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https://www.courts.state.md.us/data/opinions/coa/2024/24a23.pdf

EVIDENCE – MARYLAND RULES 5-701 AND 5-702 – DISTINGUISHING BETWEEN LAY AND EXPERT TESTIMONY

Facts:

Petitioner, Darryl Edward Freeman, was charged with fourteen counts pertaining to the killing of Mr. Bradley Brown. During trial in the Circuit Court for Charles County, the State sought to elicit an opinion regarding the meaning of the slang terms "lick" and "sweet licks" from Detective Corey Wimberly ("Det. Wimberly"). Petitioner objected, arguing that Det. Wimberly had not been offered as an expert relative to defining those terms. The circuit court overruled Petitioner's objection and allowed Det. Wimberly to testify that "lick" meant a robbery and "sweet lick" meant "an individual [who] is . . . easy to rob." Petitioner was subsequently convicted on all counts.

The Appellate Court of Maryland affirmed, holding that "[t]he meaning attributed by [Det.] Wimberly [to the terms] may well have been foreign to members of the jury, and it is reasonable to conclude that this interpretation was based on his specialized knowledge, training and experience[]" which required qualification of Det. Wimberly as an expert. *Freeman v. State*, 259 Md. App. 212, 235, 257, 303 A.3d 62, 75, 88 (2023). However, the Appellate Court concluded that the circuit court had not abused its discretion in allowing Det. Wimberly to testify in expert fashion as, "although the court did not expressly accept [Det.] Wimberly as a qualified expert, he was deemed so, albeit implicitly." *Id.* at 236, 303 A.3d at 75.

Held: Affirmed

The Supreme Court of Maryland affirmed on different grounds. The Court reiterated that *Ragland v. State* and its progeny instruct that a witness must be qualified as an expert under

Maryland Rule 5-702 when their testimony is beyond the "ken" of a layperson. 385 Md. 706, 870 A.2d 609 (2005). The Court held that under the facts of this case, testimony by Det. Wimberly concerning the colloquial definition of the slang term "lick" or "sweet licks" was not beyond the "ken" of a layperson and was permissible lay opinion testimony under Maryland Rule 5-701. *Compare State v. Blackwell*, 408 Md. 677, 681, 971 A.2d 296, 298 (2009) (holding that testimony concerning a scientific test fell under Maryland Rule 5-702), *with State v. Galicia*, 479 Md. 341, 392–94, 278 A.3d 131, 160–61 (2022) (holding that testimony on "Google's location history tracking" service was within the "ken" of a layperson given the prevalence of cell phones in society). The Court noted that the record did not reflect that Det. Wimberly had been "implicitly" admitted as an expert and held that the circuit court had not abused its discretion in allowing Det. Wimberly as a lay witness.

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Lithko Contracting, LLC, et al. v. XL Insurance America, Inc., No. 31, September Term 2023, filed July 15, 2024. Opinion by Fader, C.J.

https://www.mdcourts.gov/data/opinions/coa/2024/31a23.pdf

CONTRACT INTERPRETATION – OBJECTIVE THEORY OF CONTRACT INTERPRETATION

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Facts:

A commercial tenant, Amazon.com.dedc ("Amazon") contracted with a landlord, Duke Baltimore LLC ("Duke"), for the construction and subsequent lease of a warehouse. Duke was also to act as the general contractor for the project. The general contract between Amazon and Duke contained a waiver of subrogation for claims arising from the warehouse project, and it also required Duke to include a slightly different waiver of subrogation in all of its subcontracts for the project. Several years after the warehouse was built, it sustained major damage during a weather event. Amazon's insurer, XL Insurance America ("XL"), paid Amazon for losses it sustained from the damage. XL then brought a subrogation action in the Circuit Court for Baltimore City against several subcontractors who had worked on the warehouse (the "Subcontractors"). XL alleged that the Subcontractors' negligence was the cause of the damage to the warehouse and sought to recoup the insurance payment it made to Amazon. The Subcontractors defended on the ground that, in both the general contract between Amazon and Duke and in the Subcontractors' subcontracts with Duke, Amazon had waived subrogation against them, and thus, XL, as Amazon's subrogee, also could not recover against them.

The circuit court granted summary judgment in favor of the Subcontractors, finding that the waivers of subrogation in the general contract and in the subcontracts barred XL's claims against the Subcontractors. The Subcontractors appealed, and the Appellate Court of Maryland reversed. That court held that unambiguous language in the general contract limited the waiver of subrogation there such that it only protected Amazon and Duke and provided no rights to the Subcontractors. The court also held that the subrogation waivers in each subcontract unambiguously barred subrogation claims only as between the two parties to each subcontract, which are Duke and the relevant Subcontractor. Thus, the court held that the waivers in the subcontracts did not bar claims by Amazon (and thus, by XL) against the Subcontractors.

Held: Affirmed.

The Supreme Court of Maryland first addressed the general contract between Amazon and Duke. The Court determined that the waiver of subrogation in the general contract was unambiguous and was not intended to benefit the Subcontractors. The Court thus held that the Subcontractors, who were not bargaining parties to the general contract, were not third-party intended beneficiaries of that contract and could not enforce it against Amazon or XL as Amazon's insurer and subrogee. The Court also rejected the Subcontractors' argument that a different waiver of subrogation, appearing in an exhibit to the general contract that set out provisions Amazon required Duke to include in the subcontracts, replaced the waiver of subrogation in the general contract. Rather, the Court found that the exhibit was incorporated into the general contract only for the purpose described in that contract, which was to set out provisions that Duke was to include in its subcontracts with the Subcontractors.

Next, the Court turned to the language of the subcontracts. The waivers of subrogation in the subcontracts differed slightly from the waiver of subrogation in the general contract. The Court found that the language of those waivers suggested both that they did not apply to Amazon and that they applied to more than just the two parties to each subcontract (Duke and the relevant Subcontractor). The plain language did not provide any clarity on which parties beyond the parties to the subcontract were covered by the waiver of subrogation. Thus, the Court held that the waiver in the subcontracts was ambiguous, and on remand, extrinsic evidence would be needed to determine the subjective intent of the parties regarding the scope of the subrogation waiver in the subcontracts.

The Court also rejected the Subcontractors' argument that, whenever a general contract includes a requirement that related subcontracts contain waivers of subrogation, that requirement unambiguously shows the parties' intent to create a project-wide waiver of subrogation protecting all subcontractors regardless of the language of the required waivers. The Court determined that such a rule would run afoul of key contract interpretation principles, including that parties are free to contract as they wish and that contracts are interpreted according to their plain language to effectuate the intent of the parties.

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Town of Bel Air, Maryland, et al. v. Barton Bodt, et al., No. 27, September Term 2023, filed July 9, 2024. Opinion by Booth, J.

https://www.mdcourts.gov/data/opinions/coa/2024/27a23.pdf

LOCAL GOVERNMENT – MUNICIPAL PETITION FOR REFERENDUM OF A ZONING REGULATION.

Facts:

As a part of its comprehensive rezoning process, the Board of Commissioners of the Town of Bel Air (the "Commissioners") adopted Ordinance 809-22 in March 2022, which amended the Town's zoning map by reclassifying 13 properties. Thereafter, in May 2022, a group of citizens submitted a stack of signature pages to the Town Office that was intended to constitute a petition for referendum. In total, the document contained 1,051 signatures. The document did not contain any reference to Ordinance 809-22, nor did it request that the ordinance be submitted to a referendum vote in a Town election. Rather, the document stated that, by signing the document, the signatories were "record[ing their] disapproval of the change of zoning" for 5 of the 13 properties, and that they were "request[ing] the decision be reversed and the properties returned to R-2 zoning."

Under the Town Charter provisions governing referenda petitions, a petition is required to be signed by 20% or more of the persons who are qualified to vote in Town elections. The Charter also specifies that the petition "shall request that the ordinance . . . subject to referendum be submitted to the voters of the Town." The Town Board of Elections ("Election Board") determines whether the petition meets the threshold signature requirements.

The Commissioners considered the purported petition at an open meeting and determined, by verbal resolution, that it did not constitute a petition for referendum under the Town Charter, and therefore was legally insufficient and invalid. The Commissioners discussed the purported petition's deficiencies, including the fact that the circulated signature sheets did not mention words such as "petition," "referendum," or "vote," and that based upon the language of the document, citizens would have no idea that they were signing a document requesting that an ordinance be put to a public vote in a Town election. After discussing the various deficiencies with the document, the Commissioners adopted a verbal resolution determining that the purported petition was invalid because it did not comply with the Charter. As a result, the Commissioners did not forward the document to the Election Board for verification of signatures.

Thereafter, the citizen-organizers filed a complaint in the Circuit Court for Harford County against the Town seeking a declaratory judgment, a common law writ of mandamus, and permanent injunctive relief. The citizens argued that under the Charter, the Commissioners were required to send the document to the Election Board for verification of signatures, and sought,

among other things, a writ of mandamus directing the Commissioners to send the petition to the Election Board for verification of signatures. The circuit court concluded that the Commissioners' action was invalid for two reasons: (1) the Commissioners were required to send the purported petition to the Election Board prior to determining whether it was legally sufficient; and (2) the Commissioners were required to determine whether the document satisfied other facial or textual requirements under the Charter by the adoption of an "ordinance or arguably, a resolution" and not by "verbal motion." The court entered a declaratory judgment and ordered the Commissioners to (1) direct the Election Board to verify the signatures, (2) report the results of the signature verification at their next meeting, and (3) within 30 days after the reporting of the results, proceed by "resolution or ordinance to grant or deny the referendum."

The Supreme Court of Maryland granted the Town's petition for writ of *certiorari* to answer the following questions:

> 1. Did the Commissioners correctly determine that the signatory documents submitted to the Town did not constitute a petition for referendum under the applicable provisions of the Town Charter, and were therefore legally insufficient and invalid to be considered for scheduling a referendum on Ordinance 809-22?
>
> 2. Were the Commissioners permitted to make the determination set forth in question 1 by a verbal motion at a Commissioners' meeting that was memorialized in the minutes of the meeting?

Held: Vacated and remanded with instructions.

The Supreme Court of Maryland answered "yes" to both questions, vacated the judgment of the circuit court, and remanded the case to the circuit court with instructions for the entry of a declaratory judgment consistent with its opinion.

The legal sufficiency of a petition for referendum of a municipal ordinance related to a comprehensive rezoning is a matter that arises solely under the municipal charter. Md. Code Ann., Local Government Article § 5-213 (2013 Repl. Vol., 2023 Supp.).

The Court determined that under the plain and unambiguous language of the Charter, the Commissioners had the authority to make the threshold determination of whether the text of the purported petition satisfied the requirements of the Charter prior to sending it to the Election Board for verification of signatures. The Court explained that the Charter sets forth two conditions for a petition for referendum to be valid: (1) it must be signed by 20% or more of the persons who are qualified to vote in Town elections; and (2) it must request that the ordinance subject to referendum be submitted to referendum be submitted to the voters of the Town.

The Court observed that the determination of whether each requirement is satisfied is made by two separate boards. The Commissioners, as the legislative body, determine whether the petition satisfies the facial or textual requirements of the Charter. The Election Board, or its designee, verifies that the signature requirement is satisfied. The Court concluded that the text of the Charter does not contain any words that require a particular order or sequence when determining whether a purported petition satisfies these requirements. Accordingly, the Court held that the Commissioners had the authority to determine whether the document satisfied the threshold requirements to constitute a valid petition for referendum prior to sending it to the Election Board for verification of signatures.

The Supreme Court also held that the Commissioners did not err in determining that the purported petition failed to satisfy the requirements of the Charter and was therefore invalid. The Supreme Court observed that the signature pages made no reference to an ordinance, nor did they request that an ordinance be submitted to a referendum. Furthermore, the plain language of the Charter did not grant a right of referendum on a *part* of an ordinance. The citizen-organizers were not seeking a referendum of Ordinance 809-22, but rather only of parts of it. The Court determined that the Charter does not provide such a right.

Finally, the Supreme Court held that the Commissioners were permitted to make this determination by a verbal motion at a regular meeting that was memorialized in the minutes of the official proceeding. The Court explained that, unlike other types of municipal governmental action in which the Legislature requires adoption pursuant to an ordinance, here, the Legislature does not require an ordinance when determining the validity of a referendum petition in connection with a zoning matter. The Legislature has placed municipal petitions for referendum on zoning matters squarely and exclusively within the purview of the municipal charter.

Turning to the Charter, the Court noted that the Charter did not require that the Commissioners act pursuant to an ordinance. The Commissioners were authorized to determine the validity of a purported petition by a verbal resolution or motion memorialized in the minutes of the proceeding.

The Supreme Court concluded that the citizen-organizers were not entitled to a writ of mandamus or the permanent injunctive relief because the Commissioners did not err in determining that the purported petition did not meet the requirements of the Charter. The Court remanded the case to the circuit court with instructions to enter a declaratory judgment consistent with its opinion.

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APPELLATE COURT OF MARYLAND

Trusted Science and Technology Inc., v. Nicholas Evancich, et al., Nos. 38 & 1437, September Term 2023, filed July 22, 2024. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0038s23.pdf

WITNESSES – COMPELLING TESTIMONY – SUBPOENAS – RELEVANCE, MATERIALITY, AND ADMISSIBILITY OF TESTIMONY SOUGHT – NECESSITY – NONPARTIES

Facts:

In this consolidated appeal, Trusted Science and Technology, Inc. ("TST") appealed a pair of orders entered in the Circuit Court for Montgomery County in a divorce action between appellees, Nicholas Evancich ("Husband") and Belen Coleman ("Wife"). The order underlying Appeal No. 38 compelled TST—a nonparty to the action—to produce certain highly confidential business records, subject to a protective order, in response to a third-party discovery subpoena. In issuing the order, the circuit court overruled TST's objections that the materials sought by the subpoena were irrelevant and overbroad because, in the court's view, TST—as a nonparty—lacked standing to raise those objections.

Separately, under Appeal No. 1437, TST appealed an order striking its petition for contempt against Husband, Wife, and their counsel for alleged violations of the protective order.

Held:

The Appellate Court of Maryland dismissed Appeal No. 38 as moot but exercised its discretion to reach the merits under the particular circumstances because the issue was "capable of repetition, yet evading review." *See Powell v Md. Dep't of Health*, 455 Md. 520, 541 (2017) (quotation omitted). On the merits, the Court held that the ability of a person (including a nonparty) to object under Maryland Rule 2-510(f) encompasses an objection that the discovery sought by the subpoena exceeds the bounds of Rule 2-402 delineating the scope of discovery under the Maryland Rules, including that the discovery sought is not "relevant to the subject matter involved in the action[.]" Md. Rule 2-402(a). In the case sub judice, the circuit court erred in compelling production from TST, a nonparty, without considering TST's objection that the requests were overbroad and not relevant.

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The Court did not reach the merits of Appeal No. 1437 because, as the Court explained in *Kadish v. Kadish*, 254 Md. App. 467, 508-09 (2022), where the circuit court has not adjudged any person or entity in contempt of court, issues pertaining to a petition for contempt are not appealable.

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Ben Porto & Son, Ltd., et al. v. Montgomery County, Maryland, No. 2183, September Term 2022, filed July 9, 2024. Opinion by Getty, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2183s22.pdf

STATUTORY CONSTRUCTION – DISTINCTION BETWEEN TAX AND REGULATORY FEE

STATUTORY CONSTRUCTION – TAXES – DISTINCTION BETWEEN EXCISE TAX AND PROPERTY TAX

ENVIRONMENT – STORMWATER MANAGEMENT – STORMWATER REMEDIATION CHARGES

ENVIRONMENT – STORMWATER MANAGEMENT – EXEMPTION FROM STORMWATER REMEDIATION CHARGES

STATUTORY CONSTRUCTION – OVERLAP OF STORMWATER MANAGEMENT AND SEDIMENT AND EROSION CONTROL

Facts:

The Water Quality Protection Charge ("WQPC") is Montgomery County's stormwater remediation charge, authorized under State law and implemented to reduce the adverse environmental effects associated with stormwater from increased development. The WQPC is charged based upon the amount of impervious surface on a property.

Ben Porto & Son, Ltd., and Tri-State Stone & Building Supply, collectively "Porto," own and operate a stone quarry in Montgomery County, Maryland. Between 2016 and 2018, Porto filed applications and appeals regarding the imposition of the WQPC against its property. Porto argued that it was either exempt from the WQPC under State and County law or entitled to a credit against the WQPC under County law because it treated stormwater on-site. Porto also asserted that although Montgomery County designated the WQPC as an excise tax, the WQPC was a regulatory fee that was preempted by State regulation of mines. Montgomery County denied each of Porto's applications and appeals.

Porto subsequently appealed the denials to the Maryland Tax Court. After holding a trial on the various issues, the Tax Court held that Porto treated all of its stormwater on-site and was therefore entitled to a 100% credit against the WQPC. The Tax Court rejected Porto's other arguments regarding exemption. The parties then cross-appealed to the Circuit Court for Montgomery County, which affirmed the Tax Court's order except the award of a 100% credit, concluding that the Tax Court did not demonstrate how it determined the amount of the credit award. The parties then cross-appealed the circuit court's order.

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Held: Affirmed.

The Appellate Court of Maryland affirmed the circuit court's ruling. After assessing relevant Maryland precedent, the Court held that the WQPC is a valid excise tax, not a regulatory fee. Although it may have incidental regulatory effects, the primary purpose of the WQPC is to raise revenue, which makes it a tax. Further, based upon the framework established by the Supreme Court of Maryland in *Weaver v. Prince George's County*, 281 Md. 349 (1977), and *Waters Landing Limited Partnership v. Montgomery County*, 337 Md. 15 (1994), and as applied by the Appellate Court in *Shaarei Tfiloh Congregation v. Mayor & City Council of Baltimore*, 237 Md. App. 102 (2018), the WQPC is an excise on a specific use of property, not a direct tax on property.

The Court next held that Montgomery County must comply with the requirements in State law for implementing a stormwater remediation charge despite the County's attempt to impose the WQPC based upon its general taxing authority exclusively. The Court considered the legislative history and statutory context for State stormwater laws before concluding that the care taken by the General Assembly in ensuring that Montgomery County was subject to certain requirements of State law indicates that the County cannot avoid those requirements by relying on its general taxing authority to authorize the WQPC.

Further, the Court held that the WQPC can be imposed upon Porto. Porto argued that Montgomery County provides no stormwater services to the Porto property and therefore cannot charge Porto the WQPC. In *Shaarei Tfiloh Congregation v. Mayor & City Council of Baltimore*, the Appellate Court held that the amount of impervious surface on a property is an acceptable proxy for calculating the services provided by a county or municipality. Because the WQPC is imposed based upon the amount of impervious surface on a property, it is related to the services provided by the County as required by State law. Additionally, the Court concluded that State law does not exempt all National Pollutant Discharge Elimination System permit holders from stormwater remediation charges; rather, only State entities with such permits are exempt.

Finally, the Court held that the plain language of Montgomery County law does not require strict conformance with practices in the Maryland Stormwater Design Manual for a property to be eligible for a credit against the WQPC. Because Porto demonstrated that it treated stormwater on-site, it is eligible for a WQPC credit even though its treatment practices do not strictly conform to the Design Manual. The Court, however, agreed with the circuit court that the Tax Court had not demonstrated how it calculated the award of a 100% credit to Porto. Montgomery County law requires specific calculations and findings for determining the amount of credit a property owner is entitled to, and the record does not demonstrate that the Tax Court made those calculations and findings. The Court therefore affirmed the remand of the case to the Tax Court to make such calculations and findings on the record.

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Angelo Reno Harrod v. State of Maryland, Nos. 7 & 8, September Term 2023, filed April 22, 2024. Opinion by Tang, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0007s23.pdf

CRIMINAL LAW – EVIDENCE – FACTS IN ISSUE AND RELEVANCE – SUBSEQUENT CONDITION OR CONDUCT OF ACCUSED – IN GENERAL

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CRIMINAL LAW – TRIAL – RECEPTION OF EVIDENCE – INTRODUCTION OF DOCUMENTARY AND DEMONSTRATIVE EVIDENCE

Facts:

In June 2021, two gunmen opened fire on an occupied vehicle in a residential parking lot next to the Graduate Hotel in Annapolis, Maryland. The occupants were unharmed, but a bullet struck and fatally wounded Michelle Cummings, who happened to be on the hotel patio.

After the shooting, law enforcement circulated images of the suspects captured from surveillance footage. Certain officers recognized Angelo Harrod as one of them and advised detectives that he had an active warrant. Within 24 hours of the shooting, police located Mr. Harrod in a community he was known to frequent, and he was apprehended after a brief foot pursuit. During the arrest, Mr. Harrod repeatedly yelled about his belongings, including his cell phone, demanding that the police give his phone to his acquaintances. Police recovered "CDS," his cell phone, a digital scale, currency, and tennis shoes from his person. Body camera footage of the arrest was admitted over objection at trial.

The court admitted a 40-minute composite video of clips from original footage gathered from over one hundred cameras in two neighborhoods. The composite video showed a man (Mr. Harrod) wearing a distinctive black sweatsuit in the neighborhood where the shooting occurred and in the nearby neighborhood where he was seen exiting a cab shortly after the shooting.

Detectives who were familiar with the area testified about the clips and identified cameras, times, streets, and specific activities depicted in the clips.

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Angelo Harrod was convicted in the Circuit Court for Anne Arundel County of first-degree murder of Mrs. Cummings, among other offenses. He appealed, arguing that the trial court erred by admitting evidence of his reaction to his arrest as "consciousness of guilt" evidence, admitting the composite video as summary evidence, and permitting detectives to narrate portions of the video evidence.

Held: Affirmed

The Appellate Court held that evidence of Mr. Harrod's attempted flight and analogous conduct during apprehension was relevant as evidence of consciousness of guilt because it tended to show that he wanted to evade capture and prevent evidence linking him to the shooting from being recovered. *See Ford v. State*, 462 Md. 3, 50 (2018). This evidence was admissible even though, at the time of apprehension, Mr. Harrod had active warrants for unrelated offenses and possessed drug-related paraphernalia. This is because consciousness of guilt evidence is relevant and is not rendered inadmissible because it may indicate that a defendant committed another offense. *See Thomas v. State*, 372 Md. 342, 354 n.3 (2002). Whether attempted flight and analogous conduct showed consciousness of guilt for the offense for which Mr. Harrod was on trial went to the weight of the evidence, not admissibility. *See id*.; *Ford*, 462 Md. at 50; *People v. Yazum*, 13 N.Y.2d 302, 305 (1963); *Fulford v. State*, 221 Ga. 257, 258 (1965); *Commonwealth v. Booker*, 386 Mass. 466, 470–71 (1982); *Ricks v. Commonwealth*, 39 Va. App. 330, 336–37 (2002).

The Court held that the composite video was admissible under Maryland Rule 5-1006 because the voluminous source videos could not be conveniently examined in court. See 31 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 8044 (April 2023 update); *O'Donnell v. State*, 188 Md. 693, 698 (1947). It explained that the composite video supported the State's theory of the case went to the weight of the evidence, not admissibility. *See DuBay v. King*, 844 F. App'x 257, 263 (11th Cir. 2021); *United States v. Lynch*, 735 F. App'x 780, 786 (3d Cir. 2018).

Finally, the Court held that the circuit court did not abuse its discretion by allowing the detectives to explain what various video clips portrayed. Their knowledge of the area and camera locations provided a foundation for them to describe what they saw on the videos in a way that helped the jury understand the chronology of events and how it related to other evidence presented at trial. *See* Md. Rule 5-701.

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State of Maryland v. Tyler Allen Mailloux, No. 1203, September Term 2023, filed March 27, 2024. Opinion by Tang, J.

https://www.courts.state.md.us/data/opinions/cosa/2024/1203s23.pdf

CRIMINAL LAW – JURISDICTION – JURISDICTION OF OFFENSE

CRIMINAL LAW – JURISDICTION – LOSS OR DIVESTITURE OF JURISDICTION

Facts:

Md. Code Ann., Courts and Judicial Proceedings Article ("CJP") § 4-301(a) grants the District Court exclusive original jurisdiction in a criminal case in which a person at least 16 years old is charged with violating vehicle laws. CJP § 4-301(b) grants the District Court exclusive original jurisdiction in a criminal case in which a person at least 18 years old is charged, in pertinent part, with a common-law or statutory misdemeanor, *see* (b)(1); or a violation of the hit-and-run statute under Md. Code Ann., Transportation Article ("TA") § 20-102, *see* (b)(17).

But the District Court's exclusive original jurisdiction is subject to exceptions under CJP § 4-302. The District Court's jurisdiction over an offense is concurrent with that of the circuit court under two circumstances, subject to an exception not applicable here. First, the District Court and circuit court have concurrent jurisdiction over offenses for which the "penalty may be confinement for 3 years or more or a fine of $2,500 or more[.]" CJP § 4302(d)(1)(i). Second, the District Court has concurrent jurisdiction with the circuit court for felony offenses listed in CJP § 4-302(d)(1)(ii), including those under the hit-and-run statute (TA § 20-102).

Certain triggering events will divest the District Court of its exclusive original jurisdiction. For instance, "the District Court does not have jurisdiction of an offense otherwise within the District Court's jurisdiction if a person is charged . . . in the circuit court with an offense arising out of the same circumstances and within the concurrent jurisdictions of the District Court and the circuit court described under subsection (d) of this section." CJP § 4-302(f)(1)(ii). In that case, "the circuit court for the county has exclusive original jurisdiction over all the offenses." CJP § 4-302(f)(2).

G.K., a minor, was struck and killed by a vehicle whose driver failed to stop at the scene of the accident. The State filed a criminal information in the Circuit Court for Worcester County charging Tyler Allen Mailloux with 17 counts of violating various provisions of Title 20 the Transportation Article. Counts 1 through 8 charged Mailloux with misdemeanor and felony violations of the hit-and-run statute. Counts 9 through 17 charged him with misdemeanor violations based on his failure to render assistance to G.K., his failure to inform the police or the MVA of the accident, and his failure to provide insurance information.

Mailloux moved to dismiss the information for lack of jurisdiction, arguing that the District Court had exclusive original jurisdiction over the charges. The court granted Mailloux's motion, and the State appealed.

Held: Reversed

The Appellate Court of Maryland held that, under CJP § 4-302(d)(1)(i), the District Court and circuit court have concurrent jurisdiction over offenses charged in Counts 1 through 8. This is because these charges met the penalty thresholds of "confinement for 3 years or more or a fine of $2,500 or more[.]" Separately, under subsection (ii), the District Court and circuit court have concurrent jurisdiction over offenses charged in Counts 2, 4, 6, and 8 because they are felonies under the hit-and-run statute (TA § 20-102). *See* CJP § 4-302(d)(1)(ii).

When the State filed the information in the circuit court to include offenses charged in Counts 9 through 17, which undisputedly arose out of the same circumstances as offenses charged in Counts 1 through 8, the District Court was divested of exclusive original jurisdiction in the criminal case, and the circuit court had exclusive original jurisdiction over all the offenses. *See* CJP § 4-302(f)(1)(ii), (2).

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Brandon Stanley Caples v. State of Maryland, No. 1920, September Term 2022, filed July 1, 2024. Opinion by McDonald, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1920s22.pdf

SEARCH AND SEIZURE – SEARCH WARRANTS – VALIDITY OF WARRANT – CROSS-DESIGNATION OF ISSUING JUDGE

Facts:

Police officers executed an arrest warrant for Brandon Caples at an apartment in Charles County that he shared with his girlfriend. While arresting Mr. Caples, the officers saw two firearms on his bed. They then obtained a search warrant for the apartment that was issued by two judges of the Circuit Court for Prince George's County and returned to seize those firearms, among others. Mr. Caples was charged with various firearms violations.

Mr. Caples moved to suppress the fruits of the search on the basis that the search warrant was invalid because the judges of the Circuit Court for Prince George's County who issued it lacked territorial jurisdiction to authorize a search in Charles County. The Circuit Court granted the motion to suppress on that ground, but held that the two firearms seen on the bed remained admissible under the plain view doctrine – an exception to the warrant requirement of the Fourth Amendment.

Held: Affirmed.

The Appellate Court of Maryland affirmed the decision of the Circuit Court for Prince George's County on different grounds.

Although judges of the Circuit Court for Prince George's County ordinarily have jurisdiction to issue search warrants only for locations in that county, the judges who issued the warrant for Mr. Caples' apartment had both been cross-designated, pursuant to the State Constitution and Maryland Rules, by the Chief Judge of the Court of Appeals of Maryland (now called the Supreme Court of Maryland) to the District Court, which has statewide jurisdiction. In addition, under an emergency administrative order issued by the Chief Judge in connection with the COVID-19 crisis, both judges had also been cross-designated temporarily to serve on other trial courts, including the Circuit Court for Charles County. All of these cross-designations were in effect at the time the search warrant was issued. Accordingly, the judges had territorial jurisdiction to issue the warrant. The two firearms were thus admissible in evidence without need to consider an exception to the warrant requirement of the Fourth Amendment.

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In the Matter of the Trust Under Item Ten of the Last Will and Testament of Dorothea K. Lanier, Deceased, No. 737, September Term 2023, filed July 31, 2024. Opinion by Tang, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0737s23.pdf

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TRUSTS – ACCOUNTING AND COMPENSATION OF TRUSTEE – COMPENSATION – IN GENERAL – ALLOWANCE AND RECOVERY

Facts:

The appeal examines whether a trustee, who is also an attorney, is entitled to compensation when they hire themselves as counsel to provide legal services for a trust.

By order of the Circuit Court for Anne Arundel County, Elliot N. Lewis, Esq. ("Lewis") was appointed successor trustee of a trust. Lewis hired himself to perform legal work in connection with the administration of the trust. He later petitioned for his fees to be paid from the trust funds. The court denied the fee petition after concluding that the self-hiring posed a conflict of interest under the Maryland Trust Act, Md. Code, Est. & Trusts ("ET") § 14.5-802 (1974, 2017 Repl. Vol.).

Held: Reversed and remanded

Preliminarily, the Appellate Court raised *sua sponte* the issue of whether the order denying Lewis's fee petition was appealable while the case remained open in the circuit court. It held that an order denying a trustee's fee petition in the context of the administration of a trust falls within the collateral order doctrine and thus was appealable, where no other proceeding was pending in the circuit court. The denial order conclusively determined the disputed question of whether the trustee was entitled to his attorneys' fees, it resolved an important issue independent of the administration of the trust, and the order would have been effectively unreviewable if the appeal had to await the termination of the trust.

On the merits, the Appellate Court held that the circuit court erred in interpreting ET § 14.5-802 to mean that the trustee's self-employment as counsel to perform legal work for the trust

presented a conflict of interest that strictly prohibited the trustee from payment of reasonable compensation for such services. Under the Maryland Trust Act, a trustee shall administer the trust solely in the interests of the beneficiaries. ET § 14.5-802(a). ET § 14.5-802 outlines different types of prohibited divided-loyalty transactions by a trustee involving trust property. If a trustee engages in a self-dealing transaction under subsection (b), the transaction is voidable by the beneficiary affected, except under certain circumstances. Such a transaction is irrebuttably presumed to be affected by a conflict between personal and fiduciary interests.

If the transaction is not self-dealing but is entered into with persons with close business or personal ties to the trustee under subsection (c), it is presumptively voidable. The presumption can be rebutted if the trustee establishes that a conflict between personal and fiduciary interests did not affect the transaction.

Subsection (f), however, provides that certain divided-loyalty transactions are allowed if fair to the beneficiaries. One exception is the payment of "reasonable compensation" to the trustee. ET § 14.5-802(f)(2).

The Appellate Court concluded that regardless of whether Lewis's self-employment was self-dealing under ET § 14.5-802(b) or other conflict of interest under subsection (c)(4), the compensation Lewis sought as trustee was for legal work that he purportedly performed using his specialized skill as an attorney. See ET § 14.5-806. Therefore, the payment of "reasonable compensation" to Lewis is not precluded under subsection (f)(2) if "fair to the beneficiaries[.]"

Accordingly, the Appellate Court reversed and remanded to the circuit court with instructions to make findings of fact as to the fair and reasonable compensation for legal services performed by Lewis for the administration of the trust.

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Shivani Bajaj v. Reuben Bajaj, No. 1267, September Term 2023, filed July 31, 2024. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1267s23.pdf

APPEAL AND ERROR – NATURE AND GROUNDS OF APPELLATE JURISDICTION – NATURE AND SOURCE

APPEAL AND ERROR – REVIEW – SCOPE AND EXTENT OF REVIEW – IN GENERAL – DISCRETION OF LOWER COURT – ABUSE OF DISCRETION

Facts:

This appeal arises from a hearing limited to matters of custody and child access in an ongoing divorce action. Following the hearing, the circuit court issued an oral ruling and written order, making factual findings but not issuing a final decree of absolute divorce. Of particular significance, the circuit court made findings that the plaintiff ("Mother") had created a "loyalty bind" between her and the parties' minor children, such that they could not be parted from Mother for more than five days.

The defendant ("Father") filed an interlocutory appeal to an in banc panel of the circuit court; Mother responded with a motion to dismiss the in banc panel's review, on grounds that it lacked jurisdiction to hear an interlocutory order. In the alternative, Mother argued that the trial judge's custody order was not of the type appealable as a non-final order pursuant to Maryland Code Annotated, Courts & Judicial Proceedings Article ("CJP") § 12-303(3)(x).

The in banc panel denied Mother's motion and held that it had jurisdiction to review the order. In reviewing the trial judge's order, the in banc panel ruled that the court had abused its discretion in that it failed to reconcile its finding that the children could not be away from Mother for more than five days with its award of periods of visitation to Father longer than five days.

Held: Affirmed and remanded for further consistent proceedings.

First, the in banc panel had jurisdiction to hear an interlocutory appeal of an order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order," pursuant to CJP § 12-303(3)(x). An in banc panel of the circuit court exercises appellate jurisdiction, and the extent of that jurisdiction is defined by statute. The Supreme Court of Maryland has held that the statutory scheme setting the boundaries of the appellate jurisdiction in Maryland applies with equal force to the appellate courts and the circuit court sitting in banc. Thus, where appeal of an interlocutory order would be permitted to the Appellate Court under CJP § 12-303, it is appealable in banc. The custody order here was an

appealable interlocutory order depriving a parent of custody under CJP § 12-303(3)(x), and the in banc panel did not err in reviewing the order.

Second, the trial judge abused his discretion by providing an inadequate explanation of how the court's factual findings supported its custody order. The in banc panel did not err in remanding the matter to the trial judge for further explanation of his order.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

JOSEPH TAUBER

has been replaced on the register of attorneys permitted to practice law in this State as of July 9, 2024.

*

DISBARMENTS/SUSPENSIONS/INACTIVE STATUS

By an Order of the Supreme Court of Maryland dated July 9, 2024, the following attorney has been immediately suspended:

MICHELE YVONNE GALLAGHER

*

By an Order of the Supreme Court of Maryland dated July 25, 2024, the following attorney has been disbarred:

ROBERT P. WALDECK

*

By an Order of the Supreme Court of Maryland dated July 29, 2024, the following attorney has been disbarred by consent:

ROBERT EDWIN GLENN, IV

*

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RESIGNATIONS

By its July 24, 2024, Order the Supreme Court of Maryland has accepted the resignation of the following attorney from the practice of law in this state:

BARRY RICHARD LENK

*

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JUDICIAL APPOINTMENTS

*

On July 25, 2024, the Governor announced the appointment of the **Honorable Peter Kevin Killough** to the Supreme Court of Maryland. Judge Killough was sworn in on July 31, 2024, and fills the vacancy created by the retirement of the Hon. Michele D. Hotten.

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UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

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