UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0101 & 1205

September Term, 2015

BALTIMORE COUNTY, MARYLAND

v.

DORA WADDY

Woodward,
Meredith,
Kenney, James. A. III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: December 19, 2016

In this consolidated appeal, appellant, Baltimore County ("County"), appeals the the Circuit Court for Baltimore County's denial of its request for a *Frye-Reed* hearing on the methodologies and theories supporting the causal connection opinion of appellee Dora Waddy's expert.[1]

The question presented by the County, as we have condensed it, is as follows:

> Did the circuit court err or abuse its discretion in denying a *Frye-Reed* hearing regarding the causal connection opinion of Ms. Waddy's expert?

For the reasons that follow, we answer that question in the negative and affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On June 19, 2013, Ms. Waddy filed a claim with the Maryland Workers' Compensation Commission ("Commission") in which she alleged an occupational disease (non-Hodgkin's lymphoma) arising out of and in the course of her employment as a paramedic with the Baltimore County Fire Department ("Fire Department"). As a paramedic, she responded with firefighters to fire calls and emergency medical service calls ("EMS"). In addition, she was HAZMAT-trained and responded to hazardous material calls. At the firehouse, she was exposed to "fumes from the gas and then diesel"

[1] Ms. Waddy died sometime after the Maryland Workers' Compensation Commission ("Commission") hearing; this case is being pursued under Maryland Code (1999, 2008 Repl. Vol.), § 9-502(c) of the Labor and Employment Article ("L.E. § 9-502(c)"), which states that an employer "shall provide compensation in accordance with this title to: . . . the dependents of the covered employee for death of the covered employee resulting from an occupational disease," on behalf of Ms. Waddy's disabled son. We will continue, however, to refer to "Ms. Waddy" as the appellant in this opinion.

from running vehicles and pieces of apparatus and periodically when she and others would wash the walls and ceilings.

At the beginning of the Commission hearing on January 17, 2014, counsel for Ms. Waddy, referring to the case as "a contested 9-503 case on one level based on non-Hodgkin's lymphoma with the current amendments to the 9-503 statute,"[2] asked that the Commission "also consider whether the claim would be compensable in the absence of

[2] L.E. § 9-503(c) now provides that certain public safety workers including paid rescue squad members and firefighters are "presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if the individual:"

> (1) has . . . non-Hodgkin's lymphoma . . . that is caused by contact with a toxic substance that the individual has encountered in the line of duty;
> (2) has completed at least 10 years of service . . . where the individual currently is employed or serves;
> (3) is unable to perform the normal duties . . . in the department where the individual currently is employed or serves because of the cancer or leukemia disability; and
> (4) in the case of a volunteer . . . has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.

According to Ms. Waddy's attorney, her case was an L.E. § 9-502 case rather than an L.E. § 9-503 presumption case because EMTs and paramedics, through a "drafting mistake," were not included until a "corrective bill" was passed in 2014 covering "paid rescue squad member[s]" for dates of disability after that date. *See* Revised Fiscal and Policy Note, S.B. 1099 at 3-5 (2014 Session) (defining "rescue squad members" generally "as individuals who engage in rescue activities," which includes providers such as "EMTs or paramedics," and others that "assist with emergencies such as lost persons and natural disasters"). In addition, L.E. § 9-503 only applied to "active firefighters" and Ms. Waddy was retired at the time of disablement. Counsel for Ms. Waddy thought he could overcome the retirement issue based on when her symptoms began, but he dropped his Cross-Petition for Judicial Review based on the failure of L.E. § 9-503 to include paramedics until October 2014.

the 9-503 presumption," i.e., under Maryland Code (1999, 2008 Repl. Vol.), § 9-502 of the Labor and Employment Article ("L.E. § 9-502"). In addition, the date of disablement was at issue.

On January 29, 2014, the Commission issued an order finding that Ms. Waddy sustained an occupational disease under L.E. § 9-502,[3] not L.E. § 9-503, and that the date of disablement was June 29, 2011. On February 6, 2014, the County filed a Petition for Judicial Review. Ms. Waddy responded and filed a Cross-Petition for Judicial Review on February 18, 2014. As noted, the cross-petition was later withdrawn.

Following the County's Petition for Judicial Review of the Commission's decision, Ms. Waddy took Dr. Jonathan Gitter's video deposition. In that deposition, Ms. Waddy's counsel elicited Dr. Gitter's educational background; his board certification in internal medicine; and the nature of his practice, especially in relationship to firefighters with cancer. Dr. Gitter explained that, based on his education and training and having reviewed "the literature [during his] work life evaluating firefighters and cancer," he was familiar with "the types of conditions that can develop as a result of the exposures that . . . firefighters have."

[3] L.E. § 9-502 provides that in "the event of a covered employee becoming partially or totally incapacitated: (1) because of an occupational disease; and (2) from performing the work of the covered employee in the last occupation in which the covered employee was injuriously exposed to the hazards of the occupational disease," the "employer in whose employment the covered employee was last injuriously exposed to the hazards of the occupational disease" provide compensation to the covered employee or "the dependents of the covered employee for death of the covered employee resulting from an occupational disease."

Counsel for the County asked Dr. Gitter about his familiarity with the studies related to the statutory presumption in Maryland regarding firefighters and certain cancers, and the following exchange ensued:

> [Dr. Gitter]: I don't—I don't know the exact studies that were used for the presumption, but I know that they, that they came to conclusions or agreements based on the fact that there are many, many studies which show associations between cancer, certain cancers and the exposures that firefighters have to toxic fumes and products of combustion from fires.
>
> [COUNSEL FOR THE COUNTY]: Okay. And I'm sorry. "They" is referring to who?
>
> [DR. GITTER]: I'm talking about people that have done research over the years. I mean, I'm not talking about that specific group. There are—
>
> * * *
>
> There are several different journals that have published articles to that effect and there are many groups that looked at it. There's public health—at the Bloomberg School of Public Health at Johns Hopkins University. They've done—they've done studies to—and they've looked at the association between occupational exposures and cancers.

After inquiring into Dr. Gitter's training in toxicology, epidemiology, and occupational and environmental medicine,[4] counsel for the County indicated "[n]o objection to [Dr. Gitter] being admitted as an expert in internal medicine."

Dr. Gitter explained his review of risk factors ("something that either you're exposed to or . . . have in your genetics . . . that would make it more likely that you would

[4] Dr. Gitter trained at Bellevue in New York University Hospitals with Dr. Lewis Goldfrank, the publisher of "one of the seminal books on toxicology." He stated that epidemiology and occupational and environmental medicine were part of his "broad specialty" and "part of our training and part of what we are tested on for the boards."

develop a disease"), related to non-Hodgkin's lymphoma. In reaching his causation opinion, he considered Ms. Waddy's family history ("it's not really known to be a familial disease") and smoking ("she [had] not been a very heavy smoker, [and] had been years free of smoking"). In his view, "probably the biggest risk factor would be exposures to toxic chemicals and to exposures to radiation." He found no unusual radiological exposure in her history, but her work history and her testimony before the Commission indicated exposure to fires, exhaust fumes, and HAZMAT responses. It was his opinion "to a reasonable degree of medical probability" that Ms. Waddy's occupation as a paramedic with the Baltimore County Fire Department was "a cause or contribut[or] to the development of her non-Hodgkin's lymphoma."

During the direct examination of Dr. Gitter, Ms. Waddy's counsel referred him to several studies regarding firefighters and cancer in many areas of the body, including non-Hodgkin's lymphoma. On cross-examination, the County's counsel asked Dr. Gitter whether he drew "a distinction between firefighters and paramedics in terms of causation or causal relationship" regarding "cancer generally, but in this case, non-Hodgkin's lymphoma." He responded:

> I think that potentially the degree of exposure to those risk factors may be higher in active firefighters, but I think it can still be quite significant in the paramedics who were at the fire grounds without protective breathing equipment on. Close enough . . . to breathe in the smoke and fumes.

In response to the LeMasters study, which is a meta-analysis of 32 studies of Cancer Risk Among Firefighters, and in which there is a Summary Risk Estimate Across

all Types of Studies for All Cancers that shows non-Hodgkin's lymphoma as "probable," Dr. Gitter explained:

> The summary risk estimate is looking at the risk in the population that was exposed versus the risk in the population that wasn't exposed and it's over, *it's over 1*, so it's showing that there's a positive correlation or an increased risk amongst those who were exposed to develop that, the non-Hodgkin's lymphoma. And based, based on that, their likelihood of cancer risk, was a probable, was their overall conclusion as opposed to possible or or unlikely were the other possibilities.[5]

[5] In an earlier discovery deposition taken by the County on September 2, 2014, Dr. Gitter also discussed risk ratio:

> [COUNSEL FOR THE COUNTY]: A risk ratio? Is that a term you're familiar with?
>
> [DR. GITTER]: If you use it in a context I might be more familiar with it.
>
> [COUNSEL FOR THE COUNTY]: In the context of incidence of, say, a particular cancer in a particular population?
>
> [DR. GITTER]: Yes, I think that's something that's often looked at. I think you're talking about comparing the risks to the general population, you know, of whatever group you're looking at compared to the general population.
>
> [COUNSEL FOR THE COUNTY]: Do you have any idea what that might be ballpark with respect to non-Hodgkin's lymphoma in firefighters or paramedics?
>
> [DR. GITTER]: I think that there are multiple studies that show it *to be over one*. So, in other words, more likely in firefighters that in the general population.

(Emphasis added.)

> [COUNSEL FOR MS. WADDY]: So probable is the highest sort of category or categorization?
>
> [DR. GITTER]: Right, right. And it means that there was a significantly increased incidence in those, in those, -- of that disease with those exposures.

(Emphasis added.)

The County, on January 28, 2015, filed a Motion in Limine contending that Dr. Gitter's causation opinion should be excluded "under Rule 5-702 and the *Frye-Reed* test."[6] In its supporting memorandum, the County questioned the medical background of Dr. Gitter, who is board certified in internal medicine and whose report before the Commission stated it was his "impression within a reasonable degree of certainty that the exposure that she experienced as an EMT[7] for the Baltimore County Fire Department w[as] a substantial contributor to the development of her non-Hodgkin's lymphoma. There are no other known risk factors for her having developed the lymphoma." The County pointed out that Dr. Gitter has no "advance training in toxicology, occupational and environmental medicine, or epidemiology," that he could not provide "a single toxic substance that he would relate [Ms. Waddy's] disease to," and could not "intelligently

[6] That same day, the County filed a Motion to Consolidate Ms. Waddy's case with Kathryn Rice's Workmen's Compensation case (the *Rice* case) for the limited purpose of the "two similar motions in limine." Ms. Rice was employed as an EMT and her case involved a different cancer (colorectal cancer), but the doctor opining to causation was also Dr. Gitter. The two motions in limine and the Motion to Consolidate were "Held for the Trial Judge," with trial scheduled for March 16, 2015.

[7] Earlier in the report, Dr. Gitter wrote that "Ms. Waddy is a Baltimore County Fire Department paramedic who retired in 2009 after 25 years with the department."

discuss the risk ratios or confidence intervals" in scientific or academic studies related to an increased risk of certain cancers in firefighters.

Trial began on March 16, 2015. Regarding the motion in limine and a possible *Frye-Reed* hearing, the trial court suggested a "sort of mini-hearing on that issue alone," because if a *Frye-Reed* hearing was required, it would have to be scheduled and the trial postponed. Rather than consolidate the two cases for *Frye-Reed* purposes, it was determined that the hearing that day would relate only to Ms. Waddy's case.[8]

During discussions on whether a *Frye-Reed* hearing was necessary, there was the following exchange between the court and counsel for the County:

> [THE COURT]: Let me ask you, what exactly is the methodology that's the novel scientific technique here because I haven't heard you spell that out yet.
>
> [COUNSEL FOR THE COUNTY]: Sure. Your Honor, when you're discussing causation, essentially any physician, any scientist is going to apply a differential diagnosis. I don't think that there's a question the differential diagnosis is the appropriate methodology. The problem is in the []quality of the analysis. Basically, Dr. Myerson has and will testify that Dr. Gitter looks at these studies and he doesn't know what he's looking at. He simply doesn't understand the numbers.
>
> [THE COURT]: Okay. So what you're saying is the methodology that's used, the differential diagnosis, is generally accepted in the relevant scientific community, correct?
>
> [COUNSEL FOR THE COUNTY]: Yes, Your Honor.

[8] During argument on the motions in limine and the need for the *Frye-Reed* hearing, counsel for Ms. Waddy withdrew his Cross-Petition for Judicial Review.

> [THE COURT]: But you, you think that their expert did just a really bad job of, of performing that, is that correct?
>
> [COUNSEL FOR THE COUNTY]: That's essentially correct.
>
> [THE COURT]: Okay. Then this is not a *Frye-Reed* issue.
>
> [COUNSEL FOR THE COUNTY]: Well —
>
> [THE COURT]: It's, it's not. It's not. Differential diagnosis has been around, I mean, that's —
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> * * *
>
> [COUNSEL FOR THE COUNTY]: Yeah, yes, it has.
>
> [THE COURT]: I would agree with you that that's, that's not a novel scientific methodology, there's, and, and you can have experts that do a bad job of applying the science and that's for the jury to determine. If that's what we're arguing about, it's not a *Frye-Reed* issue.

The court denied the *Frye-Reed* motion, and the case proceeded to trial. The jury, on March 17, 2015, found that the Commission correctly determined that Ms. Waddy had sustained the occupational disease of non-Hodgkin's lymphoma out of and in the course of her employment as a paramedic with the Fire Department and that her disability was the result of the disease. The County noted an appeal on March 18, 2015, and on March 19, 2015, the County filed a Motion to Alter/Revise Judgment based on the same trial judge's decision to hold a *Frye-Reed* hearing (then scheduled for June 1, 2015) in the *Rice* case two days after denying such a hearing in this case. The County argued that both cases involved the same expert witnesses, "the same substantive issues" of causal connection between employment and the cancer, "the same relevant scientific studies," and the admissibility of Dr. Gitter's testimony.

Counsel for Ms. Waddy, in opposing the County's motion, argued that the County did not in its motion in limine in Ms. Waddy's case and in the *Rice* case "allege that the American Medical Association Guide to Evaluation of Injury and Disease Causation was relevant in any regard," or "contend that there was any relevant generally accepted medical requirement that only relative risk ratio levels above a certain level be used in a causation analysis."[9]

The circuit court's March 31, 2015, order affirming the January 29, 2014, decision of the Commission was entered on April 1, 2015. On July 23, 2015, the court denied the County's Motion to Alter/Revise Judgment, and, on July 31, the County filed a Notice of Appeal of the circuit court's orders of March 16, 2015, March 17, 2015, March 31, 2015, and July 23, 2015.[10]

DISCUSSION

Standard of Review

Generally, a "trial judge has wide latitude in determining whether expert testimony is sufficiently reliable to be admissible." *Wilson v. State*, 370 Md. 191, 200 (2002). We

[9] During oral argument on the *Frye-Reed* motion in *Rice*, the County had advanced the argument that its expert would contend that the American Medical Association, Guides to the Evaluation of Disease and Injury Causation 123-25 (2d ed. 2013), suggested that relative risk ratios below 2.0 should not inform a causation opinion. In Waddy's counsel's view, it was this argument, which was not advanced in Ms. Waddy's case, that persuaded the trial court to grant a *Frye-Reed* hearing in *Rice*.

[10] The County's appeal of March 18, 2015, was premature because the Motion to Alter/Revise filed on March 19, 2015, extended the finality of the judgment pursuant to Maryland Rule 8-202(c).

will only disturb that determination when "the decision to admit the expert testimony was clearly erroneous or constituted an abuse of discretion." *Montgomery Mut. Ins. Co. v. Chesson*, 399 Md. 314, 327 (2007). We review the trial judge's decision regarding the necessity of a *Frye-Reed* hearing under an abuse of discretion standard. *See id.* at 318.

Contentions of the Parties

The County contends that the trial court "committed clear error" by not holding a *Frye-Reed* hearing to determine the admissibility of Dr. Gitter's testimony. More specifically, it argues, the *Frye-Reed* hearing was necessary "to decide whether the doctor's methodologies and theories which formed the basis of his opinion of causal connection" between Ms. Waddy's non-Hodgkin's lymphoma and her exposure to diesel fumes and smoke as a paramedic for the Fire Department "are generally accepted in the scientific community for that purpose."

The County points out that Ms. Waddy "was never a firefighter; she was a paramedic." In the County's view, "the *entire* basis for [Dr. Gitter's] theory of causation" regarding Ms. Waddy's exposure to toxic substances "was limited to the fact [that] she had worked as a paramedic" and his "familiarity with [the] exposures of firefighters and paramedics 'generally' to diesel fumes." (Emphasis in original). In regard to his reference to "multiple studies" which Dr. Gitter thought showed a greater than average occurrence of certain cancers in firefighters, he "could not intelligently discuss the relative risk ratios or confidence intervals referenced in those studies."

The County further contends that, had there been a *Frye-Reed* hearing, its expert would have testified that Dr. Gitter's "methodologies and theories" regarding the causal relationship were "not generally accepted in the scientific community." Noting that the trial judge "seized upon the statement that Dr. Gitter employed a differential diagnosis in arriving at his opinion," the County characterizes Dr. Gitter's differential diagnosis as eliminating Ms. Waddy's eight years of smoking (approximately a pack of cigarettes a week) prior to 1988 and a history of no other exposure to toxic chemicals or smoke, and then concluding that smoke from being a paramedic was the cause of her disease. According to the County, this might "look" like a differential diagnosis, but it "falls apart" because Dr. Gitter's "methodologies and theories" are not "generally accepted by the scientific community."

Therefore, not only was the court's decision not to hold a *Frye-Reed* hearing an "inexplicable inconsistency" with its decision two days later in *Rice*, it displayed a "fundamental misunderstanding" of when it is necessary to hold such a hearing. The result was the admission of expert testimony in which the analysis was "flawed and posit[ed] an analytical gap," namely that the scientific community has to generally accept "smoke and diesel fumes as a cause of non-Hodgkin's [lymphoma] disease after the other causes have been ruled out." The County states that Ms. Waddy's counsel's decision to hire an additional expert in the *Rice* case "says all one needs to know about Dr. Gitter's qualifications to defend the 'theories and methodologies' he employed in arriving at his causal relationship opinion at a *Frye-Reed* hearing."

Ms. Waddy responds that the County did not offer a purported basis for a *Frye-Reed* hearing until "[h]alfway through" the preliminary hearing on the *Frye-Reed* motion in the *Rice* case, when the County argued, for the first time, that the epidemiologic studies "must have a relative risk ratio of greater than 2.0 in order for a doctor's reliance upon such a study for causation purposes to be generally accepted in the scientific/medical community." Ms. Waddy contends that this argument, which was not advanced in the Waddy hearing, or in the County's expert's report or pretrial deposition, or in either of the two motions for a *Frye-Reed* hearing, or at any time during discovery, is what caused the trial judge to grant a *Frye-Reed* hearing in the *Rice* case.

Ms. Waddy also argues that, "despite the County's contention," Dr. Gitter's causation opinion did "not involve a new or novel scientific technique" requiring a *Frye-Reed* hearing. As she sees it, the County's argument essentially is that "Dr. Gitter did a poor job of performing [a] differential diagnosis," but that is an issue of weight for the jury rather than a *Frye-Reed* issue. In her view, Dr. Gitter clearly employed a "differential diagnosis approach" by considering her exposure "to known carcinogens and ruling out potential other known causes." According to Ms. Waddy, that such exposure causes cancer is neither novel nor controversial. In support, she points to the fact that the General Assembly in L.E. § 9-503 established a presumption, first to firefighters and later to paramedics, that certain cancers, including non-Hodgkin's lymphoma, are caused by the carcinogens that firefighters face in the line of duty. These, she contends, are what she

faced as a long-time paramedic working in firehouses and responding to incidents along with firefighters.

She distinguishes *Montgomery Mutual Ins. Co. v. Chesson*, 434 Md. 346, 367 (2013), cited by the County, because the doctor in *Chesson* relied on the "Repetitive Exposure Protocol," which he had developed and which was not generally accepted in the scientific community. Ms. Waddy argues that *Myers v. Celotex Corp.*, 88 Md. App. 442 (1991), is on "all fours" with her case. In *Myers*, the trial court struck the testimony of plaintiff's medical expert based on its conclusion that the physician's theory of "how asbestos causes cancer" (the electrical charge theory) was not generally accepted by the medical community. *Id.* at 455-58. This Court concluded that the medical expert's opinion, which was within a reasonable degree of medical probability, should have been admitted. *Id.* at 459–60. The standard "generally accepted in the medical community" would apply to "the admissibility of evidence based upon novel scientific techniques or methodologies." *Id.* at 458. But, according to the Court, the "holding in [*Reed*] has not been extended to medical opinion evidence which is not 'presented as a scientific test the results of which were controlled by inexorable, physical laws.'" *Id.* at 458–59 (quoting *State v. Allewalt*, 308 Md. 89, 98 (1986)). The issue for the jury was not how asbestos caused cancer. Rather, the jury was being called upon to assess the doctor's "credibility" in its weighing of his opinion that the plaintiff's cancer was an "asbestos-related disease."

Analysis

When the *Frye-Reed* issue arose on the morning of trial, the County, citing *Chesson*, argued that "both methodology and analysis . . . have to be generally accepted in the relevant scientific community" and that there is a "similar causation issue" in this case. More specifically, the County, pointing out that this is an L.E. § 9-502 case for which there is no presumption, questioned Dr. Gitter's inability to identify "any specific substances, let alone . . . any particular exposure levels" for Ms. Waddy and argued that Dr. Gitter's methodology and analysis are "fatally flawed." But, counsel conceded that there was no "question the differential diagnosis [analysis] is the appropriate methodology.'" In other words, "the problem is in the []quality of the analysis." According to the County, its expert would testify that in reviewing the various studies, Dr. Gitter "doesn't know what he's looking at" and "simply doesn't understand the numbers."

The court concluded that differential diagnosis methodology is "generally accepted in the relevant scientific community;" both parties agreed. As the court saw it, the County was arguing that Dr. Gitter "did just a really bad job of, of performing" that methodology, but that was an issue "for the jury to determine." We agree.

The Court of Appeals explained in *Blackwell v. Wyeth*, 408 Md. 575, 611 n.22 (2009), that a differential diagnosis is essentially a process of elimination. Clearly, that was the process followed by Dr. Gitter in reaching his causation opinion in this case. After eliminating genetics, past light smoking, and radiation exposure as possible causes,

he concluded that the probable cause of Ms. Waddy's disease was her exposure to toxic chemicals in response to fires, exhaust fumes, and HAZMAT calls. He bolstered that conclusion by noting his general familiarity with various studies regarding risk estimates related to firefighters that are generally accepted in the medical community. That the studies related specifically to firefighters and not paramedics was a question of weight. Different physicians, based on the risk ratio for certain cancers, may read the studies differently but that does not undermine the general acceptance in the medical community of studies that show an association between certain cancers and exposure to toxic fumes and combustion products in fires and firehouses.

Nor do we see the granting of a *Frye-Reed* hearing two days later in the *Rice* case as an "inexplicable inconsistency." As Ms. Waddy notes, it was at the hearing two days later in *Rice* that the County first offered a specific argument as to why Dr. Gitter's opinion would not be generally accepted in the scientific/medical community. The County argued in *Rice* that the studies that were discussed by Dr. Gitter "have relative risk ratios [for the cancers being discussed] that do not meet the guidelines for medical acceptance in epidemiology or toxicology per the guidelines established by the American Medical Association" and therefore it is "scientific fallacy" to base a causation opinion on those numbers. In other words, the County argued that the relative risk ratio must exceed 2.0 to be relied on for causation purposes and Dr. Gitter considers risk ratios that exceed 1.0. It is for this reason that the court in *Rice* concluded that a *Frye-Reed* hearing was necessary: "We're talking about general acceptance in the relevant scientific

community and what [counsel for the County is] saying is that makes it not generally accepted."

The basis for the County's argument was to be found in the Guides to the Evaluation of Disease and Injury Causation, which did not come into evidence in the Waddy trial. Asked the purpose of its introduction, the County indicated its intent to use it for impeachment of Dr. Gitter. Because the publication had not been disclosed to Ms. Waddy, the court precluded its use in the Waddy trial. As the court later explained in *Rice*, the "risk ratio" issue had not been raised in discovery in *Waddy*, stating that "there were videotaped depositions prior to trial and none of that was brought out and all of this was a sandbag situation on the day of trial."

In short, we perceive neither error nor an abuse of discretion by the circuit court in its denial of a *Frye-Reed* hearing in the first instance and its subsequent denial of the Motion to Alter/Revise Judgment.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.