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SUPREME COURT OF MARYLAND

Attorney Grievance Commission of Maryland v. Stephen E. Whitted, AG No. 47, September Term 2021, filed August 1, 2024. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/coa/2024/47a21ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION
The Supreme Court of Maryland sanctioned an attorney with an indefinite suspension for: repeatedly filing retaliatory meritless claims against his ex-wife, her new husband, her attorneys, and judges who ruled against him; filing meritless appeals; repeating failed arguments; and ignoring rulings. Because such actions occurred in the State of Washington, the Supreme Court found that the attorney's conduct violated Washington Rules of Professional Conduct 3.1 (Meritorious Claims and Contentions) and 8.4 (Misconduct).

Facts:

Mr. Whitted, an attorney barred in Maryland, moved with his family to Georgia. In 2006, he filed for a divorce, and the court issued a Final Judgment and Decree of Divorce. The court awarded the parties joint legal custody of their children, with physical custody to Mr. Whitted's ex-wife, Ms. Jordan, and reasonable visitation to Mr. Whitted. The court ordered Mr. Whitted to pay child support and awarded him $55,000 from Ms. Jordan's 401(k) retirement plan.

Mr. Whitted chronically failed to pay child support. Ms. Jordan asked the Georgia court to hold Mr. Whitted in contempt, alleging arrearages. The court determined that Mr. Whitted owed child support, and, in addition to his regular monthly payment, ordered him to pay additional monthly amounts until the arrearages were fully paid.

Ms. Jordan later filed a motion asking the court's permission to relocate the minor children to North Carolina. Soon after, Mr. Whitted filed a separate lawsuit, naming as defendants Ms. Jordan, her attorney, the attorney's law firm, and "John Doe." Mr. Whitted also moved the court to find Ms. Jordan in contempt, order her to immediately return the children to Georgia, deny her petition, and award him physical custody of the children. The court granted Ms. Jordan sole physical and legal custody of the children, permitting her to move the children to North Carolina. The court also held Ms. Jordan in contempt for failing to transfer the $55,000 from her 401(k) plan. Mr. Whited lost his job, and in October 2010, he ceased paying child support.

Mr. Whitted then moved for the recusal of the judge who ruled against him and petitioned for mandamus against that judge. He also filed a federal complaint against that judge and Ms. Jordan's husband, alleging, among other things, that the judge violated his constitutional rights. He also alleged false imprisonment, abduction, loss of consortium, and intentional infliction of emotional distress. The court dismissed the complaint.

The Jordans moved with the children to Washington. Between 2010 and 2016, Mr. Whitted made no child support payments. Ms. Jordan filed to register the Georgia divorce decree in Washington and to collect unpaid child support. Mr. Whitted moved for a dismissal. The Washington court held a hearing and held Mr. Whitted in contempt for failing to pay child support. The court remanded him into custody and ordered him to pay down his arrearages.

Mr. Whitted appealed the order, and the Court of Appeals of Washington affirmed, finding that his arguments were meritless. Mr. Whitted also filed a complaint against the judge with the State of Washington Commission on Judicial Conduct. He then sued Ms. Jordan, Mr. Jordan, her attorney, and the attorney's partner and law firm, in federal court, alleging numerous torts such as invasion of privacy and conspiracy. The court granted the defendants' motions for summary judgment and dismissed Mr. Whitted's claims with prejudice. The court also granted the Jordans' motion for Rule 11 sanctions, ordering Mr. Whitted to pay the Jordans for the attorneys' fees incurred in defending the action. Mr. Whitted appealed, and the United States Court of Appeals for the Ninth Circuit affirmed the judgment and awarded the Jordans the attorneys' fees they incurred on appeal.

Mr. Whitted filed a motion to vacate the judgment entered against him. In response, Ms. Jordan moved for Rule 11 sanctions against Mr. Whitted and to designate him as a vexatious litigant. The court ultimately entered an order designating Mr. Whitted as a vexatious litigant and sanctioned him. Mr. Whitted appealed. The Washington Court of Appeals affirmed and ordered Mr. Whitted to pay the Jordans the attorneys' fees they incurred on appeal.

The Jordans filed a complaint with the Attorney Grievance Commission of Maryland (the "Commission"). Mr. Whitted responded, claiming that he "at all times [had] been ready and willing to pay the amount that is legally owed to Ms. Jordan" but that Ms. Jordan's "personal conduct and unfair litigation tactics have prevented this from occurring."

On April 2, 2024, the hearing judge issued findings of fact and conclusions of law (the "findings"). The court found by clear and convincing evidence that Mr. Whitted violated Washington Rules of Professional Conduct ("WRPC") 3.1 (Meritorious Claims and Contentions) and 8.4(a), (c), and (d) (Misconduct). The hearing judge also found three mitigating factors and six aggravating factors.

Mr. Whitted excepted to multiple factual findings and conclusions of law. The Commission excepted to one mitigating factor and the hearing judge's failure to find two additional aggravating factors.

Held:

The Supreme Court of Maryland overruled Mr. Whitted's exceptions, sustained two of the Commission's exceptions, adopted the hearing judge's findings, and determined that indefinite suspension was the appropriate sanction under the facts and circumstances of this case. The Supreme Court concluded that the hearing judge's conclusions were supported by clear and convincing evidence.

Most of Mr. Whitted's exceptions to the hearing judge's findings of fact were of the "failure to find" variety. The Supreme Court determined that these exceptions had no merit.

Mr. Whitted also excepted to the hearing judge's findings that detailed the events in the custody and child support litigation in Georgia. The Supreme Court overruled this exception because the findings provided history and context to the pending charges and were therefore relevant. Further, Mr. Whitted did not contend that any such findings were not supported by the evidence.

Mr. Whitted also argued that the hearing judge's legal conclusions should be disregarded because the charges against him were animated by Ms. Jordan's improper motive to force him to pay the money he owes her. The Supreme Court concluded that the hearing judge correctly understood Ms. Jordan's motives went to her credibility, which the hearing judge was in the best position to assess. Mr. Whitted also excepted to the hearing judge's legal conclusions because, he alleged, the Commission pursued this disciplinary proceeding for improper motives. The Supreme Court rejected this exception because Mr. Whitted provided no evidentiary support for his allegations and because he alleged no improper motive by the Commission.

Mr. Whitted also contended that he could not be liable under the WRPC because he represented himself. The Supreme Court overruled this objection, finding that the WRPC applied to Mr. Whitted's conduct.

Mr. Whitted excepted to the hearing judge's finding that he violated WRPC 3.1, arguing that "no state or federal court in the State of Washington ever adjudicated or determined that Respondent violated any WRPC provision" and "no trial judge, appellate justice, or administrative body ever referred Respondent for discipline in the State of Washington, or even to [the Commission] for discipline in the State of Maryland[.]" The Supreme Court found that the fact that no court in Washington specifically and expressly found that Mr. Whitted violated WRPC 3.1 did not matter. The Court further found that the hearing judge's conclusion that Mr. Whitted violated WRPC 3.1 was supported by clear and convincing evidence.

The hearing judge found that Mr. Whitted violated WRPC 8.4(a) because he violated WRPC 3.1. Mr. Whitted excepted to this conclusion. Because the Supreme Court held that the hearing judge correctly found that Mr. Whitted violated WRPC 3.1, it overruled Mr. Whitted's exception. Mr. Whitted claimed he was not liable under WRPC 8.4(c) because he did not lie in any proceeding in Washington. The Supreme Court found that the hearing judge correctly concluded that Mr. Whitted violated this rule. Mr. Whitted also excepted to the finding that he violated WRPC 8.4(d), arguing that Ms. Jordan and her attorney had violated the rule. The Supreme Court agreed

with the hearing judge that the evidence established that Mr. Whitted's conduct was prejudicial to the administration of justice in violation of WRPC 8.4(d).

The hearing judge found three mitigating factors: (1) the absence of any prior attorney discipline; (2) character and reputation; and (3) the imposition of other penalties or sanctions.

Mr. Whitted challenged the hearing judge's failure to also find the mitigating factor of remorse. The Commission excepted to the hearing judge's finding that the imposition of other penalties and sanctions in the Washington litigations constituted a mitigating factor.

The Supreme Court found that the hearing judge had ample basis to find that Mr. Whitted was not remorseful for his actions. The Supreme Court agreed with the Commission that when it has recognized sanctions or penalties as a mitigating factor, it has been when the attorney has already suffered consequences for his professional misconduct. Because Mr. Whitted has yet to suffer any consequences for his actions, the Supreme Court found that the hearing judge erred in concluding that the imposition of other penalties or sanctions was a mitigating factor.

The hearing judge found that the Commission proved by clear and convincing evidence six aggravating factors: (1) dishonest or selfish motive; (2) a pattern of misconduct; (3) multiple offenses; (4) refusal to acknowledge the wrongful nature of the conduct; (5) substantial experience in the practice of law; and (6) indifference to making restitution.

Mr. Whitted objected to each of these findings. The Commission excepted to the hearing judge's failure to find two additional aggravating factors: (1) submission of false evidence, false statements, or other deceptive practices during the attorney discipline proceeding; and (2) the likelihood of repetition of the misconduct.

Mr. Whitted excepted to the findings of the first four aggravating factors, claiming that the hearing judge failed to distinguish between "asserting one's legal rights and engaging in multiple instances of misconduct with a selfish motive and indifference to the truth." The Supreme Court found that the hearing judge's findings of a dishonest or selfish motive, pattern of misconduct, multiple offenses, and refusal to acknowledge the wrongful nature of the conduct, were all supported by clear and convincing evidence.

Mr. Whitted also excepted to the hearing judge's finding that he was indifferent to making restitution. The Supreme Court found that the hearing judge's finding of indifference to making restitution was supported by clear and convincing evidence.

The hearing judge declined to find the aggravating factor of submission of false evidence, false statements, or other deceptive practices during the attorney discipline proceeding. The hearing judge reasoned that Mr. Whitted's attempts to relitigate the multiple adverse rulings in all the cases reflected an unwillingness to acknowledge the wrongfulness of his conduct rather than the submission of false evidence, false statements, or other deceptive practices. The Commission excepted to the court's failure to find this factor. The Supreme Court agreed, as the hearing judge found, by clear and convincing evidence, that Mr. Whitted violated WRPC 8.4(c) by engaging

"in conduct involving dishonesty, fraud, deceit, or misrepresentation;" thus, the hearing judge should have found this aggravating factor.

The Commission excepted to the hearing judge's failure to find "a likelihood of repetition" of Mr. Whitted's conduct. The Supreme Court concluded that the hearing judge appropriately determined that this factor was not present.

The Supreme Court found that the appropriate sanction was an indefinite suspension. According to the Court, Mr. Whitted failed to grasp the nature and extent of his misuse of the judicial system, which had persisted for over a decade in multiple forums. Mr. Whitted engaged in a relentless pursuit of Ms. Jordan, Mr. Jordan, and Ms. Jordan's attorneys. Many times, he lost at the trial court level, lost on appeal, and then tried to relitigate the fully adjudicated issues in future proceedings. He violated multiple court orders, including orders to pay child support and orders to pay sanctions. He even attempted to relitigate the same matters in this disciplinary proceeding. Mr. Whitted's conduct evidenced a disdain for the judicial system. Nonetheless, the Supreme Court determined that Mr. Whitted should not be disbarred because his conduct, though egregious and harmful, was confined to his pro se representations.

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Bethesda African Cemetery Coalition, et al. v. Housing Opportunities Commission of Montgomery County, No. 18, September Term 2023, filed August 30, 2024. Opinion by Biran, J.

Booth, J., concurs in part and dissents in part.
Watts and Hotten, JJ., dissent.

https://www.courts.state.md.us/data/opinions/coa/2024/18a23.pdf

COMMON LAW – BURIAL GROUNDS – THE COMMON LAW OF BURIAL PLACES

BUSINESS REGULATION ARTICLE – SALE OF A BURIAL GROUND FOR ANOTHER PURPOSE – STATUTORY PROCEDURE NOT REQUIRED

BUSINESS REGULATION ARTICLE – SALE OF A BURIAL GROUND FOR ANOTHER PURPOSE – ABROGATION OF THE COMMON LAW

Facts:

Under Md. Code Ann., Bus. Reg. ("BR") § 5-505 (2015 Repl. Vol.), an action may be brought to sell a burial ground for another purpose if certain requirements are met, including that burial lots have been sold in the burial ground and deeds executed or certificates issued to buyers, and that it is desirable to dispose of the burial ground for another purpose. If a court passes a judgment to sell a burial ground under BR § 5-505, the court may set terms and notice, and must order as much of the proceeds of the sale as necessary be used to pay for removing and reinterring any human remains. A judgment under BR § 5-505 will pass title to the burial ground to the buyer free of the claims of the owners of the ground and the holders of burial lots.

In the mid-20th century, burials ceased at a historic Black burial place in Montgomery County that was sometimes known as Moses Cemetery. The burial ground contains interments of many individuals, including formerly enslaved persons and their families, and it appears from the record that Moses Cemetery operated as an informal, nominal-fee cemetery where deeds and certificates to particular burial plots were never issued to buyers. The land was sold and developed into an apartment complex and parking lot in the late 1960s, but the remains of the deceased likely remain in the land because they were never systematically and respectfully disinterred and reinterred elsewhere. Today, the land is owned by the Housing Opportunities Commission of Montgomery County ("HOC") and contains the Westwood Tower Apartments.

When HOC sought to sell the land to a property developer, the Bethesda African Cemetery Coalition and others, including descendants of the deceased (together, the "Coalition"), petitioned the Circuit Court for Montgomery County for a common law writ of mandamus to compel HOC to file an action under BR § 5-505. The Coalition argued that a judgment under BR

§ 5-505 is required whenever a burial ground is sold to be used for a purpose other than burial, so HOC could not sell the land without obtaining such a judgment.

The circuit court largely agreed with the Coalition, issuing a writ of mandamus compelling HOC to file a BR § 5-505 action and comply with its statutory provisions before selling the land. The Appellate Court of Maryland reversed, reasoning that BR § 5-505 is a quiet-title statute, that its provisions are not mandatory, and that HOC was not required to follow them before selling the land.

Held:

The Supreme Court affirmed in part and reversed in part; case remanded with instructions to remand the case to the Circuit Court of Montgomery County for further proceedings.

Common law mandamus is an extraordinary remedy generally used to compel inferior tribunals, public officials, or administrative agencies to perform their function or some other imperative duty imposed upon them. A writ of mandamus will not issue where there is any ordinarily adequate legal remedy, or where the relevant duty is not clearly established.

The Supreme Court of Maryland concluded that an extraordinary writ was unavailable for two reasons. First, under the common law of burial places, the dispute between the Coalition and HOC is within the circuit court's general equitable powers. The common law of burial places provides the appropriate framework to adjudicate disputes over burial grounds that are not governed by statute. Second, BR § 5-505 provides only an optional mechanism for parties to remove certain land use restrictions and to quiet title. Thus, the Supreme Court agreed with the Appellate Court that a writ of mandamus was not available because BR § 5-505 does not impose a duty to file an action before attempting to sell a burial ground.

In reaching its conclusion, the Supreme Court recognized the common law of burial places and explained that the common law has not been entirely abrogated by statute in Maryland. This body of law developed in the United States after the rejection of the ecclesiastical law of England, and it attaches when human remains are interred in land. The Supreme Court surveyed several principles of the common law of burial places, and noted that where the General Assembly has not covered subjects that fall under that body of law (including with respect to informal, nominal-fee cemeteries), there remains a gap in Maryland that the common law will fill. The Supreme Court further held that BR § 5 505 does not abrogate the common law of burial places in Maryland. Instead, the statute was primarily designed to address historical problems grounded in property law principles that hindered the sale of certain burial grounds, and the statute is consistent with the common law of burial places. Because a robust body of common law exists in the United States to govern the treatment of burial places, the narrowness of BR § 5-505 does not mean that burial grounds in Maryland are left without protection.

Further, the Supreme Court noted that the obscurity of the common law of burial places and misunderstandings in this case meant that HOC never opposed mandamus relief by asserting that

ordinary relief was available, and the Coalition never attempted to amend its pleading to state a claim for relief based upon a specific right or rights protected under the common law before it prevailed on its request for mandamus relief. Thus, to ensure that the parties' mutual misunderstanding about the common law of burial places, coupled with the Coalition's success in the circuit court, did not put the Coalition in a worse procedural position than it would have been in if HOC raised the availability of ordinary relief, the Supreme Court ordered a remand to allow the Coalition to seek leave to amend its complaint.

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Valerie Rovin v. State of Maryland, No. 19, September Term 2023, filed August 15, 2024. Opinion by Booth, J.

Watts, J., dissents.

https://www.mdcourts.gov/data/opinions/coa/2024/19a23.pdf

MARYLAND COMMON LAW CLAIMS FOR FALSE ARREST, FALSE IMPRISONMENT, AND MALICIOUS PROSECUTION, AND ASSOCIATED CONSTITUIONAL CLAIMS ARISING UNDER ARTICLES 26 AND 24 OF THE MARYLAND DECLARATION OF RIGHTS

MARYLAND DECLARATION OF RIGHTS – ARTICLE 40

MARYLAND DECLARATION OF RIGHTS – ARTICLE 24 – CHALLENGE TO CONSTITUTIONALITY OF THE JUROR INTIMIDATION STATUTE

Facts:

Petitioner, Valerie Rovin, was charged with second-degree assault and juror intimidation in violation of Md. Code Ann., Criminal Law Article ("CR") § 9-305 (2021 Repl. Vol.) (the "juror intimidation statute"). The juror intimidation statute provides, in relevant part, that "[a] person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror . . . in the performance of the [juror]'s official duties." CR § 9-305(a). The criminal charges against Ms. Rovin arose after she threatened the foreperson of a jury who convicted her daughter of a DUI and related traffic offenses. As reported to the deputy sheriff investigating the incident by the jury foreperson, on the day her daughter's trial concluded, Ms. Rovin, incensed that the foreperson convicted her daughter, came to his place of work, began yelling at him, invaded his personal space to the point he felt uncomfortable, and threatened to send someone from Nicaragua to "take care of" him. The foreperson was subject to jury service for the remainder of the month, but had to be dismissed as a result of the incident. After receiving advice from the State's Attorney's Office that Ms. Rovin's conduct violated the juror intimidation statute and should be "charged accordingly," the deputy sought and obtained a warrant for Ms. Rovin's arrest from a judicial officer. Ms. Rovin was arrested and ultimately tried in a bench trial. The trial judge explained that Ms. Rovin's actions, if true, were "very improper" but did not violate the juror intimidation statute because the statute is designed to "prevent someone from impeding an ongoing judicial process" not to prevent retaliation "for something that a juror has done in the past." Based on his interpretation of the statute, the trial judge acquitted Ms. Rovin.

Subsequently, Ms. Rovin filed suit against a number of defendants, including the State and the deputy sheriff who sought the warrant for her arrest, alleging that her State constitutional rights were violated and that the defendants committed certain common law torts. Her central allegation was that she was arrested, imprisoned, and prosecuted for conduct that did not amount

to a crime as a matter of law. Pointing to the language of the juror intimidation statute, Ms. Rovin claimed that the foreperson was no longer a "juror" at the time of the incident and that his "official duties" had concluded. After a prior appeal to the Supreme Court of Maryland in which certain defendants were dismissed, *see State v. Rovin*, 472 Md. 317, 327 (2021), Ms. Rovin amended her complaint on remand, naming the State, who Ms. Rovin alleged was liable for the actions of the deputy sheriff under the Maryland Tort Claims Act, Md. Code Ann., State Govt. Article § 12-101 *et seq*. (1984, 2021 Repl. Vol., 2022 Supp.), as the sole defendant. As relevant to the present appeal, Ms. Rovin's amended complaint asserted causes of action for false arrest, false imprisonment, malicious prosecution, and violations of her rights under Articles 24, 26, and 40 of the Maryland Declaration of Rights. The trial court ultimately granted the State summary judgment on each of Ms. Rovin's claims, concluding that, among other things, the State could not be liable for the deputy's actions because he obtained an arrest warrant. After the Appellate Court of Maryland affirmed the trial court, the Supreme Court of Maryland granted certiorari to review that decision.

Held: Affirmed.

The Supreme Court noted that when an arrest is made pursuant to a warrant, probable cause is predetermined by a judicial officer. Relying on United States Supreme Court precedent, the Court explained that the issuance of a warrant by a neutral judicial officer creates a strong presumption that it was objectively reasonable for a law enforcement officer to believe that there was probable cause for an arrest, and a plaintiff who argues otherwise faces a heavy burden. *Messerschmidt v. Millender*, 565 U.S. 535 (2012). Although a warrant is not an absolute shield, civil liability will arise only in circumstances in which "it is obvious that no reasonably competent officer would have concluded that a warrant should issue." *Id.* at 547. In order to overcome the presumption of objective reasonableness that attaches to a warrant, the plaintiff must demonstrate that: (1) the judicial officer issuing the warrant was misled by an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) the judicial officer wholly abandoned his or her judicial role; (3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) when the warrant is so facially deficient that the executing officers cannot reasonably presume it to be valid.

The Court also noted that, in addition to the strong presumption of probable cause that attaches to a warrant, when an officer obtains and follows legal advice from a prosecutor when applying for a statement of charges after presenting a full and fair disclosure of everything that was presented to the officer, "there is further support for the conclusion than officer could reasonably have believed that the scope of the warrant was supported by probable cause." *See id*. at 553.

Applying the above principles, the Court held that the circuit court did not err in granting summary judgment in favor of the State on Ms. Rovin's false arrest, false imprisonment, malicious prosecution, Article 24 (as that claim pertained to conduct alleging false arrest, false imprisonment, and malicious prosecution), and Article 26 claims. Ms. Rovin was arrested

pursuant to a warrant issued by a neutral judicial officer after the deputy who obtained the warrant obtained legal advice from the State's Attorney's Office. The Court determined that the application for statement of charges was based on an objectively reasonable interpretation of the juror intimidation statute, and thus probable cause and legal justification existed for Ms. Rovin's arrest and imprisonment. The Court explained that the foreperson's "official duties" had not concluded because he was subject to jury service for the remainder of the month. The Court also determined that it was objectively reasonable to conclude that the foreperson was still a "juror" within the meaning of the statute. The Court observed that the word "juror" has both a broad and a narrow interpretation. Court also reviewed other instances, both modern and historical, where the General Assembly used the word "juror" or "jury" and concluded that, at times, the General Assembly used the word "juror" to mean an active member of a jury pool.

The Court also held that the circuit court did not err in granting summary judgment to the State on Ms. Rovin's claim that her arrest and imprisonment violated her free speech rights under Article 40 and Article 24 (as that claim related to the free speech claim). Based upon its examination of the application for statement of charges that was presented to the neutral judicial officer, the Supreme Court concluded that the judicial officer had probable cause to believe that Ms. Rovin's speech constituted a "true threat" and fell outside the protections of Article 40. Because there was probable cause that Ms. Rovin's speech constituted a true threat, her free speech claim failed as a matter of law.

Finally, the Court held that the juror intimidation was not unconstitutionally vague, and that, therefore, Ms. Rovin's Article 24 rights were not violated. The Court concluded that the statute uses words or phrases that have a common meaning and understanding known to persons of common intelligence. The Court also determined that the statute does not invite arbitrary enforcement, reasoning that it coherently sets forth the types of individuals it protects and expressly limits its application to the performance of those individuals' "official duties."

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State of Maryland v. Lamont Smith, No. 30, September Term 2023, filed August 13, 2024. Opinion by Booth, J.

Biran, J., dissents.

https://www.courts.state.md.us/data/opinions/coa/2024/30a23.pdf

ADMISSION OF HEARSAY EVIDENCE UNDER DECLARATION AGAINST PENAL INTEREST

PRESERVATION FOR APPELLATE REVIEW

Facts:

Respondent, Lamont Smith, was charged with various drug related offenses, including counts of being a drug kingpin and conspiracy to possess and distribute large amounts of controlled dangerous substances ("CDS"). These charges arose after law enforcement conducted a raid on a home at which Respondent was present, as were Mr. Blake and Mr. Woods. The State also brought charges against Mr. Woods but not against Mr. Blake, who was terminally ill and required medical care and supervision.

In Respondent's criminal trial, the State sought to admit law enforcement's extensive interview of Mr. Blake (the "Blake Interview") as a declaration against penal interest. The interview was 55 minutes long, and Respondent is mentioned or referenced approximately 88 times. In seeking its admission, the State acknowledged that some statements contained in the Blake Interview were inculpatory solely as to the Respondent. However, the State urged the trial court to admit the Blake Interview in its entirety because the statements "were so interwoven" that they could not be separated. At the pre-trial hearing, defense counsel objected on several grounds, including disputing that all of the statements were self-inculpatory to Mr. Blake. Defense counsel also disagreed with the State's "interwoven" theory of admissibility.

After hearing arguments of counsel, the circuit court ruled that the entirety of the Blake Interview was admissible. In doing so, however, the court failed to conduct the parsing analysis required by *State v. Matusky*, 343 Md. 467 (1996). Instead, it treated the interview as a single statement and ruled that it was admissible as a declaration against penal interest. Thereafter, the Blake Interview was admitted at trial and published to the jury over defense counsel's objection. Respondent was found guilty on multiple charges involving possession and conspiracy to distribute CDS.

On appeal, Respondent argued that the trial court erred in admitting the entire Blake Interview without undertaking the admission process required by *Matusky*. The State maintained that the Appellate Court could not consider Respondent's argument because defense counsel did not identify, and request specific redactions of, the inadmissible statements contained within the

interview. The Appellate Court rejected the State's argument and determined that Respondent had adequately preserved his objection to the trial court's failure to undertake the process required by *Matusky*. That court held that the trial court erred in admitting the entire Blake Interview into evidence, and vacated Respondent's convictions.

The Supreme Court of Maryland granted the State's petition for writ of *certiorari* to answer one question: whether the Appellate Court erred in holding that Respondent adequately preserved his objection to the trial court's failure to undertake the process required under *Matusky* for the admission of this particular type of hearsay evidence.

Held:

The Supreme Court of Maryland affirmed the Appellate Court's judgment. The Court reiterated that it has established a process for admitting certain types of hearsay statements that fall within the declaration against penal interest hearsay exception. *See Matusky*, 343 Md. 467. The statement against penal interest exception is codified as Maryland Rule 5-804(b)(3). This Court and the United States Supreme Court have treated this particular type of hearsay as "inevitably suspect" and inherently unreliable because although it may inculpate the declarant, the declarant may be motivated to "do so to curry favor with authorities, to achieve a plea bargain, to shift blame by showing that another was more culpable, or simply to have another with whom to share the blame." *State v. Standifur*, 310 Md. 3, 13 (1987) (quoting *Cruz v. New York*, 481 U.S. 186, 190 (1987)).

Because of the inherent unreliability of statements against penal interest where the statements purportedly inculpate the declarant and a co-conspirator, this Court requires the trial court to undertake a parsing analysis, which the Court most recently articulated in *Matusky*. Specifically, when a proponent seeks to admit presumptively inadmissible hearsay statements that comprise an extended narrative or interview, a trial court must break down the narrative and determine the separate admissibility of each single declaration or remark. The test for admissibility that the trial court must apply to each statement within a declaration is whether a reasonable person in the declarant's circumstances would have believed the statement was adverse to his or her penal interest at the time it was made. A trial court may not simply admit the extended narrative or interview *in toto* without determining that each statement contained therein was self-inculpatory as to the declarant.

The Court further held that under Maryland law, there is no *duty* upon the opponent of an extended narrative interview to present the trial court with proposed redactions prior to the trial court undertaking its duty to parse the statement pursuant to the process established by *Matusky*.

Although the Court held that the opponent has no duty to propose redactions of statements contained in an extended narrative prior to the trial court undertaking the process, that does not mean that either a proponent or an opponent of the narrative or interview may not request redaction. Moreover, a trial court has no obligation to consider the admissibility of the

statements in isolation or without soliciting input or requesting proposed redactions from both parties. The trial court can look at the narrative with the parties present, consider input from the parties on each statement, and request that the parties help redact individual statements within the narrative. What the court cannot do is treat the narrative as a single statement without considering whether each statement within it is, in fact, self-inculpatory to the declarant.

Once the trial court undertakes its duty and parses the narrative to determine the admissibility of each statement, the party objecting to the admission of that statement, or any part of it, must still object to that statement. In other words, the Court held that nothing in its opinion should be construed as suggesting that traditional waiver principles do not apply once the trial court undertakes the parsing process, or where there is no objection to a trial court's failure to undertake the parsing process in the first instance. When the trial court considers each statement in connection with the aforementioned duty, a party opponent's failure to object to a statement's admissibility will be subject to traditional waiver principles.

The Supreme Court thus held that where the State sought to admit the Blake Interview, and the trial court failed to undertake the parsing process required by Maryland case law in order to admit this particular type of hearsay evidence, defense counsel had sufficiently preserved the defendant's objections for appellate review.

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Christopher Mooney v. State of Maryland, No. 32, September Term 2023, filed August 13, 2024. Opinion by Watts, J.

Fader, C.J., concurs.
Gould, J., dissents.

https://www.courts.state.md.us/data/opinions/coa/2024/32a23.pdf

"REASONABLE JUROR" TEST – AUTHENTICATION THROUGH TESTIMONY OF WITNESS WITH KNOWLEDGE UNDER MARYLAND RULE 5-901(b)(1) – AUTHENTICATION THROUGH CIRCUMSTANTIAL EVIDENCE UNDER MARYLAND RULE 5-901(b)(4)

Facts:

In the Circuit Court for Baltimore City, the State, Respondent, charged Christopher Mooney, Petitioner, with attempted first-degree murder and related offenses. The charges arose out of the nonfatal shooting of Joshua Zimmerman, who testified at trial that, in the months prior to the shooting, he had suspected Mr. Mooney of sleeping with his girlfriend, but Mr. Mooney had denied the allegation. Mr. Zimmerman testified that on the night of the shooting, he was sitting in the driver's seat of his vehicle, which was parked near a medical cannabis dispensary. Mr. Zimmerman testified that Mr. Mooney walked past his vehicle and that the two had a brief exchange of words during which Mr. Zimmerman called Mr. Mooney a name. According to Mr. Zimmerman, Mr. Mooney walked past his vehicle immediately before the shooting, and, after Mr. Mooney passed the vehicle, Mr. Zimmerman was shot from behind. Specifically, Mr. Zimmerman testified that he thought that Mr. Mooney was going to approach the driver's side of his vehicle, so he opened the door of his vehicle and looked around, but he did not see Mr. Mooney. Mr. Zimmerman testified: "I cracked my door and I'm looking out and I didn't see him. As soon as I sat back that's when the gunshots happened." Mr. Zimmerman suffered a wound to his back. Mr. Zimmerman did not testify that he saw the shooter at the time of the shooting.

Before requesting that the video be admitted into evidence, the prosecutor displayed an image from the video, and asked Mr. Zimmerman whether he recognized it. Mr. Zimmerman responded that he did and explained that the image showed him in his vehicle, the dispensary, a few houses, and a parking lot. Mr. Zimmerman confirmed that he had watched the video in preparation for trial, that the video was a true and accurate depiction of the events that occurred on the night of the shooting, and that the video did not appear to have been altered or edited.

Over objection, during Mr. Zimmerman's direct examination, the circuit court admitted into evidence the video, which had been recorded by a camera mounted on the exterior wall of a residence near the site of the shooting and had been retrieved by a detective. The video was 1 minute and 51 seconds long. After the video was admitted into evidence, Mr. Zimmerman

identified Mr. Mooney as the person depicted on the video in the white shirt "walking around" and confirmed that the footage depicted him exiting his vehicle holding his back, because that is where he was shot, and running to a nearby McDonald's. During the State's closing argument, the prosecutor contended that the video showed Mr. Mooney walk past Mr. Zimmerman's vehicle and shoot him from behind.

A jury found Mr. Mooney guilty of second-degree assault and related offenses. Mr. Mooney appealed, and the Appellate Court of Maryland affirmed.

Held: Affirmed.

The Supreme Court of Maryland held that, for video footage to be admissible, as with other evidence, there must be sufficient evidence for a reasonable juror to find by a preponderance of the evidence that the video is what it is claimed to be. In other words, the "reasonable juror" test applies to authentication of videos—*i.e.*, for a trial court to admit a video, there must be sufficient evidence for a reasonable juror to find more likely than not that the evidence is what it is purported to be. In addition, the Supreme Court held that, like other evidence, video footage can be authenticated in a variety of ways, including through circumstantial evidence under Maryland Rule 5-901(b)(4).

The Supreme Court concluded that the video footage at issue in the case was properly authenticated through a combination of the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1) and circumstantial evidence under Maryland Rule 5-901(b)(4), as a reasonable juror could have found by a preponderance of the evidence that the video was what it purported to be—namely, a fair and accurate depiction of Mr. Zimmerman's shooting and the events occurring before and after it. The parts of the video depicting the events that Mr. Zimmerman saw, or participated in, before and after the shooting were properly authenticated through his testimony under Maryland Rule 5-901(b)(1) as a witness with personal knowledge of the events.

The part of the video depicting the shooting was properly authenticated through circumstantial evidence under Maryland Rule 5-901(b)(4), as there was sufficient circumstantial evidence from which a reasonable juror could have inferred that the video fairly and accurately depicted the shooting. The close temporal proximity of the shooting to the events occurring immediately before and after the shooting, of which Mr. Zimmerman had personal knowledge, gave rise to the reasonable inference that the video accurately depicted the shooting. In addition, Mr. Zimmerman testified that the video truthfully and accurately depicted the events that he saw and did not appear to have been edited or altered. There also was evidence of the nature and origin of the video, from which a reasonable juror could have inferred that the video was recorded the night of the shooting by a source or third party not connected to law enforcement or involved with the shooting, as a detective testified that he obtained the video from an individual who lived nearby and had a camera mounted on the exterior wall of his residence.

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The Supreme Court explained that these circumstances were not intended to be exhaustive or all inclusive of the circumstances that may permit authentication of video footage under Maryland Rule 5-901(b)(4). The authentication of video footage involves a fact-specific inquiry that will vary from case to case. As with all determinations with respect to authentication under Maryland Rule 5-901(b), a trial court must assess on a case-by-case basis whether there is sufficient evidence for a reasonable juror to conclude more likely than not that video footage is what the proponent claims it to be.

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Roseberline Turenne v. State of Maryland, No. 20, September Term 2023, filed August 16, 2024. Opinion by Biran, J.
Fader, C.J. and Booth, J., concur in part and dissent in part.
Watts, J. dissents.

https://www.mdcourts.gov/data/opinions/coa/2024/20a23.pdf

CRIMINAL LAW – SEXUAL ABUSE OF A MINOR – CHILD PORNOGRAPHY OFFENSES – SUFFICIENCY OF THE EVIDENCE

Facts:

In June 2021, Roseberline Turenne worked as a teacher's aide at a daycare center ("the Center") in Salisbury, Maryland. The Center prohibits its employees from taking photographs of the children at the Center. On June 10, 2021, a co-worker of Ms. Turenne's saw several nude photographs of very young girls on Ms. Turenne's phone. The co-worker recognized that the images showed a changing table and a bathroom at the Center. When authorities interviewed Ms. Turenne about the photos, she initially denied that she had taken those pictures. Eventually, she admitted that she had taken the photos at the Center but claimed that she did so for "no reason" and that the photos had "no meaning." Authorities discovered eight different pictures of very young nude girls on Ms. Turenne's phone; each photo focused on the girls' naked genitals and pubic areas.

Ms. Turenne was charged in the Circuit Court for Wicomico County with eight counts of sexual abuse of a minor, eight counts of producing child pornography, and eight counts of possessing child pornography. At trial, Ms. Turenne asserted that she took the photos to document diaper rash that she saw on the children; this was the first time she had raised the issue of diaper rash. A jury convicted her of all counts.

The Appellate Court of Maryland affirmed Ms. Turenne's convictions. *See Turenne v. State*, 258 Md. App. 224 (2023). With respect to the child pornography charges, the Appellate Court applied a totality-of-the-circumstances test and determined that a reasonable juror could have found that each of the eight photos was a "lascivious exhibition" of the child's genitals and pubic area. *Id*. at 247, 249-52. With respect to the child sex abuse charges, the Appellate Court concluded that the State introduced sufficient evidence to allow a rational juror to conclude that, in taking the photographs of the nude children, Ms. Turenne committed sexual abuse by sexual exploitation. *Id*. at 255-56.

Ms. Turenne petitioned for a writ of certiorari, which the Supreme Court of Maryland granted, limited to the first question set forth in the petition concerning whether the evidence was sufficient to sustain the convictions. *See Turenne v. State*, 486 Md. 147 (2023).

Held: Affirmed.

With respect to the child sexual abuse charges, the Supreme Court of Maryland held that the evidence was sufficient to conclude that Ms. Turenne committed child sexual abuse by sexually exploiting the children she photographed. Sexual abuse by sexual exploitation requires the State to prove that the defendant "took advantage of or unjustly or improperly used the child" for their own benefit. *Degren v. State*, 352 Md. 400, 426 (1999). To determine whether the State sufficiently proved an act of sexual exploitation, the Court examines both the alleged act and the circumstances relevant to the act, viewing the facts surrounding the alleged sexual exploitation "in their totality." *Walker v. State*, 432 Md. 587, 622-23 (2013).

The Court held that a rational juror could conclude, based on the content of the photographs and the circumstances surrounding the photographs, that Ms. Turenne took the photos to obtain the benefit of sexual gratification. Regarding the content of the photographs, the Court noted that the photos focused exclusively on the children's genitals and pubic areas; the children were arranged in poses that resemble what might be seen in adult pornography; and the children's faces were omitted from the photos. Regarding the circumstances surrounding the photos, the Court noted that Ms. Turenne violated the Center's no-photograph policy by taking these photos; that Ms. Turenne took most of the photos at the end of the day, when there were fewer adults around; that Ms. Turenne initially lied to investigators about taking the photos; and that Ms. Turenne's diaper rash explanation was discredited by the jury.

The Court acknowledged that possession of adult pornography can sometimes be relevant in a child sex abuse case but declined to decide whether the evidence of adult pornography on Ms. Turenne's phone provided additional support for her child sex abuse convictions.

With respect to the child pornography charges, the Supreme Court of Maryland rejected Ms. Turenne's invitation to adopt the interpretation of "lascivious exhibition" set forth in *United States v. Hillie*, 39 F.4th 674 (D.C. Cir. 2022). This *Hillie* standard would have required the child to display their genitals in a way that connoted sexual desire or sexual activity for an image to be a "lascivious exhibition." *Id*. at 685. The Court also declined to adopt the six-factor test set forth in *United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986), or the totality-of-the-circumstances test used by the Appellate Court.

Instead, the Supreme Court of Maryland interpreted "lascivious exhibition" as "depict[ing] more than innocent nudity" but not needing to show "the child or anyone else doing anything sexual." The Court explained that this interpretation is consistent with the General Assembly's intent when it amended the state's child pornography laws in 2019 to include the phrase "lascivious exhibition." One of the purposes of that amendment was to expand the categories of conduct that could be punished.

The Court held that whether an image is a "lascivious exhibition" is determined by applying a "content-plus-context" test. Under this test, the trier of fact considers (1) the contents of the image; and (2) the context of the image, *i.e.*, the totality of the circumstances that directly relate to the exhibition of the genitals or pubic area. After reviewing the contents and context of a

contested image, the trier of fact must determine whether the image is objectively sexual in nature.

The Supreme Court of Maryland concluded that a rational juror could have found that the eight photos at issue depicted lascivious exhibitions of the children's genitals or pubic areas. Regarding the content of the photographs, the Court again noted that the photos were framed to focus exclusively on the children's genitals and pubic areas, and that the children were positioned in ways that resemble what might be seen in adult pornography. Regarding the context of the image, the Court pointed out that the photos were all very similar to one another; that Ms. Turenne took the photos in an area of the Center that was secluded from other adults and the Center's cameras; that all but one of the photos was taken toward the end of the day, when there were fewer adults around; and that Ms. Turenne described the photos as having "no meaning." The Court applied the same analysis for the child pornography production and possession charges.

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Aaron Jarvis v. State of Maryland, No. 22, September Term 2023, filed August 12, 2024. Opinion by Eaves, J.

Watts and Gould, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2024/22a23.pdf

CRIMINAL LAW – JURY INSTRUCTIONS – "SOME EVIDENCE" STANDARD – IMPERFECT SELF-DEFENSE

Facts:

In May 2019, Petitioner, Aaron Jarvis, and his brother-in-law, Ethan Durrett, ended up in an altercation that ended with Petitioner stabbing Mr. Durrett. Petitioner was tried in the Circuit Court for Cecil County for, among other crimes, first- and second-degree attempted murder, as well as first-degree assault. At trial, Mr. Durrett testified that Petitioner was the unprovoked, initial aggressor, who used a knife to stab him. Petitioner, on the other hand, testified that Mr. Durrett was the initial aggressor, and that he (Petitioner) drew the knife to deter Mr. Durrett from any further advances. Petitioner also testified that he never intended to stab Mr. Durrett and that the stabbing was an accident when he hugged and tackled Mr. Durrett to the ground. At the close of all the evidence, Petitioner requested that the circuit court instruct the jury on both perfect and imperfect self-defense. The circuit court granted the request for the former but not the latter. The jury acquitted Petitioner of both attempted murder charges, but it convicted him of first-degree assault and other lesser-included offenses.

On appeal to the Appellate Court of Maryland, Petitioner asked the court, among other questions, whether the circuit court erred in refusing to instruct the jury on imperfect self-defense. *Jarvis v. State*, No. 744, 2023 WL 4676989, at *1 (Md. App. Ct. July 21, 2023). The court recognized that it would be difficult "to imagine a situation where a defendant would be able to produce sufficient evidence to generate a jury issue as to perfect self[-]defense but not as to imperfect self[-]defense." *Id*. at *2 (alterations in original) (citations omitted). The Appellate Court reasoned that, because the trial judge found the evidence produced at trial sufficient to generate an instruction for perfect self-defense, the trial judge "necessarily found that the reasonableness of [Petitioner's] belief was at issue." *Id*. at *3. Thus, the circuit court abused its discretion in not providing an instruction for imperfect self-defense. *Id.* But, this error, according to the Appellate Court, was harmless because the jury *acquitted* Petitioner of both attempted murder charges. *Id*.

Petitioner filed a petition for a writ of certiorari, and the State filed a conditional cross-petition for a writ of certiorari, both of which the Supreme Court of Maryland granted on November 17, 2023. *Jarvis v. State*, 486 Md. 216 (2023).

Held: Affirmed

The Supreme Court of Maryland affirmed the judgment of the Appellate Court. After reviewing the evidence presented at trial, the Court concluded that there was no evidence that Petitioner had a subjective belief that his use of the knife was necessary to prevent imminent bodily injury or death. The jury, the Court noted, was presented with two versions of events. Mr. Durrett's version was that Petitioner attacked him, unprovoked and with lethal force. Petitioner's version was that Mr. Durrett swung at him, which Petitioner dodged and responded to by hugging and tackling Mr. Durrett; Petitioner specifically testified that the stabbing of Mr. Durrett was an accident. Other than Mr. Durrett's and Petitioner's testimony describing the altercation, there was no other evidence regarding the event. In neither version of the altercation was the jury provided evidence that Petitioner subjectively believed that his use of force was necessary for protection. The Court confirmed its conclusion by relying on *Roach v. State*, 358 Md. 418 (2000), and *State v. Martin*, 329 Md. 351 (1993), two cases where the Court previously addressed a defendant's allegation of error in not receiving the imperfect self-defense instruction.

The Court also rejected Petitioner's attempt to view as one continuous act his mere brandishing of a knife and the fact that he *tackled* Mr. Durrett. *Martin*, the Court noted, previously established that one's state of mind as to imminent bodily injury and one's intent to use force are separate and distinct inquires. Brandishing a knife, the Court stated, is not a use of deadly force; rather, it is a *threat* to use deadly force. Furthermore, Petitioner testified that he chose to tackle Mr. Durrett—not stab him—so there was no evidence that he ever thought that stabbing Mr. Durrett was necessary to prevent imminent bodily injury or death.

Because the record did not contain "some evidence" that Petitioner subjectively believed that his use of the knife against Mr. Durrett was necessary to avoid imminent bodily injury or death, the Court concluded that the circuit court did not err in declining to instruct the jury on imperfect self-defense, affirming the Appellate Court.

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Charles Mitchell v. State of Maryland, No. 8, September Term 2023, filed August 14, 2024. Opinion by Biran, J.

Fader, C.J., concurs.
Hotten and Eaves, JJ., concur in part and dissent in part.
Gould, J., dissents.

https://www.courts.state.md.us/data/opinions/coa/2024/8a23.pdf

STARE DECISIS – EXCEPTION FOR SIGNIFICANT CHANGES IN THE LAW

VOIR DIRE – DISQUALIFYING BIAS – CHILD-WITNESSES

VOIR DIRE – DUTY TO REPHRASE QUESTION

Facts:

Charles Mitchell was convicted after a jury trial in the Circuit Court for Baltimore City of one count of sexual abuse of a minor by a family member, in violation of Md. Code, Crim. Law § 3-602(b)(2) (2021 Repl. Vol.). The victim was Mr. Mitchell's daughter, L. At the time of the trial, L. was 10 years old. She served as the State's principal witness against Mr. Mitchell.

During voir dire, the defense requested the following two-part question: "Do you have any concerns about a child testifying? Does anyone not believe that a child is capable of lying about a serious crime like this?" Defense counsel further explained that the concern was that some jurors might believe "if a child makes those allegations against their parent, there's some truth to it."

The trial court agreed to ask the first part of the requested question: "Do you have any concerns about a child testifying?" No jurors responded in the affirmative, and the trial court refused to ask the second part of the requested question.

After he was convicted, Mr. Mitchell appealed. The Appellate Court held, among other things, that it was bound by the Supreme Court of Maryland's decision in *Stewart v. State*, 399 Md. 146 (2007), that questions concerning the credibility of child-witnesses would not support disqualification for cause. Thus, the Appellate Court held that the trial court did not abuse its discretion in asking the first part of the proposed question and refusing to ask the second part. Mr. Mitchell sought certiorari review, and the Supreme Court of Maryland granted Mr. Mitchell's petition in part, agreeing to review whether *Stewart* should be reconsidered in light of recent case law governing voir dire.

Held: Reversed.

Under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, criminal defendants are guaranteed the right to a fair and impartial jury. A fair and impartial jury does not include members who hold biases that are directly related to the defendant, the crime(s) with which the defendant is charged, or the witnesses who will testify in the case. The primary mechanism to identify such disqualifying biases among potential jurors is voir dire.

The Supreme Court of Maryland held that bias concerning a child-witness can be a specific cause for disqualifying a juror. Thus, a trial court must ask prospective jurors a question designed to uncover disqualifying bias concerning a child-witness where it is reasonable to conclude that: (1) potential jurors may be inclined to believe or not believe the child's testimony based solely on the child's age; and (2) the child's testimony will be important to the case. The Supreme Court stated that, in many cases involving a child-witness, an appropriate question would be: "You will hear testimony from a ___-year-old child. Would any prospective juror be more or less likely to believe that witness's testimony based solely on the fact that the witness is a child of that age?"

In so holding, the Supreme Court abrogated, in part, its decision in *Stewart v. State*, 399 Md. 146 (2007), under the exception to *stare decisis* for cases that have been superseded by significant changes in the law. The Supreme Court reasoned that *Stewart*'s rejection of voir dire questions concerning child-witnesses had been based upon a narrow understanding of prior case law as establishing certain discrete areas of mandatory inquiry in voir dire, including whether jurors would place undue weight on police officer credibility and would prefer the testimony of State's witnesses over defense witnesses. That narrow read of the cases, although prevalent at the time that *Stewart* was decided, has been superseded by a broader understanding that the underlying issue is one of prejudgment – that is, whether a juror may prejudge a witness's testimony simply because of that witness's occupation, status, category, or affiliation.

In holding that the trial court abused its discretion by failing to rephrase the defense's proposed child-witness question, the Supreme Court emphasized that trial courts have broad discretion as to the scope and form of voir dire questions. However, the trial court was required to ask, upon request, a question designed to uncover bias concerning a 10-year-old child-witness who was also the principal witness in a child sexual abuse case. The Supreme Court concluded that the trial court was required to rephrase the defense's proposed question because that question, as asked, would not necessarily elicit the type of disqualifying bias that the defense sought to reveal, and instead might elicit extraneous concerns about the traumatic impact on children of testifying.

The Supreme Court also clarified several points, including that it may not always be necessary to inquire into age-related disqualifying bias, such as when a child-witness is close to the age of majority; the child-witness questions at issue in *Stewart* are not now mandatory; and this decision shall apply to trials that occur following the issuance of the opinion and to all other cases pending on direct appeal or not yet final where the issue is preserved for appellate review.

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Adnan Syed v. Young Lee, as Victim's Representative, et al., No. 7, September Term 2023, filed August 30, 2024. Opinion by Biran, J.

Hotten, Booth, and Battaglia, JJ., dissent.

https://www.courts.state.md.us/data/opinions/coa/2024/7a23.pdf

APPELLATE JURISDICTION – MOOTNESS – ENTRY OF NOLLE PROSEQUI AFTER VACATUR OF CONVICTION

VICTIMS' RIGHTS – MOTION TO VACATE – VICTIM'S RIGHT TO BE HEARD

VICTIMS' RIGHTS – MOTION TO VACATE – VICTIM'S RIGHT TO ATTEND A VACATUR HEARING

VICTIMS' RIGHTS – MOTION TO VACATE – VICTIM'S RIGHT TO NOTICE OF A VACATUR HEARING

VICTIMS' RIGHTS – NECESSARY SHOWING OF PREJUDICE

Facts:

In September 2022, the State's Attorney for Baltimore City moved to vacate Adnan Syed's 2000 conviction for the murder of Hae Min Lee under a recently enacted statute that allows a court to vacate a conviction if certain conditions are met. See Md. Code, Crim. Proc. ("CP") § 8-301.1 (2018 Repl. Vol., 2023 Supp.). The prosecutor gave the crime victim's representative, Young Lee (Ms. Lee's brother), less than one business day's notice of an in-person hearing on the motion to vacate. As the prosecutor and the presiding judge were aware, Mr. Lee lives in California. The court denied Mr. Lee's request for a one-week postponement of the hearing, which would have allowed Mr. Lee to attend the hearing in person in Baltimore.

The requested postponement having been denied, Mr. Lee observed the hearing remotely. Mr. Syed appeared in person. The court allowed Mr. Lee to make a statement at the beginning of the hearing, prior to the presentations by the prosecutor and defense counsel. After Mr. Lee completed his remarks, the court denied Mr. Lee's attorney's request to be heard briefly.

At the conclusion of the hearing, the court granted the motion to vacate and ordered the State's Attorney within 30 days either to schedule a new trial for Mr. Syed or to enter a nolle prosequi ("nol pros") of the charges. Mr. Lee subsequently noted an appeal of the order vacating Mr. Syed's convictions and moved for a stay of the circuit court proceedings. Shortly before Mr. Syed's response to Mr. Lee's motion to stay was due to be filed, the State's Attorney entered a nol pros of the charges against Mr. Syed.

The Appellate Court of Maryland vacated the circuit court's order and remanded for a new hearing. The Appellate Court first held that the entry of the nol pros did not moot Mr. Lee's appeal. On the merits, the Appellate Court concluded that Mr. Lee had a right to reasonable notice of the vacatur hearing as well as a right to attend the hearing in person, and that Mr. Lee had been denied both of these rights. However, the Appellate Court held that crime victims and their representatives do not have a right to be heard at a hearing on a motion to vacate a conviction.

Held:

The Supreme Court affirmed in part and reversed in part; case remanded with instructions to remand the case to the Circuit Court of Baltimore City for further proceedings consistent with the Supreme Court's opinion.

The Supreme Court of Maryland first held that entry of the nol pros did not moot Mr. Lee's appeal. The Court held that this case presents exceptional circumstances that call for a tempering of the broad authority that a State's Attorney typically possesses to nol pros a charge.

On the merits, the Supreme Court first concluded, as a matter of statutory and constitutional law, that a victim has a right to be heard at a vacatur hearing. CP § 11-403 provides that a victim has a right to "address the court under oath before the imposition of sentence or other disposition" at "a hearing at which the … alteration of a sentence … is considered." CP § 11-403(a) & (b). The Court held that a vacatur hearing is a "hearing at which … alteration of a sentence … is considered[,]" CP § 11-403(a), and, therefore, a victim has the right under § 11-403 to be heard at such a hearing.

Article 47(b) of the Declaration of Rights also supports the conclusion that a victim has the right to be heard at a vacatur hearing. Article 47(b) provides that a victim of crime has the right to be informed of the rights established in the Article and the rights, "upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms 'crime', 'criminal justice proceeding', and 'victim' are specified by law." In its plain language, Article 47(b) is a broad grant of the right to be heard (and other rights specified in that provision). The Court concluded that the General Assembly may not create a new criminal justice proceeding without affording victims the rights to notice, attendance, and to be heard at such new proceeding unless the General Assembly makes clear on the face of the legislation or in unambiguous legislative history that it finds it would not be practicable to provide one or more of those rights to victims with respect to the new criminal justice proceeding. If, as is the case with CP § 8-301.1, there has not been a legislative finding of impracticability, a reviewing court must consider whether the new criminal justice proceeding is similar to one or more extant criminal justice proceedings where the General Assembly has previously granted victims the right(s) that is missing with respect to the new criminal justice proceeding. If the missing right has previously been implemented with respect to a similar

criminal justice proceeding, then the new statute that omits the right in question violates Article 47.

The Court further held a victim's right to be heard at a vacatur hearing contemplates the right to be heard in a meaningful way, which includes the right to be heard on the merits of the parties' presentations in support of a vacatur motion, and to be heard through counsel (if the victim has counsel). However, the Court held that a victim does not have the right to participate as a party in a vacatur hearing. Allowing a victim to address the merits of the motion following the parties' presentations is an important part of ensuring that the circuit court has sufficient information and argument to make an informed decision on a vacatur motion. The Court declined to read more into the right of a victim to be heard at a vacatur hearing.

The Court next held that a victim has the right to attend a vacatur hearing in person. CP § 8-301.1(d)(2) provides: "A victim or victim's representative has the right to attend a hearing on a motion filed under this section, as provided under § 11-102 of this article." The ordinary meaning of "attend" is "to be present at; go to." Prior to the COVID-19 pandemic, the ordinary and popular meaning of "attend" in the context of a court hearing was "to be present at" or "go to" a hearing in person, as most court hearings were held in person. In addition, the Court's conclusion that a victim has the right to be heard at a vacatur hearing supports the conclusion that a victim has the right to attend such a hearing in person. A victim's right to be heard would be seriously undermined if a court had unfettered discretion to exclude the victim from the courtroom where an in person vacatur hearing is being conducted and require the victim to attend the hearing remotely. The Court held that, in this case, the circuit court erred in denying the requested one-week continuance, because that ruling denied Mr. Lee a reasonable opportunity to attend the vacatur hearing in person.

The Court next held that a victim is entitled to reasonable notice of a vacatur hearing and that Mr. Lee did not receive such reasonable notice. The notice that the prosecutor provided to Mr. Lee was deficient because it did not give him sufficient time to make arrangements to travel cross-country for the hearing.

Finally, the Court held that Mr. Lee was prejudiced by the failure to provide the rights to notice, attendance and to be heard at the vacatur hearing. Traditional harmless error analysis is inapplicable when considering whether a victim was prejudiced by the failure of a trial court to ensure that the victim receives the rights to which the victim is due under applicable law. Rather, a victim must demonstrate that the error prevented the victim from meaningfully exercising their rights under the law. Mr. Lee satisfied that burden in this case.

The Court ordered a remand to the Circuit Court for Baltimore City for further proceedings before a different judge. On remand, the parties and Mr. Lee will begin where they were immediately after the State's Attorney filed the motion to vacate.

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Thomas Dwayne Cook v. State of Maryland, No. 14, September Term 2023, filed August 20, 2024. Opinion by Eaves, J.

https://www.mdcourts.gov/data/opinions/coa/2024/14a23.pdf

MD. CODE ANN., CRIMINAL PROCEDURE ARTICLE § 8-201 – POST-CONVICTION DNA TESTING – EXCULPATORY OR MITIGATING EVIDENCE

Facts:

Thomas Dwayne Cook, Appellant, was convicted of several crimes, including the first-degree assault of Lieutenant Aubrey Fletcher, a correctional officer, while Appellant was serving a prison sentence for a prior, unrelated conviction. The testimony of the correctional officers who witnessed the assault described Appellant striking Lt. Fletcher and then throwing several additional punches at his head and face area. Two inmates who witnessed the beginning of the assault both testified that Lt. Fletcher grabbed Appellant's arm before the initial strike. Other correctional officers saw blood pouring from Lt. Fletcher's face while he faded in and out of consciousness in the aftermath of the assault. Appellant was sentenced to 25 years' imprisonment to be served consecutively to the life sentence he was already serving.

Appellant filed a Petition for Post-Conviction DNA Testing (the "Petition") pursuant to § 8-201(b)(1) of the Criminal Procedure ("CP") Article of the Maryland Code (1957, 2018 Repl. Vol.), asserting that there is "a reasonable probability that DNA testing will produce exculpatory or mitigating evidence" by "identify[ing] the source of . . . the blood splatter that's on [Appellant's shirt]." After considering the State's answer, the Circuit Court for Somerset County denied the Petition without a hearing. Appellant timely appealed, primarily arguing that the circuit court erred because it (1) denied his Petition without a hearing, (2) applied the wrong standard in denying his Petition, and (3) ruled on the Petition without first allowing him the opportunity to respond to the State's answer.

Held: Affirmed

The Supreme Court of Maryland held that the circuit court properly denied the Petition because, as a matter of law, the facts alleged did not afford Petitioner relief. A petitioner for DNA testing must show that, "*more than* [*a*] *mere possibility*[,]" there is a "*fair likelihood*" that testing would produce exculpatory or mitigating evidence. *Satterfield v. State*, 483 Md. 452, 467 (2023) (quoting *Givens v. State*, 459 Md. 694, 707 (2018)). Accordingly, Appellant had to show that testing the stain on his shirt *would tend to show* that he did not commit first-degree assault. First, even under Appellant's version of events, testing would not tend to show that Appellant acted in self-defense. The record revealed no objective reason to believe that Appellant was in apparent imminent or immediate danger of death or serious bodily harm from Lt. Fletcher, nor that

Appellant actually believed he was in danger. Also, Appellant was the initial aggressor, given that he had no reason to believe that Lt. Fletcher grasping his arm was the beginning of a physical confrontation, and used unreasonable and excessive force, punching Lt. Fletcher first on "instanct[]" and then repeatedly. Second, testing would not tend to show that Appellant neither caused, nor attempted to cause, *serious* bodily injury. Accordingly, Appellant was not entitled to testing under CP § 8-201(d)(1)(i).

The Court also held that the circuit court applied the proper standard of review in its order denying Appellant's Petition. The order's introduction states that "the circuit court was not persuaded the DNA [t]esting *would* produce exculpatory or mitigating evidence of wrongful conviction or sentencing." Although the Court concluded that the introduction of the order was inaccurately worded, the language in the order's conclusion, that the circuit court was "not persuaded" that testing had "the scientific potential to produce exculpatory or mitigating evidence," controlled. In effect, the order applied language nearly identical to CP § 8-201 and concluded that testing had no potential to produce exculpatory or mitigating evidence.

Finally, the Court reaffirmed its holding in *Satterfield v. State*, that an appellant is neither entitled to a hearing nor the opportunity to respond to the State's answer before the circuit court dismisses a petition, when, as a matter of law, the facts alleged in a petition do not entitle the appellant to relief. Accordingly, because Appellant was not entitled to testing under CP § 8-201(d)(1)(i), the circuit court properly denied the Petition without a hearing and before it received a response to the State's answer.

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State of Maryland v. Steven Anthony Thomas, No. 15, September Term 2023, filed August 29, 2024. Opinion by Gould, J.

Biran, J., concurs.
Hotten and Eaves, JJ., concur and dissent.
Watts, J., dissents.

https://www.mdcourts.gov/data/opinions/coa/2024/15a23.pdf

COURTS' REVISORY POWER OVER JUDGMENTS – RULE 4-345(e)
The Supreme Court of Maryland found that the plain language in Rule 4-345(e)(1) is unambiguous: It grants the circuit court revisory power over a sentence and imposes a strict temporal limit on the circuit court's ability to exercise such power. When interpreting Rule 4-345(e)(1), a circuit court is prohibited from revising a sentence more than five years after the imposition of the sentence.

COURTS' REVISORY POWER OVER JUDGMENTS – RULE 4-345(e)
The Supreme Court of Maryland determined that *Schlick v. State*, 238 Md. App. 681 (2018), was incorrectly decided and overruled it. The Supreme Court held that a sentencing court does not have fundamental jurisdiction over a timely-filed Rule 4-345(e) motion beyond the five-year period provided under the rule.

COURTS' REVISORY POWER OVER JUDGMENTS – RULE 4-345(e)
The Supreme Court of Maryland held that if a circuit court defers a motion to reduce a sentence under Rule 4-345(e) for the full five-year period of the rule, the result is the same as if the court had expressly denied the motion at any time within the five-year period. The rule does not require the court to convert a deferral into a formal denial at any point along the five-year timeline.

Facts:

In 2002, Steven Anthony Thomas was indicted in the Circuit Court for Charles County for three alleged hotel robberies that occurred over two days. Mr. Thomas pleaded guilty to two counts of armed robbery and one count of second-degree burglary. The court sentenced him to 20 years of incarceration for the first armed robbery count, consecutive to the sentence in an unrelated case. For the second armed robbery count, the court sentenced him to 20 years of incarceration, consecutive to the sentence on the first armed robbery count. For the second-degree burglary count, the court sentenced him to 15 years of incarceration, concurrent with the sentence on the second armed robbery count. All told, the sentences in this case aggregated to 40 years of incarceration.

Mr. Thomas petitioned for postconviction relief in 2013. In 2014, based on an agreement between Mr. Thomas and the State, the circuit court reduced Mr. Thomas' sentence on the first

armed robbery count to 12-½ years and left the other sentences intact. That resentencing triggered anew Mr. Thomas' right under Rule 4-345(e) to move to modify his sentence. This new five-year period expired on December 3, 2019.

In early 2015, Mr. Thomas moved to modify his sentence under Rule 4-345(e). About four months later, the court entered an order stating that "[u]pon consideration of" Mr. Thomas' motion, the motion would "be HELD IN ABEYANCE."

In 2017, Mr. Thomas supplemented his motion to "inform the court of his additional progress and [to] respectfully request[] that a hearing now be scheduled on" his motion. Twenty-two days later, the court, entered "NOTED. NO ACTION" on the first page of the supplemental motion.

One year later, Mr. Thomas again supplemented his motion and requested a hearing. The supplement elaborated on his "progress," and alerted the court to the "5 year time limit for which the court has jurisdiction to take action," which was then just over one year away. The court entered "NOTED. NO ACTION" on the first page of the motion.

In 2019, Mr. Thomas again supplemented his motion and requested a hearing. The supplement alerted the court to the approaching deadline of "December [3], 2019," when the court would lose jurisdiction under Rule 4 345(e). On December 6, just days after the five-year period ended, the court entered "NOTED. NO ACTION" on the first page of the motion.

In January 2021, Mr. Thomas supplemented his motion and requested a hearing. On January 26, the court entered "SET FOR HEARING" on the first page of the motion. The State opposed the motion, arguing that the court no longer had authority to rule on the motion under Rule 4-345(e), as the five-year deadline had passed.

A hearing was held on June 16, 2021. The court heard argument on whether the court had the authority to reduce his sentence after the expiration of the five-year period under Rule 4-345(e). The court concluded that it had no such authority and denied the motion.

Mr. Thomas appealed. In an unreported opinion, the Appellate Court of Maryland reversed and remanded the case "so that the court, in the exercise of its discretion, can decide whether to deny [Mr. Thomas'] motion without a hearing, or to hold a hearing and then to decide whether to deny or to grant" his motion. *Thomas v. State*, No. 657, Sept. Term 2021, 2023 WL 3300896, at *7 (Md. App. Ct. May 8, 2023). In doing so, the court applied *Schlick v. State* ("*Schlick I*"), 238 Md. App. 681 (2018), which held that the circuit court retained fundamental jurisdiction over a timely-filed Rule 4-345(e) motion after the expiration of the five-year period.

The State petitioned for a writ of certiorari, and Mr. Thomas cross-petitioned. Both petitions were granted. *State v. Thomas*, 486 Md. 95 (2023).

Held:

The Supreme Court of Maryland found that the plain language in Rule 4-345(e)(1) is unambiguous. In one sentence, the rule both grants the circuit court revisory power over a sentence and imposes a strict temporal limit on its ability to exercise such power. The Supreme Court held that under Rule 4-345(e)(1), the trial court is prohibited from revising a sentence more than five years after the imposition of the sentence.

The Supreme Court then addressed whether the circuit court has fundamental jurisdiction over a timely-filed Rule 4-345(e) motion after the five-year period expires. The Supreme Court concluded that *Schlick I* was incorrectly decided, reasoning that, under the common law, the power to modify a sentence in a criminal case extended only to the end of the term in which the judgment was entered. That power was modifiable by rule under article IV, section 18(a) of the Maryland Constitution, and such rules carry the force of law until they are modified either by the Supreme Court or by the General Assembly. The Supreme Court concluded that, at common law, circuit courts never had fundamental jurisdiction over sentences *after* the expiration of the term in which the sentences were imposed, and by rule, since 2004, the circuit courts' authority to modify a sentence under Rule 4-345(e) has been limited to five years after the imposition of the sentence. The Court therefore held that a sentencing court does not, as held in *Schlick I*, have fundamental jurisdiction to reduce a sentence under Rule 4-345(e) motion beyond the five-year period provided under the rule.

The Supreme Court further held that Rule 4-345(e)(1)'s five-year expiration period was not a mere claim-processing rule under *Rosales v. State*, 463 Md. 552 (2019). The circuit court's power to modify a sentence is grounded in centuries of common law as modified by this Court's duly adopted rules. The Court concluded that the five-year limit under Rule 4-345(e) is jurisdictional and does not belong in the claim-processing category.

The Supreme Court further held that when a timely Rule 4-345(e) motion is filed, the court has three choices: grant it, deny it, or defer it "for up to five years after the imposition of the original sentence." Here, Mr. Thomas timely filed his motion, and he timely supplemented it three times, the last time just four months before the expiration of the five year period. At each juncture, the court could have granted his motion, denied it, or deferred it. The court expressly chose the deferral option by holding it in abeyance on the initial filing and then by noting and intentionally taking "no action" on the supplemental filings. Those choices required an exercise of discretion.

The Supreme Court concluded that whether the court defers the motion for the full five year period or denies it, the result is the same. The rule does not require the court to convert a deferral into a formal denial at any point along the five-year timeline, and there was no compelling reason to force a judge's hand by imposing such a requirement, particularly by judicial fiat outside the rulemaking process. Therefore, a judge who wishes to hold open the possibility of modifying the sentence up to the very end of the five-year period is permitted to do so by rule.

Adventist Healthcare, Inc. v. Steven S. Behram, No. 16, September Term 2023, filed August 27, 2024. Opinion by Fader, C.J.

Gould, J., joins in judgment only.

https://www.courts.state.md.us/data/opinions/coa/2024/16a23.pdf

CONTRACT INTERPRETATION – OBJECTIVE THEORY OF CONTRACT INTERPRETATION

CONTRACT INTERPRETATION – GENUINE DISPUTE OF MATERIAL FACT

CONTRACT INTERPRETATION – RELEASE CLAUSES

Facts:

After being suspended twice by the Medical Executive Committee at Shady Grove Medical Center (the "Hospital), Dr. Steven S. Behram and the Hospital entered into a Settlement Agreement. The stipulations of the Settlement Agreement were as follows: the Hospital will not be required to provide the "fair hearing" to which Dr. Behram was entitled under the Hospital's bylaws, the Medical Executive Committee will vote to fully restore Dr. Behram's clinical privileges, and Dr. Behram will then immediately resign his privileges to practice at the Hospital. The parties also agreed that the Hospital would submit a report, using language agreed upon by both parties, to the National Practitioner Data Bank ("Data Bank") and the Maryland Board of Physicians. The agreed language stated that Dr. Behram was suspended due to concerns for patient safety, his privileges were reinstated, and he then resigned.

The Hospital submitted four different reports to the Data Bank, the first two of which Dr. Behram contends breached the Settlement Agreement. All four reports included the agreed language from the Settlement Agreement. The first and second reports also included code-generated statements that Dr. Behram alleged were inconsistent with the agreed language. One of those statements stated that Dr. Behram was suspended due to an "immediate threat to health or safety." The other reported that he had voluntarily surrendered his clinical privileges "while under, or to avoid, investigation relating to professional competence or conduct." The Hospital ultimately submitted new reports that omitted those two statements and included different code-generated statements the parties now agree are consistent with the Settlement Agreement.

The complaint contains four counts, two of which are at issue here. In Count One, Dr. Behram alleged that the Hospital breached the Settlement Agreement by including in its reports to the Data Bank the two code-generated statements identified above. In the second, Count Four, Dr. Behram alleged that the Hospital breached its bylaws by failing to provide him with a timely "fair hearing." The Circuit Court for Montgomery County granted summary judgment in favor of the Hospital on both counts. On Count One, the circuit court determined that the Hospital was

not required to use any particular codes when reporting to the Data Bank. On Count Four, the circuit court ruled that Dr. Behram had released his claims concerning a fair hearing when he entered into the Settlement Agreement. The Appellate Court reversed the circuit court's ruling on Count One and affirmed it on Count Four.

Held: Affirmed.

The Supreme Court of Maryland affirmed the Appellate Court's judgment.

On Count One, the Court held that the circuit court erred in entering summary judgment in favor of the Hospital regarding Dr. Behram's claim that the Hospital violated the Settlement Agreement. The unambiguous terms of the Settlement Agreement required that the Hospital submit a report to the Data Bank that reflected the essential agreement of the parties, which was that the Hospital would fully restore Dr. Behram's clinical privileges without a hearing and Dr. Behram would then resign those privileges without the specter of adverse action. The legal question was whether a reasonable person would conclude that the Hospital would be prohibited from including in its report code-generated statements that were materially inconsistent with that report. The Court answered that question in the affirmative. Because a reasonable juror could conclude that the Hospital breached its obligation under the Settlement Agreement concerning its report to the Data Bank, the Court affirmed the Appellate Court's vacatur of summary judgment.

On Count Four, the Court affirmed the Appellate Court's affirmance of the circuit court's grant of summary judgment. The Court determined that the Settlement Agreement's broad release of any claim relating to the suspension of Dr. Behram's privileges before the date on which the Hospital signed the Agreement encompassed any alleged delay in providing a fair hearing.

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In the Matter of Mark McCloy, No. 10, September Term 2023, filed August 20, 2024. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/coa/2024/10a23.pdf

DISQUALIFYING CRIMES – FIREARMS
The Supreme Court of Maryland held that, in determining whether an out of State crime is disqualifying under Md. Code Ann., Pub. Safety § 5 101(g), the out of State crime is compared with the potentially equivalent Maryland crime in effect at the time the applicant submitted the firearm application, not at the time the applicant was convicted of the out of State crime.

DISQUALIFYING CRIMES – FIREARMS
The Supreme Court of Maryland held that an out-of-State crime is equivalent to a Maryland crime under Maryland's Public Safety Article ("PS") if the elements of the out of State crime are the same as or narrower than the Maryland crime. If the out-of-State crime is equivalent to a "disqualifying crime" in Maryland under PS § 5 101(g), then the out of State crime is also disqualifying. If the elements of the out of State crime are broader than the Maryland crime and there is a sufficient basis to conclusively determine the acts that formed the basis of the conviction for the out of State crime, then the out of State crime is disqualifying if those acts would support a conviction under a disqualifying Maryland crime.

Facts:

In 2021, Petitioner Mark McCloy submitted a firearm application to the Maryland State Police ("MSP") for the purpose of purchasing a handgun. The MSP's criminal background check revealed that, in 1999, Mr. McCloy had been convicted of violating 18 U.S.C. § 1512(c)(1), a federal witness tampering statute. The MSP determined that 18 U.S.C. § 1512(c)(1) was a "disqualifying crime" because it was equivalent to a Maryland crime that was disqualifying under Md. Code Ann., Pub. Safety ("PS") § 5 101(g)(3) (2003, 2022 Repl. Vol.). Because PS § 5 133(b) prohibits a person who has been convicted of a disqualifying crime from possessing a handgun, the MSP disapproved Mr. McCloy's application.

Mr. McCloy appealed the MSP's decision to the Office of Administrative Hearings, which held a hearing before an Administrative Law Judge ("ALJ"). At the hearing, the MSP testified that it had determined that the equivalent Maryland crime to 18 U.S.C. § 1512(c)(1) was Md. Code Ann., Crim. Law ("CR") § 9 305 (2002, 2021 Repl. Vol.). The MSP explained that it determines whether an out of State crime is disqualifying by comparing the elements of the out of State crime with the elements of the potentially equivalent Maryland crime. The MSP further explained that it does not consider the facts that gave rise to the conviction in making this determination. Nonetheless, Mr. McCloy introduced evidence explaining the facts that gave rise to his 1999 conviction. According to this evidence, the charges against Mr. McCloy stemmed from a sexual encounter that he, then a government employee, had with a coworker. The coworker filed a sexual harassment complaint with the Equal Employment Opportunity

Commission ("EEOC"). In a conversation that was tape recorded by the FBI, Mr. McCloy agreed to pay the coworker to dismiss the complaint. Mr. McCloy was arrested and ultimately pleaded guilty to 18 U.S.C. § 1512(c)(1). In addition to introducing this evidence, Mr. McCloy also argued before the ALJ that CR § 9 305 was not equivalent to 18 U.S.C. § 1512(c)(1).

The ALJ affirmed the disapproval of Mr. McCloy's application. Looking only at the elements of the federal and Maryland statutes, the ALJ agreed with Mr. McCloy that 18 U.S.C. § 1512(c)(1) was not equivalent to CR § 9 305. However, the ALJ sua sponte determined that 18 U.S.C. § 1512(c)(1) was equivalent to CR § 9 306, which is also disqualifying under PS § 5 101(g)(3).

Mr. McCloy sought judicial review in the circuit court. The circuit court held that the ALJ had acted improperly by sua sponte determining that CR § 9 306, rather than CR § 9 305, was equivalent to 18 U.S.C. § 1512(c)(1). However, the circuit court held that the MSP had correctly determined that 18 U.S.C. § 1512(c)(1) was equivalent to CR § 9 305. Thus, the circuit court affirmed the ALJ's disposition.

Mr. McCloy appealed to the Appellate Court of Maryland, which affirmed in a reported opinion. *In re McCloy*, 257 Md. App. 668 (2023). Mr. McCloy argued that CR § 9 305 could not be comparable to 18 U.S.C. § 1512(c)(1) because CR § 9 305 was not enacted until after his 1999 conviction. The court rejected this argument, holding that the out of State crime should be compared to the equivalent Maryland crime in effect at the time of the application. Mr. McCloy also argued that 18 U.S.C. § 1512(c)(1) was not equivalent to CR § 9 305, either on the elements or when the facts were considered. The court also rejected this argument. Looking to *Brown v. Handgun Permit Review Board*, 188 Md. App. 455 (2009), the court fashioned a two step approach for determining whether an out of State crime is disqualifying. The approach first involves comparing the elements of the out of State crime with the elements of the potentially equivalent Maryland crime. The approach then involves determining whether a "reasonable mind" could conclude that the statutes prohibit similar conduct based on both the elements of the statutes and the conduct that gave rise to the out of State conviction. Using this approach, the court concluded that Mr. McCloy's 1999 federal crime was equivalent to CR § 9 305 and was therefore disqualifying.

The Supreme Court of Maryland granted Mr. McCloy's petition for writ of certiorari. *In re McCloy*, 485 Md. 133 (2023).

Held:

The Supreme Court held that the Appellate Court correctly concluded that, in determining whether an out of State crime is equivalent to a Maryland crime, the out of State crime should be compared to the Maryland crime in effect at the time of the application. PS § 5 133(b) regulates the current possession of firearms, and the General Assembly may expand the list of disqualifying crimes and thereby convert a lawful possession to an unlawful possession. Applying the law in effect at the time of the application promotes consistency and equality in the

treatment of persons convicted of the same criminal conduct, regardless of where or when that conduct occurred.

The Supreme Court held that the Appellate Court erred in holding that CR § 9 305 is equivalent to 18 U.S.C. § 1512(c)(1). In determining whether an out of State crime is equivalent to a Maryland crime, the categorical approach articulated by the United States Supreme Court in *Taylor v. United States*, 495 U.S. 575 (1990), is an appropriate starting point. Under this approach, an out of State crime is equivalent to a Maryland crime if the elements of the former are the same as or narrower than the latter. If the out of State crime is equivalent to a Maryland crime that is disqualifying under PS § 5 101(g), then the out of State crime is also disqualifying, and the analysis ends there. If, however, the elements of the out of State crime are broader than the Maryland crime, then the out of State crime is equivalent to the Maryland crime only if information available to the MSP allows the MSP to conclusively determine that the acts forming the basis of the conviction for the out of State crime would also support a conviction under the Maryland crime. If this is the case, and the Maryland crime is disqualifying, then the out of State crime is also disqualifying.

Applying this test, the Supreme Court agreed with the ALJ that Mr. McCloy's 1999 conviction under 18 U.S.C. § 1512(c)(1) was not equivalent to CR § 9 305. Applying the categorical approach, the former embraces a wider range of conduct than the latter. Under 18 U.S.C. § 1512(c)(1), the object of the defendant's conduct can be "any person," but under CR § 9 305, the object of the defendant's conduct must be a "juror, witness, or an officer of a court of the State or of the United States." Further, 18 U.S.C. § 1512(c)(1) applies when the proceeding at issue is an "official proceeding," which, per 18 U.S.C. § 1515(a)(1), includes congressional proceedings and proceedings before federal agencies. CR § 9 305, however, applies only to judicial proceedings. Because the elements of 18 U.S.C. § 1512(c)(1) are broader than those of CR § 9 305, the categorical approach does not resolve the inquiry. Thus, the Supreme Court next considered whether there was conclusive evidence that Mr. McCloy was convicted of having committed acts that establish all the elements of CR § 9 305. The Supreme Court noted initially that the MSP had no information about the facts supporting Mr. McCloy's 1999 conviction when it disapproved his application, as this information was not introduced until the hearing before the ALJ. Even if the MSP had this information, however, it would not have established that Mr. McCloy was convicted of an offense that would support a conviction under CR § 9-305. The only evidence before the ALJ was that Mr. McCloy was convicted of tampering with a potential witness in an EEOC proceeding. However, as discussed above, CR § 9-305 applies only to judicial proceedings. Thus, the conduct forming the basis of Mr. McCloy's 1999 conviction could not have resulted in a conviction under CR § 9-305, even if such conduct had occurred in Maryland. Mr. McCloy's conviction under 18 U.S.C. § 1512(c)(1) was therefore not equivalent to a conviction under CR § 9 305 and was not disqualifying on that basis. Thus, because Mr. McCloy's 1999 conviction under 18 U.S.C. § 1512(c)(1) was not disqualifying, the Court held that the MSP erred in disapproving Mr. McCloy's application.

The Supreme Court explained why the approach it articulated is preferred over the two step approach adopted by the Appellate Court. The Supreme Court stated that the Appellate Court's two step approach is inherently subjective because it provides no standard for determining

whether two statutes prohibit "similar" conduct. Further, by asking whether a reasonable person could conclude that the conduct giving rise to the conviction could be considered prohibited by the purportedly equivalent Maryland statute, the approach appears to invite the MSP to consider and determine disputed facts underlying the out of State conviction. There is no basis in the statute's text to conclude that the General Assembly intended to assign the MSP such a factfinding task.

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Madelyn Bennett, Individually and as Successor Trustee of the Pauline A. Bennett Revocable Living Trust v. Thomas A. Gentile, No. 25, September Term 2023, filed August 12, 2024. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/coa/2024/25a23.pdf

ATTORNEY MALPRACTICE – STRICT PRIVITY RULE
The Supreme Court held that the strict privity rule set out in *Noble v. Bruce*, 349 Md. 730 (1998), is still good law. Applying the doctrine of stare decisis, the Supreme Court held that the strict privity rule applies in legal malpractice cases when a beneficiary under the inter vivos trust sues the attorney who advised a decedent in the estate planning context.

ATTORNEY MALPRACTICE – THIRD-PARTY BENEFICIARY
The Supreme Court reviewed *Noble v. Bruce*, 349 Md. 730 (1998), and *Ferguson v. Cramer*, 349 Md. 760 (1998), and concluded that one's status as a testamentary beneficiary does not entitle that person to claim third-party beneficiary status for claims against the drafting attorney. Rather, under *Noble*, the presumption is that a mere testamentary or trust beneficiary is not a third-party beneficiary. But *Noble* does not foreclose the possibility that the presumption against third-party beneficiary status cannot be overcome by allegations and proof of sufficient facts showing that the client's intent to benefit the beneficiary was the direct purpose of the transaction or relationship.

Facts:

In 2015, Pauline Bennett retained an attorney, Respondent Thomas Gentile, to prepare her estate planning documents. Mr. Gentile subsequently prepared, and Pauline executed, a trust instrument ("2015 Instrument"), which contained the terms of the Pauline A. Bennett Revocable Living Trust ("Trust").

Under the 2015 Instrument, Pauline was the Trust's settlor and initial trustee. The 2015 Instrument identified two of Pauline's properties to be transferred into the Trust, one of which was 4715 Wissahican Avenue in Rockville, Maryland ("Wissahican"). Accordingly, Pauline signed a deed to transfer Wissahican to herself as trustee. The 2015 Instrument stated that the trustee shall utilize the trust property for the benefit of the settlor, except that Wissahican shall be used solely for the benefit of one of Pauline's daughters, Audrey Bennett Eney. Upon Pauline's death, the 2015 Instrument directed the successor trustee to distribute Wissahican to Audrey and to distribute other trust property to Audrey and other relatives, including Pauline's other daughter, Petitioner Madelyn Bennett.

In 2017, Mr. Gentile prepared, and Pauline executed, a new trust instrument ("2017 Instrument"). While the 2017 Instrument revised the Trust, many provisions were unchanged, including the provision requiring the distribution of Wissahican to Audrey upon Pauline's death and the provision requiring Wissahican to be used solely for the benefit of Audrey.

In 2019, while temporarily living in a nursing facility, Pauline learned that Audrey had withdrawn money from Pauline's bank accounts, used Pauline's credit cards without authorization, and mismanaged Pauline's money. In November 2019, Pauline told Mr. Gentile her concerns about Audrey's behavior and her concerns that she would be unable to pay for her nursing home care. Pauline told Mr. Gentile that she needed to sell Wissahican to pay for her care. She instructed Mr. Gentile to adjust her estate planning documents to allow her to sell Wissahican and to ensure that no trust property would be distributed to Audrey.

Mr. Gentile sought to amend the Trust by preparing a new trust instrument ("2019 Instrument"), which Pauline executed on November 20, 2019. To allow Pauline to sell Wissahican, the 2019 Instrument removed the clause that required Wissahican to be used for Audrey's benefit and instead stated that all trust property was to be used solely for the settlor's benefit. The 2019 Instrument also removed the provision distributing Wissahican to Audrey upon Pauline's death and instead listed Madelyn as the only recipient of trust property upon Pauline's death. Finally, the 2019 Instrument established Madelyn as the sole successor trustee upon Pauline's death or disability.

Pauline died on December 31, 2019. A dispute arose between Madelyn and Audrey over the ownership of Wissahican. Accordingly, Madelyn, as successor trustee, filed a suit against Audrey in the circuit court, seeking, among other relief, to quiet title to Wissahican. Through pleadings, Mr. Gentile was made a party to the suit.

On summary judgment, the circuit court ruled that, under the Trust, Audrey was entitled to Wissahican upon Pauline's death. Construing the terms of the 2017 Instrument and 2019 Instrument, the court held that the provisions regarding Wissahican in the former were untouched by the latter. Thus, the court held that the disposition of Wissahican was governed by the 2017 Instrument, which still distributed Wissahican to Audrey. Madelyn sought en banc review by the circuit court, and the en banc panel affirmed.

Madelyn then pursued her claims against Mr. Gentile, alleging that, but for his allegedly negligent drafting of the 2019 Instrument, Wissahican would have been distributed to her. Madelyn sought damages in her capacity as trustee as well as in her individual capacity. In her individual capacity, Madeline claimed that she was an intended third-party beneficiary of the attorney client contract between Pauline and Mr. Gentile.

Madelyn's claims against Mr. Gentile were resolved in Mr. Gentile's favor by the circuit court on summary judgment. The court held that in *Noble v. Bruce*, 349 Md. 730 (1998), the Supreme Court of Maryland affirmed the continuing vitality of the strict privity rule in legal malpractice cases. Accordingly, the circuit court found that *Noble* barred non clients from bringing legal malpractice claims against attorneys who were alleged to have negligently given estate planning advice or negligently drafted estate documents. Thus, because Madelyn was not Mr. Gentile's client, the court held that her claims against him were barred. While the court noted that an exception to the strict privity rule exists if the non client is an intended third party beneficiary of

the agreement between the client and the attorney, the circuit court held that *Noble* foreclosed this exception from applying in the estate planning context. The court further held that even if *Noble* did not foreclose this exception from applying, Madelyn's claim would still fail, as the undisputed facts showed that she was not a third party beneficiary of the attorney client relationship between Pauline and Mr. Gentile. The court explained that Pauline engaged Mr. Gentile to draft the 2019 Instrument to serve her own anticipated financial needs and her desire to cut Audrey out of her estate. As the court stated, there was no evidence "that Pauline's direction [to Mr. Gentile] that Madelyn, her only other living child, receive 'anything left' was any more than incidental to removing Audrey as a beneficiary."

Madelyn appealed to the Appellate Court of Maryland. While this case was pending before the Appellate Court, she petitioned for a writ of certiorari, which was granted. *Bennett v. Gentile*, 486 Md. 228 (2023).

Held:

The Supreme Court declined to overturn *Noble* and upheld *Noble*'s strict privity requirement for legal malpractice claims in the estate planning context. The Court's analysis of the development of the strict privity rule in *Noble* was grounded in a thorough discussion and analysis of Maryland precedent going back decades. Although the Court acknowledged that it may abandon the doctrine of stare decisis when the decision is "clearly wrong and contrary to established principles" or where there is "a showing that the precedent has been superseded by significant changes in the law or facts," *Wadsworth v. Sharma*, 479 Md. 606, 630 (2022), neither circumstance applied here because Madelyn did not argue that the decision was clearly wrong or contrary to established principles, nor did she show a significant change in law or facts to justify overturning *Noble*. The Court noted that changes in the statutory law since *Noble* have also ameliorated the perceived harshness of the strict privity rule, and the Court recognized that the General Assembly is better suited to determine questions of public policy.

The Supreme Court also held that the third party beneficiary exception to the strict privity rule did not apply in this case. The Court declined to hold that *Noble* and *Ferguson v. Cramer,* 349 Md. 760 (1998), which involved issues similar to those in *Noble,* foreclosed all third-party beneficiary claims in the estate planning context. The Court noted that *Noble* and *Ferguson* did not categorically reject the third-party beneficiary claims of testamentary beneficiaries based on a bright-line rule. Instead, the Court in those cases considered the merits of those claims, including the evidence in the record, and determined that the testamentary beneficiaries were not third party beneficiaries. However, the Court here noted that, under *Noble* and *Ferguson*, one's status as a testamentary beneficiary does not entitle that person to claim third party beneficiary status in a legal malpractice claim against an estate planning attorney. Here, the Court held that the circuit court was correct in granting summary judgment for Mr. Gentile on the issue of whether Madelyn was an intended third party beneficiary of the attorney client relationship between Mr. Gentile and Pauline, as the undisputed facts showed that Madelyn was merely a testamentary beneficiary.

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Doctor's Weight Loss Centers, Inc., et al. v. Shelly Blackston, No. 17, September Term 2023, filed July 31, 2014. Opinion by Eaves, J.

https://www.mdcourts.gov/data/opinions/coa/2024/17a23.pdf

CHOICE OF LAW – *LEX LOCI DELICTI* – MEDICAL NEGLIGENCE

Facts:

A jury in the Circuit Court for Prince George's County found Dr. Alva Roy Heron, Jr., Doctor's Weight Loss Centers, Inc., the A. Roy Heron Global Foundation for Community Wellness, and the Heron Smart Lipo Center ("Petitioners") liable for medical malpractice and failing to obtain informed consent for a liposuction procedure Dr. Heron performed on Shelly Blackston in Virginia in 2015. Following the procedure, after returning to her home in Maryland, Ms. Blackston began manifesting the symptoms of a highly dangerous, contagious bacterial infection. The infection required hospitalization, five separate surgeries, and several rounds of antibiotics. The jury awarded Ms. Blackston $2,300,900 in total damages, apportioning $2,000,000 for non-economic damages, $60,000 for economic damages, and $240,900 for medical expenses. The jury was not asked to determine where Respondent was first injured.

Following trial, Petitioners filed an omnibus motion that included a request for, among other things, statutory remittitur. The circuit court, determining that Maryland's cap on non-economic damages applied, Md. Code Ann., Cts. & Jud. Proc. § 3-2A-09(b) (1957, 2020 Repl. Vol.), granted the remittitur and reduced the non-economic portion of Respondent's damages to $755,000. Under Maryland's cap, Respondent's total award was $1,055,900. The Appellate Court of Maryland reversed, holding that Virginia law, which caps the total award in medical malpractice actions at $2,150,000, Va. Code Ann. § 8.01-581.15, applied because Ms. Blackston was infected and, therefore, first injured in Virginia. *Blackston v. Drs. Weight Loss Ctrs. Inc.*, No. 553, 2023 WL 4247374, at *9 (Md. App. Ct. June 29, 2023).

Held: Affirmed.

The Supreme Court of Maryland held that, under the doctrine of *lex loci delicti*, Ms. Blackston was injured in Virginia at the time of the procedure. Accordingly, Virginia law applied to her claims. Maryland's choice of law rule, known as *lex loci delicti*, requires courts in the state to apply the law of the place where the last event necessary to make an actor liable for an alleged tort occurred. In this case, both claims of medical malpractice and failure to obtain informed consent are actions grounded in negligence. The elements of each tort make clear that they are "completed" at the occurrence of any "injury," no matter how slight, caused by the defendant's wrongful conduct.

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Because Ms. Blackston prevailed at trial, the Supreme Court reviewed the evidence in the light most favorable to her. Because the jury in this case was not charged with determining the place of harm, the Court's focus remained exclusively on the evidence presented to the jury and whether there was any evidence, however slight, sufficient to sustain the jury's verdict. In evaluating the evidence presented at trial, the Court highlighted the testimony of Ms. Blackston's expert witnesses, who opined that the infection was "introduced" and "started" during the liposuction procedure in Dr. Heron's office in Virginia. Therefore, there was sufficient evidence in the record for Virginia law to apply to Ms. Blackston's claims and to sustain the greater amount of the jury's initial damages award.

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Corey Cunningham, on behalf of Kodi Gaines, a minor v. Baltimore County, Maryland, et al., No. 9, September Term 2023., filed June 25, 2024. Per Curiam.

Watts, J., dissents.
Hotten, J., concurs and dissents.

https://www.courts.state.md.us/data/opinions/coa/2024/9a23.pdf

WAIVER – APPELLATE PRESERVATION

QUALIFIED IMMUNITY – FOURTEENTH AMENDMENT

Facts:

In 2016, a six-hour standoff between Baltimore County police officers and Ms. Korryn Gaines ended with Corporal Royce Ruby shooting and killing Ms. Gaines. Two of the bullets that struck Ms. Gaines subsequently hit and injured Kodi Gaines, Ms. Gaines's son who was then five years old.

As a result of the shooting, multiple parties filed suit against Baltimore County, Corporal Ruby, and other officers. Two of the counts in the complaint alleged claims under 42 U.S.C. § 1983 for violation of Ms. Gaines's and Kodi's federal civil rights, including violations of the Fourth, Fifth, Eighth, and Fourteenth Amendments, all based on excessive force. The only dispute remaining in this case concerned the petitioner, Corey Cunningham's Substantive Due Process Claim based on an alleged violation of the Fourteenth Amendment against Baltimore County, and others, on behalf of his minor child, Kodi Gaines.

Before, during, and after trial, there was confusion and disagreement among the parties and the circuit court as to whether Kodi's federal constitutional excessive force claim was to be decided under the Fourth Amendment or the Fourteenth Amendment. Without articulating the applicable standard, Kodi contended that the Fourteenth Amendment applied directly to his claim, while the defendants claimed that the Fourteenth Amendment was merely a vehicle for application of the Fourth Amendment. The circuit court agreed with the defendants. The jury, which was instructed only as to the Fourth Amendment's standard of objective reasonableness, returned a plaintiffs' verdict on all counts. During post-trial motions practice, the defendants filed a motion for judgment notwithstanding the verdict (JNOV), which the trial court granted. Still applying a Fourth Amendment framework, that court decided that Corporal Ruby was entitled to qualified immunity on all § 1983 claims.

Plaintiffs appealed, arguing, among other things, that the circuit court erred in granting the JNOV based on qualified immunity. As relevant here, the Appellate Court reversed the grant of JNOV with respect to the claims against Corporal Ruby and remanded the case for further proceedings. On remand, Kodi asserted that he had prevailed on a Substantive Due Process

Fourteenth Amendment claim, notwithstanding that the jury had not been instructed on such a claim or been asked to decide whether Kodi had met his burden of proving such a claim. The defendants argued, among other things, that Kodi had not pled such a claim, that the evidence at trial did not support such a claim, and that Corporal Ruby would be entitled to qualified immunity concerning such a claim.

The circuit court entered judgment for the defendants, holding that the facts elicited at trial did not satisfy the Fourteenth Amendment's shocks-the-conscience standard. On appeal, the Appellate Court held that Kodi waived his Substantive Due Process Claim and even if he did not, Corporal Ruby was entitled to qualified immunity.

Held: Affirmed.

The Court first addressed waiver and whether Kodi waived his Substantive Due Process Claim. The Court noted that it agreed with much of the Appellate Court's waiver analysis but disagreed with its outcome for two reasons. First, the Appellate Court's decision in the first appeal to reverse the grant of JNOV with respect to claims against Corporal Ruby necessarily included Kodi's Substantive Due Process Claim, and thus revived that claim. Second, the argument that Kodi waived by failing to make in his first appeal was different from the argument he pursued in his second appeal. Therefore, based on the convoluted procedural history of this case, the Appellate Court erred in holding that Kodi was precluded from pursuing his Substantive Due Process Claim on remand.

Second, the Court addressed qualified immunity, the alternative ground on which the Appellate Court affirmed the circuit court. The Court agreed with the Appellate Court that under the standard set by the Supreme Court of the United States, Corporal Ruby was entitled to qualified immunity. After laying out the two-step qualified immunity analysis, the Court proceeded to the second step, determining whether the relevant constitutional right was clearly established at the time of the violation. The Court held that the law at the time was not clearly established that Corporal Ruby would violate Kodi's Fourteenth Amendment rights as an innocent bystander when Corporal Ruby ended an armed standoff with Ms. Gaines by shooting Ms. Gaines with Kodi present. Therefore, Corporal Ruby was entitled to qualified immunity.

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APPELLATE COURT OF MARYLAND

Tyron Devon Borges v. State of Maryland, No. 134, September Term 2023, filed August 1, 2024. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0134s23.pdf

CRIMINAL LAW – SEARCH, SEIZURE, AND ARREST – IN GENERAL

CRIMINAL LAW – SEARCH, SEIZURE, AND ARREST – IN GENERAL

CRIMINAL LAW – SEARCH, SEIZURE, AND ARREST – SUBJECTIVE OR OBJECTIVE TEST; OFFICER'S MOTIVE OR INTENT

Facts:

This appeal concerns a search incident to an arrest for first- and second-degree assault. At the time, Borges was staying at his grandmother's apartment. The officers entered the apartment and went to the grandmother's bedroom where Borges was sleeping. The officers woke the appellant and arrested him. Noticing he was only in underwear and a t-shirt, the officers asked Borges where his clothes were. An officer picked up clothes that were on a bedside nightstand and felt something heavy. Inside a jacket the officer found a handgun. Borges was arrested and charged with possession of a regulated firearm after being convicted of a disqualifying crime and unlawful possession of ammunition. Prior to trial, Borges moved to suppress the firearm, but the court denied his motion. Later, Borges entered a conditional guilty plea to preserve his right to challenge the suppression court's decision. The court sentenced him to five years' imprisonment with all but one year suspended, credit for time served, and five years of supervised probation. Borges timely appealed and asked whether the suppression court erred in denying Borges' motion to suppress evidence

Held: Affirmed.

Under *Chimel v. California*, 395 U.S. 752 (1969), a search incident to arrest allows the police to search the person of an arrestee and any area within the arrestee's immediate control to protect themselves from danger and to prevent the destruction or concealment of evidence. *Chimel* and its progeny do not establish a definitive distance in which the police are permitted to search.

Rather, the searchable area is that within which the arrestee might reach as "an extension of the body."

The reasonableness of a *Chimel* search does not depend on a police officer's subjective motivations. Rather, the inquiry is objective, and determined by asking whether a reasonable officer in those circumstances would have acted in a similar manner.

In this case, Borges' clothing was within the *Chimel* perimeter when the officers searched and found the firearm. The search was for the officers' safety because they were executing an arrest warrant for first degree assault – a violent crime. It would have been contrary to officer safety to allow an arrestee potentially unfettered access to whatever may be within their clothing. The distance between Borges and the clothing was approximately ten feet, which the Court held was well with the *Chimel* perimeter when comparing that distance to situations found in Maryland appellate cases. This was not a situation where the officers removed an arrestee from the room where the firearm was found. Lastly, due to the circumstances – Borges was in his underwear on a cold, rainy morning – the officers needed to dress him to transport him for processing.

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James Russell Trimble v. State of Maryland, No. 1834, September Term 2022, filed August 1, 2024. Opinion by Getty, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1834s22.pdf

CRIMINAL PROCEDURE – JUVENILE RESTORATION ACT – WEIGHT OF FACTORS

CRIMINAL PROCEDURE – JUVENILE RESTORATION ACT – AGE OF DEFENDANT

Facts:

James Russell Trimble was convicted of various charges, including first-degree murder, in 1982. The charges resulted from a crime in which Trimble and others kidnapped and sexually assaulted two women before Trimble killed one of them. Trimble was approximately 17 years and 8 months old at the time of the offense.

In 2022, Trimble filed a motion for a reduction of sentence under the Juvenile Restoration Act ("JUVRA"), Md. Code (2001, 2018 Repl. Vol., 2022 Supp.), Crim. Proc. ("CP") Art. § 8-110. JUVRA allows an individual convicted as an adult for an offense committed when the individual was a minor to file a motion for sentence reduction if the individual was sentenced before October 1, 2021, and has been imprisoned for at least 20 years. CP § 8 110(a). The court must then consider ten enumerated factors and any other factor the court deems relevant to determine whether a reduced sentence is in the interests of justice and the individual will not be a danger to the public. CP § 8-110(c)–(d).

Trimble asserted that his actions while incarcerated demonstrated that he had been rehabilitated and should therefore have his sentence reduced. He also presented evidence and testimony regarding the nature of antisocial personality disorder, which he had been diagnosed with when he was originally sentenced, that indicated a possibility of abatement as an individual ages. After considering the evidence presented, the Circuit Court for Baltimore County denied the motion in a written opinion.

Held: Affirmed.

The Appellate Court affirmed the circuit court's decision. The Court discussed the legislative history of JUVRA, including the federal cases that served as the impetus for the state legislation, and listed the eleven factors that a court is required to consider when considering a motion for sentence reduction under JUVRA. CP § 8-110(d). The Court then held that, contrary to Trimble's assertions, the legislative history and purpose do not require a court to weigh the defendant's "demonstrated maturity, rehabilitation, and fitness to reenter society," CP § 8-110(d)(5), more heavily than the other factors in CP Section 8-110(d). Although Trimble was correct that Maryland's juvenile justice statutes have an overarching philosophy of promoting

amenability to treatment and rehabilitation, the Court concluded that neither the plain language nor the legislative history indicate that a defendant's rehabilitation must be given the most weight. Rather, a court considering a motion for sentence reduction must consider all the factors listed in CP Section 8-110(d) and balance them according to its discretion.

The Court also held that the defendant's age at the time of the offense, CP § 8-110(d)(1), can be used as either a mitigating or an aggravating factor. Trimble argued that the court misapplied this factor by using the fact that he was only 4 months shy of his 18th birthday as an aggravating factor despite this also being the characteristic that entitled Trimble to relief under JUVRA. The Court disagreed with Trimble's assessment of the age factor as categorically mitigating. The Court concluded that the age factor would be duplicative of the court's determination of a defendant's eligibility for a sentence reduction under JUVRA if the court could not exercise its full discretion in weighing the defendant's age as either for or against a sentence reduction.

Finally, the Court concluded that the circuit court did not err in weighing conflicting evidence regarding antisocial personality disorder and denied the State's motion to dismiss.

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Brandon Parks v. State of Maryland, Nos. 26 & 27, September Term 2023, filed August 28, 2024. Opinion by Tang, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0026s23.pdf

CHILD SUPPORT – ENFORCEMENT – EVIDENCE – WEIGHT AND SUFFICIENCY

Facts:

This consolidated appeal involves two cases in which the appellant, Brandon Parks ("Parks"), was convicted in the Circuit Court for Kent County of willfully failing to provide child support for two of his minor children in violation of § 10-203(a) of the Family Law Article ("FL"), Maryland Code (1984, 2019 Repl. Vol.). The sole issue in each case is whether there was sufficient evidence of willfulness.

Held: Affirmed

FL § 10-203(a) provides that "[a] parent may not willfully fail to provide for the support of his or her minor child." "Willful" is not defined in the statute. Considering the legislative history and decisional law, the Appellate Court interpreted "willful" under FL § 10-203(a) as an act done with deliberate intention for which there is no reasonable excuse.

To support a conviction for willful failure to pay child support under FL § 10-203(a), the Appellate Court held that there must be evidence from which the trier of the facts can determine that the obligor parent intentionally refused to support their child despite having the capacity to do so. Willful failure to support presupposes the existence of, or the ability to obtain, the means of support by the parent. In other words, the obligor parent must have the means of paying support or the capacity to obtain the means of paying support. Willfulness may be proven by circumstantial evidence and by inferences drawn from that evidence.

The evidence was sufficient to establish that the appellant willfully failed to pay child support under FL § 10-203(a) in two cases. In the first case, the evidence demonstrated that the appellant worked about 10 to 15 monthly jobs, paid rent, and did not use any funds to pay child support during the relevant period. The evidence also showed that the mother prevented the appellant from contacting her and from visiting the child, from which the jury could have inferred that the appellant chose not to pay support. In the second case, the evidence established that the appellant worked for one employer, earning about $500 a month during the relevant period, and he also worked for others. Despite his income and ability to work, he made no child support payments during the relevant period.

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Accordingly, the Appellate Court held that the evidence was sufficient in both cases to establish that the appellant willfully failed to pay child support under FL § 10-203(a) and therefore affirmed the judgments of the circuit court.

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Deborah Marie Pattison v. Todd Alan Pattison, No. 110, September Term 2023, filed August 1, 2024. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0110s23.pdf

CONDITION PRECEDENT – WAIVER

Facts:

In this consolidated appeal, Wife challenged the ruling of the Circuit Court for Anne Arundel County that the Voluntary Separation and Property Settlement Agreement signed by the parties was valid and enforceable because her condition precedent was not met by Husband. Wife offered Husband the Agreement on Friday, September 25, 2020, with a letter that stated: "This agreement is delivered to you in settlement of the parties' outstanding disputes on condition that the agreement and the note be executed by [Husband] today." Husband signed the agreement on Monday, September 28, 2020. The court found that the unambiguous language of the Agreement showed mutual assent to be bound by its terms, and alternatively, that Wife waived enforcing her condition precedent by her actions of waiting 17 days to advise Husband that there was no contract.

Held: Reversed.

An offer to enter into a contract can include a condition that the offer be accepted within a stated time. Where the time condition was sent in a letter attached to an email with a settlement agreement, the letter was part of the offer. The condition precedent that the agreement must be signed by a certain date was not ambiguous, and because the agreement was not signed within the time required, a valid contract was not formed between the parties.

A party can waive strict compliance with a condition precedent. Waiver is the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and it may result from an express agreement or be inferred from circumstances. Here, there was no express waiver of the condition precedent, and there was no conduct indicating an intent to waive the condition. Wife's failure to advise, for 17 days, that there was no contract due to Husband's failure to sign within the deadline did not constitute a waiver of the condition precedent of the formation of a contract; mere silence generally is insufficient to show waiver of contract rights.

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Erica J. Hall Houser v. Nicholas A. Houser, No. 2220, September Term 2022, filed August 1, 2024. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2220s22.pdf

FAMILY LAW – USE OF CHILD SUPPORT GUIDELINES

Facts:

Erica Houser and Nicholas Houser were married in 2012. They had one child together, who was born in 2018. After the parents separated in 2020, the mother initiated divorce proceedings in the Circuit Court for Anne Arundel County. Among other things, the mother requested sole custody of the child, as well as child support. The father filed a counterclaim, and also requested sole custody of the child and child support.

Prior to the merits hearing, the parents entered into a property settlement agreement and a custody agreement, under which they would share joint legal custody and the mother would have primary physical custody. The parents also entered into an agreement titled Child Support Agreement. In that agreement, both parents acknowledged that the father had accumulated child support arrearages of approximately $41,708. However, both parents agreed that there would be no child support arrears and that the mother waived any right to child support arrears. They also asserted that the Maryland child support guidelines were inapplicable to their case. Finally, they agreed to a "waiver of child support" and purported to agree that this waiver was in the child's best interests.

During the merits hearing, the parents asked the court to approve the Child Support Agreement. The parents argued that their agreement was in the best interests of their child. The parents asserted that under *Troxel v. Granville*, 530 U.S. 57 (2000), they have a fundamental right to direct the care, custody, and control of their child, which, they argued, permits them to agree to forego the obligation of child support.

The circuit court rejected the parents' arguments. Finding no justification to deviate from the statutory guidelines, the court applied the guidelines and ordered the father to make child support payments to the mother of $2,104 per month. The court also ordered the father to pay child support arrearage of $41,708.

The mother appealed. The father also appealed. Both parents argued that the order should be vacated and that they should be permitted to waive the child support obligation.

Held: Affirmed.

First, the Appellate Court of Maryland held that, even if parents have entered into an agreement regarding child support, the circuit court must apply the statutory guidelines unless the court finds that doing so would be unjust or inappropriate. Although the court may deviate from the guidelines in some circumstances, Maryland courts do not permit parents to agree privately to waive child support altogether. Second, the Court held that the legal obligation to make child support payments does not violate a parent's fundamental right to direct the care, custody, and control of the parent's child.

Parents have a legal obligation to support their children. The court has a duty to consider the child's best interest in matters regarding child support. Section 12-202(a)(1) of the Family Law Article ("FL") of the Maryland Code (1984, 2019 Repl. Vol.) mandates that courts use the child support guidelines in any proceeding to establish or modify child support. The court must award the amount dictated by the guidelines unless it determines that "the application of the guidelines would be unjust or inappropriate in a particular case." FL § 12-202(a)(2)(ii). If the court determines that the application of the guidelines would be unjust or inappropriate, it must make specific findings, including a finding about how deviating from the guidelines serves the child's best interest. FL § 12-202(a)(2)(v). Neither parent presented any justification that might permit a deviation from the guidelines. Accordingly, the circuit court did not err in its use of the guidelines.

The circuit court correctly rejected the contention that the parents had a constitutional right to agree that the father would pay no child support. In *Troxel v. Granville*, 530 U.S. 57, 65 (2000), a plurality of the United States Supreme Court held that a state statute authorizing a court to order a parent to grant visitation rights to third parties infringed upon their "liberty interest" in "the care, custody, and control of their children." The *Troxel* opinion did not address a parent's legal obligation to pay child support. Prior to *Troxel*, the Court held in *Rivera v. Minnich*, 483 U.S. 574, 580 (1987), that a father has no "liberty interest in avoiding financial obligations to his natural child that are validly imposed by state law." The liberty interest discussed in *Troxel* does not entitle parents to exculpate one another from their legal obligation to support their children.

The parents further argued that the issue of child support was not "justiciable" because they had voluntarily "withdrawn" the issue from the court's consideration at the hearing. The parents also argued that the statutory guidelines apply only to certain "contested" cases and that their case was not contested because they reached an agreement. The Court rejected these arguments. In these circumstances, allowing the parents to withdraw the issue of child support or to agree that the issue was uncontested would be tantamount to allowing them to waive the child's right to support, which they cannot do.

Finally, the parents argued that the child support statute permits modification and downward deviation from the guidelines. Although deviation is permissible in limited circumstances, the circumstances here did not merit a deviation.

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Sheriff Ricky Cox v. American Civil Liberties Union of Maryland, No. 956, September Term 2023, filed August 28, 2024. Opinion by Nazarian, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0956s23.pdf

MARYLAND PUBLIC INFORMATION ACT – WAIVER OF FEES – INITIAL BURDEN ON REQUESTOR

MPIA – WAIVER OF FEES – DUTIES OF CUSTODIAN

MPIA – DENIAL OF FEE WAIVER – ARBITRARY AND CAPRICIOUS REVIEW

MPIA – ARBITRARY AND CAPRICIOUS AGENCY ACTION – REMEDY

Facts:

The Maryland Public Information Act ("MPIA") allows members of the public to access the records of public agencies. The General Provisions Article of the Maryland Code ("GP"), § 4 206, permits the official custodian of agency records to charge reasonable fees for the costs the agency incurs to fulfill an MPIA request. GP § 4 206(e)(2)(ii) further provides that an agency custodian may waive this fee if, after considering the requestor's ability to pay the fee along with "other relevant factors", the custodian determines that a fee waiver would be in the public interest.

The American Civil Liberties Union of Maryland ("ACLU") submitted an MPIA request to the Calvert County Sheriff's Office ("Sheriff") for records of the Sheriff's use of "body searches, strip searches, and manual body cavity searches" since 2017, in addition to a fee waiver under GP § 4-206(e). The ACLU asserted a limited ability to pay for the costs of producing the records and argued that a fee waiver was in the public interest for three reasons: "(1) the information sought would significantly contribute to the public understanding of the [S]heriff's office operations and activities; (2) there is a strong public interest in having the requested information available as there is a genuine public concern regarding policing; [and] (3) the waiver would primarily benefit the public, not a narrow personal or commercial interest."

After conducting cost analyses, the Sheriff responded to the ACLU's records request identifying the responsive records in its possession and setting the cost of production at $12,271.50. The Sheriff denied the ACLU's request for a fee waiver with one sentence, stating "there is no apparent public interest served by your request." The ACLU requested reconsideration of the Sheriff's decision which the Sheriff denied, writing "[g]iven the Sheriff's Office resources needed to satisfy the request, your request for a waiver of fees is denied."

The ACLU sued the Sheriff in the Circuit Court for Baltimore City and later moved for summary judgment. The Circuit Court granted the ACLU's motion, holding that the ACLU was entitled to

a fee waiver as a matter of law. The Circuit Court reversed the Sheriff's denial of the fee waiver request and ordered the Sheriff to pay all costs. The Sheriff timely appealed.

Held:

Vacated and remanded to the Circuit Court with instructions to remand to the Sheriff to reconsider the fee waiver request.

The Appellate Court of Maryland held that the Sheriff's denial of the ACLU's fee waiver request was arbitrary and capricious. The Sheriff's assessment of the fee waiver appropriately considered both the ACLU's ability to pay and the resources the Sheriff's Office would need to expend to fulfill the request. But the Sheriff did not consider meaningfully whether there is a public benefit to disclosing records of the Sheriff's use of body searches, strip searches, and manual body cavity searches. The Sheriff also did not consider whether disclosure of records would shed light on a matter of public controversy and whether denial of the fee waiver would exacerbate it.

Consistent with *Baltimore Police Department v. Open Justice Baltimore*, 485 Md. 605 (2023), the Court found that failure to consider all relevant factors is an arbitrary and capricious exercise of discretion. At a minimum, a records custodian must consider whether any public benefit would be served by disclosure of the requested records. And if a requestor asserts that the records request concerns a matter of public controversy, a custodian must consider whether disclosure would shed light on the controversy and whether complete denial of the fee waiver request would exacerbate it. The Court rejected the position that disclosure serves a public benefit only for documented matters of substantial, preexisting public interest. The Court ordered the Sheriff to weigh the required factors and respond to the ACLU's fee waiver request with a written explanation of the Sheriff's assessment.

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The Abell Foundation v. Baltimore Development Corporation, et al., No. 1890, September Term 2022, filed August 2, 2024. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1890s22.pdf

MARYLAND PUBLIC INFORMATION ACT – EXEMPTION FOR CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION

Facts:

In 2009, the City of Baltimore entered into a payment-in-lieu-of-taxes agreement ("PILOT Agreement") with Harbor East Parcel D-Commercial, LLC ("Developer") in connection with construction of the Legg Mason Tower. Under the PILOT Agreement, parts of the property were temporarily exempted from the City's real property taxes. The parties agreed to a temporary profit-sharing arrangement, under which they would share the net cash flow after the Developer recouped a threshold level of return on its investment. The agreement required the Developer to provide certain financial information to the City, including the project's financing terms and annual audited financial statements.

In 2016, the Developer asked to buy out the City's rights under the profit-sharing provision. After reviewing internal-rate-of-return analyses voluntarily provided by the Developer, and after constructing its own model analysis, the City agreed to eliminate the profit-sharing provision in consideration for a $1.5 million payment from the Developer.

A charitable organization known as The Abell Foundation ("Abell") requested documents from the City related to the PILOT Agreement and the profit-sharing arrangement. In a formal request under the Maryland Public Information Act ("MPIA"), Abell sought extensive financial information provided by the Developer to the City.

The City responded by producing some records that included financial information. The City withheld and redacted certain documents based on Maryland Code (2014, 2019 Repl. Vol.), § 4-335 of the General Provisions Article ("GP"), a statutory exemption that denies public access if a record contains "confidential commercial information" or "confidential financial information." The City withheld some records, including the model analysis, based on the deliberative-process privilege. The City also withheld other records based on the attorney-client privilege.

Abell filed a complaint against the City in the Circuit Court for Baltimore City. Abell alleged that the City violated the MPIA by withholding documents and redacting information. Abell asked the court to require the City to produce the requested materials.

The City moved for summary judgment in its favor. Abell opposed the motion. Among other matters, the parties disagreed on whether the City had properly applied the MPIA exemption for confidential commercial or financial information in GP § 4-335.

The MPIA was modeled after the federal Freedom of Information Act ("FOIA"). FOIA contains an exemption that protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4) ("Exemption 4"). At the time the complaint was filed, federal courts used a two-tiered approach to determine whether commercial or financial information was "confidential" for purposes of Exemption 4. If a party *voluntarily* provided information to the government, the information was considered "confidential" "if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992). If a party was required to provide information, the information was considered "confidential" if its disclosure was likely to "cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

The City argued that, under GP § 4-335, it was required not to disclose the financial data that the Developer had been required to provide to the City. Invoking *National Parks*, the City argued that disclosure of this data would likely cause substantial harm to the Developer's competitive position. The City argued that, under *Critical Mass*, it was required to redact or withhold the data that the Developer had voluntarily provided, because that information would not customarily be released to the public.

Opposing the motion for summary judgment, Abell argued that the court should use the *National Parks* test to determine whether the information was "confidential" within the meaning of GP § 4-335. Abell disputed the assertion that substantial competitive harm was likely to result if the Developer's financial information were released.

Between the time when the summary judgment motion was made and when the circuit court issued its opinion, the United States Supreme Court decided *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427 (2019). The Court disavowed *National Parks* and its conclusion that information that a party was required to provide to the government is "confidential" within the meaning of FOIA's Exemption 4 only if its disclosure was likely to cause substantial competitive harm. *Id.* at 430. The Court held: "At least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Id*. at 440.

The circuit court concluded that Maryland courts would follow the Supreme Court's interpretation of Exemption 4 from *Argus Leader*. The court determined that the documents withheld under the confidential commercial or financial information exception met the standard announced in *Argus Leader*. The court remarked that, even if it were required to apply the *National Parks* test, it would conclude that disclosure of the requested materials would likely pose a risk of substantial harm to the Developer's competitive position.

The circuit court also concluded that the City had correctly applied the deliberative-process privilege in withholding the model analysis that it used to determine whether to accept a buy-out of its profit-sharing rights under the PILOT Agreement. After conducting an *in camera* review

of two remaining memorandums, the court determined that the memorandums qualified for the protection of the attorney-client privilege.

The court granted summary judgment in favor of the City on all issues. Abell appealed.

Held: Affirmed.

The Appellate Court of Maryland concluded that the circuit court correctly interpreted the terms "confidential commercial information" and "confidential financial information" in the MPIA.

The Appellate Court followed the United States Supreme Court's interpretation of the parallel federal statute in *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427 (2019). The Appellate Court observed that, when interpreting the MPIA, Maryland courts give significant weight to federal decisions that interpret parallel provisions of the FOIA. The Court recognized that Maryland's approach to statutory interpretation is similar to the approach used in *Argus Leader*. Relying on contemporary dictionary definitions, the Court reasoned that the ordinary meaning of the term "confidential" does not require a showing of competitive harm. For these reasons, the Court adopted the federal interpretation of the term "confidential" for the meaning of the MPIA exemption for confidential commercial or financial information. Under this interpretation, at least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is "confidential" within the meaning of GP § 4-335.

Abell made several arguments urging the Court not to follow *Argus Leader*. Abell argued that the term "confidential commercial information" was a common-law term of art that denotes non-public information whose disclosure would cause competitive harm. The Court rejected this argument, because none of Abell's sources supported its proposed definition. The Court rejected Abell's argument that the General Assembly had ratified *National Parks* when it recodified the MPIA, because at the time of that recodification, no Maryland appellate court had ever adopted *National Parks*. The Court rejected Abell's arguments based on various other statutes that identified certain types of information as confidential commercial information, reasoning that none of these statutes illustrated that the General Assembly was silently incorporating a requirement of competitive harm into GP § 4-335. The Court rejected Abell's argument that the MPIA's exemptions must be construed narrowly, reasoning that, where the terms of an exemption require the government to withhold information, the government must adhere to the exemption.

The Court further agreed with the circuit court that, even if the *National Parks* test applied, the City still would have been obligated to withhold the materials that it did, because the undisputed facts in the record established the likelihood of substantial competitive harm if the materials were disclosed.

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The Court concluded that the City was entitled to withhold the model analysis under the deliberative-process privilege. Because the model analysis contained deliberative analysis and was actually used in deliberations, the deliberative-process privilege applied.

The Court held that the circuit court did not err in concluding, based on its in camera inspection, that the attorney-client privilege shielded the memorandums from disclosure.

Finally, the Court determined that Abell failed to demonstrate a genuine factual dispute as to the existence of any other missing documents.

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In the Matter of Christopher Gendell, et al., Case No. 1156, September Term 2023, filed August 1, 2024. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1156s23.pdf

ZONING AND PLANNING – VARIANCES AND EXCEPTIONS – CHESAPEAKE BAY CRITICAL AREA PROGRAM – REASONABLE ACCOMMODATIONS

Facts:

Christopher Gendell and Andi Gendell ("Appellants") own property located in Anne Arundel County within the Chesapeake Bay Critical Area ("Critical Area"). Appellants are parents to two sons who have been diagnosed with proprioceptive disorder, also known as proprioceptive dysfunction ("PD"). Effective treatment for PD includes routine exercise and other therapeutic activities focused on activating the body's muscles. Lap swimming has proved to be an effective form of therapy for Appellants' sons. Appellants, therefore, sought to install an in-ground, therapeutic lap pool on their property.

Section 17-8-301 of the Anne Arundel County Code ("County Code") restricts development within "buffer" and "expanded buffer" areas of the Critical Area. Title 27 of the Code of Maryland Regulations, however, permits development within such areas through the granting of a variance. COMAR § 27.01.09.01(E)(1)(a)(ii). Appellants' property is located entirely within an expanded buffer area. Appellants, therefore, requested a variance to install a pool on their property. Appellants argued that the requested pool constituted a reasonable accommodation under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq*. ("ADA"), and the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq*. ("FHA").

The Anne Arundel County Administrative Hearing Office denied Appellants' variance request on April 15, 2021. Appellants appealed the denial of their request to the Anne Arundel County Board of Appeals ("the Board"). The Board held a two-day hearing and subsequently denied Appellants' variance request on October 6, 2022. The Board concluded that the proposed lap pool did not qualify as a reasonable accommodation under federal law. Furthermore, the Board recognized that a variance request may only be granted if applicants meet all requirements set forth in Section 3-1-207 of the County Code and concluded that Appellants failed to do so.

On November 1, 2022, Appellants filed a petition for judicial review with the Circuit Court for Anne Arundel County. The circuit court issued its order affirming the decision of the Board on July 19, 2023. This timely appeal followed.

Held: Affirmed.

The Appellate Court of Maryland considered two primary issues on appeal. First, the Court considered whether Appellants' variance request qualified as a reasonable accommodation under the ADA and FHA. The Court recognized that the ADA "requires preferences in the form of 'reasonable accommodations' that are needed for those with disabilities to obtain the same . . . opportunities that those without disabilities automatically enjoy." *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002) (emphasis in original). Moreover, the FHA prohibits any "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). The Court further recognized that the ADA and FHA apply to the administration and enforcement of local zoning laws.

The Court held that the Board properly considered whether the requested accommodation was necessary to allow Appellants' sons to use and enjoy the property to an equal extent as non-disabled individuals. The Court referred to the Supreme Court of Maryland's decision in *Mastandrea v. North, superseded by statute on other grounds*, NR §§ 8-1808(c)(13), (d), *as recognized in Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 130–33 (2016). The requested accommodation in *Mastandrea* was reasonable because it allowed the applicant's disabled, wheelchair-bound daughter access to the property's waterfront, which she would have otherwise been unable to access and enjoy. The Court distinguished the Appellants' requested variance from the accommodation requested in *Mastandrea*, observing that Appellants failed to present any evidence demonstrating that their sons are currently denied full and equal enjoyment of the property. The Court, therefore, concluded that the requested accommodation was not reasonable.

Second, the Court observed that, because applicants must meet all of the requirements under Section 3-1-207 of the County Code, applicants bear a heavy burden to prove that their variance request should be granted. The Court concluded that Appellants failed to meet this burden.

As a threshold matter, the County Code requires an applicant to establish that strict implementation of the County's Critical Area program would result in an "unwarranted hardship," which exists if, "without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested." County Code § 3-1-207(b)(1); Md. Code (1974, 2023 Repl. Vol.) § 8-1808(c)(1)(iii)(11) of the Natural Resources Article. An applicant must also establish that denial of the variance request would deprive them of "rights commonly enjoyed by other properties in similar areas" and that the variance would not confer a "special privilege." County Code §§ 3-1-207(b)(2)(i), (3)(i).

The Court held that Appellants failed to meet their burden as to these three requirements, once again distinguishing Appellants' variance request from the applicant's request in *Mastandrea*. The Court recognized that denial of the applicant's variance request in *Mastandrea* would deprive the applicants' daughter of a reasonable and significant use of their property in the form of accessing and enjoying the property's waterfront area and its accompanying views. Observing that Appellants failed to present any evidence that denial of their variance request would deprive their sons of a reasonable and significant use of their property, the Court concluded that Appellants failed to meet the unwarranted hardship requirement.

In assessing whether the denial of the variance request would deprive Appellants of a commonly enjoyed right, the Court emphasized the testimony of the witness from the County's Office of Planning and Zoning at the Board hearing. The witness testified that other properties in Appellants' area have pools on their property but specified that these pools were installed prior to the enactment of the Critical Area Program and were not required to request a variance for installation. The Court also observed that Appellants failed to present evidence of other properties in the area that have requested and been granted a variance to install a pool on their property subsequent to the enactment of the Critical Area Program. Based on this testimony, the Court determined that Appellants failed to meet their burden to establish that they would be deprived a commonly enjoyed right and would not be conferred a special privilege, as required under Section 3-1-207(b)(2) and Section 3-1-207(b)(3) of the County Code.

Because Appellants failed to fulfill the requirements under Section 3-1-207 of the County Code, the Court concluded that the Board did not err in denying Appellants' variance request and affirmed the judgment of the Circuit Court for Anne Arundel County.

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County Council of Prince George's County v. Robin Dale Land LLC, et al., No. 0255, September Term 2021, filed August 6, 2024. Opinion by Kehoe, C., J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0255s21.pdf

LAND USE – MOOTNESS – COMPREHENSIVE REZONING – PRINCE GEORGE'S COUNTY'S 2021 COUNTYWIDE SECTIONAL MAP AMENDMENT

Facts:

For zoning and land use planning purposes, Prince George's County is divided into geographical areas that are termed "subregions." Decades ago, the District Council enacted area master plans and zoning use maps (originally called "sectional maps") for each subregion. The legislation enacting a revised zoning map is termed a "sectional map amendment."

In 2014, the Prince George's County Planning Board adopted, and the District Council approved, a new general plan for the County titled "Prince George's 2035 General Plan" ("Plan 2035"). Soon thereafter, the District Council and the Planning Board, together with their staffs, stakeholders, and members of the public, began the task of updating the County's Zoning Ordinance and Subdivision Regulations in order to facilitate the implementation of Plan 2035's goals and objectives.

As part of this process, the District Council enacted a new zoning ordinance in 2018. The new version of the ordinance contained twenty-one fewer zoning use districts than did the predecessor ordinance. The enacting legislation provided that the new zoning ordinance would become effective on the date that the District Council approved a Countywide Sectional Map Amendment that assigned zoning classifications under the new ordinance to approximately 300,000 properties located in the County. In 2021, the District Council enacted Resolution CR-136-2021, which implemented the Countywide Sectional Map Amendment.

This appeal is the latest installment of a long-running dispute between the County and owners of properties located in Planning Subregions 5 and 6. Prior decisions of the District Council in these cases have been reversed by either the Circuit Court or the Appellate Court (or both) on three occasions and the cases remanded to the District Council for further proceedings. The most recent judgments were entered by the Circuit Court on March 5, 2021. The Circuit Court reversed the District Council's decisions because the Council failed to provide public notice and to hold a public hearing, both of which are required by State and County law. The District Council appealed the judgments to the Appellate Court. The cases were consolidated for purposes of appeal. While the appeal was pending, the District Council moved to dismiss the cases. The Council asserted that the cases became moot when the District Council enacted the Countywide Sectional Map Amendment.

Held: Affirmed

The District Council's motion to dismiss the cases as moot is denied and the judgments of the Circuit Court are affirmed.

A

As a general rule, enactment of a comprehensive rezoning law moots land use cases that are pending when the new law becomes effective. *Mayor & Council of Rockville v. Dustin*, 276 Md. 232, 233 (1975) ("An appeal in a zoning case should be dismissed as moot where, as here, the zoning application has been superseded by a subsequent comprehensive rezoning act of the zoning authorities.")

In *Anderson House, LLC v. Mayor & City Council of Rockville*, the Supreme Court of Maryland identified the essential attributes of comprehensive rezoning legislation:

> The requirements which must be met for an act of zoning to qualify as proper comprehensive zoning are that the legislative act of zoning must: 1) cover a substantial area; 2) be the product of careful study and consideration; 3) control and direct the use of land and development according to present and planned future conditions, consistent with the public interest; and, 4) set forth and regulate all permitted land uses in all or substantially all of a given political subdivision, though it need not zone or rezone all of the land in the jurisdiction.

402 Md. 689, 707 n.17 (2008) (cleaned up).

The Prince George's County Zoning Ordinance requires the District Council to consider certain factors before enacting a sectional map amendment. When the Countywide Sectional Map Amendment was enacted, the County Zoning Ordinance stated:

Prior to the approval of a Sectional Map Amendment, the Council shall consider the following:
(1) The character of the area under review;
(2) The suitability of particular uses;
(3) The protection of natural features in the area;
(4) The conservation of the value of buildings and communities;
(5) The most appropriate use of land throughout the County;
(6) Any adopted current staging policy, or Capital Improvement or Economic Development Program;
(7) The environmental and economic impact upon both the area under review and the entire County; [and]
(8) The protection of the health, safety, and general welfare of the citizens of Prince George's County.

PGCC § 27-222(b) (2021). [1]

An examination of the legislative history of Resolution CR-136-2021 makes it clear that the factors identified by the Supreme Court of Maryland as the hallmarks of comprehensive zoning played no part in the process in the Countywide Sectional Map Amendment mapping process. Nor did the Council consider the factors mandated by former PGCC § 27-222 when it passed the resolution. Instead, the legislative history is clear that the resolution's reclassifications of approximately 300,000 properties were intended to the "technical" and "non-substantive" rezonings and "not [a] substitute for the comprehensive planning and zoning process." Instead, the Countywide Sectional Map Amendment reclassified each property to the most analogous zoning district in the new Zoning Ordinance.

The Appellate Court concluded that "the Council's enactment of Resolution CR-27-2019 does not render moot the contentions presented by the appellees in these cases."

B

The Appellate Court agreed with the Circuit Court and the appellees that the District Council was required by both State and local law to provide public notice and to hold a public hearing before deciding the appellees' cases. *See* Md. Code, Land Use § 22-206; PGCC § 27-226 (2021).[2] Because the District Council failed to do so, its decisions in these were reversed and the cases remanded to the Council.

[1] Former PGCC § 27-222 has been recodified without relevant change as PGCC § 27-3503(5)(A).

[2] Former § 27-226 has been recodified without substantial change as § 27-3503(b)(3).

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Julia and Ryan King, et al., v. Cornelius David Helfrich, et al., No. 2094, September Term 2022, filed August 30, 2024. Opinion by McDonald, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2094s22.pdf

LAND USE – VARIANCES – UNIQUENESS REQUIREMENT – HARMONY REQUIREMENT

Facts:

Appellee Cornelius Helfrich entered into a contact to sell a small vacant lot ("16 Locust") in a residential subdivision in the Catonsville area of Baltimore County to appellee Dominion Properties, LLC, which intended to build a house there. The subdivision was recorded in 1933, before the County had adopted zoning regulations, and houses were built on the other lots, mostly in the 1930s and 1940s. When zoning was adopted, the subdivision fell within the "DR 5.5" zone, which allowed 5.5 houses per acre and would have allowed the construction of a house on 16 Locust, which comprises 0.11 acres. However, in 1996, the County downzoned almost 500 acres in Catonsville, including the subdivision, to "DR 2," which permits a density of only two houses per acre. The DR 2 zoning, along with the lot area and setback regulations applicable to it, preclude the construction of a house on 16 Locust. Mr. Helfrich and Dominion petitioned for variances from the regulations to enable the siting of a house on a net lot area of 5,000 square feet instead of the required 20,000 square feet, a lot width of 50 feet instead of the required 100, and side-yard setbacks totaling 20 feet instead of the required 40. Julia and Ryan King and other neighbors opposed the petition.

After a hearing, a County administrative law judge denied the variance on the grounds that Baltimore County's variance laws and controlling precedent require an applicant to show that the subject property has unique physical characteristics, that the fact that the lot was vacant did not meet that test, that 16 Locust was not physically unique, and that the applicants had not shown a vested right to the pre-1996 zoning.

The Baltimore County Board of Appeals conducted a hearing and addressed the matter de novo. As to the uniqueness requirement set by the County's variance law, the applicants' expert witness testified that 16 Locust was about the same size as the other lots in the subdivision and was physically different only in that it had not been developed. He stated that much of the land in older small-lot subdivisions had been zoned DR 5.5, but that the residents in the Catonsville area had sought less density. He opined that small lots such as 16 Locust should have been zoned DR 5.5. As to the requirement that the proposed variance be in harmony with the applicable regulations, a Dominion employee testified that the proposed house would be similar in appearance to the other houses in the subdivision.

In its open meeting, the Board decided that 16 Locust did not meet the "uniqueness" requirement as defined in *Cromwell v. Ward*, 102 Md. App. 691 (1995) but that the Board would grant the

variances to avoid an unconstitutional taking of the property. In its written opinion, the Board decided that the fact that 16 Locust was undeveloped made it unique in the sense that the downzoning affected it, but not the other lots, that the only beneficial use of the lot was the construction of a house there, and that a failure to grant the variances would result in an unconstitutional taking of Mr. Helfrich's property. In its uniqueness analysis, the Board relied on a test purportedly set forth by the then-Court of Special Appeals in *Mueller v. People's Counsel*, 177 Md. App. 43 (2007), to the effect that uniqueness can be established by showing that a zoning change has a unique effect on a landowner's use of the property. As to harmony, the Board found that the proposed house would be in harmony with the existing houses in the subdivision. The Board did not address harmony with the current regulations.

Held: Reversed.

The Board of Appeals erred when it applied the uniqueness test that it attributed to the court's opinion in *Mueller*. That test was not the court's test. Instead, it was the Board's own test, quoted by the *Mueller* court without either approval or disapproval in the court's recitation of the Board's opinion in that matter, and it was unsupported in the controlling precedent on what makes a property unique. Under *Cromwell v. Ward*, 102 Md. App. 691 (1995) and its progeny and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty*., 407 Md. 53, 80-83 (2008), an applicant for a variance in Baltimore County must prove as a threshold matter that the property has an inherent physical characteristic not shared by other properties in the area. The Board lacked the authority to exempt 16 Locust from that requirement on the grounds that the variances were needed to avoid a taking. A remand to the Board is unnecessary because the Board itself found that 16 Locust was not physically unique. Moreover, the Board's assumption that it needed to grant the variances to avoid a taking finding was erroneous because the applicants did not establish that they had pursued the other remedies available to them under Baltimore County's zoning laws.

The Board additionally erred when it granted the variances without finding that the proposed variances were in "strict harmony with the spirit and intent" of the existing zoning regulations applicable to 16 Locust. Because Baltimore County's variance regulation conditions the grant of a variance on the applicant's proof of that requirement, and the applicants did not prove it, the Board's grant of the variances is reversed.

To the extent that the Board based its decision on the evidence that variances had been granted in the past to owners of improved lots in the neighborhood, it erred legally.

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Kenneth E. Cosgrove, et al. v. Comptroller of Maryland, No. 1030, September Term 2023, filed August 29, 2024. Opinion by Getty, J.

https://www.courts.state.md.us/data/opinions/cosa/2024/1030s23.pdf

TAX-GENERAL – MARYLAND TAX COURT – JURISDICTION

TAX-GENERAL – INCOME TAX – FOREIGN EARNED INCOME

Facts:

Appellants Kenneth Cosgrove and Lucy Reddaway ("the Cosgroves") are Maryland residents who lived and worked in the United Kingdom. The Cosgroves jointly filed federal tax returns and excluded income from their federal adjusted gross income pursuant to the Foreign Earned Income Exclusion ("FEIE"). The FEIE is a federal law that allows a qualified United States citizen or resident living abroad to exclude earned income received for services performed within a foreign country from that individual's gross income, thereby exempting the income from federal taxes.

Originally, the Cosgroves did not exclude income under the FEIE on their joint state tax returns, but subsequently filed an amended state tax return excluding income earned in the United Kingdom and claiming a tax refund for two years. The Comptroller initially denied their claim but then, prior to the hearing before the Tax Court and without explanation, the Comptroller issued a refund with interest. The Comptroller then filed a motion to dismiss for lack of subject-matter jurisdiction. The Tax Court granted the motion to dismiss as the case was now moot and determined the Tax Court does not have the jurisdiction to hear a moot case or to issue an advisory opinion. The Circuit Court of Anne Arundel County affirmed the Tax Court's decision.

Held: Affirmed.

The Appellate Court of Maryland affirmed, holding that, as an administrative agency, the Tax Court only has the power which the legislature has granted it, and cannot expand its own jurisdiction. In its Memorandum, the Tax Court interpreted the statutes which confer it jurisdiction and determined that it lacks the power to issue an advisory opinion in a moot case. While the Supreme Court held in *Comptroller v. FC-GEN Operations Investments*, 482 Md. 343 (2022), that deference is typically given to the Comptroller's interpretation of tax statutes, in this case, the Tax Court is not interpreting a tax statute but its own jurisdictional statutes. The Appellate Court therefore gave administrative deference to the Tax Court's interpretation and decision that it does not have the power to hear and decide moot cases.

Next, the Court addressed the uncertainty regarding state taxation of foreign earned income. Initially, the Comptroller found that the Cosgroves' foreign earned income must be added back

for state purposes. Then, before the Tax Court hearing, the Comptroller issued a refund to the Cosgroves without explanation.

The Appellate Court noted its concern that the legislative history for similar tax legislation indicates that the General Assembly interprets the application of the FEIE differently than the Comptroller. The Bill File for House Bill 994 from the 2006 legislative session suggests the General Assembly believes Maryland taxpayers are already exempt from paying state taxes on foreign earned income. Due to this confusion and as a matter of fairness to Maryland taxpayers, the Court encouraged that the General Assembly examine Section 10-204 of the Tax-General Article in order to clarify whether taxpayers may claim the Foreign Earned Income Exclusion on their Maryland tax returns.

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Corman Marine Construction, Inc., et al. v. Matthew F. McGeady, et al., No. 1452, September Term 2023, filed August 1, 2024. Opinion by Ripken, J.

https://www.courts.state.md.us/data/opinions/cosa/2024/1452s23.pdf

WORKERS' COMPENSATION – LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT – DUAL STATUS OF OWNER AND EMPLOYER

MARYLAND RULES – DISCRETION OF COURT– CONTROL OF CASE PRESENTATION

Facts:

While working aboard the *Xavier*, a floating crane barge, Matthew McGeady ("McGeady") suffered a workplace accident which resulted in a traumatic brain injury. At the time of McGeady's injury, the *Xavier* was owned by McGeady's employer, Corman Marine Construction ("Corman"), and was serving as the staging area for a construction project to sink a sewage pipe into a river. The day of the incident, one end of the sewer pipe was located on the *Xavier*, but a pocket of pressurized air within the pipe prevented it from sinking. McGeady's injury occurred when the president of Corman, Martin Corcoran ("Corcoran") directed the construction foreman to remove a pneumatic plug from the sewer pipe, in order depressurize the pipe. When the foreman did so, the plug exploded out of the pipe, knocking the foreman into McGeady, who was thrown to the ground and struck his head on the deck of the *Xavier*. Neither the pipe nor the pneumatic plug was part of the *Xavier*. Although at the time of the incident, the *Xavier* was stationary and moored to a riverbed, the parties agreed that it was a vessel located in navigable waters.

Following the injury, McGeady received no-fault benefits pursuant to the federal Longshore and Harbor Workers' Compensation Act ("LHWCA" or "the Act"). 33 U.S.C. § 905. Pursuant to the Act, a covered worker who receives benefits is typically precluded from bringing a negligence action against the worker's employer, although the worker may properly bring a tort claim against the owner of a vessel for injury caused by the negligence of the vessel. 33 U.S.C. § 905(b). When the vessel owner and the employer are the same entity, the status is referred to as dual capacity. In that circumstance an injured worker who has received benefits under the LHWCA may nevertheless maintain a tort claim against the dual capacity employer/vessel owner if the injury occurred due to the dual capacity defendant's negligence in its capacity as a vessel owner.

The case proceeded to trial in the Circuit Court for Baltimore City. At the close of evidence, Corman made a motion for judgment, asserting that McGeady had failed to introduce evidence sufficient to support the conclusion that Corman's negligence had occurred in its capacity as a vessel owner, as opposed to as an employer. The court denied the motion, noting that Corcoran was present aboard the Xavier at the time of the injury.

Separately, during trial, McGeady's expert witnesses asserted that because of the brain injury he had sustained, McGeady suffered from ongoing health issues which rendered him unable to respond to others cooperatively, calmly, and productively. Corman's expert did not dispute this characterization of McGeady's challenges, although he disagreed that McGeady's injury was the cause of his difficulties. When McGeady was called as a witness and cross-examined, he demonstrated behavioral challenges and had difficulty answering questions responsively and concisely. After approximately an hour of primarily non-responsive testimony, the trial court asked Corman's counsel how much additional cross-examination time would be needed. Corman's counsel requested an hour-and-a-half of additional time. The following day, Corman's counsel again confirmed the amount of additional time needed to cross-examine McGeady. During cross-examination, McGeady continued to exhibit the same challenges, and Corman's counsel primarily asked open-ended questions. After the previously agreed upon limit expired, the court terminated cross-examination over Corman's objection.

On appeal, Corman asserts that the court erred by denying its motion for judgment and abused its discretion by imposing a time limit on McGeady's cross-examination.

Held: Reversed

The Appellate Court determined that under 33 U.S.C. § 905(b), a dual capacity employer-vessel owner is not liable to a covered employee merely because of the presence of an officer or agent of the dual capacity employer. Rather, the Appellate Court concluded that in order to survive a motion for judgement, a plaintiff must present evidence to show that the negligent conduct of the dual capacity defendant was attributable to the dual capacity defendant specifically in its capacity as a vessel.

The Appellate Court held that the injury McGeady suffered, which was precipitated by a construction worker acting within the scope of his employment duties, was not attributable to Corman in the capacity of a vessel owner. Although Corcoran, the president of Corman, was present aboard the *Xavier* at the time of the injury, no evidence was introduced which would allow a reasonable factfinder to conclude that he was aboard the *Xavier* specifically to supervise the vessel, or as a representative of Corman as vessel owner. Rather, the Appellate Court determined that the sole reasonable inference from the evidence was that Corcoran was present in order to supervise the construction project. Thus, the Appellate Court concluded that the negligence was not attributable to Corman in its capacity as a vessel owner, and therefore Corman's motion for judgment should have been granted.

The Appellate Court also determined that the trial court did not abuse its discretion in imposing a time limit on Corman's cross-examination of McGeady. The Appellate Court concluded that Maryland Rule 5-611(a), which grants trial courts the discretion to control the mode and order of witness interrogation and the presentation of evidence, permits a court to impose a reasonable time limit on cross-examination. The Appellate Court noted that the circuit court's imposition of a time limit was motivated by avoiding the needless consumption of time, and the court's

understanding that McGeady's health challenges made it difficult for him to present responsive testimony to Corman's open-ended questions. The Appellate Court also observed that Corman's counsel specifically proposed and agreed to the time limit, and although the cause of McGeady's health difficulties was a contested issue, the fact that he exhibited behavioral challenges at trial was not. Thus, the Appellate Court determined that the circuit court did not abuse its discretion under Rule 5-611(a) in limiting the time that McGeady could be cross-examined.

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ATTORNEY DISCIPLINE

DISBARMENTS/SUSPENSIONS/INACTIVE STATUS

By an Opinion and Order of the Supreme Court of Maryland dated August 1, 2024, the following attorney has been indefinitely suspended:

STEPHEN E. WITTED

*

By an Order of the Supreme Court of Maryland dated August 20, 2024, the following attorney has been placed on disability inactive status by consent:

ALLYSON BROOKE GOLDSCHER

*

By an Order of the Supreme Court of Maryland dated August 27, 2024, the following attorney has been suspended for six months, effective *nunc pro tunc* to May 17, 2024:

FRANCIS H. KOH

*

By an Order of the Supreme Court of Maryland dated August 27, 2024, the following attorney has been suspended:

BRIAN DAVID O'NEILL

*

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JUDICIAL APPOINTMENTS

*

On July 17, 2024, the Governor announced the appointment of **Kimberly Vicena Lewis** to the District Court for Prince George's County. Judge Lewis was sworn in on August 9, 2024, and fills the vacancy created by the elevation of the Hon Cheri N. Simpkins to the Circuit Court for Prince George's County.

*

On August 1, 2024, the Governor announced the appointment of the **Hon. Scott Michael Carrington** to the Circuit Court for Prince George's County. Judge Carrington was sworn in on August 23, 2024 and fills the vacancy created by the retirement of the Hon. Crystal D. Mittelstaedt.

*

On August 1, 2024, the Governor announced the appointment of the **Hon. Ada Elizabeth Clark-Edwards** to the Circuit Court for Prince George's County. Judge Clark-Edwards was sworn in on August 26, 2024, and fills a new judgeship created by the General Assembly.

*

On August 1, 2024, the Governor announced the appointment of the **Hon. LaKeecia Renee Allen** to the Circuit Court for Prince George's County. Judge Allen was sworn in on August 26, 2024, and fills the vacancy created by the retirement of the Hon. Nicholas E. Rattal.

*

On August 1, 2024, the Governor announced the appointment of Magistrate **Charles Todd Merryman Steuart** to the Circuit Court for Prince George's County. Judge Steuart was sworn in on August 26, 2024, and fills the vacancy created by the separation of the Hon. April T. Ademiluyi.

*

On August 1, 2024, the Governor announced the appointment of Magistrate **Althea Rebecca Stewart Jones** to the Circuit Court for Prince George's County. Judge Stewart Jones was sworn in on August 26, 2024, and fills the vacancy created by the retirement of the Hon. Cathy H. Serrette.

*

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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*
709 Plaza v. Plaza Condominium	0238 *	August 6, 2024
9103 Basil Ct. Partners v. Monarc Const.	2236 **	August 15, 2024
9103 Basil Ct. Partners v. Monarc Const.	2238 **	August 15, 2024
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Adams, Brian v. State	0352 *	August 19, 2024
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Cristler, Michael v. Cristler	2229 *	August 12, 2024
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Davis, Stephen Jarrod, II v. State	0662 *	August 30, 2024
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