.4(a)–(d). Shockett's failure to promptly and reasonably communicate with any of his three complaining clients constituted a violation of MLRPC 1.4(a)(1)–(3) and (b). When Shockett removed over $60,000 from the Indukumar trust fund without their informed consent, he violated MLRPC 1.15(a). Additionally, Shockett's theft from the Indukumar trust clearly constituted a violation of MLRPC 8.4(b), (c), and (d). Lastly, when taken together, the Court held that these violations result in a breach of MLRPC 8.4(a). Shockett presented no "compelling extenuating circumstances" that warranted any lesser sanction than disbarment.

As to Bar Counsel's exception, the Court declined to consider whether other aggravating factors applied to Shockett's case.

John T. Mitchell v. Maryland Motor Vehicle Administration, No. 10, September Term 2016, filed October 28, 2016. Opinion by Harrell, J.

http://www.mdcourts.gov/opinions/coa/2016/10a16.pdf

CONSTITUTIONAL LAW – FIRST AMENDMENT – MOTOR VEHICLE VANITY LICENSE PLATE REGULATIONS

CONSTITUTIONAL LAW – GOVERNMENT SPEECH

CONSTITUTIONAL LAW – PRIVATE SPEECH ON GOVERNMENT PROPERTY

Facts:

Petitioner, John T. Mitchell, applied for and received from the Maryland Motor Vehicle Administration (MVA) in 2009 vanity license plates bearing the word "MIERDA." Two years later, after receiving a complaint about Mitchell's plates, the MVA investigated the Spanish word "mierda" and determined that it translates into "shit" in English, an interpretation admitted by Mitchell. Because "shit" appears on the MVA's "objectionable plate list," a catalogue of terms the MVA proscribes pursuant to its authority in COMAR 11.15.29.02(D) to deny or rescind vanity plate messages containing "profanities, epithets, or obscenities," the MVA rescinded Mitchell's vanity plates.

Mitchell challenged the MVA's rescission of his plates, but, in *seriatim*, an Office of Administrative Hearings Administrative Law Judge, the Circuit Court for Prince George's County, and the Court of Special Appeals affirmed the MVA's decision. The Court of Appeals granted Mitchell's Petition for a Writ of Certiorari, *Mitchell v. Maryland Motor Vehicle Admin.*, 447 Md. 297, 135 A.3d 416 (2016), to consider whether the Court of Special Appeals erred in its application of the Supreme Court's First Amendment precedent and its decision to uphold the MVA's action.

Held: Affirmed.

The Court of Appeals held that the MVA rescinded permissibly Mitchell's vanity plates pursuant to COMAR 11.15.29.02(D)'s restriction of vanity messages bearing "profanities, epithets, or obscenities." Applying the Supreme Court's government speech and public forum doctrines, the Court of Appeals reasoned that: vanity messages constitute private speech in a nonpublic forum; the MVA regulation and the agency's decision to rescind Mitchell's plates satisfy the Supreme Court's requirement that government restrictions of speech in a nonpublic forum must be reasonable and viewpoint neutral; and, the MVA's decision was free of legal error and supported by substantial evidence.

In *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015) (involving commemorative specialty vehicle license plates), the Supreme Court used three factors to determine whether a communication constitutes speech by the government or by a private actor: whether, historically, the government has spoken to the public via the medium in question; whether the message's audience would believe reasonably the government to be the speaker; and, the extent to which the government controls the communication. The Court of Appeals determined that Maryland has not communicated historically to the public via vanity plate messages; observers attribute reasonably vanity plate messages to vehicle owners, not to the State; and, the MVA does not control vanity messages to the extent private speech transforms into government speech. Accordingly, the Court found that vanity plate messages are private speech on government property, not government speech.

The Supreme Court divides private speech on government property into four categories to determine what standard of judicial review scrutiny applies to government restrictions of said speech. The traditional public forum encompasses venues that have been used historically for public speech and assembly, such as public streets and public parks. The designated public forum exists when the government opens a non-traditional medium for use as a public forum. Speech restrictions in these fora face strict scrutiny. When the government restricts the use of a forum by speaker or by topic, it creates a limited public forum. Finally, a nonpublic forum exists where the State happens to allow private speech in the pursuit of its own governmental purposes. Courts review speech restrictions in the limited public forum and nonpublic forum for reasonableness and viewpoint neutrality.

The *Walker* Court reasoned that, to differentiate public and nonpublic fora, courts must look to whether the government intended to open a public forum, as evidenced by State policy and practice and the forum's nature and compatibility with expression. The Court of Appeals considered the State's twin purposes in regard to vanity license plates of vehicle identification and revenue generation, as well as the restrictions the State places on access to the forum and the words that can be communicated. The Court reviewed finally the fact that vanity plates are different in kind from fora such as public streets and parks, which epitomize free expression and the marketplace of ideas. These factors, the Court determined, do not evidence a State intent for vanity plates to be a public forum, and, therefore, Maryland vanity plates constitute a nonpublic forum.

The Court of Appeals determined that the MVA's regulation restricting the use of "profanities, epithets, or obscenities," and its application to Mitchell's plates, satisfied the requisite standards of reasonableness and viewpoint neutrality. Even though observers of vanity plates understand that the vehicle owner is the speaker of the plate's message, they nonetheless perceive the State as authorizing the message. The State has a reasonable interest in not associating itself with perceived profanities such as "MIERDA." Moreover, it is reasonable for the MVA to wish to protect members of the public, particularly minors, from witnessing expletives that may be understood by many as offensive. With respect to viewpoint neutrality, the regulation does not

concern itself with a vehicle owner's intent in choosing a particular message, only the words that convey its sentiment.

Finally, the Court of Appeals held that the MVA's rescission of Mitchell's plate was based on substantial evidence and was free of legal error. Under common dictionary definitions of "profanity" and "obscenity," both "mierda" and "shit" could qualify as either type of restricted term. Additionally, as conceded by Mitchell, "mierda's" primary English translation is "shit," as the MVA discovered when it researched the term more than two years after issuing Mitchell's plates. Accordingly, the MVA rescinded properly Mitchell's "MIERDA" vanity plates.

Daniela Bottini, et al. v. Department of Finance, Montgomery County, Maryland, No. 3, September Term 2016, filed October 7, 2016. Opinion by Watts, J.

Adkins, J., dissents.

http://www.mdcourts.gov/opinions/coa/2016/3a16.pdf

FORFEITURE – CONTROLLED DANGEROUS SUBSTANCE VIOLATIONS – MD. CODE ANN., CRIM. PROC. (2001, 2008 REPL. VOL., 2016 SUPP.) § 12-101(m)(1) – PROPERTY – TANGIBLE AND INTANGIBLE PERSONAL PROPERTY – MONEY – BANK ACCOUNT – MD. CODE ANN., CRIM. PROC. (2001, 2008 REPL. VOL., 2016 SUPP.) § 12-304 – DEADLINE FOR FILING COMPLAINT FOR FORFEITURE

Facts:

On April 13, 2012, law enforcement officers of the Montgomery County Department of Police arrested Gianpaolo Bottini ("Gianpaolo"), Petitioner, at his residence for illegal drug activity. Following his arrest, Gianpaolo was released on bond, and was scheduled to return to court on April 16, 2012, for further proceedings. On the morning of April 16, 2012, while free on bond and before appearing in court, Gianpaolo withdrew all of the money contained in two Bank of America bank accounts, titled in his name, totaling $64,388.33. On the same day and a the same time, that exact amount of money--$64,388.33—was deposited into a Bank of America bank account belonging to Gianpaolo's sister, Daniela Bottini ("Daniela"), Petitioner (together with Gianpaolo, "Petitioners"). The following day, April 17, 2012, Daniela wrote herself a check drawn on her Bank of America bank account, opened a bank account in her name only with Capital One, and deposited $63,891.93 into the Capital One bank account.

On April 18, 2012, law enforcement officers obtained subpoenas for both of Gianpaolo's Bank of America bank accounts. At that time, law enforcement discovered that all of the money in Gianpaolo's Bank of America bank accounts had been withdrawn, and they traced the money to Daniela's Capital One bank account. On that same day, a law enforcement officer applied for a search and seizure warrant for Daniela's Capital One bank account. In the application, the law enforcement officer averred that law enforcement had obtained wage records for Gianpaolo, which indicated that Gianpaolo had no reported income in the past year. Indeed, Gianpaolo had no legitimate source of income at all supporting the amount of money contained in his Bank of America bank accounts. This led law enforcement to believe that the money that was transferred from Gianpaolo's Bank of America bank accounts was either the direct proceeds of illegal drug transactions or illegal drug proceeds that had been commingled with legitimate funds.

On April 18, 2012, a judge of the Circuit Court for Montgomery County ("the circuit court") issued a search and seizure warrant for the Capital One bank account. On April 19, 2012, the Montgomery County Department of Police seized the Capital One Bank Account. On that same

day, Montgomery County sent to Petitioners a "Notice of Money Seizure," advising them of its intent to petition for forfeiture.

Approximately one year later, on May 10, 2013, Gianpaolo's criminal charges were resolved, when he was convicted and sentenced to twenty years' imprisonment. On August 1, 2013, less than ninety days after the conclusion of the criminal proceedings, the Department of Finance of Montgomery County, Maryland ("the County"), Respondent, filed in the circuit court a Complaint Petition for Currency Forfeiture as to the Capital One bank account. On August 20, 2013, the County filed an amended complaint. On September 27, 2013, Daniela filed an answer.

On November 18, 2013, the circuit court conducted a hearing. At the hearing, the circuit court treated Daniela's answer as a motion to dismiss. In the answer, Daniela argued that the Capital One bank account was not "money" for purposes of the forfeiture statute, Md. Code Ann., Crim. Proc. (2001, 2008 Repl. Vol., 2016 Supp.) ("CP") §§ 12-101 to 12-505, and that, as a result, the complaint for forfeiture was untimely filed. In the answer, Daniela argued that the bank account was intangible personal property and that the forfeiture statute required that a complaint seeking forfeiture of intangible personal property be filed ninety days after seizure. The County's complaint for forfeiture had been filed more than ninety days after seizure and would have been untimely under that theory. The circuit court rejected that argument and denied the motion to dismiss.

On April 2, 2014, the circuit court conducted a trial. At trial, Daniela again argued that the Capital One bank account was not "money" and that the complaint for forfeiture was untimely filed. At the conclusion of the trial, the circuit court again rejected that argument. The circuit court ruled that only Gianpaolo had any right, title, or claim to the funds in the Capital One bank account, and that Daniela had no right, title, or claim to the funds. The circuit court pointed out, however, that Gianpaolo had one year from the date of his criminal conviction to file an answer to the complaint for forfeiture and to assert a claim to the funds in the Capital One bank account. Thus, the circuit court denied Daniela's claim, but declined to rule on Gianpaolo's claim until a year had passed from Gianpaolo's criminal conviction, i.e., until the time for Gianpaolo to file an answer and claim to the funds had expired.

On May 8, 2014, prior to the expiration of the one-year period, Gianpaolo filed an answer and a request for a hearing. On August 21, 2014, the circuit court conducted a trial. At the conclusion of the trial, the circuit court found that the funds in the Capital One bank account constituted illegal drug proceeds, and, therefore, granted forfeiture of the entire amount. Gianpaolo filed a motion for new trial or, in the alternative, a motion to alter or amend judgment, and the circuit court denied the motion.

Petitioners appealed and, in an unreported opinion, a majority of the panel of the Court of Special Appeals affirmed the judgment of the circuit court. Petitioners thereafter filed a petition for a writ of *certiorari*, which this Court granted. *See Bottini v. Dep't of Fin., Montgomery Cnty.*, 446 Md. 290, 132 A.3d 193 (2016).

Held: Affirmed.

The Court of Appeals held that the funds contained in the Capital One bank account are "money" for purposes of the forfeiture statute under CP § 12-101(m)(1)(iv), and are not a type of tangible or intangible personal property under CP § 12-101(m)(1)(ii); and that, in accordance with CP § 12-304(c)(1), the County timely filed the complaint for forfeiture within ninety days after the final disposition of Gianpaolo's criminal proceedings arising out of the Controlled Dangerous Substances law, the deadline applicable to the filing of a complaint for forfeiture of money.

The Court of Appeals noted, as an initial matter, that it was undisputed that the funds within the Capital One bank account were subject to forfeiture because they were "proceeds traceable to the exchange" of controlled dangerous substances under CP § 12-102(a)(12).

The Court of Appeals examined the plain language of CP § 12-101(m)(1) and stated that the statute distinguishes between money on the one hand and tangible and intangible personal property on the other hand. For purposes of the forfeiture statute, money is distinct from tangible and intangible personal property, as evidenced by the separate classification in CP § 12-101(m)(1) and by the different deadline for filing a complaint for forfeiture of money set forth in CP § 12-304(c)(1).

The Court of Appeals looked to dictionary definitions as a starting point to ascertain the natural and ordinary meaning of the term "money," which is not defined in the forfeiture statute, and concluded that the definitions demonstrated that the term "money," defined in its most narrow sense, means coins and paper money used as cash and currency, and defined in a broader sense, means assets that can easily be converted to cash, or wealth. Utilizing the ordinary definition of "money," the Court stated that it is clear that funds contained in a bank account—which certainly can be said to be a person's assets that can easily be converted to cash—constitute "money." The Court was not persuaded that the definition of the term "money" somehow precluded a determination that funds in a bank account are money, or that the term "money" as used in CP § 12-304(c)(1) or in CP § 12-101(m)(1)(iv), is meant to refer only to the narrowest sense of the term, namely, tangible coins and paper bills.

The Court of Appeals noted that CP § 12-101(m)(1) does not identify a "bank account" as a particular type of property, nor does the forfeiture provide a definition of the term "bank account" that would somehow exclude it from being classified as money. The Court stated that a bank account itself is not property; rather, it is the funds, or money, contained within the bank account that constitute property that is subject to forfeiture. The Court explained that the definition of the term "bank account" in conjunction with the definition and commonsense understanding of the term "money" led to the inescapable conclusion that a bank account holds or contains money and reflects the existence of money.

The Court of Appeals held that, although in one specific respect, CP § 12-102(b)(1) limited the term "money" to coins and paper bills that were physically capable of being located near

contraband at the time of seizure, nothing in CP § 12-102(b)(1) purported to limit the definition of the term "money" in other locations in the forfeiture statute, and the term "money" is not qualified in CP § 12-101(m)(1)(iv) or CP § 12-304(c)(1) by the phrase "found in close proximity" as it was in CP § 12-102(b)(1). The Court concluded that simply because "money" in CP § 12-102(b) refers specifically to money that is found in close proximity to controlled dangerous substances, does not preclude money from having a broader meaning under the forfeiture statute.

The Court of Appeals concluded that it is evident from the plain language of CP § 12-101(m)(1) that the funds in a bank account constitute "money" under CP § 12-101(m)(1)(iv)—and not some type of tangible or intangible personal property under CP § 12-101(m)(1)(ii); and, as such, funds in a bank account are also "money" for purposes of the filing deadline set forth in CP § 12-304(c)(1).

The Court of Appeals pointed out that its holding is fully supported by the legislative history and purpose of the forfeiture statute, and that the legislative history reinforced the conclusion that the plain meaning of the term "money" in CP § 12-101(m)(1)(iv) and CP § 12-304(c)(1) includes the funds in a bank account. The Court of Appeals concluded that the legislative history demonstrated that the term "money," as used in the forfeiture statute, is, and has always been, a broad term encompassing money in all of its forms, as well as coins and currency.

Absent any indication in the relevant statutory language or the legislative history that the General Assembly intended the term "money" to narrowly apply only to coins and paper bills, or for the funds in a bank account to constitute something other than "money" under CP § 12-101(m)(1)(iv) and for purposes of the filing deadline in CP § 12-304(c)(1), the Court declined to construe the forfeiture statute to reach such a strained result.

The Court of Appeals explained that, because the funds in the Capital One bank account constitute money, the County was required to file a complaint for forfeiture within ninety days after the final disposition of the criminal proceedings related to Gianpaolo's charged violations of the Controlled Dangerous Substances law. The Court concluded that the County did so, *i.e.*, that the County timely filed the complaint for forfeiture.

Trendon Washington v. State of Maryland, No. 5, September Term 2016, filed November 1, 2016. Opinion by Adkins, J.

http://www.mdcourts.gov/opinions/coa/2016/5a16.pdf

MARYLAND CODE (2001, 2008 REPL. VOL., 2016 SUPP.), § 8-201 OF THE CRIMINAL PROCEDURE ARTICLE ("CP") – STANDING TO FILE PETITION

Facts:

Trendon Washington was charged with conspiracy to commit murder, first-degree murder, second-degree murder, and handgun offenses in connection with the death of Ricardo Paige. On March 20, 2007, Ricardo Paige was found dead at 502 East 43rd Street in Baltimore, Maryland. He had been shot six times. The police recovered two .45 caliber shell casings from the scene along with a bloody broom and dust pan that appeared to have been used to sweep up spent shell casings. The broom and the dust pan tested positive for blood, but the items were not tested for DNA. On January 21, 2009, a jury convicted Washington of conspiracy to commit murder but could not reach a unanimous verdict on the remaining charges. Washington was sentenced to life imprisonment.

On August 6, 2015, Washington filed a petition, *pro se*, in the Circuit Court for Baltimore City requesting postconviction DNA testing of the broom and dust pan. The Circuit Court dismissed the petition without a hearing on December 14, 2015 because it concluded that Washington did not have standing to file a petition under CP § 8-201(b). The court reasoned that in order to qualify for relief under this statute, a person must be convicted of a crime of violence under Maryland Code (1957, 2012 Repl. Vol.), § 14-101 of the Criminal Law Article ("CR"). Because Washington had been convicted only of conspiracy to commit murder, which is not defined as a crime of violence in CR § 14-101, he lacked standing to pursue the remedies under the statute. Washington noted a direct appeal to the Court of Appeals pursuant to CP § 8-201(k)(6).

Held: Affirmed.

The Court of Appeals held that conspiracy to commit murder is not a petition-eligible offense under Maryland's postconviction DNA testing statute, Md. Code (2001, 2008 Repl. Vol., 2016 Supp.), § 8-201 of the Criminal Procedure Article ("CP"). Section 8-201 of the Criminal Procedure Article grants individuals convicted of certain crimes the right to file a petition requesting postconviction DNA testing. CP § 8-201(b). In 2015, the General Assembly amended the statute to enlarge the class of individuals eligible to file a petition to all those convicted of crimes of violence defined in CR § 14-101. Applying Maryland's rules of statutory construction, the Court concluded that the plain language of both CP § 8-201(b) and CR § 14-101 do not include conspiracy crimes. The Court also rejected Washington's argument that

when interpreting CP § 8-201(b) as part of the broader statutory scheme, the State's duty to preserve DNA evidence postconviction under the statute gives rise to a corresponding ability to test. Reviewing the statutory scheme, the Court concluded that the State has no statutory duty under CP § 8-201 to preserve DNA evidence postconviction in conspiracy cases. Because Washington was convicted of conspiracy to commit murder, the State was not obligated to preserve DNA evidence postconviction under this statute in his case.

The Court of Appeals also held that CP § 8-201 provides sufficient due process to protect a convicted criminal defendant's limited liberty interest in demonstrating his or her innocence through newly discovered evidence under both the U.S. Constitution and the Maryland Declaration of Rights.

The Court further held that CP § 8-201 does not violate the Equal Protection Clause of the U.S. Constitution or equal protection principles of the Maryland Constitution. In so holding, the Court of Appeals declined to adopted the sentence-focused equal protection analysis the Kansas Supreme Court used in *State v. Cheeks*, 310 P.3d 346 (Kan. 2013). Instead, the Court focused on the nature of the crimes at issue. The Court concluded that individuals convicted of first-degree murder and attempted murder and those convicted of conspiracy to commit murder who are sentenced to life imprisonment are not similarly situated because, unlike murder or attempted murder, a conspiracy crime does not generally require physical presence, which makes it less likely that DNA evidence would remedy a wrongful conviction. Therefore, the State does not violate the Equal Protection Clause when it distinguishes between these two groups.

In addition, even if Washington were similarly situated to individuals convicted of first-degree murder or attempted first-degree murder, his equal protection claim does not survive rational basis review for three reasons. First, the State is not under the same statutory obligation to preserve DNA evidence in murder and conspiracy to commit murder cases. Second, it is rational for the State to work to remedy wrongful convictions by providing access to postconviction DNA testing in cases where the testing is most likely to exonerate. Third, fiscal concerns constitute a rational basis for the State to distinguish among similarly situated individuals. Thus, the postconviction DNA statute survived Washington's equal protection challenges. Accordingly, the Court affirmed the Circuit Court's order dismissing Washington's petition.

COURT OF SPECIAL APPEALS

Pedro Almazo Rojas, et. al. v. Board of Liquor License Commissioners for Baltimore City, No. 1020, September Term 2015, filed October 26, 2016. Opinion by Wright, J.

http://www.mdcourts.gov/opinions/cosa/2016/1020s15.pdf

TIME – FEDERAL REGULATION

12 HOURS – SOLAR OR STANDARD TIME

Facts:

This appeal arose from a decision of the Board of Liquor License Commissioners for Baltimore City ("Liquor Board"), concluding that appellants, Amigos Bar and its liquor licensees, violated Rule 4.05(a) Prohibited Hours and Rule 4.18 Illegal Conduct, of the Rules and Regulations for the Liquor Board. At the time, Rule 4.05(a) provided that "[n]o licensee shall permit any person to consume alcoholic beverages on the licensed premises during hours when such sales are prohibited by law." Appellants' liquor license permitted alcohol sales "at any time except from [] 1:00 A.M. until 6:00 A.M. daily and no sales on Sunday from 1:00 A.M. until 6:00 A.M. Monday . . . ." In addition, appellants were barred from having "live entertainment" on the first floor.

It is undisputed that at 1:23 a.m. Eastern Daylight Time on November, 2, 2014, appellants were selling alcohol, and two patrons were seen dancing on appellants' premises. It is also undisputed that on that night, Daylight Saving Time would end at 2:00 a.m. Eastern Daylight Time, at which time Eastern Standard Time would resume. At the Liquor Board hearing, appellants argued there was no violation of Rule 4.05(a) because the statute "makes [no] clarification" regarding Daylight Saving Time and "as long as they close by the second one o'clock they have complied with the statute." The Liquor Board disagreed.

Appellants filed a petition for judicial review of the Liquor Board's decision in the Circuit Court for Baltimore City on December 12, 2014. Following a hearing on June 11, 2015, the Circuit Court for Baltimore City affirmed the Liquor Board's decision. This appeal followed.

Held: Affirmed in part and reversed in part.

The Court upheld the Liquor Board's finding of a Rule 4.05(a) violation. Not only should some deference be given to the Liquor Board in its interpretation and application of its own statute, but courts are bound to recognize hours or time only as it has been recognized and established by law. The standard time of each State observing Daylight Saving Time, including Maryland, "shall be advanced 1 hour beginning at 2 a.m. on the second Sunday in March of each year and ending at 2 a.m. on the first Sunday in November," and "[t]his advanced time shall be the standard time of each zone during such period." 49 C.F.R. § 71.2. Thus, the Liquor Board correctly found that appellants, whose tavern was open at 1:23 a.m. Eastern Daylight Time on November 2, 2014, violated the terms of their license prohibiting alcohol sales "on Sunday from 1:00 A.M. until 6:00 A.M. Monday . . . ."

With regard to the Liquor Board's finding of a Rule 4.18 violation, the Court reversed, as the Liquor Board conceded on appeal that "it erred in finding that [appellants] violated Rule 4.18 by allowing 'live entertainment.'" According to the Liquor Board, "for purposes of Rule 4.18 patron dancing is not within the definition of 'live entertainment.'"

Karen Kunda v. William Morse, et ux., No. 1059, September Term 2014, filed August 31, 2016. Opinion by Reed, J.

http://www.mdcourts.gov/opinions/cosa/2016/1059s14.pdf

DAMAGES – PLEADING – ALLEGATIONS AS TO AMOUNT OF DAMAGE

Facts:

Karen Kunda, the appellant, entered into an agreement to transfer her small business, Hacks Point General Store, Inc. ("Hacks Point") and associated real property in Earleville, Maryland to William and Sharon Morse, the appellees, for a total of $846,950. The agreement stipulated that the appellees would obtain financing for $622,000 of the total purchase price, while the appellant would provide them with a loan to cover the remaining $224,950. The $224,950 loan was to be paid back over the course of 240 months at 8% interest. Furthermore, the agreement provided that upon full repayment of the debt, all the shares of Hacks Point stock would be placed into a voting trust and the appellant, as trustee, would elect the appellees as the directors of the corporation.

Although settlement was originally set for October 4, 2007, it was rescheduled by party addendum to May 1, 2011, to allow the appellees more time to acquire financing. In addition to the settlement date, the addendum also changed the repayment schedule for the $224,950 seller-financed loan: It required the appellees to make a $100,000 deposit on October 21, 2007, and repay the remaining $174,950 balance by June 1, 2008. The appellant testified that while the appellees made their first $100,000 payment in accordance with the addendum on or about October 29, 2007, they only paid $100,000 of the $174,950 that was required by June 2008. Nevertheless, according to the appellant, she agreed to amortize the remaining $74,950 over the period of the next two years. In June of 2010, the appellees allegedly defaulted on the remaining $74,950 debt obligation. Therefore, per the voting trust recital of the agreement, the appellant voted to re-establish herself as the director, president, vice president, and secretary of Hacks Point.

On December 29, 2010, the appellees filed a breach of contract complaint in the Circuit Court for Cecil County, alleging that the appellant breached the agreement by: (1) failing to return the approximately $100,000 the appellees had already paid for the store's stock; (2) preventing the appellees from completing their purchase of Hacks Point; and (3) failing to disclose the illegality of slot machines inside the store. The appellant filed a counter-complaint on July 29, 2011. The appellant alleged that the appellees breached the contract by failing to honor the terms of the agreement and its addendum, and also by failing to pay several outstanding bills of the corporation. She pled for damages in the amount of $75,000 for the remaining debt obligation under the agreement, as well as $10,415 for the corporation's outstanding bills.

At the conclusion of the bench trial, the court discredited the appellant's version of the events. The court found that the appellees had made both the first and second payments of $100,000, and that they were making monthly payments of approximately $500-$700 for the $74,950 that the appellant agreed to amortize. The court also found that the appellant "muscled" the appellees out of the property prior to the expiration of the delinquency period, which, per the agreement, was 30 days after the due date of a payment. Furthermore, the court determined that none of the appellees' words or actions amounted to anticipatory breach. Based on these findings, the court denied all of the appellant's claims.

Likewise, the court denied the appellees' claim for non-disclosure of the illegality of the slot machines, finding that they *may* have known that the slot machines were sources of illegal revenue before signing the agreement. Nevertheless, the court determined that the appellant was in material breach of the agreement and awarded the appellees $200,000 for the initial installments. However, the court declined to award the appellees their lease payments or the monthly payments for the financing of the amortized $74,950. Specifically, it found that the lease payments were not intended to apply to the purchase price, and that there was insufficient evidence to calculate an award for the amortization payments.

Held: Affirmed.

The record indicates that although the appellees did not make their required payment on June 1, 2010, they had not yet entered into default at the time they were evicted. Per the agreement, "[the appellees] shall be in default if any payment is not made *within 30 days of the due date*." Accordingly, because the appellant "muscled" the appellees out of the property before the expiration of the delinquency period, the circuit court was correct in finding that she materially breached the agreement.

Another issue on appeal was whether the appellees satisfied the requirements of Maryland Rule 2-305 regarding the pleading of damages over $75,000. Prior to 2012, Rule 2-305 required that a plaintiff plead a specific amount of damages in the *ad damnum* clause of the complaint. Under the old version of the Rule, if a jury awarded damages in excess of the amount alleged, the plaintiff would have to amend his or her pleading to include a request for the higher amount. Defendants were also able to seek remittitur in those situations.

However, in 2012, the Rule was amended such that plaintiffs no longer have to plead a specific amount of damages. Under the current version of the Rule, "a demand for a money judgment that exceeds $75,000 shall not specify the amount sought, but shall include a general statement that the amount sought exceeds $75,000." Md. Rule 2-305. Here, the appellees pled a specific amount of damages per the requirements of the pre-2012 version of Rule 2-305. Nevertheless, because they pled for an amount greater than $75,000, the purposes of the current Rule were satisfied. Therefore, the appellees were not required to seek leave to amend the *ad damnum* clause or file for a release of the excess award in this Court.

Franklin David Long v. Maryland State Department of Public Safety and Correctional Services, No. 2593, September Term 2014, filed September 28, 2016. Opinion by Salmon, J.

CONSTITUTIONAL LAW – EX POST FACTO LAWS

Using the intent-effects test, the *ex post facto* rights (as guaranteed by Article 17 of the Maryland Declaration of Rights) of a sex offender were not violated when, at the time he was convicted, was required to register for life as a sex offender but subsequent to the dates the crime was committed, Maryland law changed so as to: 1) require him to report to a law enforcement agency more frequently than as of the date he was convicted (every three months as opposed to once annually), and 2) required him to provide the law enforcement agency with far more personal information and more personal identification materials than required at the time of his sex offense.

Facts:

On October 4, 2000, Franklin David Long ("Long") committed a third-degree sexual offense. His victim was an 11-year-old girl.

About ten months after the commission of the crime, on August 6, 2001, Long entered a guilty plea in which he admitted having committed a third-degree sexual offense against the 11-year-old victim. The plea was entered in the Circuit Court for Montgomery County, Maryland. On September 6, 2001, the circuit court sentenced Long to five years' incarceration with all but six months suspended, in favor of five years' probation.

At the time Long committed the crime, and at the time of his sentence, Article 27 § 792(D)(2)(ii)(1) provided that anyone convicted as a third-degree child sexual offender was required to register for life as a sexual offender. Moreover, due to the nature of Long's crimes, he also met the definition of a sexually violent offender; such offenders were also required to register as a sex offender for life.

On the same day that Long was sentenced, he acknowledged receipt of an order for probation upon release from incarceration that contained various conditions of probation, one of which was that he "must register as a sex offender." The order did not specify for how long he was required to register.

In 2009 and 2010, the Maryland Sex Offender Registration Act ("the Act") was amended. The amendments, in so far as here pertinent, were set forth in Maryland Code (2008 Repl. Vol., 2015 Supp.), Criminal Procedures Article ("Crim. Proc.") § 11-701(q)(1)(ii). The amendments to the Act reclassified persons in Mr. Long's situation from a "child sexual offender" and "sexually

violent offender" to a "Tier III sex offender." As amended, the Act defined a "Tier III sex offender" as a "person who has been convicted of committing a violation of § 3-307(a)(3) . . . of the Criminal Law Article[.]" Although the amendment did not change the time period for which an offender was required to register, it did require that the sex offender "register in person every three months with a local law enforcement unit" for life. The 2010 amendment made additional changes that made the registrant provide considerably more information to the local law enforcement unit than was previously required.

In this case, Long requested, *inter alia*, that the circuit court declare that he should only have to meet the reporting requirements that were in place in 2000 and not the much more stringent requirements presently imposed upon third-degree sex offenders. The circuit court, in a written opinion, rejected that conclusion and granted a declaratory judgment in favor of the appellee, Maryland State Department of Public Safety and Correctional Services.

Held: Affirmed.

Long contended on appeal that requiring him to meet the much more stringent requirements set forth in the 2009 and 2010 amendments to the Maryland Sex Offenders Registration Act violated the *ex post facto* provisions set forth in Article 17 of the Declaration of Rights and/or Article 1, section 10 of the United States Constitution. In rejecting that contention, the key issue was whether the court should apply the "disadvantage" test which was discussed in *Doe v. Department of Public Safety and Correctional Services* ("*Doe1*"), 430 Md. 535 (2013) or the intent-effects test, which was utilized by the Supreme Court in *Smith v. Doe*, 538 U.S. 84 (2003). Long contended that the "disadvantage test" should be utilized.

The court held, after carefully analyzing the plurality opinion in "*Doe1*", together with the concurring opinions in that case, that the appropriate test was that set forth in the *Smith* case, i.e., the intent-effects test. Using that test, the court held that the intent of the legislature was non-punitive. The legislative history indicated a desire to exercise the States' regulatory power to accomplish two public safety regulatory objectives. One objective was to incorporate some of the provisions of the federal sex registry act and the second intended purpose was to further the objectives of the civil regulatory scheme that was already in effect prior to the amendments. Moreover, the court held that the effect of the more burdensome registration requirements was also non-punitive. In reaching that conclusion, the court examined numerous factors mentioned by the Supreme Court in *Smith*. After examining the seven factors suggested by the *Smith* decision, the court concluded that Long had failed to produce evidence that despite the non-punitive intent of the amendments, the effect of the amendments were punitive. Accordingly, since the amendments were not punitive, the *ex post facto* provisions of Article 17 were inapplicable.

Theodore Scott v. State of Maryland, No. 2412, September Term 2014, filed October 26, 2016. Opinion by Eyler, Deborah S., J.

http://www.mdcourts.gov/opinions/cosa/2016/2412s14.pdf

FEDERAL CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY — ENHANCED SENTENCING — RESENTENCING ON REMAND AFTER DECISION ON APPEAL THAT EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT ENHANCED SENTENCING FACTOR — MARYLAND COMMON LAW DOUBLE JEOPARDY PROTECTION AGAINST AUTREFOIS ACQUIT — COLLATERAL ESTOPPEL FORM OF DOUBLE JEOPARDY

Facts:

Scott was convicted of attempted armed robbery, use of a handgun, and conspiracy. The court imposed a mandatory enhanced sentence of 25 years without parole for the attempted armed robbery conviction, upon a finding, under section 14-101 of the Criminal Law Article, that this was Scott's third conviction of a crime of violence.

This Court vacated the sentence for attempted armed robbery on the ground that the evidence was legally insufficient to prove that one of the predicate convictions—for aggravated assault in the District of Columbia, by way of a guilty plea—was for a crime of violence. That statutory crime can be perpetrated in multiple ways, including some that would qualify as a crime of violence in Maryland and others that would not. The evidence introduced at sentencing was not adequate to show the manner in which the crime was perpetrated. The Court remanded the case for resentencing. It did not vacate the sentences for use of a handgun and conspiracy.

On resentencing on remand, the court permitted the prosecution to introduce the transcript of the sentencing hearing for the D.C. aggravated assault guilty plea. That transcript, which supports a finding that the aggravated assault conviction was for a crime of violence, had not been offered at the original sentencing. The court found that the D.C. aggravated assault conviction was for a crime of violence, and again imposed the 25 year without parole mandatory sentence for attempted armed robbery as a third crime of violence.

Scott appealed, arguing, among other things, that double jeopardy principles barred the prosecution from proving at resentencing that his D.C. aggravated assault conviction was for a crime of violence when it had failed to make that proof at the original sentencing. He relied primarily upon *Bowman v. State*, 314 Md. 725 (1989), which so holds, under the Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment. The State responded that *Bowman* is not entitled to precedential effect because subsequent United States Supreme Court precedent, in particular *Monge v. California*, 524 U.S. 721 (1998), has rejected the premise on which the *Bowman* Court relied in its Double Jeopardy Clause analysis.

Held: Affirmed.

Neither the Double Jeopardy Clause of the Fifth Amendment, the Maryland common law of double jeopardy, nor the collateral estoppel form of double jeopardy precluded the State from proving, on resentencing on remand, that the D.C. aggravated assault conviction was for a crime of violence, so as to support a mandatory sentence enhancement for a third crime of violence.

Ordinarily, when a conviction is reversed for trial court error, the Double Jeopardy Clause does not preclude a retrial of the offense. Under an exception to that general rule, announced in *Burks v. United States*, 437 U.S. 1 (1978), when a conviction is reversed for legally insufficient evidence, the defendant cannot be retried for the offense, because the failure to adduce legally sufficient evidence to support the conviction is tantamount to an acquittal. In Bowman, the Court of Appeals applied the *Burks* exception to enhanced sentencing factors, reasoning that if the evidence at the original sentencing was legally insufficient to support an enhanced sentence, the defendant could not be retried, so to speak, on that enhanced sentencing factor, on resentencing. Several years later, in *Monge*, the Supreme Court rejected that reasoning, holding that sentencing factors are not part of *an offense*, and the Double Jeopardy Clause protects a criminal defendant from being twice put in jeopardy for *an offense*. Thus, the fact that the evidence at the original sentencing was legally insufficient to support an enhanced sentence is not the functional equivalent of an acquittal of that sentence. On resentencing, the government is not precluded by the Double Jeopardy Clause from attempting to prove, a second time, the enhanced sentencing factor that it failed to prove originally.

Bowman was decided solely under the federal Double jeopardy Clause. Because its underlying reasoning has been expressly rejected by the Supreme Court, it is likely that, if faced with the same scenario today, the Court of Appeals would not follow its own precedent in *Bowman*. Accordingly, in this case, the Double Jeopardy Clause of the Fifth Amendment did not bar the State from attempting to prove on resentencing that Scott's D.C. conviction was for a crime of violence. In addition, the Maryland common law of double jeopardy, in particular the doctrine of *autrefois acquit*, and the collateral estoppel form of double jeopardy did not bar the State from attempting to prove, on resentencing on remand, that the D.C. conviction was for a crime of violence.

Larry Jackson v. State of Maryland, No. 1606, September Term 2015, filed October 26, 2016. Opinion by Woodward, J.

http://www.mdcourts.gov/opinions/cosa/2016/1606s15.pdf

EVIDENCE – RULE 5-404(B), "OTHER CRIMES, WRONGS, OR ACTS" – PROOF OF MOTIVE EXCEPTION – PRIOR DOMESTIC ABUSE PROBATIVE OF MOTIVE ON CHARGE OF ASSAULT

Facts:

Tiffani Wilson and her husband, Javon Evans, resided in a house in Baltimore City with Tiffani's daughter, Shakeara Wilson, and Shakeara's boyfriend, appellant. Shakeara and appellant lived in the basement of the house. On September 1, 2014, Tiffani hosted a birthday party for Evans. After the festivities concluded around 11:00 p.m., Tiffani was cleaning up on the main floor, and appellant and Shakeara were in the basement. According to Shakeara, she and appellant began to argue, which led to mutual pushing, and then appellant grabbed Shakeara around the throat. When appellant released Shakeara, she ran upstairs to get Evans. Evans and Tiffani went down to confront appellant. In response, appellant pulled a gun and fired into the ceiling.

In a taped statement to police, Shakeara was asked by the detective, "did you pass out when you were choked?[,]" to which she responded, "borderline." Shakeara further stated that appellant punched her in the face at some point before he left the house. Tiffani observed that Shakeara had a "swollen and red" eye.

The police never recovered the gun or any bullets fired from the gun. In a taped interview with the police, appellant denied any knowledge of the gun, but admitted assaulting Shakeara. Appellant was acquitted of all gun related charges, but was convicted of second-degree assault on Shakeara.

Held: Affirmed.

Appellant's primary claim of error on appeal was the admission of evidence allegedly in violation of Rule 5-404(b), which Rule precludes the admission of other crimes, wrongs, or acts to show a person's bad character. Specifically, appellant complained about the admission of evidence of appellant's prior domestic abuse of Shakeara. Appellant argued that such evidence did not fall within any exception to Rule 5-404(b) and also had no probative value. The Court rejected appellant's argument.

The Court held that evidence of prior abuse is admissible to show motive, which is a recognized exception to Rule 5-404(b). The Court reviewed the cases of *Snyder v. State*, 361 Md. 580

(2000), *Jones v. State*, 182 Md. 653 (1944), and *Stevenson v. State*, 222 Md. App. 118, *cert. denied*, 443 Md. 737 (2015). Each case held that hostility, violent acts, and other abuse by the defendant against the victim was probative of motive where the defendant was charged with murder. In the instant case, the Court determined that the subject evidence was similar to the properly admitted evidence in *Snyder*, *Jones,* and *Stevenson*. Moreover, "[i]t is of no moment that those cases were for murder, and the case at bar is for assault. The motive is the same: the exertion of control over the victim through the perpetration of a cycle of violence."

Finally, the Court observed that, even if the subject evidence was admitted in error, such error was harmless beyond a reasonable doubt. Appellant admitted in a taped statement that he struck Shakeara; photographs of Shakeara's battered face were admitted into evidence; and defense counsel argued that the case involved only a second-degree assault, and not crimes where a handgun was used. Therefore, the Court concluded that the prior assaults on Shakeara could not have had any effect on the verdict.

Brooks Sinclair Perry v. State of Maryland, No. 2489, September Term 2014, filed September 28, 2016. Opinion by Leahy, J.

http://www.mdcourts.gov/opinions/cosa/2016/2489s14.pdf

CRIMINAL LAW – RECKLESS ENDANGERMENT – ELEMENTS OF THE CRIME

Facts:

Trooper Tanner Nickerson initiated a traffic stop of Brooks Sinclair Perry after observing Perry's car speeding. Perry behaved oddly throughout the traffic stop before speeding away from the scene—during the traffic stop—while Trooper Nickerson was waiting for backup. Perry's car achieved a speed of approximately 100 miles per hour before slowing down due to apparent engine trouble. Perry jumped out of his car while it was still moving and started running toward a nearby golf course. Corporal Resh, Corporal Emerick (the two officers constituting Trooper Nickerson's backup), and Trooper Nickerson pursued Perry on foot through the golf course. The golf course was uneven, and Perry fell three times—each time springing up—with Corporal Resh closing the distance each time Perry fell. Perry then jumped onto a fence, and Corporal Resh heard a gunshot and observed a muzzle flash as Perry was on the far side of the fence. Corporal Resh then returned fire three times. Trooper Nickerson immediately dropped to the ground upon hearing the gunshots. Perry escaped, but he was located and arrested approximately 12 hours later.

Perry was tried and convicted by a jury in the Circuit Court for Talbot County of, *inter alia*, two counts of reckless endangerment (for putting Corporal Resh and Trooper Nickerson at substantial risk of death or serious physical injury), negligent driving, and reckless driving. He was found not guilty of attempted second-degree murder, first-degree assault, and second-degree assault. Evidence was offered at trial of three recovered .40 caliber casings (from Corporal Resh's weapon) and one recovered .45 caliber cartridge casing, but Perry's firearm was never found.

Held: Affirmed.

The Court of Special Appeals traced the history of reckless endangerment case law since the enactment of the original reckless endangerment statute in 1989. The Court then clarified that the *actus reus* of reckless endangerment is measured objectively and that the proper inquiry, in a reckless endangerment case involving a firearm, is whether the firearm was handled in a manner that created a substantial risk of death or serious physical injury to another. The Court determined that the phrase, "arc of danger," used in several prior cases including *Albrecht v. State*, 105 Md. App. 45 (1995), although it was a wonderfully descriptive phrase applicable in certain factual situations, was not a precise substantive element of the crime of reckless endangerment. In the present case, the Court observed that there was no way to establish the

geometric dimension of the line of fire from the gun held by a person fleeing wildly from the police with a loaded weapon that discharged in the dark night and determined that the "arc of danger" analysis applied in *Albrecht* was inapplicable to the facts presented in the case *sub judice*. The Court then held that the jury could have reasonably found that Perry's conduct put Corporal Resh and Trooper Nickerson in substantial risk of death or serious physical injury sufficient to find reckless endangerment.

Perry also argued that Corporal Resh's testimony concerning his observation of a muzzle flash during the golf course chase constituted improper expert testimony, but the Court concluded that this argument was not preserved and declined to exercise plain error review. Nonetheless, the Court opined that Corporal Resh's testimony that he observed a muzzle flash would have allowed the jury to infer that the weapon was fired in Corporal Resh's direction. The Court stated that it did not require an expert, nor advanced knowledge in physics, for the jury to have concluded that the light from the muzzle flash travelled straight ahead and did not bend around Perry's body as his weapon discharged.

Perry further contended that the circuit court impermissibly coerced the jury by informing the jurors that the case would conclude in two days or less. The Court determined that this argument was also unpreserved, but nevertheless observed that it would be unreasonable to restrict a court from informing a jury about the anticipated length of the evidentiary phase of the trial. Finally, the Court merged Perry's negligent driving conviction with his reckless driving conviction—for the purpose of sentencing only—because negligent driving is a lesser included offense of reckless driving.

Timothy Alan Moats v. State of Maryland, No. 1219, September Term 2015, filed October 25, 2016. Opinion by Berger, J.

http://www.mdcourts.gov/opinions/cosa/2016/1219s15.pdf

SEARCHES AND SEIZURES – CELLULAR PHONES

Facts:

One night in early January of 2015, Moats and three other teenagers were riding around Garrett County in Moats's car. During the drive, eighteen-year-old Moats provided marijuana and suboxone to the other teenagers. Moats, along with the three other teenagers, then went to a party where one of them, A.D.C. was sexually assaulted.

About two-weeks later, A.D.C. reported the sexual assault to the police. In the course of investigating the sexual assault, the police interviewed Moats. Moats admitted that he distributed marijuana and suboxone to the other teenagers, but denied any involvement in the sexual assault of A.D.C. Moats's admissions were corroborated by the statements the other teenagers made to the police.

On January 23, 2015, the police sought and obtained a warrant for Moats's arrest on charges related to his distribution of drugs. During the search conducted incident to his arrest, the police recovered Moats's cellular phone. On January 24, 2015, Moats was released from the detention center. The police retained his cell phone, however, believing that it might contain evidence related to Moats's distribution of drugs and the sexual assault of A.D.C. On January 26, 2015, the police applied for and were granted a warrant to search Moats's cellular phone. In the course of the search, the police discovered sexually explicit photos and a video of a young woman that had been saved on the cellular phone. The officers later identified the young woman in the photos and video as Moats's then fifteen-year-old girlfriend.

On March 10, 2015, Moats was charged with three counts related to his possession of child pornography and one count of second degree assault. Prior to trial, defense counsel filed a motion to suppress the photos and videos recovered from Moats's cellular phone, arguing, in part, that the search warrant was not supported by sufficient facts to establish probable cause. The trial court denied the defense motion to suppress.

On July 23, 2015, Moats agreed to plead not guilty to an agreed statement of facts on one count of possession of child pornography. As part of the agreement, all other charges pending against Moats, including the drug charges, were dropped. The court found Moats guilty and sentenced him to eighteen months of incarceration, suspending all but the time he had already served. Moats was ordered to serve two years of supervised probation and was required to register as a sexual offender. Moats noted a timely appeal on July 30, 2015.

Held: Affirmed.

Judgment of the Circuit Court for Garret County affirmed. Costs to be paid by appellant.

The Court reiterated that individuals have a protected interest in the data that is stored in their personal cellular phones. Consequently, police are generally required to obtain a search warrant before conducting a search of a cellular phone even if the phone is seized pursuant to a legal arrest.

The Court concluded that the police had probable cause to seize and subsequently retain Moats's cellular phone for the period necessary to obtain a search warrant. By seizing the cell phone incident to Moats's arrest and then subsequently obtaining a warrant before conducting any search of the phone's contents, the police acted in accordance with the Constitution and Article 26 of the Maryland Declaration of Rights. Therefore, the trial court did not err in denying Moats's motion to suppress the evidence recovered from his cellular phone based on the warrantless seizure of the phone incident to his arrest or the police's failure to return the phone to Moats when he was released from jail.

The Court further determined that the warrant issuing judge in this case had a substantial basis for concluding that probable cause existed to believe that evidence of a crime would be found on Moats's cellular phone. Specifically, the Court concluded that the police officer's averment in the warrant affidavit indicating that he knew "through his training and experience" that "individuals who participate in such crimes communicate via cellular telephones" was sufficient to provide a common-sense nexus between the offenses Moats was accused of committing and the phone to be searched. The Court was persuaded that the affidavit that accompanied the search warrant provided a substantial basis for the warrant-issuing judge to reasonably infer that evidence of Moats's involvement in drug dealing or sexual offenses was likely to be found in a search of Moats's cellular phone. The Court concluded, therefore, that the circuit court did not err by denying Moats's pre-trial motion to suppress the photographs and video that were recovered from his cellular phone.

The Court opined that even had it concluded that the warrant judge did not have a substantial basis to issue the search warrant in this case, the Court would still uphold Moats's conviction, because the record demonstrates that the police acted in good faith in preparing the affidavit and obtaining a warrant before searching the electronic contents of Moats's cellular phone and reasonably relied on the warrant issuing judge's independent determination that the search warrant was supported by probable cause. Therefore, the good faith exception to the warrant requirement would allow admission of the photographs and videos that were recovered from Moats's cell phone even had the warrant been defective.

Anthony Santos v. State of Maryland, No. 2448, September Term 2015, filed October 26, 2016. Opinion by Beachley, J.

http://www.mdcourts.gov/opinions/cosa/2016/2448s15.pdf

CRIMINAL PROCEDURE – *WHREN* STOP

CONSTITUTIONAL LAW – FOURTH AMENDMENT – REASONABLE SUSPICION

Facts:

On September 30, 2014, Detective Dominic Bridges and Sergeant George Rakowski of the Baltimore County Police Department, narcotics section, were patrolling an area around the Eastpoint Mall in Dundalk. The detectives observed a black car parked outside a McDonald's restaurant. The detectives took note of the car because it was parked away from the restaurant, though closer spaces were available, and because they knew the parking lot to be "highly concentrated for narcotics transactions." The detectives observed Santos in the driver's seat, and a woman later identified as Amanda Fitch in the passenger's seat. Both appeared to be "looking around" in a manner which the detectives interpreted as checking for the presence of police. Fitch then exited the vehicle and entered the McDonald's restaurant, where she sat with another man, while Santos drove out of the parking lot, passing the detectives. The detectives noted that Santos was not wearing a seat belt and was "manipulating" his cell phone. Believing they had witnessed a drug transaction, the detectives conducted a traffic stop of Santos's vehicle.

The detectives approached Santos's vehicle, identified themselves, and asked for his license and registration. The detectives noted that Santos appeared unusually nervous, was trembling, and "sweating profusely." When questioned about where he was coming from and whether he had met with anyone, Santos gave answers which were inconsistent with what the detectives had previously observed. Detective Bridges asked Santos to step out of the vehicle, at which time a second vehicle arrived with Detectives Herr and Johnson. Detectives Bridges and Herr remained at the scene to conduct a record and registration check while Sergeant Rakowski and Detective Johnson went back to the McDonald's to find Fitch. Santos's record check revealed two possibly outstanding warrants. Detective Bridges asked the precinct desk to determine whether they were active.

Meanwhile, at the McDonald's, Sergeant Rakowski was able to locate Fitch. She admitted to buying heroin from Santos. Sergeant Rakowski relayed this information by radio to Detective Herr at the scene of the traffic stop. Sergeant Rakowski estimated he made the radio report six minutes after leaving the scene of the traffic stop. Detective Bridges testified Detective Herr received Sergeant Rakowski's call before the status check of Santos's warrants had been completed. Detective Bridges then arrested Santos and searched his car. A modified WD-40 can containing heroin and cocaine was found behind the passenger's seat.

Santos moved to suppress the evidence at trial. The Circuit Court denied the motion, finding that the officers had conducted a valid *Whren* stop and had reasonable suspicion to detain Santos. Santos entered a conditional guilty plea to charges of distributing heroin and possession of cocaine with intent to distribute. Santos timely noted an appeal from the denial of the suppression motion.

Held: Affirmed.

The Court of Special Appeals held that Detective Bridges and Sergeant Rakowski possessed reasonable articulable suspicion to detain Santos. The Court determined the initial stop to be valid under *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). When conducting a *Whren* stop, officers may only detain a suspect while the purpose of the traffic stop is being pursued. Once this purpose has been fulfilled, the detention may only continue with the driver's consent or if the officers have reasonable articulable suspicion that criminal activity is afoot under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Whether the police have reasonable articulable suspicion is based on the totality of the circumstances.

The Court concluded that the detective's observations of Santos formed a sufficient basis for reasonable articulable suspicion. Santos was parked away from the McDonald's restaurant when closer spaces were available. Santos and Fitch were looking around while in the vehicle, apparently checking for the presence of police. Santos appeared unusually nervous when the detectives stopped his vehicle. Finally, Santos answered the detective's questions in a manner inconsistent with their own observations. The Court rejected Santos's contention that such questions were impermissible and outside the scope of the traffic stop, citing *Arizona v. Johnson*, 555 U.S. 323, 327, 129 S. Ct. 781, 784, 172 L. Ed. 2d 694, 700 (2009). The Court held that though there could be innocent explanations for any of these behaviors when viewed separately, taken together they amounted to reasonable articulable suspicion.

The Court also held that the duration of Santos's detention was not unreasonable. The constitutional duration of a *Terry*-stop varies dramatically from that of a general traffic stop. When conducting a *Terry*-stop, the police may detain a suspect for as long as they are diligently pursuing a means of investigation likely to confirm or dispel their suspicion quickly. The Court determined the officers developed reasonable suspicion within minutes of the traffic stop and confirmed their suspicion within a reasonable amount of time.

Marguerite R. Morris, Personal Representative of the Estate of Katherine Sarah Morris v. Isaac Jerome Goodwin, No. 749, September Term 2014, filed October 26, 2016. Opinion by Woodward, J.

http://www.mdcourts.gov/opinions/cosa/2016/0749s14.pdf

MARRIAGE – MARRIAGE PROCURED BY FRAUD VOIDABLE, NOT VOID – VOIDABLE MARRIAGE MAY BE CHALLENGED ONLY DURING JOINT LIVES OF PARTIES – PERSONAL REPRESENTATIVE DOES OT HAVE STANDING TO BRING ANNULMENT ACTION FOR DECEDENT'S MARRIAGE BASED ON FRAUD

Facts:

Katherine Morris married appellee in August of 2011. Morris was a student at the University of Maryland, living on the College Park campus. Appellee was a U.S. Army Staff Sergeant stationed at Fort Bragg, North Carolina. Following the wedding, appellee returned to Fort Bragg, and Morris continued to reside on campus. In May of 2012, nine months later, Morris committed suicide.

On September 11, 2012, Morris's mother, appellant, was appointed personal representative of her estate. On June 14, 2013, appellant, acting *pro se*, filed a petition in circuit court to annul Morris's marriage to appellee on the basis of appellee's fraud. Among other things, appellant alleged in her petition (1) that appellee was found to have misappropriated government funds, which resulted in financial sanctions, including a reduction in his housing allowance; (2) that appellee married Morris in order to increase his housing allowance; (3) that appellee continued sexual relationships with other women during his marriage to Morris; and (4) that appellee never shared his military benefits with Morris until ordered to do so. The trial court ultimately dismissed appellant's petition for annulment with prejudice, because appellant lacked standing to sue for annulment of Morris's marriage to appellee.

Held: Affirmed.

The Court observed that, although Maryland has recognized the distinction between "void" and "voidable" marriages, no Maryland appellate court has explicitly stated whether a marriage procured by fraud is void or voidable. Consistent with the general principle accepted in other jurisdictions and by legal scholars, the Court held that a marriage procured by fraud is voidable, not void, because such marriage goes to the legal efficacy of a party's consent, rather than whether the parties could have established a valid marriage.

The Court next addressed the questions of when and who may bring a suit for an annulment of a marriage based on fraud. The first question had been answered in *dicta* in *Picarella v. Picarella*,

20 Md. App. 499, 508 n.9 (1974) that voidable marriages may be challenged only "during the joint lives of the parties."

For the second question, the Court pointed to the general rule that only a party to a voidable marriage normally has standing to seek an annulment, and thus a personal representative lacks the power to seek an annulment of a decedent's marriage on the ground of fraud. The general rule is based on the public policy that a marriage contract is so uniquely personal that, if the parties do not see fit to avoid the marriage during their joint lives, a stranger should not be permitted to challenge it unless the marriage is absolutely void, rather than voidable. The Court determined that the public policy behind the general rule is sound, and thus held that a personal representative does not have standing to bring a suit to annul the decedent's marriage on the ground of fraud.

Finally, the Court distinguished the two cases relied upon by appellant, because each case involved an action that had been instituted by the decedent during his or her lifetime that was prosecuted by the personal representative after death. In the instant case, Morris did not file a suit to challenge her marriage to appellee during her lifetime; appellant did so over a year after Morris's death.

Sugheil Cabrera v. Nelson Mercado, Nos. 1304 and 2393, September Term 2015, filed September 28, 2016. Opinion by Leahy, J.

http://www.mdcourts.gov/opinions/cosa/2016/1304s15.pdf

FAMILY LAW – UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT – PARENTAL KIDNAPPING PREVENTION ACT

Facts:

Appellant Sugheil Cabrera and Appellee Nelson Mercado were married in 2013 and had one child, A.M.C., born on June 21, 2014. The family lived in Montgomery County, Maryland. On October 25, 2014, Ms. Cabrera petitioned the District Court of Maryland for a protective order, for herself and A.M.C., against Mr. Mercado, alleging obsessive and otherwise controlling behavior. The district court issued an ex parte interim protective order for the benefit of Ms. Cabrera and A.M.C. against Mr. Mercado, October 26, 2014. On October 28, 2014, the district court issued a temporary protective order, which awarded custody of A.M.C. to Ms. Cabrera until the final protective order hearing, which was scheduled for November 5, 2014 and later rescheduled to November 17, 2014, at the agreement of the parties.

Ms. Cabrera fled to Puerto Rico—with A.M.C.—on November 15, 2014. On the morning of November 17, Ms. Cabrera's counsel appeared at the final protective order hearing in Maryland and requested dismissal of the protective order petition without explanation. That same morning, Ms. Cabrera filed a complaint for custody of A.M.C. in the superior court for Puerto Rico.

Mr. Mercado responded by filing an emergency motion for temporary custody and a complaint for divorce, custody, and child support in the Circuit Court for Montgomery County on November 21, 2014. Mr. Mercado asserted that Maryland was A.M.C.'s "home state" under Maryland's Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 9.5-101 et seq., and that Maryland had exclusive, continuing jurisdiction over the custody of A.M.C. Mr. Mercado and his counsel made multiple attempts to inform Ms. Cabrera of the motion and the complaint, and emailed the documents to her. After a November 24, 2015 hearing, the circuit court granted an emergency order awarding temporary custody of A.M.C. to Mr. Mercado, requiring A.M.C.'s return to Maryland. On December 7, 2014, service of the Maryland proceedings was effected on Ms. Cabrera in Puerto Rico. On March 20, 2015, Ms. Cabrera's counsel filed a motion requesting that the circuit court decline jurisdiction and vacate the emergency temporary custody order.

The Puerto Rico court entered a final custody order in favor of Ms. Cabrera on March 25, 2015, determining that it had jurisdiction over the custody proceeding under the federal Parental Kidnapping Prevention Act ("PKPA"), 28 U.S.C. § 1738A (2012).

Ms. Cabrera never returned to Maryland, and the parties continued to wrangle over the jurisdictional issue. After Ms. Cabrera did not appear for a scheduled June 1, 2015 *pendente lite* hearing in the Circuit Court for Montgomery County, in violation of a *subpoena duces tecum*, Mr. Mercado requested that the court issue a body attachment for Ms. Cabrera.

On June 15, 2015, the circuit court issued the requested writ of body attachment. Ms. Cabrera filed a motion to revise the order and writ of body attachment on June 25, 2015, which the circuit court denied on August 3, 2015. Ms. Cabrera filed a notice of appeal of the denial of the motion to revise the body attachment on August 19, 2015.

On September 14, 2015, the circuit court entered an order denying Ms. Cabrera's motion to decline jurisdiction and vacate the emergency temporary custody order. Ms. Cabrera then filed her second notice of appeal on September 18, 2015.

The court held the custody merits hearing on November 18, 2015, and entered an order granting custody to Mr. Mercado on December 11, 2015. Ms. Cabrera filed her third notice of appeal on January 8, 2016. On appeal, Ms. Cabrera challenged the circuit court's entry of the emergency temporary custody order, the final custody order, and the body attachment.

Held: Affirmed.

The Court of Special Appeals first recognized that Maryland was A.M.C.'s home state under both the UCCJEA and the PKPA because he was not yet six months old at the initiation of either custody proceeding and he had lived in Maryland with one or both parents for his entire life until Ms. Cabrera relocated to Puerto Rico. The Court then held that the Maryland protective order proceeding in the district court was the first custody proceeding and that the temporary protective order was the initial custody determination, thereby giving Maryland "exclusive continuing jurisdiction" under the UCCJEA, FL § 9.5-202, and continuing jurisdiction under the PKPA, 28 U.S.C. § 1738A(d).

Ms. Cabrera also argued that the circuit court's emergency temporary custody order should be reversed because she had not been personally served before the hearing or entry of the order. The Court determined that this issue was moot because Ms. Cabrera was served well before the merits custody hearing and the resulting final custody order. The final custody order would continue in effect even if the Court were to vacate the emergency temporary custody order. Nevertheless, the Court concluded that, in the circumstances presented, where a party has fled the jurisdiction and made herself unavailable, the efforts of counsel to inform the absconded party of the emergency (and thus, temporary) proceeding complied with Maryland Rule 1-351 and FL § 9.5-107(a)(1). Because such efforts were "reasonably calculated to give actual notice[,]" in turn satisfying FL § 9.5-107(a)(2), the Court held that the circuit court did not commit error by entering the emergency temporary custody order without personal service on Ms. Cabrera.

The Court held that the circuit court did not abuse its discretion by denying Ms. Cabrera's motion to decline jurisdiction for forum nonconveniens, determining that the circuit court fully considered the circumstances presented in the case from the time of the emergency temporary custody hearing on November 24, 2014 to the entry of the order denying the request to decline jurisdiction—almost a year later.

Finally, the Court held that it did not have jurisdiction over Ms. Cabrera's contentions concerning the issuance of the body attachment because the denial of a motion to revise a body attachment is neither a final judgment nor an appealable interlocutory order.

ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated September 1, 2016, the following attorney has been suspended by consent for thirty days, effective October 3, 2016:

KEITH ERIC TIMMONS

*

By an Order of the Court of Appeals dated October 5, 2016, the following attorney has been indefinitely suspended by consent:

KEVIN MICHAEL ROY

*

This is to certify that the name of

WILLIAM LEIGH SISKIND

has been replaced upon the register of attorneys in this state as of October 6, 2016.

*

By a Per Curiam Order of the Court of Appeals dated October 7, 2016, the following attorney has been disbarred:

MARK HOWARD ALLENBAUGH

*

By an Order of the Court of Appeals dated October 7, 2016, the following attorney has been disbarred by consent:

AMBER KAYE LITCHFIELD

*

*

By a Per Curiam Order of the Court of Appeals dated October 14, 2016, the following attorney has been disbarred:

DALTON FRANCIS PHILLIPS

*

By an Order of the Court of Appeals dated October 27, 2016, the following attorney has been suspended:

ERIC JOHN PARHAM

*

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JUDICIAL APPOINTMENTS

*

On September 12, 2016, the Governor announced the appointment of **KEITH DANA PION** to the District Court of Maryland – Baltimore County. Judge Pion was sworn in on October 6, 2016 and fills the vacancy created by the retirement of the Hon. Barbara R. Jung.

*

UNREPORTED OPINIONS

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