Amicus Curiarum

VOLUME 37
ISSUE 7 JULY 2020

A Publication of the Office of the State Reporter

Table of Contents

COURT OF APPEALS

COURT OF SPECIAL APPEALS

COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Gwyn Cara Hoerauf, Misc. Docket AG No. 7, September Term 2019, filed June 26, 2020. Opinion by Biran, J.

https://mdcourts.gov/data/opinions/coa/2020/7a19ag.pdf

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

Facts:

On June 20, 2019, Petitioner, the Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Respondent, Gwyn Cara Hoerauf, alleging violations of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC") and the Maryland Attorneys' Rules of Professional Conduct ("MARPC"). Bar Counsel subsequently filed an Amended Petition for Disciplinary or Remedial Action. The Amended Petition concerned three separate complaints against Hoerauf, and alleged violations of MLRPC 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c), and (d) (Misconduct). Additionally, Bar Counsel alleged that Hoerauf violated MARPC 19-303.3(a)(1) (Candor Toward the Tribunal), 19-304.3 (Dealing with Unrepresented Person), 19-308.1(a) and (b) (Bar Admission and Disciplinary Matters), and 19-308.4(a), (c), and (d) (Misconduct).

On June 20, 2019, pursuant to the Maryland Rules, the Court of Appeals transmitted this matter to the Circuit Court for Montgomery County and designated the Honorable Christopher C. Fogleman (the "hearing judge") to conduct an evidentiary hearing and make findings of fact and conclusions of law. On September 11, 2019, Bar Counsel filed a Motion for Order of Default after Hoerauf failed to answer the Amended Petition. On October 10, 2019, the hearing judge issued an Order of Default and scheduled a hearing for November 15, 2019. Hoerauf did not move to vacate the Order of Default.

Hoerauf did not appear at the November 15, 2019 hearing, and the hearing judge admitted Bar Counsel's exhibits into evidence. Bar Counsel submitted Proposed Findings of Fact and Conclusions of Law on December 9, 2019, based on the evidence admitted at the hearing. The hearing judge issued Findings of Fact and Conclusions of Law on December 30, 2019 based on clear and convincing evidence, concluding that Hoerauf had violated the aforementioned

provisions of the MLRPC and MARPC. These violations arose from Hoerauf's conduct in three separate client matters. Hoerauf facilitated an attorney-client relationship between her client's alleged victim, a 16-year-old minor, and another attorney, and then misled the circuit court in an effort to conceal that relationship and conceal her efforts to dissuade the victim from cooperating with the prosecution. Additionally, Hoerauf took advantage of the minor victim by gaining her trust in an effort to weaken the prosecution's case against her client. Hoerauf failed to file motions on a client's behalf, misrepresented she had done so, and failed to communicate the scope and terms of her representation in the client's six cases. In her dealings with Bar Counsel, Hoerauf failed to timely respond on three occasions, provided inflammatory and unprofessional statements about a complainant, and falsely testified about what she agreed to do for a client.

Neither party filed exceptions to the hearing judge's Findings of Fact and Conclusions of Law.

Held: Disbarred

On April 9, 2020, the Court of Appeals granted Bar Counsel's uncontested request to waive oral argument and to consider the case on the papers. On April 24, 2020, the Court issued a per curiam order disbarring Hoerauf. The Court later filed an opinion in which it accepted the factual findings of the circuit court and agreed with the hearing judge's recommended conclusions of law that Hoerauf violated MLRPC 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(a), (c), and (d) (Misconduct), MARPC 19-303.3(a)(1) (Candor Toward the Tribunal), 19-304.3 (Dealing with Unrepresented Person), 19-308.1(a) and (b) (Bar Admission and Disciplinary Matters), and 19-308.4(a), (c), and (d) (Misconduct).

The Court held that disbarment is the appropriate sanction for Hoerauf's numerous and severe violations of the MLRPC and MARPC. Hoerauf exhibited dishonesty on multiple occasions. She brought the legal profession into serious disrepute through those acts of dishonesty, and through her attempts to dissuade an alleged victim of sexual abuse from cooperating in the prosecution of her alleged abuser, Hoerauf's client. The Court finds it particularly troubling that Hoerauf engaged in misconduct in one matter while the disciplinary proceeding in a separate matter was in progress, and after having previously been suspended from the practice of law for 30 days in 2014. Based on the evidence presented at the hearing, which demonstrated a pattern of serious misconduct, the Court concluded that the public will only be sufficiently protected through Hoerauf's disbarment.

Attorney Grievance Commission of Maryland v. James Andrew Markey and Charles Leonard Hancock, Misc. Docket AG No. 5, September Term 2019, filed June 26, 2020. Opinion by Watts, J.

McDonald, J., joins opinion and concurs.

https://www.mdcourts.gov/data/opinions/coa/2020/5a19ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

Facts:

On behalf of the Attorney Grievance Commission, Petitioner, Bar Counsel filed in the Court of Appeals a "Petition for Disciplinary or Remedial Action" against James Andrew Markey and Charles Leonard Hancock, Respondents, charging them with violating MLRPC 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice), 8.4(e) (Bias or Prejudice), and 8.4(a) (Violating the MLRPC).

The Court appointed a hearing judge, who found the following facts. Markey and Hancock worked as a Veterans Law Judge and an Attorney-Advisor, respectively, at the Board of Veterans' Appeals ("the Board"), which is part of the United States Department of Veterans Affairs ("the Department"). For approximately seven years, Markey, Hancock, and three other employees of the Board used their official Department e-mail addresses to participate in an e-mail chain that they called "the Forum of Hate." They referred to themselves as "members" of "the Forum of Hate." As members of "the Forum of Hate," Markey and Hancock sent numerous e-mails that included statements about their Board colleagues that were highly offensive, and that frequently evinced "bias or prejudice based upon race, sex, . . . national origin, . . . sexual orientation[,] or socioeconomic status." MLRPC 8.4(e). As examples, in one instance, in response to a photograph of Hancock's son's all-white Little League team, Markey asked where the white sheets were and stated "'[b]onfire' after every victory[,]" referencing the Ku Klux Klan, and, in another, Markey referred to an African American woman Chief Veterans Law Judge as "a total b[****.]" Among many other examples, Hancock referred to the Chief Veterans Law Judge as a "Ghetto Hippopotamus" and "a despicable impersonation of a human woman, who ought to [have] her cervix yanked out of her by the Silence of the Lamb[s] guy, and force[-]fed to her." The Veterans Affairs Office of Inspector General discovered the e-mails, the Department terminated Markey, and Hancock voluntarily retired.

Held: Indefinitely suspended.

The Court of Appeals concluded that Markey and Hancock violated MLRPC 8.4(d), 8.4(e), and 8.4(a) by using Department e-mail addresses to make alarmingly inappropriate and offensive

remarks about their colleagues that were both prejudicial to the administration of justice and evinced bias and prejudice on multiple grounds.

Before the hearing judge, Markey and Hancock contended that the comments in their e-mails did not violate MLRPC 8.4(d) because the comments were intended to be humorous, and were spread in a small circle of people, without the expectation that the comments would ever be shared outside of the small group, *i.e.*, the comments were private and were not intended to become public. The hearing judge determined that the e-mails were related to the practice of law and violated MLRPC 8.4(d). The hearing judge concluded that, in taking the position that the e-mails did not violate MLRPC 8.4(d) because there was no expectation that the e-mails would be shared outside of their group, Hancock misinterpreted this Court's holding in *Attorney Grievance Comm'n v. Link*, 380 Md. 405, 844 A.2d 1197 (2004), as had the lawyer in *Attorney Grievance Comm'n v. Basinger*, 441 Md. 703, 109 A.3d 1165 (2015). The hearing judge pointed out that the term "private" in *Link* meant unrelated to the practice of law, not undisclosed to or unknown by the public. The hearing judge determined that Markey and Hancock's misconduct was related to the practice of law because they sent the e-mails mostly during work hours at their workplace (*i.e.*, the Board), using Department e-mail addresses, and talked about their colleagues and Board-related matters.

"[W]here . . . a lawyer engages in conduct that is related to the practice of law[,]" the lawyer violates MLRPC 8.4(d) if the lawyer's conduct "would negatively impact [the] perception of the legal profession" of "a reasonable member of the public[.]" *Basinger*, 441 Md. at 720, 109 A.3d at 1175 (cleaned up). Applying the reasonable member of the public test, the hearing judge concluded that "the insulting[,] demeaning language" that Markey and Hancock used in the e-mails would "undoubtedly bring[] the legal profession into disrepute in the eyes of a reasonable member of the public." The Court concluded that the hearing judge's conclusions were more than amply supported by clear and convincing evidence. The Court explained that Markey's and Hancock's misconduct clearly had the potential to undermine the work of the Board and the public's confidence in that work, as well as damage the public's perception of the legal profession, the Board, the Department, and the federal government at large.

As to MLRPC 8.4(e), the Court concluded that Markey's and Hancock's statements demonstrating bias and prejudice spoke for themselves and constituted abhorrent conduct without the need for any evidence that Markey and/or Hancock discriminated against a particular veteran in a case before the Board. Actual discrimination was not required to determine that Markey and Hancock glaringly violated MLRPC 8.4(e) when, acting in their professional capacities, they knowingly engaged in conduct demonstrating bias and prejudice that was prejudicial to the administration of justice and not in pursuit of legitimate advocacy.

The Court accepted the hearing judge's findings that Markey's and Hancock's misconduct was aggravated by substantial experience in the practice of law and a pattern of misconduct, and that Markey's misconduct was also aggravated by a refusal to acknowledge the wrongful nature of the misconduct. The Court determined that Markey's and Hancock's misconduct was also aggravated by multiple violations of the MLRPC. The Court did not disturb the hearing judge's findings that Markey's and Hancock's misconduct was mitigated by a lack of prior attorney

discipline, cooperation with Bar Counsel's and the Office of Inspector General's investigations, and the imposition of other sanctions in the form of loss of employment, and that Hancock's misconduct was also mitigated by remorse and good character and reputation.

The Court determined that the appropriate sanctions for Markey's and Hancock's misconduct were indefinite suspensions from the practice of law in Maryland because Markey's and Hancock's remarks were egregious, were part of an approximately seven-year-long pattern, and were not stray, random, or isolated. The Court explained that the circumstances established that Markey and Hancock were making remarks that were intentionally offensive. The *modus operandi* of the group was for its members to regularly make deliberately offensive statements, and to praise each other for the statements. For example, after one of the members of the group made an offensive remark about an African American woman Chief Veterans Law Judge four days before Christmas 2012, Markey stated: "Good xmas hate gate[.]" Similarly, after a Chief Veterans Law Judge who was a member of the group made a reference to the Ku Klux Klan, Hancock stated: "Nice management hate. Bout time!!"

Comment 4 to MLRPC 8.4 explains that MLRPC 8.4(e) "reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system[.]" The Court explained that Markey's and Hancock's many inappropriate and offensive statements were demeaning of many groups of people in our society, an affront to the dignity of the legal profession, and could not be tolerated from any members of the Bar of Maryland—especially ones who occupy positions of public trust.

The Court concluded that Markey's and Hancock's misconduct warranted the same sanction even though Markey was a Veterans Law Judge and Hancock was an Attorney-Advisor. To be sure, Markey occupied a higher position of trust than an Attorney-Advisor, and, as a Veterans Law Judge, was responsible for fairly and impartially making decisions with respect to claims by veterans, and Hancock, as an Attorney-Advisor, assisted Veterans Law Judges with drafting opinions, and did not have decision-making authority. Regardless of their positions, however, Markey and Hancock equally participated in the e-mail exchanges, and the applicable aggravating and mitigating factors did not compel different sanctions. The Court explained that, although Hancock had the additional mitigating factors of remorse and good character and reputation, and Markey had the additional aggravating factor of a refusal to acknowledge the wrongful nature of the misconduct, those differences were counterbalanced by the circumstance that Hancock's statements were particularly egregious, and that the Court did not give great weight to Hancock's additional mitigating factors. The Court stated that it must assure that lawyers do not evince bias or prejudice while acting in their professional capacities and that the principles of fairness and equal justice under the law are foremost in the legal profession.

Attorney Grievance Commission of Maryland v. Natalie Thryphenia Collins, Misc. Docket AG No. 8, September Term 2019, filed June 8, 2020. Opinion by Booth, J.

https://www.courts.state.md.us/data/opinions/coa/2020/8a19ag.pdf

ATTORNEY DISCIPLINE – SANCTION – SUSPENSION

Facts:

On June 20, 2019, the Attorney Grievance Commission of Maryland ("Commission"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action ("Petition") against Respondent, Natalie Thryphenia Collins. The proceeding arose from Ms. Collins's representation of a client in a divorce and contested custody proceeding. The Petition alleged that Ms. Collins violated the Maryland Attorneys' Rules of Professional Conduct ("MARPC") 19-301.1 (Competence); 19-301.3 (Diligence); 19-301.4 (Communication); 19-303.4 (Fairness to Opposing Party and Attorney); and 19-308.4 (Misconduct)

Pursuant to Maryland Rule 19-711(a), this Court designated the Honorable Charles J. Peters ("the hearing judge") of the Circuit Court for Baltimore City to conduct a hearing regarding the alleged violations of the MARPC and to provide findings of fact and conclusions of law. On December 18 and 19, 2019, the hearing judge conducted hearings and subsequently issued Findings of Fact and Conclusions of Law. The hearing judge found that Ms. Collins's client sought counsel to represent her in a divorce and custody case involving the client's minor daughter. During representation of her client, Ms. Collins continuously failed to respond to discovery, which resulted in a motion for sanctions, and failed to follow up with discovery requests sent to opposing counsel. Further, Ms. Collins failed to respond to attempts by the child's attorney requesting assistance obtaining information and scheduling a meeting with each parent. Prior to the merits hearings, Ms. Collins failed to adequately prepare her client and her client's son and met with them for the first time one hour before the hearing began. During the hearing, Ms. Collins's client learned that Ms. Collins had failed to respond to discovery, that a motion for sanctions had been filed. And that Ms. Collins had never met with the child's attorney. The magistrate granted the motion for sanctions and precluded the introduction of any documents by Ms. Collins on behalf of her client. Following the two-day merits hearing, Ms. Collins's client informed her that she no longer wanted Ms. Collins to represent her.

Based upon the record, the hearing judge concluded by clear and convincing evidence that Ms. Collins violated MARPC 19-301.1 (Competence); 19-301.3 (Diligence); 19-301.4 (Communication); 19-303.4(d) (Fairness to Opposing Party and Attorney); and 19-308.4(a) and (d) (Misconduct). Additionally, the hearing judge found clear and convincing evidence of several aggravating factors including Ms. Collins's multiple violations, failure to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of family law. With respect to mitigating factors, the hearing judge noted the absence of prior attorney

discipline and found by a preponderance of the evidence that "one client and one attorney believe that [Ms. Collins] is a competent, honest attorney." Neither party filed exceptions.

Held: 60-day Suspension

The Court of Appeals imposed a 60-day suspension. Because neither party filed exceptions, the Court accepted the judge's findings of fact as established. The Court found that the hearing judge's conclusions of law were supported by clear and convincing evidence. Accordingly, the Court held that Ms. Collins violated MARPC 19-301.1 (Competence); 19-301.3 (Diligence); 19-301.4 (Communication); 19-303.4(d) (Fairness to Opposing Party and Attorney); and 19-308.4(a) and (d) (Misconduct).

The Court found that Ms. Collins demonstrated a clear lack of thoroughness and preparation through her failure to respond to discovery requests and motions, lack of communication with her client, and failure to respond to the child's attorney. These deficiencies and failures resulted in serious consequences to her client. Moreover, the Court concluded that Ms. Collins's conduct impaired the public's confidence in the legal profession and therefore was prejudicial to the administration of justice. Given Ms. Collins's substantial experience and unwillingness to accept responsibility for her misconduct, the Court held that a 60-day suspension was appropriate.

Return to ToC

Minh-vu Hoang v. Jeffrey Lowery, No. 17, September Term 2019, filed June 5, 2020. Opinion by Booth, J.

McDonald and Getty, JJ., dissent.

https://mdcourts.gov/data/opinions/coa/2020/17a19.pdf

COURTS & JUDICIAL PROCEEDINGS – STATUES OF LIMITATIONS – TOLLING

PROVISIONS – PETITIONS IN INSOLVENCY

Facts:

Mr. Lowery obtained a default judgment against Ms. Hoang in the Circuit Court for Montgomery County in April 2002. In May 2005, before Mr. Lowery was able to satisfy his judgment, Ms. Hoang filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. In October 2005, Ms. Hoang's bankruptcy was converted from a Chapter 11 reorganization to a Chapter 7 liquidation proceeding. In March 2006, the bankruptcy court entered an order denying Ms. Hoang discharge of her pre-petition debts as punishment for her various attempts to conceal assets. Entry of the denial of discharge lifted the automatic stay that had prevented Ms. Hoang's creditors from attempting to seize any assets Ms. Hoang received after filing for bankruptcy.

In April 2016, Ms. Hoang received settlement funds from an unrelated real estate dispute. Mr. Lowery learned of the settlement and served Ms. Hoang's attorney (who was holding the funds in escrow) with a writ a garnishment to satisfy his 2002 judgment. Ms. Hoang moved to quash the writ of garnishment, arguing that Mr. Lowery's judgment had expired because he had not renewed it within twelve years as provided in § 5-102(a)(3) of the Courts & Judicial Proceedings Article ("CJ") of the Maryland Code and Maryland Rule 2-625. Mr. Lowery argued that his judgment had not expired and that the twelve-year period had been tolled by CJ § 5-202, which tolls any statute of limitations applicable to claims against a debtor who has filed a "petition in insolvency" from the time of filing until the petitioner is "dismissed."

The circuit court agreed with Ms. Hoang and quashed the writ of garnishment. The Court of Special Appeals reversed, holding that CJ § 5-202 tolls the statute of limitations renewal of judgments both when a debtor's bankruptcy case is dismissed and when a debtor is denied a discharge but their case continues.

Held: Reversed.

The Court of Appeals held that the plain language of CJ § 5-202 does not include denial of discharge in its tolling protection.

First, the Court looked to the 1814 statute that created the tolling provision of CJ § 5-202 as an amendment to Maryland's 1805 insolvency statute. The 1805 insolvency statute provided for discharge of a petitioner's debts and their release from prison. Petitions filed under the 1805 law that were not fully administered and disposed of by the courts could either be dismissed or withdrawn. Like modern federal bankruptcy law, the 1805 law also provided for denial of discharge for debtors who attempted to defraud their creditors or the court. The text of the 1814 amendments provided that tolling would apply only when a petition was "dismissed." The legislature did this despite also providing that judgments against a debtor were automatically reinstated and enforceable when the debtor's petition was dismissed, withdrawn, or the debtor was denied a discharge. Therefore, the Court held, the plain terms of the tolling provision's original enactment show that the General Assembly intended to provide tolling only in the event of dismissal.

Second, the Court held that denial of discharge cannot fit within the text of CJ § 5-202 because denial of discharge is not procedurally analogous to the dismissal of a bankruptcy petition. When a bankruptcy petition is dismissed, the bankruptcy proceeding terminates and the parties return to their pre-filing statuses without any adjudication of creditors' claims. Conversely, when a bankruptcy court denies a debtor a discharge in Chapter 7 proceeding, the case continues, the bankruptcy trustee continues to marshal the debtor's assets for liquidation, and the court ultimately adjudicates all allowed claims against the debtor. The term "dismissal" cannot be stretched to encompass procedures like denial of discharge that function nothing like dismissal.

Return to ToC

David R. Faulkner v. State and Jonathan D. Smith v. State of Maryland, Nos. 42 & 43, September Term 2019, filed April 27, 2020. Opinion by Biran, J.

https://mdcourts.gov/data/opinions/coa/2020/42a19.pdf

CRIMINAL LAW – PETITION FOR WRIT OF ACTUAL INNOCENCE – MATERIALITY OF NEWLY DISCOVERED EVIDENCE

Facts:

On January 5, 1987, Adeline Curry Wilford, age 68, was found murdered on the kitchen floor of her home in Talbot County, Maryland. A butcher knife was protruding from Ms. Wilford's cheek/eye area when officers from the Maryland State Police (MSP) arrived at the scene. The officers discovered a latent palm print on the exterior of a window that had been propped open in Ms. Wilford's utility room, as well as another palm print on the washing machine inside that same utility room. The palm prints did not belong to Ms. Wilford or to anyone else known to have been in her home. MSP theorized that a burglar or burglars had left the palm prints in the process of stealing items from her house, and murdered Ms. Wilford after she interrupted the burglary.

Despite a reward being offered for information leading to the arrest and conviction of Ms. Wilford's murderer(s), the case went cold for several years. In 1991, James Brooks told MSP that his friend, William Thomas, had confessed to him in 1990 that he had broken into Ms. Wilford's home with Ty Brooks (no relation to James Brooks). According to James Brooks, William Thomas confessed that he stabbed Ms. Wilford to death with a butcher knife after she returned home while he and Ty Brooks were burglarizing her home. When James Brooks told MSP about William Thomas's alleged confession, the particular type of knife used in the murder (i.e., a butcher knife) had not yet been publicly reported. Although MSP took initial steps to investigate William Thomas's and Ty Brooks's involvement in the Wilford burglary and murder, MSP did not check whether either or both of those suspects were the sources of the suspicious palm prints. The case went cold again.

In 2000, MSP reopened the investigation and interviewed Beverly Haddaway. Haddaway told MSP that her nephew, Jonathan Smith, and his friends David Faulkner and Ray Andrews, were involved in the Wilford murder. Although the palm prints at the scene of the crime did not match Smith, Faulkner, or Andrews, and no other physical evidence linked them to the crime, authorities charged Smith, Faulkner, and Andrews with burglary, murder, and related offenses in the Circuit Court for Talbot County. The charges were based largely on statements made by Smith and Andrews, as well as Haddaway's claim that she saw the three young men walk out of a corn field approximately two-and-a-half to three miles away from the Wilford home on the afternoon of January 5, 1987, and that Smith had blood splattered on his shirt at that time.

Andrews entered into a plea agreement with the State, under which the State agreed to recommend a five-year sentence for involuntary manslaughter. Andrews testified against Smith and Faulkner in separate jury trials in 2001. Haddaway also was a key witness for the State in both trials. Faulkner produced alibi evidence indicating that he was paid for working at his job, which was approximately a 30-minute drive from the murder scene, on January 5, 1987. Both Smith and Faulkner were convicted of burglary and murder, and both were sentenced to life in prison. Smith's and Faulkner's direct appeals and petitions for post-conviction relief were unsuccessful.

By 2013, Smith and Faulkner both had new sets of attorneys, who moved for an order compelling the State to run the unidentified palm prints through Maryland's recently created automated print identification system. After an MSP fingerprint expert did so, he discovered that the palm prints left by the suspected burglar belong to Ty Brooks. Smith and Faulkner also learned in 2012 that the State had suppressed recorded pretrial conversations between Haddaway and an MSP officer assigned to the Wilford case. Those recordings revealed, among other things, that Haddaway demanded the dismissal of unrelated drug charges against her grandson shortly before she testified against Smith and Faulkner. Haddaway threatened to testify in a way that would lead to acquittals if the State did not dismiss the charges against her grandson. Shortly after Haddaway made this threat, the State acceded to Haddaway's demand and dismissed the charges. The State did not notify Smith's and Faulkner's defense counsel of Haddaway's demand and the State's agreement to it.

Smith and Faulkner filed petitions for writs of actual innocence in the Circuit Court for Talbot County under Md. Code Ann., Crim. Proc. ("CP") § 8-301 (2008, 2018 Repl. Vol.), contending that, if the newly discovered palm print evidence and pertinent portions of the Haddaway recordings had been provided to their juries, there is a substantial or significant possibility that the juries would have reached different results. The circuit court denied relief to both Smith and Faulkner, and the Court of Special Appeals affirmed.

Held: Judgment of the Court of Special Appeals vacated; new trials ordered for Smith and Faulkner.

Smith and Faulkner asked the Court of Appeals to consider whether the circuit court abused its discretion in concluding that the newly discovered palm print evidence and Haddaway recordings did not create a substantial or significant possibility that their juries would have reached different results if they had heard that evidence.

The Court of Appeals held that, in analyzing the materiality of multiple items of newly discovered evidence for purposes of an actual innocence petition, a circuit court must conduct a cumulative analysis. A cumulative assessment is necessary for two reasons. First, in some cases, no one distinct item of newly discovered evidence will suffice on its own to warrant relief, but cumulatively, such evidence will create a substantial or significant possibility of a different result. Second, even if one or more distinct pieces of newly discovered evidence independently

justifies the granting of the writ, a cumulative analysis may affect the court's determination of the appropriate remedy.

The Court held that, in this case, the circuit court conducted a cumulative analysis of the materiality of the palm print evidence and the Haddaway-Bollinger recordings. Although the circuit court's opinion did not contain a separate section that explicitly addressed cumulative effect, it is clear from the overall proceedings on remand that the circuit court considered the newly discovered evidence collectively. While it is preferable for a circuit court to include an explicit discussion of cumulative effect when there are multiple pieces of newly discovered evidence under consideration in an actual innocence petition, an appellate court will review the proceedings in the circuit court for substance, not form.

The Court further held that, although the circuit court analyzed the newly discovered evidence cumulatively, it did so using an erroneous standard. After considering the evidence introduced at the actual innocence hearings, the circuit court concluded such evidence did not prove beyond a reasonable doubt that Ty Brooks and William Thomas committed the burglary and murdered Ms. Wilford. Under CP § 8-301, the question the court was required to decide was not whether the newly discovered evidence proves Ty Brooks and Thomas guilty beyond a reasonable doubt, but rather whether such evidence, combined with the evidence the juries did hear, creates a substantial or significant possibility that the juries would not have found Smith and Faulkner guilty beyond a reasonable doubt. The circuit court did not account for the possibility that Smith and Faulkner could prevail in their innocence petitions even if the evidence introduced at the actual innocence hearings did not prove Ty Brooks and Thomas guilty beyond a reasonable doubt. This is a fundamental error that requires reversal of the denial of the writs of actual innocence.

The Court also held that the circuit court erred in its materiality analysis regarding the palm print evidence. Strong alternate perpetrator evidence can be very powerful in the defense of a person accused of a crime where the primary issue in dispute is identity. This is especially the case where, as was the case with Faulkner, a defendant presents plausible alibi evidence. In this case, the alternate perpetrator evidence is compelling. This is not a case in which a petitioner has come forward with only conjecture or speculation that another person may have committed the crime for which the petitioner was convicted. The Court concluded that the alternate perpetrator evidence brought forward by Smith and Faulkner creates a substantial or significant possibility that their juries would not have found Smith and Faulkner guilty beyond a reasonable doubt if they had heard the alternate perpetrator evidence.

Further, the Court observed that the Haddaway recordings, while arguably insufficient by themselves to warrant relief, nevertheless add meaningfully to the analysis. Haddaway's professed willingness to alter her testimony based on whether the State would dismiss the drug charges against her grandson likely would have markedly increased the effectiveness of her impeachment by defense counsel, and also revealed important irregularities in the State's handling of these prosecutions. Thus, the Court reasoned, if the alternate perpetrator evidence independently did not require the issuance of the writs of actual innocence, the Haddaway-

Bollinger recordings and the alternate perpetrator evidence cumulatively would entitle Smith and Faulkner to relief.

Although the Court was persuaded that there is a substantial or significant possibility that, if the juries had heard the newly discovered evidence, they would have reached a different result, the Court stated that it was not exonerating Smith and Faulkner, and instead ordered new trials for both petitioners. The Court recognized that Smith and Andrews confessed involvement in the events of January 5, 1987, at various times. In addition, the Court observed that Andrews's relatively consistent account of the events of that day is difficult to reconcile with Smith's and Faulkner's claims of innocence. If the State elects to retry Smith and Faulkner, it will be up to new juries to consider the conflicting evidence and theories and determine if the State has proven Smith and Faulkner guilty beyond a reasonable doubt.

Return to ToC

Pablo Javier Aleman v. State of Maryland, No. 60, September Term 2019, filed, 2020. Opinion by McDonald, J.

Watts and Getty, JJ., dissent.

https://mdcourts.gov/data/opinions/coa/2020/60a19.pdf

CRIMINAL PROCEDURE – INTERSTATE COMPACTS – INTERSTATE AGREEMENT ON DETAINERS – TEMPORARY CUSTODY OF PRISONER

CRIMINAL PROCEDURE – INTERSTATE COMPACTS – INTERSTATE AGREEMENT ON DETAINERS – APPLICATION TO DEFENDANT FOUND NOT CRIMINALLY RESPONSIBLE

Facts:

The Interstate Agreement on Detainers ("IAD"), codified in Maryland as Maryland Code, Correctional Services Article ("CS"), §8-401 et seq., is a congressionally-sanctioned compact among the states designed to facilitate the prompt disposition of a detainer lodged by one state against a person incarcerated in another state. The IAD allows for the temporary transfer of the prisoner from the state of incarceration (the sending state) to the state in which charges are pending (the receiving state) upon the request of either the prisoner or the prosecutor in the receiving state.

Pablo Javier Aleman was serving an 11-year sentence in Ohio for felony assault. In Maryland, a murder charge was pending against Mr. Aleman in the Circuit Court for Baltimore County based on his alleged fatal stabbing of his former landlord. On September 26, 2016, he requested a transfer under the IAD to Maryland. Maryland agreed to take temporary custody of Mr. Aleman for resolution of the pending murder charge and he was transferred on November 17, 2016.

Mr. Aleman initially entered pleas of not guilty and not criminally responsible. The Circuit Court accordingly ordered an examination of Mr. Aleman with respect to his competency to stand trial and criminal responsibility. Mr. Aleman was found competent to stand trial.

The prosecution and the defense agreed to bifurcate the issues of whether Mr. Aleman committed the alleged acts and whether he was criminally responsible for those acts. Mr. Aleman pled guilty to second degree murder and elected to have the issue of criminal responsibility decided by a jury. After a jury trial on May 29-31, 2018, the jury found that Mr. Aleman was not criminally responsible for the murder of his former landlord.

After the jury verdict, the Circuit Court initially indicated that it would commit Mr. Aleman to the Department of Health pursuant to Maryland Code, Criminal Procedure Article ("CP"), §3-112. But upon being advised that Mr. Aleman had been brought to Maryland under the IAD, the court took the position that Mr. Aleman would have to be returned to Ohio and remanded him to

the county detention center. On June 4, 2018, the court entered an order committing Mr. Aleman to the Department of Health with the date of transfer and place of commitment "to be determined."

Shortly thereafter, Mr. Aleman filed a petition for habeas corpus in the Circuit Court for Baltimore County, seeking release from the county detention center and a commitment to the Department of Health. Following a hearing on June 13, 2018, the Circuit Court concluded that the IAD required Mr. Aleman's return to Ohio and denied the relief sought in the habeas corpus petition. Mr. Aleman noted an appeal and the Circuit Court stayed both its order committing Mr. Aleman to the Department of Health and its order directing that Mr. Aleman return to Ohio.

Meanwhile, Mr. Aleman filed a second petition for habeas corpus, which was also denied. Mr. Aleman again appealed. The Court of Special Appeals consolidated the two appeals and affirmed the judgment of the Circuit Court.

Held: Affirmed.

The Court of Appeals held that, under the plain language of the IAD, and consistent with the purpose of the compact as reflected in its legislative history, the IAD gives a receiving state limited temporary custody of a prisoner for the sole purpose of resolving charges underlying a detainer. Accordingly, given the temporary custody provisions of the IAD, Maryland does not have the requisite jurisdiction over Mr. Aleman to commit him to the Department of Health under CP §3-112. As soon as Mr. Aleman's pending murder charge was resolved in Maryland, whatever that resolution happened to be, Maryland was obligated to return Mr. Aleman to Ohio.

The Court of Appeals also held that a verdict of not criminally responsible in a receiving state concerning a defendant's mental status at the time of a past offense does not by itself render the IAD inapplicable to a prisoner under Article VI(b) of the IAD, which states that "[n]o provision of [the IAD], and no remedy made available by [the IAD], shall apply to any person who is adjudged to be mentally ill." CS §8-408(b). Examining the text of that provision, the Court concluded that its use of the present tense indicates that the IAD and its remedies do not apply when a prisoner currently suffers from a mental illness – for example, when a prisoner is found to be incompetent to stand trial. By contrast, an adjudication that one was not criminally responsible due to mental illness at the time of the crime in question does not alone suffice to satisfy Article VI(b). In addition, the provision's reference to "remedies" evidences a concern with current mental illness. Article VI(b) recognizes that it would be futile to apply the remedy of dismissal with prejudice of charges underlying a detainer, a remedy which the IAD authorizes in several circumstances, in the case of a prisoner who is currently incompetent to stand trial. Moreover, the statutory context, the IAD's legislative history, and other jurisdictions' interpretations of Article VI(b) confirm that the provision functions as a safeguard against subjecting a prisoner who is presently mentally ill to unnecessary transfers between jurisdictions. Therefore, Article VI(b) does not prevent Mr. Aleman's return to Ohio.

Return to ToC

As the charges underlying the Maryland detainer pertaining to Mr. Aleman have now been resolved, the IAD requires his return to Ohio to serve the remainder of his sentence there. Any commitment for treatment in Maryland must await completion of the Ohio sentence.

Nationwide Mutual Insurance Company v. Margaret Shilling, No. 38, September Term 2019, filed April 20, 2020. Opinion by Getty, J.

https://www.courts.state.md.us/data/opinions/coa/2020/38a19.pdf

INSURANCE LAW – STATUTE OF LIMITATIONS – UNDERINSURED MOTORIST CLAIM

Facts:

Respondent, Margaret Shilling, was injured in an automobile accident on April 19, 2011, when her vehicle was hit from behind by Barbara Gates. Ms. Shilling suffered injuries from the collision for which she received treatment from April 2011 to July 2014. Ms. Gates was an underinsured motorist, insured for up to $20,000 per person in bodily injury coverage by Agency Insurance Company of Maryland ("Agency"). Ms. Shilling was insured by Nationwide Mutual Insurance Company ("Nationwide") with a policy up to $300,000 per person in bodily injury coverage for uninsured and underinsured motorist coverage. Nearly two years after the accident, Agency offered to settle Ms. Shilling's claim for $20,000 on the conditions that Nationwide waive its subrogation rights and Ms. Shilling release all claims against Agency. Nationwide advised Ms. Shilling's attorney that it would waive it subrogation rights on April 13, 2013, and Ms. Shilling's attorney forwarded Nationwide's waiver to Agency on January 27, 2014. Ms. Shilling signed Agency's "Full Release of All Claims and Demands" on February 3, 2014. Ms. Shilling and Nationwide began settlement negotiations on April 23, 2013. On January 26, 2015, Ms. Shilling sent Nationwide a formal demand letter to recover underinsured motorist benefits under her Nationwide policy. At no time during settlement negotiations did Nationwide deny Ms. Shilling's claim. On September 23, 2016, Ms. Shilling filed suit in the Circuit Court for Anne Arundel County seeking the balance of unpaid damages not covered by Agency's settlement of $20,000. Nationwide filed a motion to dismiss on the basis that Ms. Shilling's claim was time-barred by the three-year statute of limitations under CJ § 5-101.

Nationwide argued that the statute of limitations begins to run when the tortfeasor's insurance policy is exhausted. According to Nationwide, this occurred in mid-April 2013 when Ms. Shilling accepted Agency's settlement offer. Ms. Shilling countered that the statute of limitations begins to run when the insurer denies the claim for underinsured motorist benefits, which Nationwide never did. The circuit court agreed with Nationwide and dismissed Ms. Shillings' claim. Ms. Shilling timely appealed to the Court of Special Appeals. While pending in the Court of Special Appeals, Ms. Shilling informed Nationwide that she did not sign Agency's release until February 2014, raising the question of when the tortfeasor's insurance policy was actually exhausted. The Court of Special Appeals granted the parties' Joint Motion to Stay Appeal and Remand to the Circuit Court to determine on what date Ms. Shilling exhausted the tortfeasor's policy: (1) the date the insurer consented to settlement, (2) the date the insurer and tortfeasor sign the release, or (3) the date the settlement check is deposited. The circuit court determined that Ms. Shilling's exhausted the tortfeasor's policy on the date of settlement—mid-

April 2013—and therefore, the claim was time-barred for Ms. Shilling's failure to institute an action before April 23, 2016. Ms. Shilling timely appealed to the Court of Special Appeals.

The Court of Special Appeals reversed, holding that the earliest date Ms. Gates' policy could be exhausted would be February 2014 when Ms. Shilling accepted Agency's offer by executing the release and securing Nationwide's waiver of subrogation rights. Nationwide timely appealed to the Court of Appeals, presenting the question of at what point the statute of limitations begins to run in an insured's action against his or her own insurer to recover underinsured motorist benefits.

Held: Affirmed on different grounds.

The Court of Appeals held that the statute of limitations in an underinsured motorist claim begins to run when the insurer denies an insured's demand for benefits, thereby breaching the insurance contract.

The Court reaffirmed the notion that an insured's claims for underinsured motorist benefits sounds in contract and is governed by contract principles. In contract law, the statute of limitations begins to run when the contract is breached. The insurer cannot breach the contract if the insured does not demand benefits under the contract. In an underinsured motorist claim, when an insured receives a settlement offer from the tortfeasor's insurer, complies with the requirements of IN § 19-511, and makes a demand for the insurer to pay underinsured motorist benefits, the statute of limitations does not begin to run until the insurer denies the claim.

The Court could not conclusively state the date on which the statute of limitations began to run based on the record before it. The Court did, however, conclude that Ms. Shilling's action is not time-barred because Nationwide did not deny her claim for underinsured motorist benefits more than three years prior to her instituting the action in the circuit court.

Return to ToC

Brian Wynne and Karen Wynne v. Comptroller of Maryland, No. 12, September Term 2019, filed June 5, 2020. Opinion by McDonald, J.

https://mdcourts.gov/data/opinions/coa/2020/12a19.pdf

TAXATION – TAX REFUNDS – STATE BUDGET LEGISLATION – DORMANT COMMERCE CLAUSE

Facts:

After a U.S. Supreme Court decision held that the Maryland tax code's failure to provide a credit for taxes paid by residents on income earned in other states violated the dormant Commerce Clause of the federal Constitution, the General Assembly amended the credit provision on a retroactive basis and authorized refunds and interest payments on those refunds through two State budget reconciliation and finance acts. In consideration of the state's increased expenditures and decreased revenues, partially as a result of the Supreme Court's decision, the General Assembly pegged the rate of interest paid on those refunds to the prime rate (about 3%) instead of the minimum 13% as generally provided by the tax code for certain other refunds. Upon receipt of their refund and interest payment, Petitioners, Brian and Karen Wynne, appealed seeking the higher rate and arguing that the chosen interest rate violated the dormant Commerce Clause. The Maryland Tax Court agreed with the Wynnes, but the Circuit Court for Anne Arundel County reversed, finding that the interest rate selected by the General Assembly did not discriminate against interstate commerce.

Held: Affirmed.

The Court concluded that the payment of interest on these refunds pegged to the prime rate did not violate the dormant Commerce Clause and that the General Assembly was acting in a manner consistent with its constitutional obligation to balance the state budget.

The Court reasoned that a rate of interest on tax refunds, in contrast to an income tax credit, is too attenuated from interstate commerce as to substantially impact the flow of production and capital investment and, even assuming that it does, the Wynnes failed to meet their burden of proving that the General Assembly's action actually had the effect of discriminating against interstate commerce. On the contrary, the Court explained, the Wynnes were provided a full refund and received an interest rate in excess of the rate of inflation thus placing them in a better position compared to similarly situated Maryland taxpayers.

Estate of Jeffrey Blair by Personal Representative Tiauna Blair v. David Austin, No. 35, September Term 2019, filed June 2, 2020. Opinion by Hotten, J., which Barbera, C.J., and McDonald, J., join.
Opinion by Watts, J.
Getty, Booth, and Battaglia, JJ., dissent.

https://mdcourts.gov/data/opinions/coa/2020/35a19.pdf

APPELLATE REVIEW – JURY FACTUAL FINDINGS

EXCESSIVE FORCE – EVIDENCE – LEGAL SUFFICIENCY

EXCESSIVE FORCE – VIDEO EVIDENCE

Facts:

On February 22, 2015, Baltimore City Police Officer David Austin ("Officer Austin"), while on routine patrol duty, stopped at a traffic light at the intersection of Pennsylvania Avenue and Martin Luther King Jr. Boulevard in Baltimore City. Officer Austin observed Jeffrey Blair ("Mr. Blair") driving on the wrong side of the road, as he entered the intersection, and made a right turn against the red light. Subsequently, Officer Austin activated his lights and siren and pursued Mr. Blair. Mr. Blair drove at a speed between 20 and 25 miles per hour, making several turns and running another red light, before pulling over. Although Mr. Blair failed to stop his vehicle as directed and briefly drove on the wrong side of the road, he did not force other drivers off the road, cause a collision, or otherwise place Officer Austin or pedestrians at risk during the slow pursuit.

After about a mile, a surveillance video captured Mr. Blair's vehicle and Officer Austin's patrol vehicle stop on the right side of the 1000 block of Fremont Avenue. Officer Austin observed Mr. Blair lean toward his passenger seat before exiting his vehicle. Although the video did not reveal Mr. Blair's actions inside his vehicle, the video showed Mr. Blair, relatively large in stature, emerge from his vehicle and move toward Officer Austin's patrol car. In response, Officer Austin exited his vehicle and briefly attempted to shield himself with his door. Officer Austin advised Mr. Blair to return to his vehicle. Instead, Mr. Blair rapidly increased his pace toward Officer Austin. There was no indication whether Mr. Blair was armed.

Officer Austin testified that Mr. Blair attempted to grab Officer Austin's firearm and then appeared to go into his pants' pocket as if to grab a weapon. However, Officer Austin also testified that he withdrew his firearm before he thought Mr. Blair may have been reaching for a weapon. The surveillance video appeared to have an obstructed view that did not reflect any movements consistent with Mr. Blair reaching into his pants' pocket, or the presence of a weapon in Mr. Blair's possession; however, no weapon was recovered on the scene. There was no evidence that Mr. Blair verbally threatened Officer Austin. The video revealed that minimal

time elapsed from the beginning of the encounter to when Officer Austin fired four shots at Mr. Blair, striking him several times.

After Mr. Blair fell to the ground, Officer Austin called for additional law enforcement officers and a medic to treat Mr. Blair. Officer Austin maintained a distance from him, testifying that he did so because he believed Mr. Blair possessed a weapon. When the responding law enforcement officers arrived on the scene, they subdued Mr. Blair by use of a taser. Subsequently, Mr. Blair was treated for gunshot wounds to his abdomen and right hand. In June 2015, Mr. Blair died of causes unrelated to this incident.

In 2016, Tiauna Blair ("Ms. Blair"), the widow of Mr. Blair, filed a complaint on behalf of Mr. Blair's Estate in the Circuit Court for Baltimore City against several law enforcement officers, including Officer Austin. The complaint alleged nine counts, including excessive force. At trial, the parties presented the surveillance video evidence, testimony from several fact and expert witnesses, and documentary evidence.

After the Estate presented its case, Officer Austin moved for judgment as a matter of law, asserting the Estate failed to establish a *prima facie* case regarding the question of excessive force, and whether the force applied was objectively reasonable. Considering all the evidence and any rational inferences thereto, in the light most favorable to the Estate as the non-moving party, the circuit court granted Officer Austin's motion on several counts, including the count of false arrest, both counts of false imprisonment, the count of intentional infliction of emotional distress, the count of conversion, the count of deprivation of property, and the survival action. The circuit court denied Officer Austin's motion for judgment relative to the civil assault and excessive force counts, finding there was sufficient evidence to generate a jury question on both counts. At the close of the entire case, Officer Austin renewed his motion for judgment on the civil assault and excessive force counts, but the motion was denied and the case was submitted to the jury. After considering all of the evidence, the jury returned a verdict in favor of the Estate, determining that Officer Austin civilly assaulted Mr. Blair and used excessive force against Mr. Blair in violation of Article 24 of the Maryland Declaration of Rights. Officer Austin timely appealed to the Court of Special Appeals.

The Court of Special Appeals reversed in favor of Officer Austin, based on its independent review of a single piece of evidence – the surveillance video. Relying on *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769 (2007), the Court of Special Appeals held that "when faced with a claim of excessive use of force by a police officer where reliable video evidence is available, appellate courts should not blindly adopt the interpretation promoted by either of the parties. Rather, an appellate court should view the facts in the light portrayed by the video." *Austin*, 2019 WL 1873495 at *3 (internal citation omitted). Based on the video surveillance, the Court of Special Appeals reversed and concluded that Officer Austin acted as an objectively reasonable officer would under the circumstances.

Thereafter, the Estate filed a petition for writ of *certiorari*, which the Court of Appeals granted. Officer Austin filed a conditional cross-petition, which the Court of Appeals denied.

Return to ToC

Held: Reversed.

The Court of Appeals held that when the evidence in a civil jury trial, produces only one inference, it is an issue of law for the court to decide; but where the evidence generates several possible inferences, the jury, as the trier of fact, is the sole arbitrator of the weight and value of the evidence. Appellate courts must not substitute the jury's findings with its own. The Court of Special Appeals erred when, in its reliance on *Scott v. Harris*, it substituted its judgment for the factual findings and verdict of the jury regarding Officer Austin's excessive use of force, for that of its own, based on its own independent evaluation of the video camera evidence.

In an excessive force case, the trier of fact must determine whether a preponderance of the evidence establishes an officer exceeded the level of force that an objectively reasonable officer would use under the circumstances. Based on the totality of the evidence, the issue of whether the force used was objectively reasonable under the circumstances was a question of fact for the jury to resolve.

Starr Neal et al. v. Baltimore City Board of School Commissioners, No 21, September Term 2019, filed February 28, 2020. Opinion by Getty, J.

https://mdcourts.gov/data/opinions/coa/2020/21a19.pdf

SOVEREIGN IMMUNITY – INDEMNIFICATION

Facts:

The petitioners, three students—Starr Neal, Ty'llah Neal, and Diamond McCallum ("the Students")—were involved in a violent altercation at the Vanguard Collegiate Middle School—a Baltimore City Public School. During a class change, a school police officer—Officer Lakeisha Pulley—verbally and physically assaulted the Students. A verbal altercation between Officer Pulley and Starr Neal turned physical when Officer Pulley reached out, grabbed Starr Neal's hair, pushed her against a window, hit her, and directed pepper spray in her direction. Officer Pulley hit Ty'llah Neal when she approached. Diamond McCallum struck Officer Pulley in the head and neck area. Officer Pulley chased Diamond McCallum and hit her in the head with an expandable baton three times. The altercation ended when Diamond McCallum retreated into an office, and a teacher restrained Starr Neal and Ty'llah Neal.

The parents and guardians of the Students brought complaints in the Circuit Court for Baltimore City against Officer Pulley and the Baltimore City Board of School Commissioners for false imprisonment, malicious prosecution, false arrest, intentional infliction of emotional distress, violation of Article 26 of the Maryland Declaration of Rights, and violation of Article 24 of the Maryland Declaration of Rights. The Students also brought claims of assault and battery against Officer Pulley and negligent hiring, retention, supervision and credentialing against the Board. The circuit court dismissed the intentional infliction of emotional distress and negligent hiring claims. The Board moved for summary judgment on the basis that it could not be responsible for damages or indemnification under § 5-518 of the Courts and Judicial Proceedings ("CJ") Article. In response, the Students ignored CJ § 5-518, and instead relied on respondeat superior. The circuit court granted the Board's motion and dismissed all the claims against the Board with prejudice. The circuit court also dismissed several claims against Officer Pulley, leaving only certain intentional tort claims and the Article 24 violation.

At trial, the Students proceeded only with the Article 24 claim. The Board was not a party and did not participate at trial. The parties stipulated that Officer Pulley was acting within the scope of her employment during the altercation. The jury found that Officer Pulley violated the rights of the Students and awarded $150,000 to Starr Neal, $100,000 to Diamond McCallum, and $30,000 to Ty'llah Neal. Counsel for the students never appealed the order dismissing the Board from the case.

The Students requested that the Board satisfy the judgments against Officer Pulley; the Board declined the request. The Students then filed a motion to enforce the judgment arguing that the

Board was obligated to satisfy the judgments under CJ § 5-518. At a hearing, the Students' counsel conceded that the decision to proceed only with the Article 24 claim was strategic to avoid arguing that Officer Pulley acted with malice so that the judgment could be enforced against the Board. The strategy was based on the interpretation of CJ § 5-518 that the board would not be required to satisfy the judgments against an employee if the employee acted with gross negligence or malice. The Board argued that it was not obligated to pay the judgments because it had been dismissed from the case. The circuit court rejected the Board's position and granted the Students' motion to enforce judgments. The Board timely appealed.

The Court of Special Appeals held that the Students' motion to enforce the judgments was barred by res judicata because the Board had been granted summary judgment by the circuit court. The Court of Special Appeals decided that the Students' initial claim included indemnification against the Board and that issue was decided when the circuit granted summary judgment based on the absence of obligation under CJ § 5-518. The Students timely appealed to the Court of Appeals presenting the following question: in order to force a county school board to indemnify a judgment against a county board employee, does the mandatory joinder requirement under § 5-518 of the Courts & Judicial Proceedings Article require a county board be joined as a party throughout the entire litigation?

Held: Affirmed on different grounds.

The Court of Appeals held that for the purpose of indemnifying a defendant county school board employee, the plain language of CJ § 5-518 requires joinder of a county board of education in the litigation even if the board has for all other purposes been substantively dismissed. The county board of education must be joined for all stages of the litigation to enforce the board's statutory obligation to indemnify an employee. The Court did not need to address the issue of res judicata because statutory analysis resolved the case.

CJ § 5-518 requires joinder of a county school board to an action against a county board employee that alleges damages resulting from a tortious act or omission committed by the employee in the scope of employment. If the board is substantively dismissed, the Plaintiff is required to keep the board as a party—or request that it be brought back into the case—for the board to be required to indemnify an employee. The plain language of the statute instructs the Plaintiff to join the county board of education as a party to an action involving a county board employee for damages resulting from the employee's tortious act or omission in the scope of employment. When the board is dismissed, the statute instructs that the plaintiff request the board be brought back into the case or appeal the circuit court order dismissing the board prior to or during trial.

In this case, after the Board was dismissed, the Students did not request that the Board remain a party for purposes of indemnification. The Students likewise did not appeal the earlier order of summary judgment for the Board. By not doing so, the Students waived their right to force indemnification from the Board. The Students also did not make a CJ § 5-518 argument until

they sought to enforce the judgments against the Board. Due to the CJ § 5-518 procedural errors, the Board is not required to satisfy the judgment.

The Students' strategy relied on the interpretation of CJ § 5-518 that the county board was not required to indemnify the employee if the employee acted with malice. The Court explained that this interpretation was incorrect. The language of the statute presents two scenarios: one where only the board is liable when the employee acts within the scope of employment and one where both the board and the employee may be liable when the employee acts with malice or gross negligence. This reading is consistent with other immunity statutes governing local government and State employees. The statute governing local government employee—the Local Government Tort Claims Act ("LGTCA")—requires indemnification by the local government for any judgment against an employee within the scope of employment. Malice is relevant only to the additional liability of the employee, not the government. The LGTCA, however, does not require joinder of the government in order to enforce the judgment against it while the sovereign immunity statute for county boards of education at issue in this case does. However, the statute for State employees—the Maryland Tort Claims Act—exempts the State employee from liability only when the employee acts within the scope of employment and without gross negligence or malice. The State's immunity from suit is waived only if both are true. This is an express requirement contained in the statute, without which there is no mutual exclusivity of government and employee liability. In CJ § 5-518, there is no provision indicating that the board's immunity is contingent on the employee acting with either gross negligence or malice.

The legislative history confirms the intent that the board be joined as a party for indemnification. CJ § 5-518 was enacted to remedy the problem arising from trial courts misinterpreting a prior statute that only the board was protected by sovereign immunity and not the employee. The intent of the statute was to protect employees by requiring joinder of the county boards of education.

Therefore, the Court concluded that if a board is substantively dismissed from a case, a plaintiff must maintain the board as a party or request it be brought back into the case to indemnify an employee. The plain language and the legislative history dictate that a county board must be joined throughout the entire suit to be required to indemnify the employee. In this case, the Board is not required to satisfy the judgment against the employee because it was dismissed from the case and the Students failed to ask the court to join the Board for indemnification or appeal the order of summary judgment. Thus, they waived their right to force indemnification from the Board.

Return to ToC

In the Matter of Bernard L. Collins, No. 49, September Term 2019, filed May 26, 2020. Opinion by Biran, J.

https://mdcourts.gov/data/opinions/coa/2020/49a19.pdf

MARYLAND WORKERS' COMPENSATION ACT – SETTLEMENT AND RELEASE – DEPENDENT'S CLAIM FOR DEATH BENEFITS

Facts:

Bernard Collins worked for many years as a firefighter for the Huntingtown Volunteer Fire Department (the "Department"). In February 2012, Mr. Collins filed a workers' compensation claim with the State Workers' Compensation Commission (the "Commission"), alleging that he was disabled as a result of heart disease and hypertension caused by his work for the Department. The Department and its insurers (collectively, the Petitioners in this case) contested Mr. Collins's claim.

The parties reached a settlement of Mr. Collins's claim in 2015, under which Petitioners agreed to make various payments to Mr. Collins. As part of the written settlement agreement, Mr. Collins agreed to release Petitioners from all claims that he or his dependents might otherwise be entitled to bring under the Act arising from his disability (the "Release"). The agreement was signed by Mr. Collins, Mr. Collins's attorney, and attorneys for Petitioners. Mr. Collins's wife, Peggy Collins, was not a party to the agreement. The parties filed the agreement with the Commission on May 19, 2015. On June 4, 2015, the Commission approved the agreement. Petitioners subsequently made the agreed-upon payments to Mr. Collins.

On June 8, 2017, Mr. Collins died from cardiac arrest. On July 17, 2017, Mrs. Collins filed a "Dependent's Claim for Death Benefits" with the Commission. Petitioners contested Mrs. Collins's claim, asserting that the Release bars Mrs. Collins from receiving death benefits under the Act. After holding a hearing, the Commission concluded that Mrs. Collins has no right to death benefits and therefore denied her claim.

Mrs. Collins sought judicial review in the Circuit Court for Calvert County. The circuit court subsequently granted summary judgment to Petitioners, holding that the Release bars Mrs. Collins's claim for death benefits.

Mrs. Collins appealed to the Court of Special Appeals, which reversed the circuit court.

Held: Affirmed.

Petitioners requested that the Court of Appeals consider whether the Release operates to bar Mrs. Collins's claim for death benefits under the Act.

After assuming, without deciding, that the language of the Release evinces Mr. Collins's intent to release his wife's potential future claim for death benefits, the Court of Appeals affirmed the Court of Special Appeals' holding that the Release is unenforceable against Mrs. Collins.

The Court held that, in drafting the settlement provisions of the Act, the General Assembly intended to allow a dependent of an employee covered under the Act to settle the dependent's future claim for death benefits while the employee is still living. However, the employee does not have the power to release the dependent's claim for death benefits. Rather, the Act provides that a dependent must be a party to any settlement agreement that releases the dependent's claim for death benefits in order for such a release to be enforceable against the dependent. The Commission's approval of a settlement agreement that purports to release a dependent's future claim for death benefits does not render the release enforceable against a dependent who is not a party to the agreement.

The Court also held that an employee's settlement of the employee's own claim for benefits related to an accidental personal injury or occupational disease does not extinguish a dependent's potential future claim for death benefits based on the same injury or disease. A dependent's claim for death benefits under the Act, although based on an employee's compensable injury or disease, is independent of the employee's claim for benefits. The Act does not include any language suggesting that the employee must not have settled a claim for benefits relating to a compensable injury or disease in order for a dependent to retain a viable claim for death benefits based on the same injury or disease. Reading such a requirement into the Act would be inconsistent with the requirement that the Act be construed as liberally as possible in favor of employees and their families to effectuate the Act's benevolent purposes.

Return to ToC

COURT OF SPECIAL APPEALS

Larry Harriston v. State of Maryland, No. 739, September Term 2019, filed June 1, 2020. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2020/0739s19.pdf

CRIMINAL LAW – STATE'S CLOSING ARGUMENT – BURDEN SHIFTING

CRIMINAL LAW – JURY INSTRUCTIONS – CROSS-RACIAL IDENTIFICATION

Facts:

The Baltimore City Police Department recovered surveillance video footage of a homicide that took place outside of a church. In the video, a man stepped from an alleyway and shot the victim as he sat on the church's front steps. From the video footage, the police created photographic still prints that they disseminated throughout the police department to help identify the shooter. One officer came forward and said the shooter looked like "Little Larry," who the officer had known for many years. The officer also selected Larry Harriston from a photo array and confirmed that he was the shooter. The police also got a confirmation that the shooter was Harriston after his sister viewed stills created from the video footage. At trial, the officer identified Harriston from the witness stand. A jury convicted Harriston of first-degree murder, use of a firearm in the commission of a crime of violence, and possession of a regulated firearm by a prohibited person. The court sentenced him to life imprisonment.

Harriston appealed on two grounds. First, he claimed that the prosecutor engaged in improper burden-shifting during closing argument. Second, Harriston asserted that the court erred in declining to give a cross-racial identification instruction where "identification [was] a critical issue" and the "eyewitness's cross-racial identification [was] not corroborated by other evidence giving it independent reliability," factors Harriston argued made the instruction mandatory.

Held: Affirmed.

The Court of Special Appeals held that the circuit court properly overruled Harriston's objection to the prosecutor's comments during closing argument. Specifically, Harriston claimed that

comments that prosecutor made about the defense's ability to obtain cell phone records inappropriately shifted the burden of production to the defense. The Court held that those comments did not shift the burden of production of evidence from the State to the defense. The comments were tailored to respond to the defense's argument that the police had seized a phone from Harriston but declined to analyze the phone's data after they discovered the phone was not registered to him. In reaching its decision the Court analyzed precedent to determine that the comments did not suggest that the defense was required to produce evidence but commented on the defense's ability to obtain phone records as did the State. Additionally, analyzing the comments under the "opening the door" doctrine also show that the prosecutor's comments were made in direct response to a defense argument.

The Court also held that the circuit court did not err in declining to give a cross-racial identification instruction. After examining precedent in this State and in neighboring jurisdictions, we reaffirm what we held in *Kazadi v. State*, 240 Md. App. 156, 190 (2019), *rev'd on other grounds*, 467 Md. 1 (2020), namely, that cross-racial identification instructions are not mandatory even when, as here, the identifier is of a different race that the defendant. The important consideration is that a trial judge may not arbitrarily refuse to provide a cross-racial identification instruction: "[I]t would be an abuse of discretion for the trial judge to apply a uniform policy of rejecting all requested instructions that are not covered by some pattern instruction." *Janey v. State*, 166 Md. App. 645, 666 (2006). Here, the judge did not arbitrarily refuse to give the instruction, but in the exercise of her discretion determined that the circumstances here -- the police officer had known Harriston since he was a teen and had no trouble identifying him -- did not warrant a cross-racial identification instruction.

Return to ToC

A.A. v. Ab.D., Case No. 1439, September Term 2019, filed June 5, 2020. Opinion by Leahy, J.

https://mdcourts.gov/data/opinions/cosa/2020/1439s19.pdf

FAMILY LAW – CHILD CUSTODY – DISCOVERY SANCTIONS – *SANDERS-TAYLOR* FACTORS

Facts:

Appellant, A.A. ("Mother"), and appellee, Ab.D. ("Father"), are the parents of two minor children, I.D. and A.D. Mother and Father lived together with I.D. and A.D. until 2010, when, according to Mother, she left the family home and established a separate residence for herself and the children. Father, in turn, moved to Florida in 2011, where he lived for approximately five years before returning to Maryland in March of 2016 with his new wife.

In 2011, Mother filed a "Complaint for Custody and Other Relief" in the Circuit Court for Montgomery County requesting, among other things, sole legal and physical custody of the children. After Father failed to answer, the circuit court granted an order of default. Following a hearing, the court awarded Mother sole legal and physical custody of I.D. and A.D on November 18, 2011.

On October 23, 2015, Father filed a "Motion for Modification of Visitation." The circuit court ordered a custody and visitation evaluation. Following three days of hearings, which included the findings and recommendations of the custody evaluator, the circuit court ruled that "it's in the child's best interest that primary physical custody and sole legal custody remain with the mother at this time, but that the father will have access that will be unsupervised." The circuit court declined to grant overnight access during the weekend, due to the Father's schedule, or during the school week, because "it would be disruptive to the school schedule." The court memorialized its ruling, on October 19, 2016, in a written order granting Father's motion.

Less than two years later, on July 27, 2018, Father filed a "Motion for Modification of Custody" and alleged that, since the October 19, 2016 Order, "several changes have occurred which directly affect the minor children and their best interest." Specifically, Father stated that his work schedule changed from the weekends to a '"regular' work schedule [which] allow[ed] [Father] to have more time with the minor children." Father also claimed that Mother had denied him access to the children, unilaterally altered the court-ordered visitation schedule, and "essentially 'lord[ed]' her position as the primary custodian, over [Father] to better serve *her* whims, and not the best interest of the minor children." The circuit court set a hearing on Father's motion to modify custody for March 18, 2019.

In anticipation of the hearing on his amended motion for modification, on November 27, 2018, Father propounded interrogatories and a request for production of documents. Mother did not

respond adequately to Father's discovery requests. Father moved to compel and, at the custody hearing, moved in limine to exclude both the testimony of witnesses for whom Mother had failed to provide contact information and, with the exception of financial documents, any evidence Mother had declined to produce during discovery. The circuit court granted Father's motion and limited Mother's testimony to the subjects she addressed in her answers to Father's interrogatories and was precluded from introducing documents that were not produced in discovery or calling witnesses whose contact information was not provided during discovery.

After resolving the motion to compel and request for sanctions, the circuit court proceeded with a two-day hearing on Father's motion to modify custody. The court determined that there had been material changes in circumstances and that the best interests of the children would be served by changing the custodial arrangement. The court granted Father joint legal and shared physical custody of the children and awarded Father tie-breaking authority. Mother noted a timely appeal.

Held: Vacated and remanded.

The Court of Special Appeals held that the circuit court erred, under the circumstances of this case, by precluding Mother from presenting evidence as a discovery sanction without first considering whether that evidence was relevant to the court's determination of the best interests of the children. Procedural defects should not be corrected—nor should discovery disputes be sanctioned—in a manner that adversely impacts the court's determination regarding the child's best interests. *See Flynn v. May*, 157 Md. App. 389, 410-11 (2004). By foreclosing Mother's opportunity to introduce evidence of Father's past conduct, the court was unable to assess completely Father's fitness to have custody of I.D. and A.D.—let alone tie-breaking authority.

The court's independent obligation to the child[ren] requires that, before ordering the exclusion of evidence as a sanction, the court should take a proffer or otherwise ascertain what the evidence is that will be excluded, and then assess whether that evidence could assist the court in applying the *Sanders-Taylor* factors in its determination of the best interests of the child[ren]. When the court completes this assessment, we review any discovery sanction it imposes thereafter for an abuse of discretion.

Davon Muhammad v. Prince George's County Board of Education, No. 401, September Term 2019, filed June 1, 2020. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2020/0401s19.pdf

LABOR & EMPLOYMENT – EMPLOYEE STATUS – CONTRACTS

LABOR & EMPLOYMENT – BREACH OF CONTRACT – CONTRACT TERMS

SETTLEMENT AND RELEASE – CONFIDENTIAL TERMS – COURT'S REVIEW

Facts:

Davon Muhammad entered into an employment contract with the Prince George's County Board of Education ("Board") as a health education teacher for the 2016-2017 school year at Walker Middle School. Signed on July 26, 2016, the contract was to take effect on August 15, 2016. In preparation for his role for the upcoming school year, Muhammad attended three days of training on August 8, 9, and 10, 2016; three days of professional development on August 15, 16, and 18; and one day of professional development for health education on August 18. However, at the end of the professional development session on August 18, Muhammad was told that he would not be working for Prince George's County Public Schools ("PGCPS") in any capacity for the 2016-2017 school year.

Muhammad subsequently sued the Board in the Circuit Court for Prince George's County for breach of contract. However, at an alternative dispute resolution ("ADR") meeting on April 3, 2018, the parties agreed that Muhammad would dismiss his claims against the Board in return for $33,500.00. This ADR agreement was a simple statement that the case was resolved; Mohammad would drop his lawsuit, and in return he was to receive the agreed upon sum. The parties signed the ADR agreement and submitted it to the circuit court. The court docketed Muhammed's case as settled by agreement.

Later, the parties further reduced their agreement to a more comprehensive document entitled, "Settlement Agreement and Release" ("settlement agreement"). The first paragraph of the settlement agreement reads: "The Board shall pay and Muhammad accepts, as full and final settlement of the above-referenced litigation, the amount of Thirty Three Thousand Five Hundred Dollars, ($35,500.00), less applicable required State and Federal tax withholding, as full and final settlement of all claims." The parties also incorporated a confidentiality clause, mandating that the terms of the agreement "will not be disclosed to any person or entity, except any person or entity that is statutorily required to have such knowledge."

Soon thereafter, the Board sent Muhammad a check in the amount of $20,569.00, reflecting the deduction of $12,931.00 in state and federal tax withholdings. Muhammad refused to accept the check, demanding the full $35,000.00. The Board declined to provide another check, insisting

the lesser amount was consistent with the settlement agreement. Muhammad then filed a motion to vacate the settlement agreement and requested the court reset the case on the trial docket, or, in the alternative, order the Board to pay him $33,500.00.

At the hearing on Muhammad's motion to vacate, Muhammad argued that he was never a PGCPS employee because his termination occurred prior to the first day of school, despite the parties' signed employment contract. As such, Muhammad argued the Board wrongfully deducted payroll taxes from the settlement amount. After reviewing the employment contract and the parties' settlement agreement, the circuit court denied Muhammad's motion to vacate or, in the alternative, enforce the settlement agreement.

Held: Affirmed.

Muhammad appealed to the Court of Special Appeals to determine (1) whether he was an employee under the employment contract, and (2) whether the circuit court was permitted to consider the language in the parties' settlement agreement, given the agreement's confidentiality clause.

The Court of Special Appeals concluded that, under the five-factor employment test in *Mackall v. Zayre Corp*., 293 Md. 221 (1982), Muhammad was an employee of PGCPS at the time of his termination. Primarily, the Board exercised enough control over Muhammad such that he attended teaching in-service meetings in preparation of his new role. Muhammad's participation in these meetings demonstrated not only did the Board consider him an employee, but Muhammad considered himself to be an employee pursuant to the contract. Moreover, Muhammad signed the employment contract on July 27, 2016, which stated that his appointment would begin on August 15, 2016. Thus, at the earliest, Muhammad became an employee on July 27, but, under the most conservative estimate, on August 15. Both of these dates predated the date on which the Board notified Muhammad that it would be cancelling the employment contract, which took place on August 18, 2016. Given that Muhammad was a Board employee, the Board was correct in deducting federal and state payroll taxes from the settlement agreement, as the award was considered "wages" pursuant to the Internal Revenue Code.

The Court of Special Appeals also concluded that the terms of the settlement agreement did not bar the circuit court from reviewing the document. Under the common law interpretation of contracts, the parties' settlement agreement effectively voided the ADR agreement, and, when read together, the provisions of the settlement agreement required the circuit court to review the document when determining any dispute or controversy arising from the agreement. Importantly, it is also the court's responsibility, when sitting as a fact-finder, to review all evidence in rendering a decision. This responsibility naturally extends to the review of contracts, including settlement agreements, notwithstanding any confidentiality clause contained in such agreements. Such confidentiality clauses, then, do not prohibit or restrain the court's capacity to review such agreements.

Return to ToC

Maryland Office of People's Counsel v. Maryland Public Service Commission, et al., No. 789, September Term 2019, filed June 1, 2020. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2020/0789s19.pdf

PUBLIC UTILITIES – GAS – STATUTORY INTERPRETATION

Facts:

NiSource, Inc., and its subsidiary, Columbia Gas of Maryland, sought a rate increase that included, among other things, the cost to remediate environmental waste from Columbia Gas' site in Hagerstown, Maryland. The Maryland Service Commission (the Commission) affirmed the rate increase based on an agreement the parties reached and after a contested hearing before the Chief Public Utilities Law Judge (PULJ) on the remediation costs. The PULJ recommend the Commission approve the rate increase including the contested remediation costs. Office of People's Counsel (OPC) sought judicial review in the Circuit Court for Baltimore City, which, after a hearing, affirmed the Commission. OPC appealed.

OPC's appeal rested on two grounds. First, OPC argued the circuit court erred in finding that part of the property to be remediated was not used or useful in the making of natural gas and, therefore, the cost to remediate that part of the property should not have been included. Second, OPC claimed that in its order, the Commission failed to address OPC's contention that the cost to remediate the portion of the Columbia Gas property that was not used to manufacture gas be cleaved from the total costs. OPC argued that this omission rendered the Commission's decision arbitrary and capricious.

Held: Affirmed.

The Court of Special Appeals held that the circuit court properly affirmed the Commission. The Court reviewed the history of the case, including a prior appeal to this Court by the same parties in 2015. At that time, Columbia Gas sought a rate increase that included the costs to remediate the same property. The Commission disapproved the rate increase, and the circuit court agreed. This Court affirmed, finding that the controlling statute, Public Utilities (PUA) § 4-101, required that the property to be remediated had to be "used and useful in providing service to the public." *Columbia Gas v. Public Service Commission*, 224 Md. App. 575 (2015). As a direct result of our decision, within two years, the General Assembly struck the "used and useful" language and re-wrote the statute.

With the new statute, PUA § 4-211, now in effect Columbia Gas sought to include the remediation costs as part of a new rate increase. The Court held that the Commission properly applied the new statute to the facts. Contrary to what OPC argued, the Court agreed, giving due

deference to the Commission interpreting its own statute. The Commission could include the cost to remediate the whole property, even land upon which gas was not manufactured, as PUA § 4-211 only required that the contamination "relate" to the real property and "the real property is or was used to provide manufactured or natural gas service directly or indirectly to the gas company's customers or the gas company's predecessors." Both of the requirements were met as the site was used to manufacture gas and the contamination related to the whole property and was not necessarily confined to one portion over another. Moreover, the Legislature wrote out of existence Columbia Gas' impediment to recovery in 2015. The Court held that to add restrictions on recovery as OPC suggests would be to render the statute a nullity. Finally, the Commission considered OPC's argument about subdividing the property to apportion the costs and rejected it. The Court held that the Commission's decision was well-reasoned and neither arbitrary nor capricious.

Return to ToC

ATTORNEY DISCIPLINE

*

This is to certify that the name of:

ROBERT GEORGE LIPMAN

has been replaced upon the register of attorneys in the Court of Appeals as of June 8, 2020.

*

By an Order of the Court of Appeals dated June 10, 2020, the following attorney has been disbarred by consent:

DAVID PATRICK KARDIAN

*

By an Order of the Court of Appeals dated March 20, 2020, the following attorney has been indefinitely suspended by consent, effective June 19, 2020:

JOSEPH C. CAPRISTO

*

By an Order of the Court of Appeals dated May 8, 2020, the following attorney has been indefinitely suspended by consent, effective June 22, 2020:

JONATHAN CHARLES SILVERMAN

*

By an Order of the Court of Appeals dated June 22, 2020, the following attorney has been placed on inactive status by consent:

MICHAEL THOMAS ROSENBERG

*

*

By an Order of the Court of Appeals dated June 24, 2020, the following attorney has been placed on inactive status by consent:

JORDAN JUSTINE LYSCZEK

*

By an Opinion and Order of the Court of appeals dated June 26, 2020, the following attorney has been indefinitely suspended, effective on the date, if any, as of which he returns to active status as a lawyer in Maryland:

CHARLES LEONARD HANCOCK

*

By an Opinion and Order of the Court of Appeals dated June 26, 2020, the following attorney has been indefinitely suspended, effective on the date, if any, as of which he is recertified and no longer temporarily suspended from the practice of law in Maryland:

JAMES ANDREW MARKEY

*

By an Order of the Court of Appeals dated February 28, 2020, the following attorney has been disbarred by consent, effective June 29, 2020:

LEWIS MAURICE SILBER

*

Return to ToC

RULES ORDERS AND REPORTS

*

A Rules Order pertaining to the 205th Report of the Standing Committee on Rules of Practice and Procedure was filed on June 17, 2020.

https://mdcourts.gov/sites/default/files/rules/order/ro205.pdf

*

A Rules Order pertaining to the 202nd Report of the Standing Committee on Rules of Practice and Procedure was filed on June 30, 2020.

https://mdcourts.gov/sites/default/files/rules/order/ro202.pdf

*

A Rules Order pertaining to the 203rd Report of the Standing Committee on Rules of Practice and Procedure was filed on June 30, 2020.

https://mdcourts.gov/sites/default/files/rules/order/ro203.pdf

*

Return to ToC

UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
A		
Abdullah, Raouf B. v. Abdullah	1079 *	June 16, 2020
Ablonczy, Anthony George v. State	3219 *	June 19, 2020
Aguero, Jimmy v. State	0796	June 17, 2020
Alexander, Shelton v. Alexander	1817	June 1, 2020
Allan Myers, L.P. v. Mayor & City Cncl. of Baltimore	0849	June 11, 2020
Asencio, Orlando Manuel v. State	2706 *	June 22, 2020
Azrael, jonathan v. Md. Agricultural Land Preservation	3071 *	June 19, 2020
B		
Ball, Sheldon v. State	0657	June 12, 2020
Bey, Kevin Sparrow v. State	3004 *	June 1, 2020
Blackston, James v. State	0503	June 8, 2020
Blanding, William v. State	0660	June 12, 2020
Bonilla-Mead, Debra v. O'Sullivan	3055 *	June 9, 2020
Boyer, Corey Michael v. State	0628	June 23, 2020
Burnett, Jerome v. Dept. of Labor, Licensing & Reg.	0342	June 3, 2020
C		
Calhoun-El, James v. State	3175 *	June 4, 2020
Carbond, Inc. v. Comptroller of the Treasury	2767 *	June 2, 2020
Cartrette, Evelyn Faye v. RA Brooklyn Park	0172	June 12, 2020
Castillo, Duglas M. v. State	2791 *	June 1, 2020
Cavanaugh, Dustin Michael Lee v. State	0756	June 26, 2020
Chavis, James Arthur v. State	2617 *	June 23, 2020
City of Annapolis v. Clemens	2323 *	June 17, 2020
Clark, Damien Gary v. State	0486	June 29, 2020
Coit, Octavia T. v. Nappi	0318	June 16, 2020
Conner, Effrem Antoine v. State	0134	June 26, 2020

September Term 2019
* September Term 2018

D

Dorsey, Maurice P. v. State	0249	June 3, 2020
Durniak, John v. Bourdelais	0778	June 16, 2020

E

Edmond, John v. McDonald	0325	June 3, 2020
Elick, Nelson v. Keefe Commissary Network	2971 *	June 23, 2020
Evans, Clayton H. v. Evans	0686 *	June 26, 2020

F

Faust, Donovan v. State	3438 *	June 2, 2020
Fogg, Jonathan v. Eraibi	0645	June 22, 2020
Frisby, Ashton Lee v. State	2890 *	June 29, 2020

G

Gallion, Hubert L., Jr. v. Villa Rosa Nursing & Rehab.	2578 *	June 17, 2020
Gardner, Kennard v. State	1099	June 9, 2020
Gartside, John Edward v. State	0779	June 9, 2020
Gibson, Teresa v. Gibson	2305 *	June 26, 2020
Givens, Brian C. v. Euro Motorcars Collision Center	0088	June 26, 2020
Gupta, Darryl A. v. State	0368	June 5, 2020

H

Harrington, Travon v. State	0502	June 5, 2020
Hayman, Montie Lamont v. State	0599	June 24, 2020
Herring, Jason Timothy v. State	0910 *	June 16, 2020
Hinton, Kenneth v. State	0661	June 12, 2020

I

In re: A.H.	2093	June 19, 2020
In re: K.G.	0472	June 17, 2020
In re: M.M.	0437	June 11, 2020

J

Jackson, James Polk v. State	0498 *	June 18, 2020
Jacob, Deandre Malik v. State	0950	June 24, 2020
Jarvin, Derek v. Leggett	0145	June 3, 2020
Johnson, Jeanne Marie v. Golden	0939	June 22, 2020
Johnson, Junior Alexander v. State	0568	June 26, 2020
Jones, Brian Terrance v. State	0081 *	June 18, 2020
Jones, Mahiri v. Affordable Home Improvements	3385 *	June 16, 2020

September Term 2019
* September Term 2018

K		
Khan, Lubna v. Niazi	0873 *	June 4, 2020
Khan, Lubna v. Niazi	2399 *	June 4, 2020
L		
Langley, Alexander v. State	0147	June 2, 2020
LeGault, Glenn v. LeGault	1262	June 5, 2020
Lockett, Willie Fred v. State	2834 *	June 11, 2020
Lopez, Isabel Galvez v. Martinez	0760	June 18, 2020
M		
Mahoney, Trevante v. State	3436 *	June 4, 2020
Majied, Tanya v. Anderson	2103	June 12, 2020
Majied, Tanya v. Anderson	2104	June 12, 2020
Marszalek, Jack Anthony v. State	3522 *	June 2, 2020
Martin, Peggy Ann v. Dolet	0832	June 18, 2020
Martin, Peggy Ann v. Dolet	2711 *	June 18, 2020
McAnany, Jennifer v. McKenzie	1556	June 15, 2020
McClinton, Grady v. Balt. City Dept. of Soc. Services	0113	June 16, 2020
McCray, Jason v. State	1086	June 9, 2020
Medley, Paula v. State	3399 *	June 23, 2020
Miles, Marcus Gerrod, Sr. v. State	0605	June 9, 2020
Miller, Bertram v. Joyce	3074 *	June 12, 2020
Mills, Melissa v. Mills	0400	June 24, 2020
Murray, Eris v. State	0948	June 2, 2020
O		
Oakley, Donte v. State	2931 *	June 5, 2020
Onley, Brian v. State	0289	June 3, 2020
P		
Pescrillo, Gary William v. State	0862	June 24, 2020
Phifer, Jonathan v. State	0233	June 4, 2020
Phillips, Jack Lee, Jr. v. State	3284 *	June 3, 2020
Price, Jonathan David v. State	0026	June 30, 2020
Prince, Lionel Lee v. State	0860 *	June 2, 2020
Pritt, Melissa Rae v. State	0424	June 5, 2020
R		
Reaves, Kirby v. State	1084	June 9, 2020
Rodriguez, Kevin Oscar v. State	0347	June 3, 2020
Rosario-Ovalles, Elizardo v. State	0154	June 17, 2020
Rovin, Valerie v. State, et al.	0233 *	June 17, 2020

September Term 2019
* September Term 2018

Return to ToC

S

Salami, Djimi v. Sobo	0057	June 26, 2020
Saylor, David F. v. State	0004	June 29, 2020
Sewell, Starsha v. Howard	0173	June 2, 2020
Stilp, Jonathan D. v. State	0442	June 5, 2020

T

Tankard, James Brandon v. State	0423	June 4, 2020
Taylor, Jamaal v. Tokio Marine Insurance Co.	0646	June 18, 2020
Torrence, Dwayne v. State	0200	June 24, 2020
Treger, Tara v. Wade	1147	June 12, 2020

U

Ucheomumu, Andrew N. v. Att. Grievance Comm'n.	0600	June 15, 2020
United Behavioral Health v. J.D.S.	0517	June 17, 2020

W

Walker, Dustin James v. State	0859	June 9, 2020
Walsh, Jarob v. State	0551	June 8, 2020
Waters, Brian Keith v. State	0248	June 11, 2020
Watkins, Shabazz v. State	0104	June 30, 2020
Williams, Christen Joel v. State	1387	June 12, 2020

September Term 2019

* September Term 2018