Amicus Curiarum

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https://www.courts.state.md.us/data/opinions/coa/2020/16a19.pdf

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Facts:

In 1952 and 1953, Edwin Pinner was exposed to asbestos while working at an insulating plant in Baltimore, Maryland. In August 2009, while living with his wife, Mona, in North Carolina, Edwin was diagnosed with mesothelioma. Edwin had one biological son, Randy, from a prior marriage who also lives in North Carolina. In 2010, Edwin and Mona, through counsel, filed suit in the Circuit Court for Baltimore City against numerous defendants, including two of Edwin's former employers headquartered in Baltimore City, alleging that he had been directly exposed to asbestos dust while working for those companies. After Edwin died in October 2010, Mona was appointed personal representative of Edwin's Estate in North Carolina and the Maryland suit was subsequently amended to add a claim for wrongful death. Throughout the Asbestos Case, Mona never traveled to Maryland.

Under Maryland rules, Mona, as the party bringing the wrongful death action, was required to list Randy as a use plaintiff and serve notice and a copy of the complaint. Md. Rule 15-1001(b); (d). One year after Mona amended the complaint to include the wrongful death claim, two defendants moved to dismiss the wrongful death count on the ground that Mona failed to name Randy as a use plaintiff. In response, Mona filed a second amended complaint adding Randy as a use plaintiff and served Randy with the proper notice under Maryland Rule 15-1001(d).

However, when Randy moved to intervene, the circuit court denied his motion as being barred by the applicable statute of limitations.

In January 2016, Randy filed the instant case against Mona and her attorneys based on the failure to name him as a use plaintiff. Although Randy and Mona both resided in North Carolina and Randy alleged claims under North Carolina law, Randy filed the lawsuit in the Circuit Court for Baltimore City. After a hearing, the circuit court granted the law firms' motions to dismiss leaving the remaining counts against Mona as the sole claims. First, Randy alleged that Mona negligently failed to name Randy as a use plaintiff in violation of Maryland Rule 15-1001. Second, Randy alleged that Mona breached her fiduciary duties as personal representative of the Estate under North Carolina law by failing to provide notice and failing to distribute a share of the settlement monies from the Asbestos Case. Third, Randy alleged that Mona was vicariously liable for the tortious acts and omissions of her attorneys. Randy asserted that the court had personal jurisdiction over Mona under Maryland's long arm statute. Md. Code, Courts and Judicial Proceedings Article ("CJ") § 6-103.

After Mona failed to respond to Randy's suit, the circuit court granted Randy's request for an order of default. The court sent Mona a notice of the order and, through her attorney, Mona moved to vacate the order. The court held a damages inquisition hearing, at which Randy appeared with counsel, but Mona did not appear. During the hearing, the court *sua sponte* raised the issue of personal jurisdiction. After a continuance, the court ruled that it had jurisdiction over Mona and ordered her to pay Randy $99,856.84, representing one-half of the settlement proceeds on the wrongful death claim, less a $60,000 spousal deduction under North Carolina law.

On appeal, the Court of Special Appeals held that Mona's sole contact with Maryland – the filing of the Asbestos Case – was insufficient to warrant the exercise of specific jurisdiction under the three-prong framework outlined in *Beyond Systems, Inc. v. Realtime Gaming Holding Co*., 388 Md. 1, 22 (2005).

Held: Affirmed.

The Court of Appeals held that Mona's act of filing and prosecuting of the Asbestos Case through counsel does not rise to the level purposefully availing herself of the forum state's laws. Through the three-prong framework outlined in *Beyond Systems*, the Court considered whether Mona's contacts were sufficient under both the requirements of Maryland's long-arm statute, CJ § 6-103, and the requirements imposed by the Due Process Clause of the Fourteenth Amendment. Randy failed to present evidence that Mona traveled to Maryland and relied solely on the filing of a single lawsuit through her attorneys.

Although different facts may lead the Court to hold differently, under these circumstances, the Court concluded that the sole act of filing a lawsuit did not constitute a persistent course of conduct in Maryland. The Court held that it is not foreseeable that Mona's connection with

Maryland is such that she should reasonably anticipate being haled into court in Maryland to defend breach of fiduciary duty claims arising under North Carolina law filed by a North Carolina resident in connection with her duties as the personal representative of a North Carolina estate. Moreover, due process factors weigh against causing Mona to defend a suit in Maryland, making an exercise of personal jurisdiction constitutionally unreasonable.

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Elijah Peterson v. State of Maryland, No. 14, September Term 2019, filed March 31, 2020. Opinion by Hotten, J.

https://www.courts.state.md.us/data/opinions/coa/2020/14a19.pdf

CRIMINAL LAW – POST-CONVICTION RELIEF – UNIFORM POST-CONVICTION PROCEDURE ACT

CRIMINAL LAW – POST-CONVICTION RELIEF – WRIT OF ERROR CORAM NOBIS

PETITION FOR WRIT OF HABEAS CORPUS – NOT CRIMINALLY RESPONSIBLE

Facts:

In March 2007, Elijah Peterson ("Mr. Peterson") while walking down the middle of the road on Marlboro Pike in Prince George's County, pointed what appeared to be, a rifle at a police vehicle as it passed. Subsequently, Mr. Peterson was arrested and charged with one count of auto theft, one count of attempted theft over $500, one count of unauthorized use of a motor vehicle, one count of attempted armed carjacking, two counts of first-degree assault, and two counts of second-degree assault. Mr. Peterson entered a plea of not guilty. Ultimately, the Circuit Court for Prince George's County found Mr. Peterson guilty but not criminally responsible ("NCR") because he lacked substantial capacity to either appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

Upon finding Mr. Peterson NCR, the circuit court ordered him to be civilly committed to the Maryland Department of Health ("the Department") for five years in December 2007. He was required to comply with recommendations from his mental health treatment provider and either reside at an appropriate hospital facility or in other housing approved by the Department. He was required to voluntarily admit himself to a psychiatric facility as requested by his mental health provider. Mr. Peterson could not own, possess, or use a firearm of any kind or take illicit drugs, use alcohol, or abuse prescription drugs. Between 2008 and 2013, the circuit court issued multiple orders for conditional release, and placed similar conditions as were placed in the original order of December 2007. In March 2013, the circuit court maintained the previously imposed conditions, but also required Mr. Peterson to refrain from initiating contact with the victim of his crime.

In July 2012, while on conditional release, Mr. Peterson filed for post-conviction relief under the Uniform Post-Conviction Procedure Act ("UPPA"). The circuit court conducted a hearing on June 11, 2013, but ultimately denied Mr. Peterson's petition. The circuit court found that Mr. Peterson was neither "confined" nor on "probation or parole," for purposes of the UPPA. The Court of Special Appeals affirmed.

In January 2014, Mr. Peterson filed a Petition for Writ of Error *Coram Nobis* and requested a hearing to vacate his 2007 NCR judgment. Following a hearing, the circuit court found that Mr. Peterson's commitment to the Department was a direct consequence of his NCR plea, not a collateral consequence. The Court of Special Appeals affirmed.

Held: Affirmed.

The Court of Appeals held that Mr. Peterson was ineligible for post-conviction relief under the UPPA based on a plain language reading of the Act. Although construed liberally because of its remedial nature, the plain language of the UPPA applies to individuals convicted in Maryland who are imprisoned or on parole or probation. The Court of Appeals determined that the UPPA does not encompass the "functional equivalents" of imprisonment nor parole and probation. The Court added that even if the General Assembly intended to include the "functional equivalents" of imprisonment and parole or probation, civil confinement and conditional release, as a result of an NCR finding, are not "functional equivalents" of imprisonment or parole and probation. Mr. Peterson was convicted in Maryland and subsequently civilly confined and conditionally released as a result of his NCR finding. Because Mr. Peterson was neither imprisoned, nor on parole or probation, he did not fall under the jurisdiction of the UPPA. As such, Mr. Peterson could not seek post-conviction relief under the UPPA.

The Court of Appeals also held that Mr. Peterson did not satisfy all five elements to qualify for *coram nobis* relief. The Court of Appeals emphasized that *coram nobis* relief is an extraordinary remedy and is only available to those who sufficiently plead the following elements: (1) the grounds challenging a conviction are based on constitutional, jurisdictional, or fundamental grounds, (2) the burden to rebut the "presumption of regularity" is overcome, (3) the petitioner has suffered or is facing significant lingering collateral consequences from the conviction, (4) no other common law or statutory remedy is available, and (5) the issue is not being relitigated in the *coram nobis* proceeding. The Court of Appeals determined that Mr. Peterson's initial commitment, conditional release, and re-commitments were direct consequences of his conviction and NCR finding, as contemplated by *Anderson v. Dep't of Health and Mental Hygiene*, 310 Md. 217, 528 A.2d 904 (1987). Accordingly, Mr. Peterson failed to show that he suffered significant collateral consequences and was ineligible for *coram nobis* relief.

Finally, the Court of Appeals addressed Maryland's *habeas corpus* statute. In light of the decision in *Sabisch v. Moyer*, 466 Md. 327, 220 A.3d 272 (2019), the Court of Appeals held that a circuit court could render a determination regarding whether Mr. Peterson qualifies for *habeas corpus* relief. In *Sabisch*, the Court of Appeals held that a *habeas corpus* petitioner need not be "physically restrained" to be eligible for *habeas corpus* relief. Considering *Sabisch*, the Court of Appeals held that defendants civilly confined or on conditional release may be eligible for *habeas corpus* relief, because both significantly deprive a defendant of her or his liberty. Regarding Mr. Peterson specifically, the Court of Appeals did not determine whether Mr. Peterson was eligible for *habeas corpus* relief but noted that the circuit court may determine whether Mr. Peterson is eligible for such relief upon receipt of an appropriately filed petition.

State of Maryland v. Aaron Terrell Alexander, No. 1, September Term 2019, filed March 26, 2020. Opinion by McDonald, J.

https://mdcourts.gov/data/opinions/coa/2020/1a19.pdf

CRIMINAL PROCEDURE – PROBATION – PROBATION VIOLATIONS

CRIMINAL PROCEDURE – PROBATION – TERMINATION OF PROBATION

Facts:

Aaron Terrell Alexander pled guilty to a charge of theft of property valued between $10,000 and $100,000 in the Circuit Court for Baltimore County. On May 28, 2014, the court sentenced Mr. Alexander to two years imprisonment, but suspended the sentence in favor of three years of supervised probation. One of the conditions of his probation was a condition that he pay $11,520 in restitution. The three-year period of probation would expire on May 28, 2017.

On February 11, 2016, the Circuit Court found Mr. Alexander in violation of the restitution condition of his probation and amended its sentencing order. The court maintained the two-year term of incarceration, which remained suspended in favor of three years of supervised probation. As a result of the amended order, the three-year period of probation would not expire until February 11, 2019.

On August 29, 2017, Mr. Alexander was again charged with violating the conditions of his probation. Mr. Alexander failed to appear for the originally scheduled probation violation hearing on November 14, 2017 and was taken into custody. He remained incarcerated for 26 days until the rescheduled probation violation hearing on December 15, 2017.

At the December 15 hearing, the Circuit Court dismissed the probation violation petition without adjudicating its merits because Mr. Alexander had already been incarcerated for a period longer than the presumptive sanction of 15 days imprisonment under the Justice Reinvestment Act. In addition to dismissing the probation violation petition, the Circuit Court apparently terminated Mr. Alexander's probation 14 months before its February 2019 expiration when it directed that Mr. Alexander be released from custody, stated that his probation was "over," and referred the collection of unpaid restitution to the Central Collection Unit.

The State appealed. The Court of Special Appeals held that the Circuit Court had discretion to dismiss the probation violation petition and end Mr. Alexander's probation early without adjudicating the merits of the probation violation petition. The intermediate appellate court found no abuse of discretion and affirmed the Circuit Court's judgment.

Held: Vacated and remanded.

The Court of Appeals held that the statutes and rules governing probation confer discretion on a trial court, in most instances, to dismiss a probation violation petition without holding a hearing. In reaching this conclusion, the Court first explained that dismissal without a hearing does not interfere with prosecutorial discretion. Rather, the sentencing judge retains ultimate control over proceedings to modify or revoke probation. Maryland Code, Criminal Procedure Article ("CP"), §6-223(b) and Maryland Rules 4-346(b) and 4-347(a) state that a court "may" initiate probation-related proceedings. This means that even if a prosecutor or probation officer seeks to initiate proceedings, the court ultimately decides whether to issue the appropriate notice, summons, or warrant. Moreover, while a probation violation proceeding is related to a criminal prosecution, such a proceeding is not a new criminal prosecution. The Court next found that Maryland Rule 4-347(e)(1) does not require a trial court to hold a hearing before dismissing a probation violation petition. Considered in light of its purpose, the rule requires a hearing only when a court decides whether a defendant has committed a violation of probation in order to decide whether probation should be modified or revoked.

The Court of Appeals also held that a trial court has discretion, in most circumstances, to terminate a defendant's probation early without holding a hearing. By its plain language, CP §6-223(a) does not require a hearing before a court may end a period of probation. Moreover, Maryland Rule 4-346(b) directs courts to provide defendants with an opportunity to be heard before modifying probation, but does not otherwise require a hearing before the court terminates probation. Like Maryland Rule 4-347, the rule concerning revocation of probation, Maryland Rule 4-346(b) codifies due process protections for the defendant and does not require an adjudicatory hearing when the court takes action favorable to the defendant. Finally, Maryland Rule 4-345(f), which requires that a court hold a hearing before modifying or vacating a defendant's sentence, does not affect a court's authority to terminate a period of probation without first holding a hearing because the rule pertains to a court's power to modify a sentence, not probation.

Having concluded that the Circuit Court in this case had discretion to dismiss the probation violation petition, the Court of Appeals held that the Circuit Court did not abuse its discretion when it did so. In light of the fact that Mr. Alexander had already been in custody for a period that exceeded the presumptive sanction and the State did not proffer facts suggesting that the Circuit Court could make the findings required to exceed the presumptive sanction, it cannot be said that the Circuit Court abused its discretion. In addition, although the Circuit Court had discretion to terminate Mr. Alexander's probation early, the Court of Appeals found that the record suggests that the Circuit Court was acting under a misimpression that the probation period had already expired and did not in fact exercise its discretion. Accordingly, the Court remanded the case so that the Circuit Court may either exercise its discretion, indicate that it has already done so, or take any other appropriate action.

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Latashia Pettiford v. Next Generation Trust Service, No. 34, September Term 2019, filed March 26, 2020. Opinion by Watts, J.

Barbera, C.J., and McDonald, J., concur.

https://www.mdcourts.gov/data/opinions/coa/2020/34a19.pdf

LANDLORD – TENANT LAW – SUMMARY EJECTMENT PROCEEDING – CONSENT JUDGMENT – DEFENSE UNDER IMPLIED WARRANTY OF HABITABILITY – DEFENSE UNDER RENT ESCROW STATUTES

Facts:

The case involves a summary ejectment proceeding, under Md. Code Ann., Real Prop. (1974, 2015 Repl. Vol., 2018 Supp.) ("RP") § 8-401, initiated by Next Generation Trust Service ("Next Generation"), Respondent, a landlord, in the District Court of Maryland, sitting in Baltimore City, against Latashia Pettiford, Petitioner, alleging that Pettiford had failed to pay rent for five months (June through October 2018) and seeking repossession of the property. In the District Court, Pettiford moved to dismiss the complaint because Next Generation did not have a Baltimore City use and occupancy permit for the property following receipt of a violation notice from Baltimore City. The District Court denied the motion to dismiss. Pettiford attempted to assert defenses to summary ejectment, including breach of the implied warranty of habitability and a request for rent escrow. The District Court stated that, if the property was uninhabitable, Pettiford would not be permitted to stay in the property, "[s]o, she'll be out by midnight tonight if she wants to claim it's uninhabitable." Pettiford's counsel responded that, in "that case[,] we cannot."

The District Court addressed the amount of rent still owed and sent the parties to the hallway to discuss a possible resolution of the case. The parties returned to the courtroom having not arrived at a resolution, and the District Court stated that the trial would proceed. Next Generation's agent stated that the parties could not reach an agreement due to an issue with heat in the property. Pettiford's counsel confirmed, stating that Pettiford was seeking the right to rent escrow based on a lack of heat in the property that Pettiford had notified Next Generation about approximately nine months earlier. Pettiford addressed the District Court and confirmed that the furnace in the property was not working and she did not have heat, and that she had told an agent of Next Generation about the issue. The District Court stated that the complaint alleged rent owed for June through October, when Pettiford "wouldn't have needed heat[,]" so Pettiford could "open [an] escrow for November[, b]ut [Next Generation was] not asking for November[,]" and Pettiford could "go to the [C]lerk's [O]ffice and open that for November."

The District Court next addressed the amount owed by Pettiford, who acknowledged owing rent for certain months. The District Court asked whether Pettiford "just said she owes July, August, September[,] and October that she didn't pay it, correct?" Pettiford responded: "Mmm-hmm."

Immediately thereafter, the District Court stated: "Okay, then we'll do a consent judg[]ment[,]" and Next Generation's agent thanked the court. The District Court thanked the parties "for working it out" and wished them good luck. Pettiford's counsel thanked the court. The District Court modified the amount of the judgment to be consistent with the amount sought in the complaint, less a partial payment, stating an amount, and Next Generation's agent stated "[r]ight." Pettiford's counsel and Next Generation's agent thanked the court and the proceeding concluded.

Pettiford appealed on the record to the Circuit Court for Baltimore City, which affirmed the District Court's judgment.

Held: Reversed and remanded.

Reversed, and case remanded to the circuit court with instructions to vacate the judgment of the District Court and to remand for further proceedings consistent with the opinion.

The Court of Appeals held that the motion to dismiss was properly denied. The Court concluded that, under this case's circumstances, the holding in *McDaniel v. Baranowski*, 419 Md. 560, 563, 19 A.3d 927, 929 (2011), did not extend to Baltimore City use and occupancy permits at the time that Next Generation initiated the summary ejectment proceeding in this case.

The Court of Appeals held that the judgment entered by the District Court was not a consent judgment, and, as such, Pettiford was not required to object to its entry to preserve for appellate review issues concerning the judgment and merits of the case, but rather could simply appeal, as she did. The judgment entered by the District Court was not a consent judgment because there was no agreement between the parties as to resolution of the issues in the case, no agreement was presented by the parties to the District Court, there was no consideration, and neither Pettiford nor her counsel consented to the so-called consent judgment. The Court concluded that the record was devoid of any agreement between the parties with respect to the resolution of the issues in the case. The Court stated that, because there was no agreement of the parties with respect to the resolution of the issues in the case, there obviously was no agreement presented to the District Court. The Court determined that the record failed to demonstrate that there was any consideration given for settlement of the case. And, the Court concluded that there was no valid consent by Pettiford to the judgment proposed by the District Court.

The Court of Appeals held that that the District Court improperly precluded Pettiford from asserting and litigating defenses under the implied warranty of habitability and the rent escrow statutes, and that Pettiford was statutorily entitled to raise such defenses during the summary ejectment proceeding and to have them fully considered. The Court held that a claim for breach of the warranty of habitability or under the rent escrow statutes may be raised as a defense in a summary ejectment proceeding. That was exactly what Pettiford attempted to do in the case. Once they were raised, the District Court was required to consider the defenses. Instead, the District Court cut off Pettiford's defenses at the knees, effectively denying her the right to seek

relief and defend against the summary ejectment proceeding. The Court noted that, additionally, the District Court made no factual findings with respect to Pettiford's assertion about the breach of the warranty of habitability, because it had not bothered to address the merits of the defense raised.

The Court of Appeals concluded that exchanges with, and remarks by, the District Court tended to show that the District Court did not understand that a rent escrow issue could be raised as a defense in the summary ejectment proceeding, and that the issue did not need to be raised in a separate action. The Court determined that the District Court improperly concluded that, because the complaint sought rent only for June through October, and because Pettiford would not "have needed heat" for those months, a rent escrow issue could not be raised in the summary ejectment action. Nothing in the rent escrow statutes sets forth a temporal limitation, providing that a rent escrow claim may only be made for certain times of the year or under certain conditions or provides that a rent escrow defense may be raised only where the hazardous condition complained of occurred or impacted the tenant during the months for which rent is sought to be recovered by the landlord.

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Alvin Eusebio v. State of Maryland, No. 3278, September Term 2018, filed March 2, 2020. Opinion by Kehoe, J.

https://mdcourts.gov/data/opinions/cosa/2020/3278s18.pdf

SEARCHES AND SEIZURES – WARRANTS – PARTICULARITY

SEARCHES AND SEIZURES – WARRANTS – SCOPE OF WARRANTED SEARCH

SEARCHES AND SEIZURES – REASONABLENESS – WARRANTLESS SEIZURE TO EFFECT SEARCH UNDER WARRANT

SEARCHES AND SEIZURES – WARRANTS – SEARCH OF "ALL PERSONS"

Facts:

After weeks of investigation, a detective with the Cecil County drug task force obtained two search-and-seizure warrants. One warrant's caption identified a suspected drug dealer's car as its subject; the other identified the dealer's apartment. Both contained the same language, commanding officers to "[e]nter, and search the residence, chattels, and, out buildings *on the curtilage* as completely described above." (Emhpasis added.) Additionally, both warrants authorized the search of the suspected dealer's person, and they purported to authorize police to search "other person/s found in or upon *said premises* who *may be participating* in the [drug-distribution scheme], and who *may be concealing* evidence, paraphernalia, and/or Controlled Dangerous Substances." (Emphasis added.)

To execute the warrant, police stopped the suspected dealer's car as it returned from a quick trip to New York City. The car was stopped on the street just in front of the suspect's apartment. Alvin Eusebio was a passenger in the car. Up to this point, he was unknown to the police. As police approached, they saw Eusebio fidgeting with something around his waist. Police ordered Eusebio and the driver to get out. When the men did not comply, police forcibly removed them. As Eusebio got out of the car, two bags of marijuana fell from his pants to the ground. Police then searched the car and the persons of the driver and Eusebio. Those searches revealed, among other things, 50.2 grams of suspected heroin secreted in the groin area of Eusebio's pants. Both men were then arrested.

Before the circuit court, charged with six counts of related drug offenses, Eusebio moved to suppress the heroin evidence found during the search of his person. This motion was denied. Eusebio entered a conditional guilty plea to one count of possession with intent to distribute.

Held: Affirmed.

The issue before the Court of Special Appeals was whether the suppression court erred in denying Eusebio's motion to suppress the drug evidence found in the police search of his person. As he did before the circuit court, Eusebio conceded the validity of the search warrants—that they had been issued with probable cause. But he argued (1) that the warrant purportedly authorizing the search of McClure's car was impermissibly "general"; (2) that the warrant authorized the search of the car only if it was "on the curtilage" of the driver's apartment; (3) that even if the warrant authorized the search of the car, it did not authorize police to seize the vehicle and its passengers, like Eusebio; and (4) that even if the warrant permitted police to search the driver's car and, incidentally, seize it, police could not lawfully search Eusebio's person under the warrant because (a) the warrant did not authorize the search of Eusebio's person unless he was "on the premises" and (b) police lacked the probable cause needed to search Eusebio under the provision authorizing the search of possible participants in the crime investigated.

The Court of Special Appeals held that all the searches and seizures that led police to the drug evidence were lawful and that, accordingly, the circuit court did not err in denying Eusebio's motion to suppress.

First, the warrant purporting to authorize the car search was not impermissibly "general." It was sufficiently definite (particularly describing the car and authorizing its search) and limited (authorizing the search of only "the specific areas and things for which there [was] probable cause to search." *Maryland v. Garrison*, 480 U.S. 79, 84 (1980)). This was true even though the warrant to search the car purported to authorize searches of the residence and "out buildings on the curtilage" too.

Second, the police did not exceed the warrant's scope by searching the car, even though the car was not "on the curtilage" when stopped. Police are confined strictly within the bounds set by a warrant. But in determining where those boundaries lie, courts read warrants in context and with the understanding that they are drafted by police, not legal linguists. Considering the context of this case, the Court read the warrant's command as if it directed police to enter and search "the above-described residence, out buildings on the curtilage, and chattels." The car—a chattel—did not have to be "on the curtilage" to be subject to search.

Third, with a valid warrant to search a car, police can lawfully seize the car, its driver and its passengers. That is because the "ultimate touchstone" of the Fourth Amendment is "reasonableness." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). And, after balancing the degree and nature of the intrusion against the promotion of legitimate governmental interests

involved, the Court determined the warrantless seizure of a vehicle to effect a warranted search of the same is reasonable.

Finally, the search of Eusebio's person was lawful—but not for the reasons assumed and argued by the parties. The search of Eusebio's person lay beyond the scope of the warrant because warrant commands to search all persons present who "may be" participating in a crime (all-present-participants provisions) are inoperative. These commands leave it *to police officers* to decide who is subject to search, based on the information they possess upon execution of the warrant. Therefore, personal searches made after an all-present-participants warrant is issued "cannot be upheld on the ground that they were based upon a prior probable cause determination *by a magistrate*." 2 Wayne R. LaFave, Search & Seizure § 4.5(e) (5th ed. 2019). These provisions can be contrasted with commands to search all persons present upon execution of a warrant (all-persons-present provisions). Those commands, using physical presence as the descriptive fact satisfying the Fourth Amendment's particularity requirement, are valid if "the information supplied the magistrate supports the conclusion that it is probable anyone in the described place when the warrant is executed is involved in the criminal activity in such a way as to have evidence thereof on his person." *Sutton v. State*, 128 Md. App. 308, 322 (1999).

Even though the warrant did not authorize the search of Eusebio's person, the search fell within an exception to the general warrant rule: searches incident to arrest. Police had independently developed probable cause sufficient to arrest Eusebio by the time they searched him. It did not matter that police conducted the search before making the arrest, because the search and the arrest were "essentially contemporaneous." *Ricks v. State*, 322 Md. 183, 191 (1991).

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ATTORNEY DISCIPLINE

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By an Order of the Court of Appeals dated January 9, 2020, the following attorney has been disbarred by consent:

BABAK BAGHERI

*

By an Opinion and Order of the Court of Appeals dated March 3, 2020, the following attorney has been indefinitely suspended:

GREGORY J. MILTON

*

By an Order of the Court of Appeals dated March 9, 2020, the following attorney has been disbarred by consent:

MALCOLM BRUCE KANE

*

By a Per Curiam Order of the Court of Appeals dated March 12, 2020, the following attorney has been disbarred:

MOHAMED ALPHA BAH

*

By an Order of the Court of Appeals dated February 28, 2020, the following attorney has been indefinitely suspended by consent, effective March 13, 2020:

MIGUEL ALAN HULL

*

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By an Opinion and Order of the Court of Appeals dated March 18, 2020, the following attorney has been disbarred:

JONATHAN CHRISTIAN DAILEY

*

By an Order of the Court of Appeals dated March 30, 2020, the following attorney has been placed on inactive status by consent:

JOHN-STUART WARRINGTON BAILEY

*

By an Opinion and Order of the Court of Appeals dated February 28, 2020, the following attorney has been suspended for sixty (60) days, effective March 30 2020:

CHARLES DARROW YATES

*

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JUDICIAL APPOINTMENTS

*

On February 17, 2020, the Governor announced the appointment of **LaKeecia Reneé Allen** to the District Court for Prince George's County. Judge Allen was sworn in on March 26, 2020 and fills the vacancy created by the elevation of the Hon. Bryon S. Bereano to the Circuit Court for Prince George's County.

*

On February 17, 2020, the Governor announced the appointment of **John Anthony Bielec** to the District Court for Prince George's County. Judge Bielec was sworn in on March 26, 2020 and fills the vacancy created by the enactment of Chapter 749 of the 2019 General Assembly Legislative Session establishing two new judgeships in the District Court for Prince George's County.

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On February 17, 2020, the Governor announced the appointment of **Dolores Dorsainvil** to the District Court for Prince George's County. Judge Dorsainvil was sworn in on March 26, 2020 and fills the vacancy created by the enactment of Chapter 749 of the 2019 General Assembly Legislative Session establishing two new judgeships in the District Court for Prince George's County.

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On February 17, 2020, the Governor announced the appointment of **Stacey Maria Cobb Smith** to the District Court for Prince George's County. Judge Cobb Smith was sworn in on March 26, 2020 and fills the vacancy created by retirement of the Honorable Mark T. O'Brien.

*

On February 17, 2020, the Governor announced the appointment of **Wennesa Bell Snoddy** to the District Court for Prince George's County. Judge Snoddy was sworn in on March 26, 2020 and fills the vacancy created by retirement of the Hon. Thurman H. Rhodes.

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RULES ORDERS AND REPORTS

*

A Rules Order pertaining to the 204th Report of the Standing Committee on Rules of Practice and Procedure was filed on March 16, 2020.

http://www.courts.state.md.us/sites/default/files/rules/order/ro204.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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