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# COURT OF APPEALS

*Attorney Grievance Commission of Maryland v. Stuart R. Blatt*, Misc. Docket AG No. 42, September Term 2017, filed May 22, 2019. Opinion by McDonald, J.

<https://www.courts.state.md.us/data/opinions/coa/2019/42a17ag.pdf>

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

## **Facts:**

Stuart R. Blatt, a creditors rights attorney, practiced in Maryland for more than four decades as in-house counsel and as a principal in several law firms without incident. However, his firm began a downward spiral when Citibank, Mr. Blatt's largest client for many years, decided to reduce the number of law firms to which it referred collection matters and stopped referring business to Mr. Blatt's firm. Apparently, in response to these circumstances, Mr. Blatt began placing client money in a bank account that was not handled as a trust account. As the firm failed, Mr. Blatt transferred \$24,500 from that account into a bank account in his own name.

Bar Counsel presented evidence of other specific misconduct relating to four clients. The Harvard Drug Group had hired Mr. Blatt to collect debts from its customers. Mr. Blatt initially went about this work without incident, but in July 2014 he began to withhold funds his firm had collected on company's behalf. Mr. Blatt's firm also continued to collect from one debtor after the relevant judgment had expired, and as a result Harvard Drug Group was forced to settle with that debtor by paying him \$20,000 for damages and attorneys' fees.

Mr. Blatt also collected debts on behalf of Doris Mayer but failed to send her any funds until she hired an attorney to review Mr. Blatt's work. Another client, Douglas Knight & Associates, an insurance subrogation firm, sent Mr. Blatt money for court costs to file cases against debtors. In several instances such cases were not filed before the statute of limitations expired, but the money was never refunded. The Montgomery County Employees Federal Credit Union also hired Mr. Blatt to collect debts for it, but he failed to remit what his firm collected to the Credit Union after January 2015.

Mr. Blatt failed to inform any of these clients in a timely manner that his firm had closed, and never provided any of them with a full accounting of his work on their behalf.

Following an investigation, Bar Counsel filed a petition for disciplinary or remedial action against Mr. Blatt, alleging violations of Rule 1.1 (competence); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.15(a), (c) & (d) (safekeeping property); Rule 1.16(d) (declining or terminating representation); Rule 5.1(a) & (b) (responsibilities of partners, managers, and supervisory lawyers); Rule 5.3(a), (b) & (c) (responsibilities regarding non-lawyer assistants); Rule 8.1(a) (bar admission and disciplinary matters); and Rule 8.4(a), (c) & (d) (misconduct) (Bar Counsel later withdrew the charge under Rule 8.1(a)).

The hearing judge found Mr. Blatt had violated the remaining provisions charged by Bar Counsel, and Mr. Blatt excepted to various fact findings of the hearing judge as well as the conclusion that he had committed misconduct.

**Held:** Disbarred.

The Court sustained the hearing judge's findings of fact and conclusions of law. It further determined that three aggravating factors applied to this case: Mr. Blatt's substantial experience in the practice of law, his pattern of misconduct, and his failure to make restitution to clients. The Court also concluded that there was no evidence that any mitigating factors applied to this case.

Given that misuse and misappropriation of client funds is among the gravest violations of the attorney-client relationship, the Court disbarred Mr. Blatt.

*In re: G.R.*, No. 32, September Term 2018, filed April 1, 2019. Opinion by Getty, J.

<https://mdcourts.gov/data/opinions/coa/2019/32a18.pdf>

CRIMINAL LAW – PROBATION AND PUNISHMENT – CONDITIONS OF PROBATION – PARTICULAR TERMS AND CONDITIONS – RESTITUTION AND REPARATIONS

**Facts:**

In juvenile court in Prince George’s County, Petitioner G.R. pleaded involved to robbery, second-degree assault, and openly carrying a dangerous weapon. The charges stemmed from an incident that occurred earlier that month in which G.R. and several others robbed two juvenile victims at knifepoint. Among other things, the assailants took a key ring, containing three keys, from one of the victims. The keys corresponded to the homes of the juvenile victim’s mother, father, and sister. While the two juvenile victims were being transported to the police station for additional questioning in a police cruiser, they spotted their assailants walking down the street. The police attempted to apprehend the assailants but they ultimately fled. Thereafter, G.R. was apprehended by police. At the time, he had possession of the victim’s key ring. When G.R. was taken to a juvenile detention center, the keys were mistakenly inventoried with his personal property. Therefore, the keys were not returned to the victim and the locks of the three homes were rekeyed shortly after the robbery. At a restitution hearing, the juvenile court ordered G.R. to pay a total of \$120 in restitution, which included \$65 in restitution for the costs associated with rekeying the household locks. Also at the hearing, it came to light that neither the victims nor the State were aware that the house keys had been held at the juvenile detention center since G.R. was apprehended by police. G.R. appealed the judgment of the juvenile court to the Court of Special Appeals. Before the intermediate appellate court, G.R. argued that the cost of rekeying the locks was not a direct result of the underlying robbery under Md. Code (1974, 2013 Repl. Vol.) Criminal Procedure Article (“CP”) § 11-603(a)(1), and therefore, the juvenile court erred in awarding the victim \$65 in restitution to rekey the locks. In an unreported opinion, the Court of Special Appeals reversed the juvenile court’s judgment, holding that the costs associated with rekeying the locks were not a direct result of the underlying robbery.

**Held:** Reversed.

G.R. argued that the Court of Special Appeals correctly determined that the costs associated with rekeying the locks was not a direct result of the underlying robbery. G.R.’s primary contention was that rekeying the locks was an intervening event, too far removed from the robbery, which severed any form of direct result causation under *Williams v. State*, 385 Md. 50 (2005). The Court of Appeals held that, the costs associated with rekeying the locks were a direct result of the underlying robbery. The Court held that the theft of the keys substantially reduced the value of

the locks by jeopardizing the locks' status as protectors of the sanctity and security of the home to an extent cognizable under CP § 11-603(a)(1). The Court commented that the Court of Special Appeals erred in its restitution analysis, because the court based its decision primarily on a lack of physical damage to the lock, overlooking that a substantial decrease in value may be sufficient to undergird a restitution claim. Additionally, the Court determined that a lapse of time between the theft of the keys and rekeying was not dispositive because the substantial decrease in household locks' value occurred contemporaneously with the theft and would remain until the keys were returned, unduplicated, to their rightful owners. Next, the Court distinguished the instant case from *Williams v. State*, wherein the victim's own actions prevented return of his property and therefore, an award of restitution. 385 Md. 50 (2005). The Court determined that rekeying the locks in the instant appeal was not an intervening agent or occurrence that would sever the required direct causation between the robbery and the substantial reduction in value of the locks. Therefore, the Court reversed the judgment of the Court of Special Appeals.

*Gerald Hyman v. State of Maryland*, No. 18, September Term 2018, filed May 20, 2019. Opinion by Barbera, C.J.

<https://mdcourts.gov/data/opinions/coa/2019/18a18.pdf>

CRIMINAL PROCEDURE – SEX OFFENDER REGISTRATION – WAIVER IN CORAM NOBIS PROCEEDINGS

**Facts:**

In 2001, Petitioner Gerald Hyman pleaded guilty to third degree sexual offense stemming from a purportedly consensual sexual encounter with a fourteen-year-old female when he was thirty years old. His sentence was fully suspended in favor of three years of probation. Hyman faced several consequences of his conviction including sex offender registration. At the time of his conviction, the Maryland Sex Offender Registration Act required lifetime registration. When Hyman registered in 2001 and 2002, however, he was told in error that his registration term was ten years; only in 2003 was he told his registration was lifetime. Changes to the law in 2010 lowered his requirement to twenty-five years.

In 2004, Hyman was convicted on unrelated federal charges and sentenced to seventy-eight months in prison. A residential drug treatment program was recommended for him, but his 2001 conviction left him ineligible for the early release incentive that accompanied the program. Hyman petitioned in 2006 for a writ of coram nobis, claiming ineffective assistance of counsel and involuntary plea; he wanted his conviction vacated so that he could qualify for that incentive. He did not mention the duration of his sex offender registration period as a ground underlying either claim. The coram nobis court denied Hyman’s petition and Hyman appealed to the Court of Special Appeals. While his appeal was pending in 2008, Hyman was released from federal prison early, and the Court of Special Appeals thus dismissed his appeal as moot.

In 2016, Hyman again petitioned for a writ of coram nobis, alleging the same two claims. This time, he argued that his ignorance of the duration of his sex offender registration period is what made his plea involuntary and his assistance of counsel ineffective. He asked for his conviction to be vacated so that he could be free from various stigmatizing effects of registration. The coram nobis court denied relief. The court held that no prejudice had occurred and his plea was not involuntary because knowing the registration period’s duration would not have led a reasonable defendant in his position—facing twenty-one years’ imprisonment on a strict liability charge—to go to trial rather than plead and receive a fully suspended sentence.

The Court of Special Appeals affirmed. The intermediate appellate court rejected the State’s waiver argument, accepting Hyman’s claim that his 2006 petition, having been prepared by a “jailhouse lawyer,” did not reflect his full understanding or thinking. It agreed with the coram nobis court, however, that Hyman had not demonstrated prejudice: only his “*post hoc* assertions,” not “contemporaneous evidence,” substantiated his declared preference to have gone

to trial rather than have pleaded guilty. As Hyman was advised of his registration on the record of the plea proceeding, the coram nobis court was correct that he was not prejudiced and that his plea could not be said to be involuntary as a result of ignorance of the duration of the registration period.

**Held:** Affirmed.

The Court of Appeals affirmed, but on a different ground. Although the Court did not disagree with the intermediate appellate court's discussion of the merits, the Court held the issue waived. Hyman did not present his ignorance of the duration of his registration period at the time of his plea when he filed his 2006 coram nobis petition. By that time, he had already been told, in 2003, that his requirement was lifetime. Although intelligent and knowing waiver is required for constitutional claims, Hyman raised both of these claims in his earlier petition. His not raising the duration of his registration period as a *ground* underlying those claims is not entitled to the same presumption against waiver as the claims themselves. Therefore, Hyman's 2006 silence on the duration ground renders it waived in the current proceeding.



*State of Maryland v. Mark Edmund Christian, II*, No. 68, September Term 2018, filed May 17, 2019. Opinion by Barbera, C.J.

<https://mdcourts.gov/data/opinions/coa/2019/68a18.pdf>

POSTCONVICTION PROCEEDINGS – MOTION TO CORRECT THE RECORD –  
REMAND FOR FURTHER FACT FINDING

**Facts:**

In 2012, Mark Edmund Christian, II was convicted of several crimes related to the murder of Robert Hemphill and sentenced to life plus 30 years' incarceration. The convictions were upheld on appeal.

In 2016, Christian filed a petition for postconviction relief, alleging, among other claims, that his trial counsel provided ineffective assistance by failing to object to an *Unger* instruction.<sup>1</sup> The transcript from Christian's trial indicates that the presiding judge instructed the jury, "Since this is a criminal case, you are judges, judges of both the law and the facts." The postconviction court granted Christian's petition, finding that trial counsel's failure to object to a blatantly erroneous instruction constituted deficient conduct, and ordered a new trial. The State appealed to the Court of Special Appeals.

While the appeal was pending, the State filed a Motion for Reconsideration in the postconviction court, alleging that the judge who presided over Christian's trial never gave the improper instruction. Instead, the State claimed, the court reporter at Christian's trial took boilerplate language from an old jury instruction, which included the offending language, and inserted it into the trial transcript. The State proffered that the presiding judge was willing to testify to these facts. The circuit court denied the motion, ruling that it lacked jurisdiction given the State's pending appeal. The Court of Special Appeals affirmed the circuit court's grant of a new trial and refused to correct the record under Maryland Rule 8-414, holding that no remedy was available because the State had not submitted the required affidavit supporting its assertions.

After the Court of Appeals issued a writ of certiorari, the State filed a Motion to Correct the Record. With its motion, the State submitted an affidavit from the judge who presided over Christian's trial. The affidavit stated that the improper instruction was never given to the jury.

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<sup>1</sup> An "*Unger* instruction" refers to the Court of Appeals decision in *Unger v. State*, 427 Md. 383 (2012), in which the Court held that jury instructions implying that the presumption of innocence or burden of proof standard are "merely advisory" constitutes a structural error entitling one to relief.

**Held:**

The Court of Appeals remanded the case to the postconviction court for further fact finding. The Court noted that the presiding judge's affidavit raised sufficient uncertainty about what happened at Christian's trial to warrant further examination. The Court stressed, however, that more evidence than the judge's affidavit is needed before a correction to the record is justified, as the correction sought would effectively terminate Christian's sole ground for postconviction relief. On remand, the Court instructed the postconviction court to render findings of fact relating to whether the improper instruction was provided at Christian's trial and conclusions of law based on those findings.

*The Town of Forest Heights v. The Maryland-National Capital Park and Planning Commission, et al.*, No. 21, September Term 2018, filed April 5, 2019. Opinion by Getty, J.

Adkins, Watts, and Hotten, JJ. dissent.

<https://mdcourts.gov/data/opinions/coa/2019/21a18.pdf>

MUNICIPAL CORPORATIONS – CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION – TERRITORIAL EXTENT AND SUBDIVISIONS, ANNEXATION, CONSOLIDATION, AND DIVISION – ANNEXATION OR DETACHMENT OF TERRITORY FOR SPECIAL PURPOSES

**Facts:**

On April 20, 2016, Petitioner, the Town of Forest Heights (“Forest Heights”) introduced two annexation resolutions that would more than double the corporate limits of the town. The proposed annexation resolutions encompassed an area that consisted of entirely tax-exempt properties and no registered voters resided therein. The proposed annexation area contained property owned by Respondent, Maryland—National Capital Park and Planning Commission (MNCPPC), Prince George’s County, the Board of Education of Prince George’s County, the State of Maryland, the United States, and the Oxon Hill Methodist Church. The first proposed annexation resolution encompasses an area located to the west of Forest Heights and extends to the boundary line between Maryland and Washington, D.C. The second proposed annexation resolution encompasses area to the south of Forest Heights and a portion of the Washington Circumferential Highway, i.e. Interstates 95 and 495.

On April 20, 2016, Forest Heights adopted annexation plans corresponding to the two annexation resolutions. The town held a public hearing on June 6, 2016, where the resolutions were passed. That same day, MNCPPC and Prince George’s Country submitted letters of opposition to the Mayor of Forest Heights requesting that the properties under their jurisdiction be removed from the annexation area.

MNCPPC then filed a complaint for declaratory judgment in the Circuit Court for Prince George’s County, seeking a declaration that both annexation resolutions were a nullity. Before the circuit court, MNCPPC argued that LG § 4-403(b)(2) required consent from the owners of tax-exempt properties. Because Forest Heights had not acquired such consent, they argued that the annexation resolutions should be void. Additionally, MNCPPC also argued that Forest Heights’ annexation plan attempted to divest or usurp law enforcement jurisdiction from MNCPPC over lands it owns and operates. The Circuit Court agreed with MNCPPC and, in a written order dated January 29, 2018, found Forest Heights’ annexation resolutions to be null and void, because Forest Heights had failed to obtain consent from the property owners and its

annexation plan allegedly attempted to impermissibly divest law enforcement jurisdiction from MNCPPC.

Forest Heights filed a notice of appeal in the circuit court on February 23, 2018. While the appeal was pending before the intermediate appellate court, Forest Heights filed a petition for writ of certiorari which the Court of Appeals granted on June 1, 2018.

**Held:** Reversed.

Pursuant to LG § 4-403(b)(2), a municipality’s legislative body must obtain consent from “the owners of at least 25% of the assessed valuation of the real property in the area to be annexed.” Prior to 1971, tax-exempt property was not assessed. In 1971, the General Assembly enacted a bill which required the assessment of tax-exempt property. 1971 Md. Laws ch. 361 § 1. This provision is currently § 7-106 of the Tax – Property Article of the Maryland Code.

Before the Court of Appeals, Forest Heights was joined by Amicus Curiae, Maryland Municipal League, Inc. (“MML”). The two argued that the General Assembly’s enactment of 1971 Md. Laws ch. 361 § 1 created ambiguity within the context of municipal annexations, because although tax-exempt properties were now assessed, the General Assembly’s intent was uncertain as to whether tax-exempt properties should be considered under the 25% owner consent requirement of LG § 4-403(b)(2). Both relied upon an earlier decision by the Court of Special Appeals which held that the owners of tax-exempt lands were not required to consent to municipal annexations. *See City of Salisbury v. Banker’s Life*, 21 Md. App. 396 (1974). Therefore, Forest Heights and MML argued that the consent of tax-exempt property owners had not been required to effectuate a municipal annexation for over forty years. Both parties, echoing the holding in *Banker’s Life*, argued that the statutory history of the relevant statutes indicates that the General Assembly had no intention of requiring consent from the owners of tax-exempt properties, within the context of municipal annexations. In contrast, MNCPPC asserted that the statutory provision in dispute is unambiguous and, under the plain language of the statute, municipalities must obtain consent from the owners of tax-exempt properties.

The Court of Appeals held that the 25% owner consent requirement of LG § 4-403(b)(2) does not require municipalities to obtain the consent from the owners of tax-exempt property. The Court examined the history of the relevant statutory provisions and ultimately determined that the change in 1971, i.e. requiring the assessment of tax-exempt properties, was primarily aimed at providing the State an avenue through which it could keep track of payments-in-lieu of taxes and the value of tax-exempt properties generally. The Court of Appeals determined that the General Assembly clearly had not intended the statutory provision to modify the procedure associated with municipal annexations. The Court of Appeals also examined several opinions by Maryland’s Attorney General and the legislative history of other statutes to determine that the longstanding prohibition against granting a county the ability to veto municipal annexations was also applicable to MNCPPC as a tax-exempt State planning agency. Therefore, the Court of Appeals reversed the circuit court’s decision.

Second, MNCPPC argued that Forest Heights' proposed annexation plan, which contained language that Forest Heights intended to police the areas annexed, including the properties owned and managed by MNCPPC, "as permitted by law" was an attempt to usurp law enforcement jurisdiction from MNCPPC. However, the Court of Appeals concluded that the annexation plan in question did not attempt to divest or usurp police jurisdiction from MNCPPC. The Court commented that the indefinite and conditioned language within the annexation plan sufficiently limited its application to avoid Forest Heights divesting MNCPPC of police jurisdiction. Additionally, concurrent law enforcement jurisdiction between Forest Heights and MNCPPC could be achieved through a mutual aid agreement. Therefore, the Court of Appeals held that language contained within Forest Heights' annexation plan did not attempt to usurp, divest, or duplicate police jurisdiction from MNCPPC.

# COURT OF SPECIAL APPEALS

*Brian M. Barrett, Sr. v. Carol J. Barrett*, No. 68, September Term 2018, filed May 1, 2019. Opinion by Leahy, J.

<https://mdcourts.gov/data/opinions/cosa/2019/0068s18.pdf>

CIVIL PROCEDURE – MARYLAND ELECTRONIC COURTS

## **Facts:**

Rather than serve the parties in a divorce action copies of a magistrate’s report through the Maryland Electronic Courts (“MDEC”) system or regular mail, the clerk of the Circuit Court for Wicomico County placed the report, along with notices regarding the filing of exceptions and certificates of service, in mailboxes located at the courthouse that are assigned to the parties’ counsel. Appellant Brian Barrett did not retrieve copies of the magistrate’s report, issued on January 23, 2018, following an October 2017 hearing on the merits, from the mailbox until February 5, 2018—the last day on which he could file timely exceptions to the judgment of divorce. The circuit court entered a judgment of absolute divorce the following day, February 6. On February 7, Appellant filed exceptions and a motion for leave to file them, along with a separate motion to alter, amend or to revise the judgment. He argued that because he was not properly served, the time for filing exceptions should not run from the date that the Report was docketed. On February 21, the court summarily denied Appellant’s filings, and he appealed.

## **Held:** Reversed.

Wicomico County is an MDEC County. Under Maryland Rule 20-205(d)(1), unless certain enumerated exceptions apply, “judges, judicial appointees, clerks, and judicial personnel” must “file electronically all submissions in an MDEC action.” The court here failed to serve the magistrate’s report electronically. Given the undeveloped record regarding service and electronic filing in this case, the Court of Special Appeals decided to vacate the court’s orders and remand with instructions for the court to determine, in the first instance, if and how service of the report by courthouse mailbox in this case satisfied the Maryland Rules—particularly Title 20.

*David Andrew Hartless v. State of Maryland*, No. 123, September Term 2017, filed May 30, 2019. Opinion by Berger, J.

<https://mdcourts.gov/data/opinions/cosa/2019/0123s17.pdf>

CRIMINAL PROCEDURE – CONSTITUTIONAL LAW – SENTENCING – PAROLE – JUVENILE OFFENDERS – LIFE SENTENCES

**Facts:**

David Andrew Hartless was convicted of first-degree premeditated murder, robbery with a deadly weapon, and lesser-included offenses. He was seventeen years old at the time he committed the offense. He was sentenced to life in prison, and his convictions were affirmed on direct appeal. Following the United States Supreme Court’s decisions in *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that the Eighth Amendment forbids mandatory life without parole sentences for juvenile offenders convicted of homicide), and *Montgomery v. Louisiana*, 135 U.S. \_\_\_, 136 S. Ct. 718 (2016) (holding that *Miller* applies retroactively), Hartless filed a motion to correct what he alleged to be an illegal sentence. The circuit court denied Hartless’ motion.

Hartless’ appeal was stayed pending the decision of the Court of Appeals in *Carter v. State*, No. 54, Sept. Term, 2017; *Bowie v. State*, No. 55, Sept. Term 2017; and *McCullough v. State*, No. 56, Sept. Term, 2017, because the cases raised issues relating to whether a life sentence with the possibility of parole or a lengthy term of years sentence constituted an unconstitutional *de facto* life without parole sentence. On August 29, 2018, the Court of Appeals issued an opinion in *Carter v. State*, 461 Md. 295 (2018), *reconsideration denied*, October 4, 2018. The Court’s consolidated opinion resolved the cases of *Carter*, *Bowie*, and *McCullough* and held that juvenile homicide offenders’ life sentences with parole are legal because “the laws governing parole of inmates serving life sentences in Maryland, including the parole statute, regulations, and a recent executive order adopted by the Governor, on their face allow a juvenile offender serving a life sentence a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’” Following the issuance of the *Carter* opinion, the Court lifted the stay in Hartless’ appeal and the appeal proceeded.

**Held:** Affirmed.

Hartless raised three arguments on appeal. Hartless’ first argument was that *Carter* requires an individualized sentencing hearing that takes into consideration the offender’s youth and attendant circumstances for all juvenile offenders, regardless of whether the juvenile was sentenced to life without parole. The Court of Special Appeals acknowledged that there is some language in *Carter* that, when taken out of context, could support such a requirement for all juvenile

offenders. The Court examined the context of the language cited by Hartless, as well as the authority upon which the *Carter* Court relied. The Court concluded that *Carter* does not support the conclusion sought by Hartless and that the right to an individualized sentencing hearing expressly taking into consideration the juvenile offender's youth and attendant circumstances is not required when the juvenile has been sentenced to life with parole.

The Court of Special Appeals further rejected Hartless' argument that his sentence was illegal due to the structure of the Maryland parole system and the role of the Parole Commission in the context of executive clemency. The Court concluded that the statutes and regulations governing executive clemency do not permit juvenile offenders serving a life sentence to be diverted from parole consideration. The Court explained that the Parole Commission's role in the context of clemency is entirely separate from the Commission's role in the context of parole.

The Court of Special Appeals declined to address Hartless' assertion that *Carter* is inconsistent with Supreme Court precedent and should be reconsidered. The Court of Special Appeals observed that it was bound by the Court of Appeals decision in *Carter*.



*Pizza di Joey, LLC, et al. v. Mayor and City Council of Baltimore*, No. 2411, September Term 2017, filed May 30, 2019. Opinion by Nazarian, J.

<https://mdcourts.gov/data/opinions/cosa/2019/2411s17.pdf>

MARYLAND DECLARATION OF RIGHTS – ARTICLE 24 – RATIONAL BASIS

MARYLAND DECLARATION OF RIGHTS – JUSTICIABILITY – VAGUENESS

**Facts:**

Baltimore is home to over a thousand brick-and-mortar restaurants and about seventy licensed food trucks, including Pizza di Joey and Madame BBQ. Baltimore City Code, Article 15, § 17-33, known colloquially as the “300-foot rule,” prohibits mobile food vendors from conducting business within 300 feet of brick-and-mortar establishments that sell primarily the same kind of food.

In October 2016, Pizza di Joey and Madame BBQ sued the City in the Circuit Court for Baltimore City. They asked the court to declare that the 300-foot rule functionally prohibited them from operating in Baltimore City and, therefore, violated their rights to due process and equal protection under Article 24 of the Maryland Declaration of Rights. The City countered that the rule did not prevent food trucks from thriving in Baltimore City and that the rule’s location restrictions furthered the City’s legitimate interest in supporting local brick-and-mortar businesses that had invested in Baltimore’s commercial neighborhoods. The circuit court found that the 300-foot rule passed constitutional muster under Article 24, applying what it characterized as “heightened rational basis review” and relying on the Court of Appeals decision in *Attorney General v. Waldron*, 289 Md. 683 (1981). The circuit court nonetheless granted Pizza di Joey and Madame BBQ’s request for an injunction, finding that ambiguities in the statutory language of the 300-foot rule rendered it unconstitutionally vague.

Pizza di Joey and Madame BBQ appealed the circuit court’s finding that the 300-foot rule did not violate their rights to equal protection or due process. The City cross-appealed the circuit court’s finding that the 300-foot rule is unconstitutionally vague.

**Held:** Affirmed in part and reversed in part

The Court of Special Appeals affirmed the circuit court’s finding that the 300-foot rule passes constitutional muster, but under a different standard of constitutional scrutiny. Rather than apply “heightened rational basis review,” the Court of Special Appeals found that the 300-foot rule was subject to traditional Article 24 rational basis scrutiny. The Court found *Waldron*, which imposes a higher degree of scrutiny than traditional rational basis when the challenged statute implicates important private rights, inapplicable because the 300-foot rule, unlike the statute in *Waldron*, is

a wholly economic regulation. And because the 300-foot rule rationally furthers the City's legitimate interest in protecting brick-and-mortar restaurants from free-riding mobile vendors, it is permissible under Article 24.

The Court of Special Appeals reversed the circuit court's finding that the 300-foot rule is unconstitutionally vague. The Court found that Pizza di Joey and Madame BBQ had not presented a vagueness challenge and had, in fact, expressly disclaimed a vagueness challenge at trial. Furthermore, the Court found that, even if vagueness had been raised, neither a facial nor an as-applied challenge could properly be considered in this case. A facial vagueness claim was not appropriate because the challengers had not alleged that a fundamental constitutional right was violated, and an as-applied challenge was not appropriate because the 300-foot rule was never enforced against Pizza di Joey or Madame BBQ and the circuit court did not have a record before it to properly consider whether the rule was unconstitutional as-applied.

*Derrick L. Carroll v. State of Maryland*, No. 510, September Term 2017, filed May 2, 2019. Opinion by Kenney, J.

<https://mdcourts.gov/data/opinions/cosa/2019/0510s17.pdf>

CRIMINAL PROCEDURE – WARRANT REQUIREMENT – PROBABLE CAUSE – NEXUS  
– SUBSTANTIAL BASIS

CRIMINAL PROCEDURE – WARRANT REQUIREMENT – GOOD FAITH EXCEPTION –  
CONFLICT OF LAWS – MARYLAND OR NEW JERSEY LAW

CLOSING ARGUMENT – PLAIN ERROR

**Facts:**

Two Maryland citizens were murdered during a home invasion in Maryland. Appellant, who is also a Maryland citizen and the ex-husband of the victims’ granddaughter, was developed as a suspect by law enforcement. During the investigation, they learned that he had gone to Trenton, New Jersey. One day after the bodies were found, United States Marshals observed him exiting a residence with a garbage bag, walking down the street, and leaving the garbage bag in an alley between some houses. After, they arrested him based on an outstanding arrest warrant for an earlier robbery in Maryland.

The same day, a New Jersey police officer prepared an affidavit in support of search warrants for the residence and for the garbage bag, both of which a New Jersey judge issued. The affidavit described the U.S. Marshals’ observations of appellant in New Jersey and provided information about the murder in Maryland. It stated that appellant was “a suspect” in that murder without reference to any facts.

At trial, the State introduced into evidence items obtained from the two searches. From the residence, cell phone text messages and ski masks containing codefendants’ DNA were introduced; from the garbage bag, a key to the victims’ house and a key for a victim’s car were introduced. A jury convicted appellant of two counts of first-degree murder. On appeal, he challenged the searches.

**Held:** Affirmed.

An issuing judge’s probable cause determination is reviewed under the *Illinois v. Gates* totality of the circumstances test, looking only to the information provided in the warrant and its accompanying application documents. Probable cause may be based on information obtained through a state investigation in collaboration with law enforcement from other state or federal jurisdictions, but a finding of probable cause cannot rest on purely conclusory affidavits.

A probable cause determination requires that a sufficient nexus be shown between the alleged criminal activity, the place to be searched, and the things to be seized. In this case, the affidavit to the warrant application did not provide any information establishing why appellant was named a suspect in the investigation.

The Court reviews whether the issuing judge had a substantial basis to conclude that the warrant was supported by probable cause, that is, whether there exists a fair probability that contraband or evidence of a crime will be found in the place of the search. It accords great deference to the issuing judge's determination by reviewing affidavits in a commonsense fashion and viewing the factual recitations in the warrant application in the light most favorable to the state.

Because the suppression court found that the officers executed the warrants in good faith reliance, the Court addressed the good faith exception to the warrant requirement. The applicability of the good faith exception is reviewed de novo when the facts are not in dispute. Maryland has adopted the *United States v. Leon* good faith exception that allows evidence obtained under a deficient warrant to be admissible if the executing officers acted in objective good faith in relying on the warrant. The New Jersey Supreme Court has expressly declined to adopt the *Leon* good faith exception on independent state grounds. See *State v. Novembrino*, 519 A.2d 820 (N.J. 1987). It interprets the New Jersey state constitution as affording New Jersey citizens greater protection against unreasonable searches and seizures and rejects the good faith exception based on the impact its adoption would have on the privacy rights of New Jersey citizens and on the procedures employed by New Jersey's criminal justice system.

The criminal act is the murder and robbery in Maryland of two Maryland citizens by another Maryland citizen. New Jersey was involved only because appellant had left Maryland and went to New Jersey. The investigation, arrest, and searches were a joint law enforcement effort involving officers from Maryland and New Jersey in addition to the U.S. Marshals Service. Nothing in the record suggests that the Maryland police were consciously trying to evade Maryland law. Application of the good faith exception will not impact the privacy rights of New Jersey citizens or impair or negatively disrupt the procedures employed in New Jersey's criminal justice system. Whatever interest New Jersey may have in the process by which the evidence was obtained, Maryland has the greater interest in the case. Maryland law and the good faith exception apply because the warrants are not so obviously deficient that they could not have been reasonably relied upon by the officers in good faith.

The admission of the prosecutor's unobjected-to statement during closing argument that there were tensions based on race between appellant and the victim was not a clear or obvious error that warranted plain error review.

*Roland E. Simms v. State of Maryland*, No. 410, September Term 2018, filed May 1, 2018. Opinion by Wright, J.

<https://mdcourts.gov/data/opinions/cosa/2019/0410s18.pdf>

CRIMINAL LAW – VERDICTS & JUDGMENTS – PARTIAL VERDICTS – MERGER

**Facts:**

Roland E. Simms faced nine charges in the Circuit Court for Prince George’s County in relation to his January 24, 2017, attack on the mother of his children. During the jury’s deliberations, the jury indicated to the court that it could not reach a unanimous decision on one of the charges. In discussing with the parties how best to respond to the jury, the circuit court stated, in pertinent part, that “in order to take a partial verdict, both sides must agree.” The court also noted that the jury must agree before taking such a verdict. The court decided to tell the jury to “please continue to deliberate.” After receiving another similar note from the jury, the court discussed the possibility of giving the jury an *Allen* charge, but decided to ask the jury to “keep deliberating.” Shortly thereafter, the jury reached a verdict and convicted Simms of: first and second-degree assault; reckless endangerment; use of a firearm in the commission of a crime of violence; illegal possession of a firearm; wearing, carrying, or transporting a handgun; and violation of a protective order.

Simms appealed the judgment to this Court and presented two questions for our review. First, he asks whether the circuit court erred in refusing to take a partial verdict on the grounds that before taking such a verdict, both parties must agree to do so. Second, he asks whether the court erred in “imposing separate sentences for first degree assault, use of a firearm in the commission of a crime, illegal possession of a firearm, wearing, carrying, or transporting a handgun, and violation of a protective order?”

**Held:** Affirmed in part and vacated in part.

As to Simms’ first question, this Court held that the circuit court did not err in declining to take a partial verdict. At the outset of its analysis, the Court agreed with the State that Simms had waived any argument on this point. Specifically, the Court relied on the facts that Simms’ attorney agreed with the court that both parties had to agree before a partial verdict could be taken, and that Simms’ attorney did not ask for partial verdict in response to subsequent jury notes. Assuming *arguendo* that the issue was preserved, the Court noted that “the circuit court was correct when it observed that the *jury* must unanimously agree to a partial verdict[,]” *but* that the “court was incorrect” insofar as its comments “required that both [parties] agree before it could take a partial verdict.” In spite of this, this Court determined that the circuit court did not fail to exercise its discretion in considering a partial verdict; rather, the court merely decided that

“it would not consider a partial verdict that early in the jury’s deliberations.” Therefore, this Court held that even if the issue was not waived by Simms, the circuit court properly exercised its discretion in refusing to take a partial verdict.

As to Simms’ second question, the Court held that under the rule of lenity, Simms’ conviction for wearing, carrying, or transporting a handgun should have merged with his conviction for use of a firearm, and his conviction for violation of a protective order should have merged with the conviction for first degree assault. Therefore, the Court vacated Simms’ convictions for wearing, carrying, or transporting a handgun and for violation of a protective order.

*In the Matter of Robert H. Watkins, Jr.*, No. 2171, September Term 2017, filed May 29, 2019. Opinion by Eyler, J.

<https://mdcourts.gov/data/opinions/cosa/2019/1203s17.pdf>

ESTATES & TRUSTS – ESTATE ADMINISTRATION – UNCLEAN HANDS

**Facts:**

Robert F. Watkins, Jr., the decedent, died in 2014, survived by his third wife of less than two years and two adult daughters from prior marriages. One of the daughters, appellee, was appointed personal representative of his estate. A will and codicil were admitted to probate in Maryland. The surviving wife, appellant, filed objections in the Orphans' Court for Prince George's County. Appellant argued that the decedent was domiciled in Florida and thus the estate should be administered in Florida. Appellant also filed an election to take a statutory share of the estate. After a hearing, the Orphans' Court found that the decedent was domiciled in Maryland and that appellant was ineligible to receive any benefit from the estate because she had procured her marriage by undue influence. On appeal, appellant did not challenge the finding of undue influence but argued that the Orphans' Court had exceeded its authority by denying her benefits.

**Held:**

Affirmed based on the doctrine of unclean hands.

*Montgomery County, Maryland v. Complete Lawn Care, Inc., et al.*, No. 1203, September Term 2017, filed May 2, 2019. Opinion by Zarnoch, J.

<https://mdcourts.gov/data/opinions/cosa/2019/1203s17.pdf>

LOCAL GOVERNMENTS – PREEMPTION BY STATE LAW – CONFLICT PREEMPTION – IMPLIED PREEMPTION – “FRUSTRATION OF PURPOSE” – AMENDMENT REJECTION THEORY.

**Facts:**

In 2015, the Montgomery County Council passed an ordinance that, among other requirements, restricted the use of certain pesticides for cosmetic purposes throughout the County. Appellees challenged the ordinance in the Circuit Court for Montgomery County, seeking a declaratory judgment that the bill was preempted by State law and a permanent injunction before the County ordinance was scheduled to take effect in January 2018. The County and Appellees waived discovery, stipulated as to the facts, and filed cross motions for summary judgment.

In an August 2017 written opinion, the circuit court concluded that the County ordinance was preempted by State law, both by implication and by conflict. As such, the circuit court granted Appellees’ motion for summary judgment, issued a declaratory judgment that the ordinance was preempted by State law, and issued an injunction from the enforcement of the ordinance.

**Held:** Reversed.

The Court of Special Appeals held that the County ordinance was not preempted in any of the three ways by which State law may preempt local law—expressly, by conflict, or by implication.

The appellate court first determined that the County ordinance’s requirements were not expressly preempted by an uncodified provision in a 1957 statute that purportedly vested exclusive jurisdiction in all matters pertaining to the distribution, sale, and transportation of pesticides in the office of the State Chemist. Although the uncodified provision does not appear to have ever been repealed, the Court concluded that the provision was not a true preemptive clause that was meant to confine local regulation in the face of State authority.

The Court next determined that the County’s restrictions on pesticide use were not preempted by conflict with State law. Conflict preemption occurs when a local law prohibits an activity which is intended to be permitted by State law, or permits an activity which is intended to be prohibited by State law. Although Appellees had pointed to the Maryland Department of Agriculture’s regulations as containing the sort of express authorization that would compel a finding of conflict preemption, the Court concluded that the Department’s regulations were instead better characterized as setting a floor, above which the County could provide for further health and



safety restrictions. The Court observed that other State regulations authorize local jurisdictions to pursue pesticide control practices, which would make it anomalous if the Agriculture Article conflicted with the ability of county governments to enact such rules. Notably, although the circuit court had found conflict preemption in part based on its determination that the County ordinance would frustrate the State's purpose of seeking uniform pesticide regulations, the Court noted that the Court of Appeals "has not recognized frustration of purpose-type conflict preemption." *County Council of Prince George's County v. Chaney Enters. Ltd. P'ship*, 454 Md. 514, 541 n. 19 (2017).

Finally, the Court of Special Appeals concluded that the General Assembly has not so comprehensively regulated the field of pesticide regulation that an intent by the State to occupy the entire field must be implied. Central to the Court's analysis was the Amendment Rejection Theory of statutory construction, whereby legislative inaction impacts the interpretation of existing law. Here, following a 1985 published opinion of the Attorney General which said that State law did not impliedly preempt local pesticide regulation, 70 Md. Att'y Gen. Op. 161 (1985), and the U.S. Supreme Court's 1991 decision in *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991), that federal law also did not preempt local regulation, the pesticide industry unsuccessfully sought passage of preemptive legislation in the General Assembly in 1992, 1993, and 1994. In full recognition of existing local pesticide ordinances, the members of the House of Delegates by floor vote rejected each of the bills that sought to preempt more stringent local regulation. This "strongly suggests" under the Amendment Rejection Theory that there was no legislative intent to authorize or recognize preemption. *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 304 (1993).

The Court also based its conclusion against implied preemption on other factors, including: the State's pesticide statutes are less comprehensive than the non-preemptive features of the principal federal statute governing pesticides; for decades, Maryland's Chesapeake and Atlantic Coastal Bays Critical Area Protection Program has authorized certain counties to regulate pesticides within the Critical Area without any record of chaos and confusion for multi-tiered regulation; Maryland's pesticide statutes' references to uniformity with federal legislation are best regarded as an aspirational goal, rather than an obstacle to local legislation; there is no pervasive administrative enforcement of State pesticide statutes by the Maryland Department of Agriculture, which receives federal funds to enforce federal law in Maryland and which has opposed tougher pesticide controls as "anti-agriculture"; and the General Assembly's course of legislative practice shows that it has been aware of local authority to act in the field of pesticide regulation.

*Steamfitters Local Union No 602 v. Erie Insurance Exchange, et al.*, No. 1168, September Term 2017, & *Steamfitters Local Union No. 602 v. Cincinnati Insurance Company, et al.*, No. 1142, September Term 2017, filed May 30, 2019. Opinion by Eyler, J.

Friedman, J., dissents.

<https://mdcourts.gov/data/opinions/cosa/2019/1142s17.pdf>

TORTS – NEGLIGENCE – PREMISES LIABILITY FOR DAMAGES TO ADJOINING LAND

**Facts:**

A fire on property owned by Steamfitters Local Union No. 602 (Steamfitters), appellant, spread to adjoining property and caused substantial damage. The theory of liability was that an unknown person discarded a cigarette into a mulched area on the Steamfitters property. There was substantial evidence that cigarettes had been discarded into that area on many occasions prior to the fire. A jury in the Circuit Court for Prince George’s County found in favor of the adjoining property owner, Gordon Contractors, Inc., an appellee, and its insurers, Erie Insurance Exchange and Continental Casualty Company. appellees. In a consolidated action, the jury found in favor of Cincinnati Insurance Company, subrogee of the owner of material in a warehouse that was damaged.

**Held:**

A property owes a duty of reasonable care to the owners and occupants of neighboring properties to use and maintain his or her property in a reasonably safe manner so as to avoid harm to the neighboring property. Based on the evidence of a pattern or practice of behavior of persons on the premises that was known or should have been known by the owner, the question whether the duty of reasonable care was breached was for the jury.

# ATTORNEY DISCIPLINE

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By an Order of the Court of Appeals dated May 3, 2019, the following attorney has been  
disbarred by consent:

JASON MARK SIMS

\*

By an Opinion and Order of the Court of Appeals dated May 22, 2019, the following attorney  
has been disbarred:

STUART R. BLATT

\*

By an Order of the Court of Appeals, dated May 28, 2019, the following attorney has been  
indefinitely suspended by consent:

JONATHAN KIMBEL O'NEILL

\*

# RULES ORDERS AND REPORTS

A Rules Order pertaining to the One Hundred Ninety-Ninth Report of the Standing Committee on Rules of Practice and Procedure was filed on May 16, 2019.

<http://www.courts.state.md.us/sites/default/files/rules/order/ro199.pdf>

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A Rules Order pertaining to the Two Hundredth Report of the Standing Committee on Rules of Practice and Procedure was filed on May 16, 2019.

<http://www.courts.state.md.us/sites/default/files/rules/order/ro200.pdf>

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# UNREPORTED OPINIONS

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

<https://mdcourts.gov/appellate/unreportedopinions>

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