Circuit Court for Baltimore City
Case No.: 122153001

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2209

September Term, 2022

ANTON HARRIS

v.

STATE OF MARYLAND

Albright,
Tang,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: September 12, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted appellant, Anton Harris, of second-degree murder and illegal possession of a regulated firearm. On appeal, appellant presents four questions:

> I. Under *Abruquah v. State*, 483 Md. 637 (2023), did the motions court abuse its discretion by denying Appellant's motion to exclude and/or limit the State's firearms identification evidence?
>
> II. Did the trial court abuse its discretion by refusing to ask prospective jurors during voir dire whether they or a close friend or relative had been trained or employed in the law, law enforcement, or a law-related field?
>
> III. Did the trial court err by denying the defense motion for a mistrial and/or by denying the defense request to voir dire the jury after the parties learned mid-trial that a juror's partner was an Assistant State's attorney?
>
> IV. Did the trial court err by denying defense counsel's request for an evidentiary hearing after a State's witness made a surprise in-court identification?

For the following reasons, we hold that the circuit court erred by permitting the firearms examiner to offer an unqualified opinion that two cartridge casings were fired by a gun recovered near appellant. Because we are not satisfied that this error was harmless beyond a reasonable doubt, we reverse appellant's convictions and remand for a new trial. Considering our resolution of the first issue, we need not reach the remaining issues.

I.

Appellant was indicted by the Grand Jury for Baltimore City of first-degree murder, second-degree murder, use of a firearm in the commission of a crime of violence, and illegal possession of a regulated firearm. He proceeded to trial before a jury and was found

not guilty of first-degree murder and use of a firearm in the commission of a crime of violence and guilty of second-degree murder and illegal possession of a regulated firearm. The court sentenced appellant to a term of incarceration of forty years for second-degree murder and a concurrent term of incarceration of fifteen years for illegal possession of a regulated firearm.

These charges stem from appellant's alleged murder of Keith Johnson. Around 3 p.m. on May 4, 2022, Keith Johnson was shot and killed on North Pulaski Street in West Baltimore. Latia Davis, who lived a short way down the street and knew Mr. Johnson, testified at trial that she heard a gunshot from her bedroom window, looked outside, and saw appellant fire a second shot. She testified that appellant was wearing army fatigues and that, after he shot Mr. Johnson, he ran down Pulaski Street.

On cross-examination, defense counsel played Ms. Davis's recorded statement to the police, made on the day of the shooting. In her contemporaneous statement, Ms. Davis denied having witnessed the shooting or having seen the man who shot Mr. Johnson except from behind. She told officers that she heard two gunshots and looked out the window about six seconds later. She saw a man running away from the shooting. She described the man as wearing a dark green or black hooded sweatshirt with green writing on the back of it.

The Baltimore City Police Department ("BPD") received a 911 call from a man who identified himself as "Keith Adams." He reported that he was inside a bar, heard gunshots, left the bar, and observed Mr. Johnson lying on the ground. The caller advised that he was "looking at the suspect as we speak," describing him as a black male wearing a black

hooded sweatshirt, black pants, and a white tee-shirt with green letters on the back, walking westbound on Franklin Street. While the dispatcher asked him questions, the caller interjected, "Hold on. Hold on. I got MTA Police right here." He then began yelling to a third person, stating: "Hey, hey, hey, hey. . . . Help. There's a dude that got the gun that just shot."

At the same time, Gregory Robinson, an MTA patrol officer, was leaving the parking lot at the West Baltimore MARC train station, located near the shooting, when he was flagged down by a man driving a Nissan Altima. Officer Robinson identified that man as Adams after listening to the 911 call. Mr. Adams directed Officer Robinson to a man walking westbound on Franklin Street. Officer Robinson began following that man, who was wearing a black hooded sweatshirt with white writing on the back and black pants, in his patrol car. The man began running, turning north onto Wheeler Avenue. Officer Robinson parked his patrol car and pursued the man on foot, drawing his weapon and ordering the man to show his hands. The man ran behind a Nissan Xterra SUV. Officer Robinson could see the man through the windows of the vehicle, standing between the rear passenger side door and the front passenger side door. Though his hands were not visible, Officer Robinson could tell by the man's shoulder movements that he was doing something with his hands. After about five seconds, the man took off running into a wooded area behind a grassy lot.

About six minutes later, Detective Nolan Arnold discovered a man, later identified as appellant, hiding behind a tree in the wooded area. Appellant was wearing black pants and a gray tee-shirt. A second officer found a black hooded sweatshirt with large white

writing on the back on the ground near where appellant was discovered. At the scene, Officer Robinson identified appellant as the man he had pursued who ran behind the Xterra and then into the wooded area.

A BPD officer obtained security camera footage from the front door of a house on North Pulaski Street. The house was south of the shooting scene, but on the same side of the same block. The footage taken around the time of the shooting depicted a man wearing a hooded sweatshirt with writing on the back getting out of the rear passenger seat of a sedan and walking northbound on Pulaski Street, towards the shooting scene.

After apprehending and identifying appellant, Officer Robinson returned to the location of the Xterra where the man he was chasing had hidden. Near the rear passenger door of the vehicle, he found a Polymer 80 handgun and a loaded detachable magazine. At the scene of the shooting, a crime scene technician recovered two lead fragments, one bullet jacket fragment, and one cartridge casing. These ammunition components were sent to the BPD firearms examination unit for analysis.

Swabs from the top slide of the Polymer 80 firearm, the grip, and the magazine appeared to recover blood from the gun. These swabs were tested for DNA. Lydia Moon, a DNA analyst who was admitted as an expert, testified that DNA extracted from the swab taken from the top slide of the Polymer 80 handgun was consistent with a major male contributor and at least one minor contributor. The major contributor was identified as the victim, Mr. Johnson, but Ms. Moon could draw no conclusions about the minor contributor. DNA from the grip of the gun also resulted in a match to the victim.

Most pertinent to the present appeal, the State presented the testimony of Zoe Krohn, a firearms analyst for the BPD who analyzed the cartridge casings found at the scene to determine whether they had been fired from the Polymer 80 handgun. Ms. Krohn used the Association of Firearm and Toolmark Examiners' "Theory of Identification" (hereinafter "AFTE Theory") which is widely used by police officers.

In advance of trial, appellant moved in *limine* to exclude the firearms identification evidence as unreliable under the *Rochkind-Daubert* standard set forth in *Rochkind v. Stevenson*, 471 Md. 1 (2020). He argued that firearms identification, generally, and the AFTE Theory, specifically, were unreliable. Alternatively, appellant argued that, even if the AFTE Theory were deemed reliable under *Rochkind-Daubert*, it was not applied reliably in this case and, therefore, the conclusions drawn by Ms. Krohn should be excluded under Rule 5-702. He asked the court to exclude her testimony or, alternatively, to limit the opinion. The State opposed the motion, arguing that the AFTE Theory is a reliable scientific method and attached numerous studies that it asserted demonstrate low error rates when examiners are tested on their ability to match cartridge cases and bullets. The court admitted the testimony, finding, without a hearing, that the State had presented sufficient evidence in its attached studies to satisfy the *Rochkind-Daubert* standard.[1]

Ms. Krohn testified that she compared test-fired cartridge cases from the Polymer 80 handgun to two cartridge casings – the one found at the shooting scene and the one lodged in the barrel of the gun when it was recovered. Ms. Krohn explained that the gun

[1] Appellant does not object to the trial court failing to hold an evidentiary *Daubert* hearing.

manufacturing process creates "microscopic imperfections" in firearms and those imperfections "leav[e] behind markings on ammunition components because the metal of the firearm is a lot harder than the metal that is used in ammunition components, cartridge cases, and projectiles." Ms. Krohn testified that she performs "microscopic comparisons on fired evidence, such as bullets and cartridge cases, to determine whether they were fired by the same firearm or different firearms." After she completes a comparison, a second firearms examiner conducts an "independent verification" of her analysis. She and the second firearms examiner then "come together to determine whether or not we agree with each other." She opined that both cartridge casings were fired from the Polymer 80 handgun. She acknowledged, however, that what constituted sufficient agreement between two sets of microscopic marks was a "subjective decision" and that there were no "particular number of matching characteristics" necessary.

The jury found appellant guilty, and this timely appeal followed.

II

Appellant contends that the Maryland Supreme Court's recent decision of *Abruquah v. State*, 483 Md. 637 (2023), rendered after his trial date, compels the reversal of his convictions. In that case, the Court considered the same AFTE Theory methodology used by Ms. Krohn in this case. After considering the extensive research on the reliability of the AFTE Theory produced over the last two decades, the Supreme Court concluded as follows:

> "[T]he firearms identification methodology employed in this case can support reliable conclusions that patterns and markings on bullets are consistent or inconsistent with those on bullets fired from a particular firearm. Those reports, studies, and testimony do not, however, demonstrate that that methodology can reliably support an unqualified conclusion that such bullets were fired from a particular firearm."

Id. at 648. Appellant maintains that he presented "substantially the same argument as presented in the *Abruquah* case" in his objection to Ms. Krohn's testimony and, yet, the court overruled his objection and permitted the unqualified conclusion that particular bullets were fired from a particular firearm.

Appellant does not contest the court's decision not to hold a *Rochkind-Daubert* hearing in this case. Rather, appellant contends that the AFTE methodology is so fundamentally unreliable as to render it an inappropriate methodology to use in any case where the examiner purports to be able to match a particular bullet or casing to a particular firearm. Appellant contends that the trial court abused its discretion in finding that Ms. Krohn's AFTE Theory methodology met the *Rochkind-Daubert* standard.

The State acknowledges that the Court in *Abruquah* prohibited an expert from testifying, based on the AFTE Theory, that particular bullets were fired from a particular firearm. However, the State argues that the Supreme Court's decision was limited by the record in front of the Court in that case. In support of this argument, the State points to a footnote in *Abruquah,* in which the Court noted that the State, in that case, had presented additional studies regarding the reliability of the AFTE Theory on appeal but that the Court would not consider them because they had not been made available to the circuit court. *Id.* at 657 n.6. The Court went on to say that "If any of those studies materially alters the

analysis applicable to the reliability of the Association of Firearm and Tool Mark Examiners theory of firearms identification, they will need to be presented in another case." *Id.* The State argues that it presented studies in the circuit court in this case that materially alter the analysis in *Abruquah*.

Alternatively, the State argues that any error in admitting Ms. Krohn's unqualified opinion was harmless beyond a reasonable doubt because the presence of Mr. Johnson's blood on the gun tied it to the murder independent of the firearms identification evidence.

Appellant counters, in his reply brief, that the State's "new studies" do not move the needle in terms of reliability and that *Abruquah* still controls the permissibility of firearms identification using the AFTE theory. Appellant contends that the error in admitting Ms. Krohn's opinion cannot be deemed harmless given that the State relied upon it in closing argument to show criminal agency.[2]

III

We consider the circuit court's decisions on the admissibility of expert testimony on an abuse of discretion basis. *Devincentz v. State*, 460 Md. 518, 550 (2018). We reverse only when the decision to admit the expert testimony "appears to have been made on untenable grounds." *Id.* We do not find an abuse of discretion because we would have decided otherwise. *Id.*

[2] Because we do not reach appellant's second, third, and fourth questions presented, we do not set forth the underlying facts of those arguments.

A court's decision to admit expert testimony is governed by Maryland Rule 5-702 which provides as follows:

> "Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and
>
> (3) whether a sufficient factual basis exists to support the expert testimony."

In determining whether a particular methodology is sufficiently reliable to meet the above standard, trial courts consider the following non-exhaustive set of factors:

> "(1) whether a theory or technique can be (and has been) tested;
> (2) whether a theory or technique has been subjected to peer review and publication;
> (3) whether a particular scientific technique has a known or potential rate of error;
> (4) the existence and maintenance of standards and controls; . . .
> (5) whether a theory or technique is generally accepted[;] . . .
> (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;
> (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
> (8) whether the expert has adequately accounted for obvious alternative explanations;
> (9) whether the expert is being as careful as [the expert] would be in [the expert's] regular professional work outside [the expert's] paid litigation consulting; and
> (10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give."

Rochkind v. Stevenson, 471 Md. 1 (2020).

In *Abruquah v. State*, 483 Md. 637 (2023), the Maryland Supreme Court considered whether the use of the AFTE Theory to identify a particular firearm from which a bullet or casing was fired satisfied the *Rochkind-Daubert* factors. The Court held that it was an abuse of discretion for a circuit court to admit testimony that an expert had used the AFTE Theory to match a particular firearm to a particular bullet or casing because "a circuit court abuses its discretion by . . . admitting expert evidence where there is an analytical gap between the type of evidence the methodology can reliably support and the evidence offered. *Id.* at 652. The Court found that the AFTE Theory could support conclusions that a particular bullet or casing was consistent with a particular firearm, but not that there was an unqualified match. *Id.* at 648.

In particular, the Supreme Court examined criticisms of the accuracy, repeatability, and reproducibility of the AFTE Theory. Accuracy concerns a firearm examiner's ability to correctly identify a match or eliminate a nonmatch. *Id*. at 669. Repeatability addresses the ability of a firearms examiner to reach the same result when reviewing the same comparison on multiple occasions. *Id*. Reproducibility concerns whether different examiners reach the same conclusions about the same comparisons. *Id*. Because, in this case, we are asked to re-evaluate the criticisms of the AFTE Theory in light of new scientific studies, we set forth the relevant evidence considered by the Supreme Court below.

In 2009, the National Research Council of the National Academies of Science (the "NRC") issued a report that concluded that the AFTE Theory produced results that were

"not shown to be accurate, repeatable, and reproducible[.]" *Id*. at 663 (citing National Research Council, National Academy of Sciences, *Strengthening Forensic Science in the United States: A Path Forward* 153-55 (2009) (hereinafter "2009 NRC Report"). The same report noted that "A fundamental problem with toolmark and firearms analysis is the lack of a precisely defined process." 2009 NRC Report, *supra* at 155. The AFTE has a theory that firearm toolmarks are uniquely identifiable but does not provide a specific protocol for the identification or a standard for sufficient agreement between two samples. *Id.* 154-55.

In 2016, the President's Council of Advisors on Science and Technology ("PCAST") issued a report criticizing firearms identification, finding that the AFTE Theory was "circular" and that appropriate studies had not confirmed its accuracy, repeatability, and reproducibility. *Abruquah*, 483 Md. at 664-65 (citing Executive Office of the President, President's Council of Advisors on Science and Technology, *REPORT TO THE PRESIDENT*, *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (2016) (hereinafter the "PCAST Report")). PCAST specifically criticized the majority of available studies as inappropriately designed to effectively test the accuracy, repeatability, and reproducibility of firearms analysis. PCAST Report, *supra* at 106.

The only study PCAST recognized as being appropriately designed at the time was known as the Ames I Study,[3] an open-set[4], black box study. *Id*. In that study, the false positive rate was 1.01%. The Supreme Court emphasized, however, that even the Ames I Study was flawed. Because examiners were permitted to respond with "inconclusive," which could not be counted as a "false-positive," low false negative and false positive rates reported in the study were potentially inaccurate representations of fieldwork. *Abruquah*, 483 Md. at 668. Ames I did not attempt to validate repeatability or reproducibility.

In response to the PCAST report, the Ames Laboratory conducted the "Ames II" study.[5] It was a three-phase, open-set, black box study designed to test accuracy, repeatability, and reproducibility. *Id*. Phase I tested accuracy, Phase II tested repeatability, and Phase II tested reproducibility. In each phase, the examiners were asked to indicate identification, elimination, or one of the three levels of "inconclusive." *Id*. As in Ames I, Phase I of the study produced a low false positive rate but a high number of inconclusive results. *Id.* The rate of "inconclusive" was significantly higher in this study that in closed-set studies[6] where the examiner had been assured there would be matches to each firearm. *Id.*

[3] David P. Baldwin et al., Defense Biometrics & Forensics Office, U.S. Dep't of Energy, *A Study of False-Positive and False-Negative Error Rate in Cartridge Case Comparisons*, (Apr. 2014).

[4] Open-set studies are those for which a firearms examiner makes comparisons within groupings in which there may or may not be a match. *Abruquah,* 483 Md. at 668.

[5] Stanley J. Bajic et al., U.S. Dep't of Energy, *Validation Study of the Accuracy, Repeatability, and Reproducibility of Firearm Comparisons*, 1-2 (2020).

[6] In a closed-set study, examiners compare a group of known and unknown samples where each unknown sample matches one known sample within the set. *Id*. at 666-67.

Phase II tested repeatability by having the same examiner review the same test set a second time, without knowledge that it was the same set, and Phase III tested reproducibility by having a second examiner review a test set that had been analyzed by a different examiner. *Id.* at 669. With respect to cartridge casings, the same examiners classified matching sets in the same category only 75.6% of the time and non-matching cartridge cases in the same category just 62.2% of the time. *Id*. at 671. A second examiner classified a matching cartridge case in the same category as the first examiner 63.6% of the time and a non-matching cartridge case in the same category just 40.3% of the time. *Id*. at 672.

Ames I and Ames II factored heavily into the Court's analysis of the *Rochkind-Daubert* factors. First, in assessing the "known or potential rate of error" factor as applied to firearms identification, the Court was concerned by the extremely high rate of inconclusive selections in the Ames I and Ames II open-set studies as compared to the low rate in closed-set studies, in which examiners knew a match for each unknown bullet existed. *Id*. at 684. The Court noted that this suggests that firearms examiners' decisions were biased by outside knowledge of the circumstances of their evaluation which could produce more false positives in a field setting. *Id.* at 684. After considering this and other data, the Court determined that the "relatively low rate of 'false positive' responses in studies conducted to date is by far the most persuasive piece of evidence in favor of admissibility of firearms identification evidence." *Id*. at 686. Nevertheless, the Court was not persuaded "that that rate is reliable, especially when it comes to actual casework." *Id*.

Second, in assessing the "existence and maintenance of standards and controls, the Court found "enlightening" that Phases II and III of Ames II revealed "troublesome" rates of disagreement between the same examiners reviewing the same ammunition components a second time and between different examiners reviewing the same components. *Id*. at 689-90. This highlighted the central issue underlying criticism of the field: "the lack of standards and controls" as to what indicators or degree of similarity is required for a "match." *Id*. at 690.

Third, with respect to whether the expert's opinion involved unjustified extrapolation from an accepted premise, the Court reasoned on the same bases set out above that an analytical gap exists in any use of the AFTE Theory. *Id*. at 694. It determined that the AFTE Theory only reliably supported an opinion that "patterns and lines on bullets of unknown origin are consistent with those known to have been fired from a particular firearm." *Id*. The Court concluded that it was not reasonable to extrapolate, based on the available science, that a firearms examiner could match a particular firearm to a particular bullet. *Id.*

Fourth, the expert opinion did not account for "obvious alternative explanations" because "without the ability to examine other bullets fired from other firearms in the same production run as the firearm under examination," a firearms examiner could not "reliably eliminate all alternative sources." *Id*. at 695. For all these reasons, the majority in *Abruquah* held that the trial court had abused its discretion by admitting the expert opinion without qualification. *Id.* 697

In this case, the State provided to the circuit court nineteen additional studies not available to the Court in *Abruquah*. The State alleges that these studies more firmly establish the reliability of the AFTE Theory and resolve the issues found by the Supreme Court in *Abruquah*. The State points to three of these studies, in particular, as examples of studies meeting the criteria for study design set out by the PCAST Report: Erwin J.A.T. Mattijssen et al., *Firearm Examination: Examiner Judgments and Computer-Based Comparisons*, 66 J. of Forensic Sci. 96 (2020) (hereinafter "Mattijssen I"); Erwin J.A.T. Mattijssen et al., *Validity and Reliability of Forensic Firearm Examiners*, 307 Forensic Sci. Int'l 110112 (2020) (hereinafter "Mattijssen II"); W. Kerkhoff, et al., *A Part-Declared Blind Testing Program in Firearms Examination*, 58 Sci. & Justice 258 (2018) (hereinafter "Kerkhoff"). We disagree with the State that these studies materially alter the Supreme Court's *Rochkind-Daubert* analysis.

Mattijssen I and Mattijssen II tested accuracy and compared examiner judgments against computer-based methods. In Mattijssen I, 73 examiners compared breech face and firing pin markings on 48 sets of epoxy resin replicas of cartridge cases. Mattijssen I, *supra* at 96. The results revealed that, depending on what type of impression the examiners looked at, their false positive rate was between 11.8% and 13.8%. *Id*. at 103-05. When the authors considered only those determinations that the examiners "felt confident to report," the false positive rate declined only slightly, to between 11.2% and 12.1%.

In Mattijssen II, 77 examiners viewed side-by-side 2D magnified digital images of the firing pin aperture shear marks on cartridge cases for comparison and were asked to judge whether they were fired from the same or different Glock pistols. Mattijssen I, *supra*

at 4. Excluding inconclusive results, the false positive rate for all examiners was 10.8%. *Id.* at 7. The researchers noted that the false positive rates might not be entirely representative of true casework because they selected the samples to represent "difficult" comparisons. *Id.* at 11. But they noted that the examiners displayed too high a degree of confidence in their identifications and warned of the possible effects of this overconfidence on judicial systems. *Id.*

Kerkhoff, likewise, was designed to test accuracy. This study was designed to mimic casework by submitting test sets to examiners without disclosing that they were being tested. *Id*. at 259. The test design was such that examiners were comparing groupings of cartridge cases and determining if one, two, three or more firearms were used to produce them. *Id*. at 260. In this study, "None of the 137 cartridge cases were wrongly attributed to (a cluster of) cartridge cases fired from a different firearm." *Id*. at 262. The authors recognized, however, that the small sample size was unlikely to provide a "good estimate of the rate of misleading evidence in practice." *Id.* In the view of the authors, "a much larger sample would be needed" to determine the actual rates of "misleading evidence in practice." *Id.*

None of these studies resolve the *Abruquah* Court's concerns about repeatability and reproducibility because they did not attempt to test those factors. Nor do they alleviate the concerns about accuracy given the high false positive rates in Mattijssen I and II (which were much higher than those in Ames I and II). And, while Kerkhoff is more promising in terms of demonstrating accuracy in a casework-like environment, the small sample size does not permit sufficient extrapolation to undermine *Abruquah*. Thus, even if we focused

solely upon the accuracy of the examiners' judgments as reflected in the studies, the results are not compelling.

In sum, the studies cited by the State do not materially alter the analysis under *Rochkind-Daubert* because they do not reliably demonstrate a low false positive rate or establish that examiners applying the AFTE Theory can reliably identify a particular firearm. Thus, consistent with *Abruquah*, the trial court abused its discretion by permitting Ms. Krohn to offer an unqualified opinion that two cartridge cases were fired from the Polymer 80 firearm.

IV.

Having concluded that the court erred by admitting the expert testimony, we reverse appellant's convictions unless the error is shown to be harmless beyond a reasonable doubt. *See, e.g., Newton v. State*, 455 Md. 341, 353 (2017) (reasoning that an error is harmless where "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict"). We are not satisfied that that high bar has been met in this case.

As the State points out, there is ample evidence demonstrating that appellant was the man seen walking down the street immediately after the shooting. But the only direct evidence that appellant was the one who shot the victim came from a witness who was impeached on multiple grounds shortly thereafter. The evidence that the victim's blood was on the firearm, like the testimony of eyewitnesses that appellant was at the scene, is compelling evidence that the firearm was at the scene, but not necessarily that it was used (presumably by appellant) as the murder weapon. The State relied on the firearm evidence

to show that the Polymer 80 handgun, was the murder weapon. We cannot conclude that its inclusion did not contribute to the jury's verdict.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL.