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Table of Contents

THE SUPREME COURT

THE APPELLATE COURT

Return to ToC

SUPREME COURT OF MARYLAND

Roman Catholic Archbishop of Washington v. John Doe, et al., No. 9, September Term 2024; *Board of Education of Harford County, et al. v. John Doe*, No. 10, September Term 2024; *The Key School, Inc., et al. v. Valerie Bunker*, Misc. No. 2, September Term 2024, filed February 3, 2025. Opinion by Fader, C.J.

Biran, Eaves, and McDonald, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2025/2a24m.pdf

VESTED RIGHT — STATUTE OF LIMITATIONS — ART. 24, MARYLAND DECLARATION OF RIGHTS — ART. III, § 40, CONSTITUTION OF MARYLAND

VESTED RIGHT — STATUTE OF REPOSE — ART. 24, MARYLAND DECLARATION OF RIGHTS — ART. III, § 40, CONSTITUTION OF MARYLAND

COURTS & JUDICIAL PROCEDURE § 5-117 — CHILD VICTIMS ACT OF 2023 — STATUTE OF LIMITATIONS

COURTS & JUDICIAL PROCEDURE § 5-117 — CHILD VICTIMS ACT OF 2023 — RETROACTIVE RESURRECTION OF A PREVIOUSLY PRECLUDED REMEDY — HEIGHTENED RATIONAL BASIS REVIEW

Facts:

In 2017, the General Assembly enacted legislation that expanded the limitations period applicable to filing child sexual abuse claims. Part of that law, § 5-117(d) of the Courts and Judicial Proceedings Article ("Subsection (d)") provided that "[i]n no event" may a civil action for child sexual abuse be filed against a defendant not alleged to have been the perpetrator of the abuse "more than 20 years after the date on which the victim reaches the age of majority." In 2023, the General Assembly enacted the Child Victims Act of 2023 (the "2023 Act"), which eliminated all time restrictions applicable to child sexual abuse claims, including Subsection (d).

Following the effective date of the 2023 Act, alleged survivors of childhood sexual abuse filed previously time-barred civil claims against three non-perpetrator institutional defendants in State

and federal courts in Maryland. The three defendants at issue in these cases argued that the 2023 Act was unconstitutional because the 2023 General Assembly lacked the authority to eliminate time restrictions that had already run. The dispute focused on (1) whether Subsection (d) in the 2017 law was a statute of limitations or a statute of repose, and (2) whether either or both types of restrictions create a vested right to be free of liability. In two of those cases, a Maryland circuit court found that the 2023 Act was constitutional because the 2017 law was a statute of limitations that did not create a vested right to be free of liability. In the third case, a federal court asked the Supreme Court of Maryland to consider the constitutionality of the 2023 Act.

The Supreme Court of Maryland took up the cases to determine whether the 2023 Act constituted an impermissible abrogation of a vested right in violation of Article 24 of the Maryland Declaration of Rights and/or Article III, Section 40 of the Maryland Constitution.

Held: Affirmed.

The Court first addressed the differences between statutes of limitations and statutes of repose. Maryland courts look holistically at a statute and its history to determine whether it is a statute of limitations or a statute of repose. The Court identified typical points of distinction between the two types of statutes, including purpose, operation, trigger, and tolling. The Court concluded that an ordinary statute of limitations is a remedial and procedural device intended to encourage the prompt resolution of claims and protect against unfairness and complication associated with stale claims by blocking access to a remedy for a cause of action that otherwise continues to exist after a certain period. It is ordinarily triggered by the accrual of a plaintiff's cause of action and is subject to tolling. On the other hand, a statute of repose creates a substantive right protecting a particular class of defendants from liability from suit upon the passage of a legislatively determined period that is unrelated to the plaintiff's injury.

The Court then addressed whether either or both a statute of limitations and a statute of repose create a vested right to be free of liability upon the running of the prescribed period. The Constitution of Maryland prohibits the retroactive abrogation of a vested right. And while a party has a vested right in an accrued cause of action, it does not necessarily have such a right in a defense to a cause of action. The Court concluded that the running of an ordinary statute of limitations does not provide a potential defendant with a vested right in remaining free from liability, but the running of a statute of repose creates such a right.

Next, the Court considered whether Subsection (d) established a statute of limitations or a statute of repose. The Court concluded that Subsection (d) was an ordinary statute of limitations, the expiration of which did not give rise to a vested right to be free of liability. Accordingly, the 2023 Act, which eliminated Subsection (d), did not retroactively abrogate vested rights in violation of the Constitution of Maryland and the Maryland Declaration of Rights.

Finally, the Court held that heightened rational basis review is the appropriate level of scrutiny to apply to a statute that retroactively resurrects an available remedy that had previously been

precluded by a statute of limitations. Under heightened rational basis review, the statute must bear a real and substantial relation to the problem addressed by the statute. The Court held that the retroactive resurrection of remedies in the 2023 Act survives heightened rational basis scrutiny. The undisputed purpose of the 2023 Act bears a real and substantial relation to the problem it addressed, namely, the historical prevalence of child sexual abuse claims, prior efforts to hide misconduct by both perpetrator and non-perpetrator defendants, and significantly delayed reporting by victims well beyond the existing statute of limitations in Subsection (d) of the 2017 law.

Return to ToC

Baltimore City Board of Elections, et al. v. Mayor and City Council of Baltimore, et al., No. 34, September Term 2023, filed February 3, 2025. Opinion by Watts, J.

https://mdcourts.gov/data/opinions/coa/2025/34a23.pdf

CHARTER AMENDMENTS – CONSTRUCTION OF CHARTERS – LOCAL LEGISLATION – POLICE AND GENERAL POWERS

Facts:

The Maryland Child Alliance, Inc. ("the Alliance"), Appellant, sponsored a petition proposing an amendment to the Charter of Baltimore City, a document which is the functional equivalent of a state or federal constitution. The proposed amendment would have required payments of at least $1,000 to all new parents who are residents of the City and is known as the "Baby Bonus Amendment." After obtaining signatures of registered voters, the Alliance requested that the Baltimore City Board of Elections ("Baltimore City BOE") include a question regarding the citizen-initiated Baby Bonus Amendment on the ballot for the November 2024 Presidential General Election. Ultimately, the Baltimore City BOE determined that the Alliance's petition contained sufficient voter signatures and certified the Baby Bonus Amendment for placement as a question on the ballot for the November General Election.

In the Circuit Court for Baltimore City, the Mayor and City Council of Baltimore, Michael Mocksten, the Director of the Department of Finance of Baltimore City, and Robert Cenname, the Deputy Director of the Department of Finance of Baltimore City (together, "the City"), Appellees, sued the Baltimore City BOE, Scherod C. Barnes, the President of the Baltimore City BOE, and Armstead B.C. Jones, Sr., the Election Director of the Baltimore City BOE (together, "the City Board"), Appellants, as well as the State Board of Elections ("the State Board"), Appellee. The City sought judicial review of the City Board's certification of the question, a writ of mandamus compelling the City Board to perform its statutory duties, declaratory judgment, and an injunction keeping the Baby Bonus Amendment off the ballot.

The Alliance filed a motion to intervene as a defendant, which the circuit court granted. The City filed a motion for summary judgment; the City Board filed a motion to dismiss or for summary judgment; and the Alliance filed a motion to dismiss and conditional cross-motion for summary judgment. On August 9, 2024, in a memorandum opinion and order, the circuit court declared that the Baby Bonus Amendment violated Article XI-A, § 3 of the Constitution of Maryland, ruling that it took away any meaningful discretion from the City over an area within its legislative purview and that the amendment was in fact legislative in nature rather than proper charter material.

Pursuant to Md. Code Ann., Elec. Law (2003, 2022 Repl. Vol.) ("EL") §§ 6-209(a)(3)(ii) and 6-210(e)(3)(i)(2), the City Board and the Alliance each noted a direct appeal to this Court. On August 28, 2024, the Supreme Court of Maryland heard oral argument and, on August 29, 2024,

issued a *per curiam* order affirming the circuit court's ruling. *See Balt. City Bd. of Elections v. Mayor and City Council of Balt.*, 488 Md. 531, 533, 322 A.3d 77, 78 (2024) (per curiam).

Held:

The Supreme Court of Maryland declined to overrule *Cheeks v. Cedlair Corp*., 287 Md. 595, 608-09, 415 A.2d 255, 262 (1980), in which the Court held that a proposed citizen-initiated amendment was not "charter material" given that when "[c]onsidered as a whole, the amendment [was] not addressed to the form or structure of government in any fundamental sense[,]" and that "[t]o permit the voters by charter amendment, to exercise the City's police or general welfare powers would constitute an unlawful extension or enlargement of the City's limited grant of express powers and would violate the constitutional requirement that those powers be exercised by ordinance enacted by the City Council." (Footnote omitted). The Supreme Court concluded that overruling *Cheeks* would allow the charter amendment process to be used to enact local laws in contravention of Constitution of Maryland.

The Supreme Court of Maryland held that when a proposed charter amendment precludes the local legislature's meaningful exercise of discretion to legislate in an area under the ambit of Article XI-A, § 3 of the Constitution of Maryland and encroaches upon City's police or general welfare power, it does more than address the form or structure of government originally established by adoption of the charter and is therefore not proper "charter material." For these reasons, the Supreme Court concluded that the Baby Bonus Amendment, which would have mandated one-time payment of at least $1,000 to every eligible City resident upon birth or adoption of child, violated Article XI-A, § 3 of the Constitution of Maryland.

The Supreme Court of Maryland concluded that the Baby Bonus Amendment is not an amendment that relates to the form and structure of government in any fundamental sense. The Supreme Court concluded that the Baby Bonus Amendment is akin to a legislative enactment in that it mandates the making of mandatory minimum payments to certain residents of the City and encroaches on the City's discretion to address matters of public health and welfare concerning children and new parents, which pursuant to Art. XI-A are areas reserved by the General Assembly for local legislation. The powers delegated by the General Assembly to the Mayor and City Council of Baltimore in Article 4, Section 6 of the Public Local Laws of Maryland include actions taken to protect the general welfare of the City. Article XI-A, § 2 of the Maryland Constitution provides that express powers granted to "the City of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly." By mandating a minimum payment to the specific groups of individuals identified by the terms of the proposed amendment, the Baby Bonus Amendment in effect strips the Mayor and City Council of the "*full* power and authority to pass ordinances deemed expedient in maintaining the peace, good government, health, and welfare of the City of Baltimore." *Cheeks*, 287 Md. 600, 415 A.2d at 257 (cleaned up) (emphasis added).

Return to ToC

The Supreme Court of Maryland declined to sever mandatory payment provision from the Baby Bonus Amendment, concluding that the dominant purpose of Amendment would not be achieved in the absence of the $1,000 payment provision, which abrogated the City's law-making authority in violation of the Constitution of Maryland.

Return to ToC

In Re: The Estate of Michael Gerard Schappell, No. 15, September Term 2024, filed February 11, 2025. Opinion by Watts, J.

https://mdcourts.gov/data/opinions/coa/2025/15a24.pdf

INTESTATE SUCCESSION – EQUITABLE ADOPTION – INTENT TO ADOPT

Facts:

Michael Gerard Schappell (the "Decedent") died intestate in 2021, leaving no close relatives as he had no spouse or domestic partner, siblings, or biological or legally adopted children, and his parents and grandparents had predeceased him. The Decedent had a stepdaughter, Karen Ellis, Respondent, whom he had known since he married Ms. Ellis's mother when Ms. Ellis was four years old. Ms. Ellis petitioned the Orphans' Court for Montgomery County to be named, under the doctrine of equitable adoption, the sole heir to the Decedent's estate. Ms. Ellis petitioned for the transmission of issues to the Circuit Court for Montgomery County for a jury to determine whether she had been equitably adopted by the Decedent.

Karen Schappell Daniel, Paul Schappell, and Anne O'Boyle Vlahos, Petitioners, who are or were intestate heirs of the Decedent, filed in the orphans' court a motion for summary judgment on the issues raised by Ms. Ellis. Ms. Daniel, a cousin of the Decedent, had been named the personal representative of the Decedent's estate and moved for summary judgment individually and in that capacity. Petitioners sought summary judgment in their favor on the ground that Ms. Ellis could not be named the heir because the Decedent never intended to adopt Ms. Ellis and, as such, the doctrine of equitable adoption did not apply. Petitioners also opposed the request to transmit issues to the circuit court. The orphans' court denied without prejudice Petitioners' motion for summary judgment, granted the petition to transmit issues, and issued an order transmitting seven issues (questions) to the circuit court for decision. Petitioners appealed.

The Appellate Court of Maryland held that "if a person seeks to establish that they are an intestate decedent's equitable child and heir, the person must prove that they and the decedent, objectively and subjectively, intended to and did live as child and parent." *In re Est. of Schappell*, 260 Md. App. 532, 559, 310 A.3d 1181, 1196 (App. Ct. Md. 2024). The Appellate Court concluded that a claimant must prove that the decedent intended to treat the claimant as the decedent's own child and that the intent element is not necessarily an intent to adopt pursuant to the adoption statute, but rather an intent that the child be regarded and treated as a natural or legally adopted child. *See id.* at 559, 310 A.3d at 1196-97.

The Appellate Court determined that applying the doctrine of equitable adoption involves a mixed question of fact and law and that the orphans' court did not err in transmitting one of the seven questions to the circuit court, which the Appellate Court described as a mixed question of fact and law concerning whether Ms. Ellis had been equitably adopted by the Decedent. *See id.* at 563-64, 310 A.3d at 1199. The Appellate Court concluded that the other six questions should

not have been transmitted to the circuit court because they were questions of fact and it is the orphans' court's responsibility to determine the facts of a case, and that, in this instance, the first-level facts were not in dispute. *See id*. The Appellate Court vacated the orphans' court's order and remanded the case to the orphans' court for proceedings consistent with its opinion. *See id.* at 564, 310 A.3d at 1199-1200.

On April 11, 2024, Petitioners filed a petition for a writ of *certiorari*, which the Supreme Court granted. *See In re Est. of Schappell*, 487 Md. 263, 317 A.3d 912 (2024).

Held: Reversed and remanded.

The Supreme Court of Maryland held that a claimant may establish the right to inherit from an intestate decedent, who died with no surviving spouse, registered domestic partner, surviving issue, parents, siblings, or grandparents,¬ under the doctrine of equitable adoption upon satisfying by clear and convincing evidence a two-step test demonstrating proof of the decedent's intent to adopt and that the decedent acted in accord with that intent. First, a person claiming equitable adoption must demonstrate proof of the decedent's intent to adopt by establishing the existence of an expression, on the decedent's part, of an intent to adopt the claimant. The intent may be shown by proof of an unperformed express agreement or promise to adopt. It may also be demonstrated by proof of other acts or statements showing that the decedent intended the claimant to be, or to be treated as, a legally adopted child, such as proof of an invalid or unconsummated attempt to adopt or the decedent's statement of intent to adopt the child. Second, the claimant must demonstrate that the decedent manifested to the public or community at large that the claimant was the decedent's natural or legally adopted child and the decedent treated the claimant as the decedent's natural or legally adopted child.

The Supreme Court of Maryland declined to conclude that a decedent representing to the claimant or to the public or community at large that the claimant was considered or treated as a natural or adoptive child is sufficient alone to demonstrate the decedent's intent to adopt the claimant. This results from recognition that a decedent may have held out to a claimant or to the public or the community at large that a claimant was considered to be or treated as a natural or adoptive child but have had no intent either to adopt the claimant or for the claimant to inherit.

The Supreme Court of Maryland reversed the judgment of Appellate Court of Maryland and remanded the case to that Court with instruction to remand the case to the Orphans' Court for Montgomery County for a determination of the Petition to Transmit Issues and Demand for Jury Trial, which was filed by Ms. Ellis, the stepdaughter of the Decedent, based on the standard set forth in its opinion.

Return to ToC

Harford Memorial Hospital, Inc. v. Josephine Jones, et al., No. 377, September Term 2023, filed February 28, 2025. Opinion by Albright, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0377s23.pdf

JUDGES – DISQUALIFICATION TO ACT – OBJECTIONS TO JUDGE, AND PROCEEDINGS THEREON

APPEAL AND ERROR – PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW – OBJECTIONS AND MOTIONS, AND RULINGS THEREON – NECESSITY OF SPECIFIC OBJECTION – IN GENERAL

APPEAL AND ERROR – REVIEW – SCOPE AND EXTENT OF REVIEW – PROCEDURAL MATTERS IN GENERAL – JUDGE – BIAS, RECUSAL, AND DISQUALIFICATION

JUDGES – DISQUALIFICATION TO ACT – OBJECTIONS TO JUDGE, AND PROCEEDINGS THEREON – DETERMINATION OF OBJECTIONS

JUDGES – DISQUALIFICATION TO ACT – BIAS AND PREJUDICE – IN GENERAL

APPEAL AND ERROR – PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW – OBJECTIONS AND MOTIONS, AND RULINGS THEREON – NECESSITY OF SPECIFIC OBJECTION – IN GENERAL

Facts:

Mr. Jones presented at the emergency room of Appellant Harford Memorial Hospital ("HMH") one evening complaining of stomach pain. After diagnosing Mr. Jones with an inguinal hernia and incarcerated bowel, general surgeon Dr. Alexander Aurora performed abdominal surgery on Mr. Jones. Two days later, Mr. Jones died suddenly of a pulmonary embolism, which occurs when a blood clot from elsewhere in the body migrates through the blood stream and lodges in a blood vessel in the lung. Appellees' complaint alleged that Dr. Aurora, the on-call general surgeon at HMH who performed Mr. Jones's surgery, and Dr. Robert Kennedy, a hospitalist employed by HMH who treated Mr. Jones after surgery, negligently failed to prevent, diagnose, and treat the pulmonary embolism that caused Mr. Jones's death.

During the trial, the trial judge allowed Dr. Aurora to testify about his parents' deaths but did not allow Dr. Kennedy to testify about why his wife's medical condition prevented him from testifying in-person. The trial judge also allowed questioning of Dr. Kennedy about a nurse's note and a conversation he had with Dr. Aurora after Mr. Jones's death, but did not allow such questioning of Dr. Aurora.

After an eight-day trial, a jury found that Dr. Aurora was not negligent, but that HMH's employee, Dr. Kennedy, was. The jury awarded Appellees just over $1.2 million in damages

from HMH. Following the verdict, HMH timely moved for a new trial, alleging that the trial court's disparate treatment of Dr. Aurora, who is White, and Dr. Kennedy, who is Black, deprived HMH of its right to a fair and impartial trial. The trial court denied that motion, and HMH filed this timely appeal.

Held: Affirmed.

This opinion reaffirms Maryland's strong presumption of judicial impartiality and builds upon the requirements for preservation of a claim of judicial bias that were set forth in *Baltimore Cotton Duck, LLC v. Ins. Comm'r of the State of Md.*, 259 Md. App. 376, 401 (2023) and *Braxton v. Faber*, 91 Md. App. 391, 408–09 (1992). A litigant claiming bias on the part of a trial judge must "generally" move for relief "as soon as the basis for it becomes known and relevant." *Braxton*, 91 Md. App. at 406 (quoting *Surratt v. Prince George's Cnty.*, 320 Md. 439, 468-69 (1990)). To preserve such a claim, the party must raise the issue during trial and, in doing so, meet four requirements:

> (1) facts are set forth in reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be stated with particularity and clarity.

Baltimore Cotton Duck, LLC, 259 Md. App. at 401 (quoting *Braxton v. Faber*, 91 Md. App. at 408–09). These requirements are even more important where, as here, a litigant's claims are based on implicit, rather than explicit, bias by the trial judge.

In reviewing preserved claims that a trial judge is biased or lacks impartiality, the reviewing court must use an objective standard in asking "whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 554 (1999) (quoting *Surratt*, 320 Md. at 465).

On appeal, HMH claimed that evidentiary rulings and other conduct by the trial court were the product of racial bias. This claim was premised on HMH's view that the trial court had treated Dr. Kennedy differently than Dr. Aurora during the trial and that this difference was due to racial bias against Dr. Kennedy. Accordingly, HMH sought reversal of the verdict against it and a new trial.

The Appellate Court of Maryland held that HMH's bias claim was not preserved. HMH did not raise its claim during trial when Dr. Aurora was testifying. HMH's request to recall Dr. Kennedy at the close of evidence did not preserve its bias claim because although it then contended that Dr. Kennedy had been treated differently than Dr. Aurora, HMH did not ascribe this difference to racial bias as is required to preserve such a claim. The first time that HMH charged the trial

court with treating Dr. Kennedy differently because of racial bias was in its new trial motion, i.e., after trial and after HMH had suffered an unfavorable verdict.

Return to ToC

Hess Construction + Engineering Services, Inc.(n/k/a Hess Construction company, LLC) v. Francis O. Day Co., Inc., No. 1116, September Term 2023, filed February 28, 2025. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1116s23.pdf

CONTRACTS – CONSTRUCTION AND OPERATION – GENERAL RULES OF CONSTRUCTION – APPLICATION TO CONTRACTS IN GENERAL – EXISTENCE OF AMBIGUITY

EVIDENCE – PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS – PARTICULAR SUBJECTS OF PAROL OR EXTRINSIC EVIDENCE – CONSTRUCTION, INTERPRETATION, OR APPLICATION OF WRITINGS; AMBIGUITY – NATURE AND EXISTENCE OF AMBIGUITY IN GENERAL

Facts:

Hess Construction + Engineering Services, Inc. ("Hess") is the general contractor for a public works construction project (the "Project"). Hess and Francis O. Day Co., Inc. ("F.O. Day") entered into a "Subcontract" under which F.O. Day, as a subcontractor, is responsible for providing asphalt paving and related services for the Project. Under the Subcontract, Hess is obligated to pay F.O. Day the "Subcontract Price," which is subject to adjustment based on an "Asphalt Index Provision" and "change orders" executed by the parties. The Asphalt Index Provision is designed to capture fluctuations in the price of liquid asphalt, as reflected in an "asphalt index" maintained by the Maryland State Highway Administration.

After completing its work on the Project, F.O. Day sued Hess in the Circuit Court for Montgomery County, asserting, among other things, breach of contract claims for Hess's alleged withholding of the full Subcontract Price. In the circuit court, the parties disagreed about the "formula" for calculating adjustments to the Subcontract Price based on the Asphalt Index Provision. Observing that the provision did not explicitly state a formula for calculating adjustments, the circuit court concluded that the provision was too vague and indefinite to be enforced. However, the circuit court concluded that F.O. Day was owed additional payment for extra work it completed on the Project, and that the relevant statute of limitations did not bar its claims for compensation for that extra work. The circuit court awarded F.O. Day a total of $469,523.80 in damages.

Held:

Vacated in part and affirmed in part; remanded.

The Appellate Court of Maryland determined that the language of the Asphalt Index Provision was ambiguous, because it was "susceptible of more than one meaning." *Cochran v. Norkunas*, 398 Md. 1, 17 (2007). However, the Appellate Court vacated the circuit court's holding that the Asphalt Index Provision was unenforceable, reasoning that the provision's language was not so vague and indefinite that its meaning could not be clarified by parol evidence, and recognizing that the law "leans against" declaring entire provisions of contracts unenforceable. *Quillen v. Kelley*, 216 Md. 396, 407 (1958). Observing that F.O. Day and Hess had offered competing "formulas" for calculating adjustments to the Subcontract Price, both of which were consistent with the language of the Asphalt Index Provision, the Appellate Court remanded the case for the circuit court to consider parol evidence and determine which of the "formulas" the parties intended to use. The Appellate Court affirmed the circuit court's holding that F.O. Day was entitled to additional compensation for extra work performed, and that its claims for this compensation were not barred by the relevant statute of limitations.

Return to ToC

Eric Townes v. State of Maryland, No. 1228, September Term 2023, filed February 3, 2025. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1228s23.pdf

CRIMINAL LAW – SENTENCING – IMPERMISSIBLE CONSIDERATION

CRIMINAL LAW – SENTENCING – COURT'S PLEA OFFERS

CRIMINAL LAW – PRIOR INCONSISTENT STATEMENT HEARSAY EXCEPTION – FEIGNED LACK OF MEMORY

Facts:

This appeal arises from the trial and conviction of appellant Eric Townes in the Circuit Court for Baltimore City. Townes was charged with attempted murder in the first degree, attempted murder in the second degree, assault in the first degree, reckless endangerment, and carrying a dangerous weapon openly with intent to injure.

Townes' charges stem from the stabbing of Shawn Staples. Staples could not identify his attacker, but the evening of the attack, police interviewed Townes' then-girlfriend, Ivory Robinson, who witnessed the altercation. During that interview, which was captured by police body-worn camera, Robinson described how Staples and Townes fought despite her attempts to deescalate the situation.

Before trial, the State offered Townes a plea of 35 years all but 20 suspended and five years' probation for attempted murder in the first degree, and three consecutive years, all suspended, for carrying a dangerous weapon openly with intent to injure. The court rejected that plea offer and made its own offer: If Townes pled guilty to attempted murder in the first degree and carrying a dangerous weapon openly with intent to injure, the court would sentence Townes to "no probation, no parole, 25 straight [years]." The court later said it "might be persuaded to give [Townes] 20 [years] rather than 25." Townes, however, rejected that offer and proceeded to trial.

At trial, the State called Robinson as a witness, who continually testified that she did not remember her conversation with police. The State eventually moved to introduce the body-worn camera video of Robinson's statement to police as substantive evidence. The court asked if the State made such motion pursuant to "*Nance/Hardy*," which the State responded, "Under *Nance/Hardy*, that's correct." Townes' counsel then objected, arguing some parts of the video were inadmissible. The court then explained "according to *Nance/Hardy*, the entire statement comes in as substantive impeachment if [Robinson's] feigning inability to remember the details. So, I believe that she is feigning." Townes' counsel then identified portions of Robinson's statement to police he argued were inadmissible because they were hearsay, not relevant, and/or

prejudicial. The court overruled those objections and admitted into evidence Robinson's statements to police.

The jury found Townes guilty of attempted murder in the second degree, reckless endangerment, and carrying a dangerous weapon openly with intent to injure. The Sentencing Guidelines called for 10 to 18 years for these offenses. At sentencing, the State recommended the court depart upwards from the Guidelines due to the nature of the crime and Townes' prior record. Townes' counsel argued that the State's request "is tantamount to asking the court to punish [Townes] for exercising his right to trial… and I know this court will not do that."

The court sentenced Townes to 30 years for attempted murder in the second degree, three years for reckless endangerment to run concurrently, and three years for carrying a dangerous weapon openly with intent to injure to run concurrently. Townes then appealed to this Court.

Held: Affirmed.

First, Townes preserved his claim that the circuit court relied on an impermissible consideration when it sentenced him: his decision to plead not guilty and go to trial. Although Townes' counsel expressed his belief that the court would not impermissibly consider Townes exercising his right to trial in rendering its sentence, Townes' counsel's expressed belief did not "retreat from the position… that the circuit court should not penalize [a defendant] for having elected to go to trial." *Sharp v. State*, 446 Md. 669, 684 (2016).

Second, a reasonable person could not infer the sentencing judge might have been motivated by Townes' decision to plead not guilty and proceed to trial. Townes' counsel—not the sentencing judge—raised the issue of the State's recommended sentence punishing Townes for exercising his right to trial. In rendering Townes's sentence, the sentencing judge did not discuss Townes rejecting the State's and court's pretrial plea offers. Rather, the sentencing judge articulated permissible reasons for its sentence: the nature of Townes' offense and his criminal record.

Third, we reiterate the Supreme Court's recommendation in *Sharp*: trial courts should refrain from making plea offers to criminal defendants. As the Court discussed in *Sharp*, making such pleas can lead to allegations that, during sentencing, a trial court was motivated by the impermissible consideration of a defendant declining the trial court's plea offer and instead proceeding to trial. Judges should avoid even the appearance of impropriety in offering, or attempting to offer, their own plea agreements to criminal defendants.

Finally, Townes did not preserve his claim that the court erred in finding Robinson feigned her lack of memory because the specified grounds for Townes' counsel's objection to introducing the video capturing Robinson's statement to police did not include the circuit court's finding that Robinson was feigning her lack of memory. But even if he did preserve his claim, the circuit court fulfilled its requirement of finding that Robinson was feigning lack of memory: it specifically found her memory loss on the stand was contrived, not actual. Accordingly, the

circuit court properly admitted Robinson's statement because it constituted a prior inconsistent statement not excluded by the hearsay rule.

Return to ToC

ATTORNEY DISCIPLINE

DISBARMENTS/SUSPENSIONS

By an Order of the Supreme Court of Maryland dated February 3, 2025, the following attorney has been disbarred by consent:

CRAIG W. STEWART

*

By an Order of the Supreme Court of Maryland dated February 21, 2025, the following attorney has been suspended:

MATTHEW ADAM BAUM

*

By an Order of the Supreme Court of Maryland dated February 21, 2025, the following attorney has been suspended:

BARRON LEGRANT STROUD, JR.

*

By an Order of the Supreme Court of Maryland dated February 21, 2025, the following attorney has been suspended:

PAUL GERARD WERSANT

*

Return to ToC

UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
A		
Anderson, James Russell v. State	1574 *	February 27, 2025
Anderson, James Russell v. State	1576 *	February 27, 2025
B		
Baylor, Michael v. Sundry Claims Board	2052 **	February 5, 2025
Brown, Marc C., Jr. v. State, et al.	2400 *	February 14, 2025
Brown, Michael A. v. State	1377 *	February 20, 2025
C		
Casey, Michael v. State	0800 **	February 27, 2025
Cecil County Gov't. v. McCall	1238 *	February 21, 2025
Chan, Iris v. Chan	1078	February 18, 2025
D		
Daley, Evereen Helena v. Carranza	0655	February 10, 2025
Davis, Juaquin v. Goeller	0383	February 7, 2025
Dease, Candise v. Houser	0306	February 28, 2025
E		
Ellis, Leon v. State	1605 *	February 7, 2025
F		
Farace, Juliet v. Cross	2060 *	February 13, 2025
G		
Gardner, Quamaine L. v. State	2491 *	February 7, 2025
Graham, Kenton v. Graham	1189	February 18, 2025
Green, Dearil, III v. State	0331 *	February 5, 2025

September Term 2024
* September Term 2023
** September Term 2022
*** September Term 2021

Return to ToC

H

H.H. v. J.T.	1105	February 28, 2025
Hammonds, Jerome v. State	1111 *	February 5, 2025
Harrison, Kevin v. State	0164	February 7, 2025
Heath, Adam v. State	2024 *	February 11, 2025
Hernandez, Marles Antonio v. State	0686 *	February 28, 2025
HSU Contracting v. Holton-Arms School	0199	February 14, 2025

I

In re: A.B.	1131	February 3, 2025
In re: Estate of Colachicco	2178 *	February 3, 2025
In re: M.M.	0432	February 18, 2025
In re: M.M.	0896	February 14, 2025
In re: R.G.	2197 *	February 21, 2025
In the Matter of Bahram Sina Liv. Trust	1878	February 3, 2025
In the Matter of Germa, Meron	0665	February 4, 2025
In the Matter of Milani Construction	2436 *	February 19, 2025
Ison, Sierra L. v. Jaskiewicz	0166 **	February 27, 2025
Iz-Duzyol, Beril v. Duzyol	1171	February 18, 2025

J

Jackson, Antonio v. State	0335	February 10, 2025
Jarosz, Kasimier v. Jarosz	1200 *	February 11, 2025
Jewel, Isiah Abraham v. State	2196 *	February 11, 2025
Johnson, Richard v. DNF Associates	0925	February 4, 2025
Jones, Shanikiqua Schnell v. State	2054 *	February 4, 2025

L

Lee, Karen C. v. Mains Homeowners Ass'n.	1535 *	February 20, 2025
Lindauer, Susan v. O'Sullivan	0293	February 7, 2025
Linn, Devin Grey v. State	2385 *	February 7, 2025

M

Marroquin-Romero, Victor Hugo v. State	0133	February 18, 2025
Moore, Ashley v. CVS Pharmacy	2339 *	February 6, 2025

P

Palmer, Trent C. v. State	2286 *	February 7, 2025
Pham, Thomas v. Crespin	1425 **	February 20, 2025
Pham, Thomas v. Crespin	2485 *	February 20, 2025
Phillips, Rockwell v. Phillips	1851 *	February 28, 2025

September Term 2024
* September Term 2023
** September Term 2022
*** September Term 2021

Return to ToC

Portzen, Patrick Allan, Jr. v. State	0588 *	February 19, 2025
R		
R.J., Tavone v. State	1784 *	February 7, 2025
Redgate, Patrick V. v. Redgate	0756	February 6, 2025
Reese, Dean v. State	0638 *	February 28, 2025
Rosenfield, James Burton v. Harnik	1750 *	February 12, 2025
S		
Samm, Mario Matthew v. State	1941 *	February 21, 2025
Santana, Miguel Angel v. State	1572 *	February 25, 2025
Skipwith, Keonta Adrian v. State	2344 **	February 24, 2025
Solomon, Adam v. Solomon	0156 *	February 27, 2025
Spicuzza, Brian Steven v. State	0885 *	February 14, 2025
Stancell, Donald McCoy, Jr. v. State	0780	February 7, 2025
State v. Parker, Wayne K.	2443 *	February 11, 2025
Stemple, Butchie Junior v. State	0174	February 27, 2025
Sutton, Edward D. v. Queen Anne's Cnty. Comm'rs	0075	February 18, 2025
T		
Taylor, Evelyn Silvianne v. State	2126 *	February 14, 2025
Taylor, Reginald Evan v. Taylor	1279	February 6, 2025
Thomas, Lewis D. v. Patriot Square HOA	2189 *	February 5, 2025
Trybus, Andrea v. Trybus	1103	February 7, 2025
Tucker, Ronaldo V. v. Ward	1338	February 4, 2025
W		
Ward, Warren v. State	0205	February 27, 2025
Waters, Patricia v. City of Laurel	1104 *	February 4, 2025
Wilkins, Anthony D'Angelo v. State	1505 ***	February 21, 2025
Winston, Nicole v. Prince George's Co. Dept. of Health	1200	February 7, 2025
Z		
Zano, Haizuanna v. Driscoll	0836 *	February 10, 2025

September Term 2024
* September Term 2023
** September Term 2022
*** September Term 2021