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APPELLATE COURT OF MARYLAND

Antonio Booker v. State of Maryland, No. 742, September Term 2024, filed August 28, 2025. Opinion by Shaw, J.

<https://www.courts.state.md.us/data/opinions/cosa/2025/0742s24.pdf>

TERRY STOPS – REASONABLE ARTICULABLE SUSPICION – BLADING

Facts:

On October 31, 2023, police officers from the Baltimore City Police Department observed Appellant seated on the front steps of a house. As officers continued their patrol of the area, they observed a male approach Appellant and greet him. When the two men engaged in a handshake, the officers noticed that Appellant's left hand came over to the right side of his body and pressed in against his jacket. Based on their police training and experience, this action suggested to officers that Appellant might have a concealed weapon on his person. Officers also observed a distinct shape in Appellant's pocket that furthered their suspicions and when Appellant stood up, officers noticed that the pocket was swinging in a manner that would indicate that there was a heavy item in the pocket. Simultaneously, Appellant turned his body slightly away from the officers, and kept his hand over the pocket, a movement is known to police as "blading". Based on these observations, officers approached Appellant, completed a pat-down, and recovered and secured a firearm from Appellant's jacket pocket. In addition to the firearm, officers also recovered illicit substances from Appellant's outer garments. Appellant was arrested and charged with possession of a firearm during and in relation to a drug trafficking crime, among other charges.

Appellant later filed a motion to suppress the evidence and statements obtained from his encounter with the officers. The court denied the motion, reasoning that the standard for a *Terry* stop is whether there is a particularized and objective basis for suspecting that a person may have been involved in criminal activity and, here, the officers clearly articulated the basis for that suspicion. Appellant was convicted of possession of a firearm in relation to a drug trafficking crime and sentenced to five years' incarceration, without the possibility of parole. Appellant filed this timely appeal.

Held: Affirmed.

The Appellate Court of Maryland held that the circuit court did not err in denying Appellant's motion to suppress. Appellate review of an investigatory stop requires the court to determine whether the observed conduct reasonably suggested criminal activity. To determine this, the court considered "the totality of the circumstances" in its analysis. In previous cases, the Appellate Court has held that a search or seizure cannot be "subjectively premised upon a 'hunch' or 'gut reaction'", and the Supreme Court of Maryland has previously held that absent specific facts suggesting the presence of a weapon on a person or that criminal activity is afoot, officers lack the reasonable suspicion needed to conduct a *Terry* stop. However, the Supreme Court has also held that a totality of the circumstances analysis can result in officers' successfully establishing the required reasonable suspicion needed to justify a search.

The Appellate Court applied the totality of circumstances analysis here to explain that officers in this case did not rely on a single observation but instead relied on multiple observations of Appellant's behavior and actions to justify their search. Appellant's "blading" of his body was a significant factor in the reasonable suspicion analysis and ultimately supported the officers' establishment of reasonable suspicion to conduct a *Terry* stop.

Ultimately, the Appellate Court found that the officers' observations, training, and experience, coupled with the factor of "blading", provided a particularized and objective basis for reasonable suspicion that justified the *Terry* stop.

Kim Dixon Smith v. Kevin Jay Smith, No. 1263, September Term 2023, filed June 6, 2025. Opinion by Getty, J.

<https://www.courts.state.md.us/data/opinions/cosa/2025/1263s23.pdf>

DIVORCE – JUDGMENT – AMENDMENT OR MODIFICATION

DIVORCE – MILITARY RETIREMENT – CALCULATION OF PENSION OR DISABILITY RIGHTS

Facts:

Mr. and Ms. Smith were married for nine years and five months from 1990 until 1999. From 1978 until 2018, with a one-year break from 1985-1986, Mr. Smith served in the military as both active duty and a reservist.

In August 2020, Ms. Smith filed a motion in the Circuit Court for Baltimore County to enforce the judgment of absolute divorce issued by the court in 1999. Specifically, the motion requested that the trial court order Mr. Smith to pay Ms. Smith her retired pay award as provided for in the 1999 constituted pension order (“CPO”). Based upon knowledge obtained through a Freedom of Information Act (“FOIA”) request, Ms. Smith discovered that Mr. Smith had started to draw upon his military retirement plan in April 2020.

As the result of a number of motions and hearings aimed at compelling Mr. Smith to pay the spousal share of his retired pay to Ms. Smith, the trial court determined that the formula used in the CPO to calculate Ms. Smith’s award was inaccurate and substituted the formula proffered by Mr. Smith’s counsel. The trial court modified the CPO’s use of creditable service months to instead use the Defense Finance Accounting Service’s (“DFAS”) points system and ultimately awarded 6.84% of Mr. Smith’s disposable military retired pay to Ms. Smith.

Ms. Smith filed a motion to alter or amend the judgment, which was denied by the trial court. She then noted a timely appeal. Also at issue in the appeal but not addressed by the trial court’s order is the method of distribution for the former spouse’s share of the retired pay award. DFAS declined to distribute the retired pay directly to Ms. Smith because under the federal statute, DFAS does not distribute payments directly to former spouses of marriages that, like in this case, lasted less than ten years.

Held: Reversed and remanded for further proceedings consistent with this opinion.

The Court addressed three issues: first, whether the CPO from 1999 could be modified twenty-two years later for equitable reasons based upon Maryland precedent on the finality of judgments; second, determining the proper method to calculate Ms. Smith’s retired pay award in

a fair and equitable manner; and finally, determining the proper method for dispersal of the retired pay award when the Uniformed Services Former Spouses' Protection Act ("USFSPA") prohibits DFAS from directly distributing the retired pay to a former spouse where the marriage lasted less than ten years.

The Court held that the trial court was prohibited by Maryland Rule 2-535(a)-(b) from modifying the 1999 divorce judgment and CPO absent evidence supporting a finding of fraud, irregularity, or mistake. The divorce judgment and CPO were final judgments because they were intended by the court to be unqualified and final dispositions on the matters at issue and adjudicated all claims made by both parties. Parties may not relitigate any issue after a final judgment absent a timely appeal or, under Maryland Rule 2-535(b), evidence of fraud, irregularity, or mistake. The Court held that the trial court made a significant modification to the calculations in the 1999 judgment and CPO that amounted to a modification of a final judgment absent any showing that Maryland Rule 2-535(b) applied; thus, the trial court erred.

Next, the Court addressed the proper calculation for the spousal share of retired pay under the 1999 CPO and the facts of the case. The Court noted that if the issue were on appeal from the original 1999 divorce judgment, the points system calculation proposed by Mr. Smith would be the proper unit of measurement to use in the calculation. However, because the trial court erred when it modified the language of the CPO, the Court held that the proper remedy is instead to change the denominator in the equation to reflect the same system so that the units of measurement are congruent—in this case, 113 months (the number of qualifying months during the marriage) over 468 months (the number of total qualifying months). The Court explained that this calculation honors the agreement made between the parties in 1999 and adheres both to the units of measurement under the DFAS regulations and the finality of the 1999 judgment.

Finally, the Court determined that the trial court should, on remand, calculate any retired pay arrearages due to Ms. Smith, offset by the lump sum payment of \$10,000 made by Mr. Smith. The trial court was also tasked with ordering a payment schedule in conformity with the now-settled terms of the CPO, which required Mr. Smith to pay Ms. Smith within seven days of receipt of his monthly retired pay allotments.

Nathan M.F. Charles v. Tiffany Summerfield Charles, No. 2342, September Term 2023, filed May 30, 2025. Opinion by Nazarian, J.

<https://www.mdcourts.gov/data/opinions/cosa/2025/2342s23.pdf>

TORT LAW – ABUSE OF PROCESS

TORT LAW – MALICIOUS USE OF PROCESS

SANCTIONS – ATTORNEYS’ FEES

Facts:

Tiffany Summerfield Charles (“Wife”) asked her husband Nathan M. F. Charles (“Husband”) for a divorce on or around July 3, 2023. Husband tried to convince Wife that they were better off married and attempted to maintain a physical relationship with Wife. Wife rejected Husband’s proposed courses of actions (i.e., marriage counseling, fault-based divorce proceedings against Wife, and other terms), opted to pursue other options, and made clear she would not be leaving the marital home.

On the morning of July 20, 2023, Husband went to Wife’s bedroom “to attempt to reconcile with her.” He spoke to her and, by his reckoning, touched her “in ways designed to entice her into sexual intercourse.” Wife rejected his unwanted advances and asked him to leave. Husband continued to plead for physical affection. Eventually, he left the room. Frustrated, he said, “If you want a divorce, then fucking leave!” as he walked out. That afternoon, Wife sent an email to Husband, explaining that she did not want to return to marriage counseling and that she planned to file for divorce. She told Husband that his actions scared her, and she requested that he stop entering her room and touching her without her consent.

Husband filed a complaint for a limited divorce in the Circuit Court for Montgomery County that afternoon. He alleged actual and constructive desertion and sought, among other things, to maintain use and possession of the marital home. That evening, Wife filed a petition for protection from domestic violence (the “petition”) in the District Court for Montgomery County, claiming Husband’s actions that morning constituted sexual assault. In the petition, Wife requested an order giving possession of the marital home to her and requiring Husband to leave and refrain from reentering it. A commissioner granted the petition and Wife’s requests regarding the marital home and issued an interim protective order that night. The district court then held an *ex parte* temporary protective order (“TPO”) hearing on July 24, 2023. After that hearing, the district court entered a TPO that included the same terms about the marital home as the interim order. The district court scheduled a final protective order hearing to be held in the circuit court on August 7, 2023.

The parties entered negotiations on child custody in the week leading up to the hearing. The parties reached an agreement that, among other things, granted Wife temporary use and possession of the marital home and restricted Husband's ability to contact Wife. Because they reached an agreement, Wife dismissed her petition before the final hearing.

On August 21, 2023, Husband filed a defamation suit against Wife, alleging that she had made false statements under oath in her petition. Counsel for Wife emailed Husband, informing him that an absolute privilege applied to those statements. In his response, Husband suggested that Wife filed the petition to gain an advantage in the divorce proceedings. He said Wife's claims were false and that he simply "made an attempt at a romantic interlude with [his] own wife." He demanded that they file an answer or preliminary motion.

Wife filed a motion to dismiss Husband's complaint and a motion for attorneys' fees. Husband didn't file an answer but instead filed an amended complaint on October 4, 2023. He added to the list of "false statements" that Wife allegedly made in her petition, maintained the single count of defamation *per se* from his initial complaint, and added five new counts: defamation *per quod*; abuse of process; malicious use of process; negligence; and intentional infliction of emotional distress.

Wife filed a motion to dismiss the amended complaint on October 19, 2023. The following day, Husband voluntarily dismissed, without prejudice, all but two counts: one for abuse of process and one for malicious use of process.

The circuit court held a hearing on Wife's motion to dismiss on February 6, 2024. The court dismissed the remaining two counts with prejudice and set a hearing for Wife's motion for attorneys' fees. Three days before the hearing, Husband filed a motion for remote appearance because he was out of town with his fiancée and her children. The court denied his request and held the hearing as scheduled. Ultimately, the court awarded Wife attorneys' fees totaling \$12,693.

Husband noted timely appeals from the circuit court's orders granting Wife's motions to dismiss and for attorneys' fees.

Held: Affirmed.

In his appeal, Husband asked us to determine whether the court erred in granting Wife's motion to dismiss and Wife's motion for attorneys' fees. The Court held that the circuit court did not err in granting Wife's motion to dismiss Husband's amended complaint because Husband failed to state a claim upon which relief may be granted for either abuse of process or malicious use of process. As to his abuse of process claim, Husband failed to allege facts sufficient to establish that Wife used the protective order process for an improper purpose, that Wife acted to satisfy an ulterior motive, or that Husband suffered any cognizable damages from Wife's use of the protective order process. As to his malicious use of process claim, Husband failed to allege facts

sufficient to establish that Wife initiated the protective order process without probable cause and with malice.

Regarding Wife's motion for attorneys' fees, the Court held that the circuit court did not err in granting Wife's request for attorneys' fees because Husband maintained the suit in bad faith. Although the court recited the facts underlying its bad faith finding in a fairly summary fashion, Husband's bad faith conduct is clear in the record. The record coupled with the court's review of the history of the case satisfied the factual finding requirement of Maryland Rule 1-341.

Deborah Lavine, et al. v. American Airlines, Inc., No. 2917, September Term 2009, filed July 28, 2025. Opinion by Kenney, J.

<https://www.mdcourts.gov/data/opinions/cosa/2025/2917s09.pdf>

TORT LAW – CONTRACTUAL LIMITATION OF LIABILITY CLAUSE

TORT LAW – NEGLIGENT & INTENTIONAL MISREPRESENTATION – PROXIMATE CAUSE

FEDERALISM – PREEMPTION – AIRLINE DEREGULATION ACT

Facts:

The Lavines booked a trip on American Airlines’s website from Washington, D.C. to Key West, which included a connection in Miami. The Lavines received an “E-Ticket Confirmation” email, which included a line stating, “[a] summary of Terms and Conditions of travel is available by selecting the Conditions of Carriage button below.” The connecting flight was scheduled to depart approximately 40 minutes after the first flight. The Lavines claim to have never seen the Conditions of Carriage.

The Lavines, informed that their first flight was delayed, claimed an American agent assured them that the delay would not cause them to miss their connecting flight. When they arrived in Miami, they claimed that they were told that they had fifteen minutes to reach the gate for their connecting flight. They ran through the airport, where construction was ongoing, and allegedly inhaled debris. When they arrived at the gate, they were denied boarding because they had not arrived in time before the scheduled departure, as stipulated in the Conditions of Carriage. Because the next flight to Key West was not until the next day, American paid for a hotel room for the Lavines, but the Lavines also purchased a different hotel room. The Lavines later filed a complaint alleging negligent and intentional misrepresentation based on American’s alleged promise that it could transport the Lavines to Key West “within the time identified.”

The Circuit Court for Howard County granted summary judgment in favor of American, finding there to be no genuine dispute of material fact and reasoning that (1) the Conditions of Carriage precluded American’s liability for delays and/or missed connections, (2) passengers did not prove that their injuries were the proximate cause of American’s actions, and (3) § 41712(b)(1) of the Airline Deregulation Act (the “ADA”) preempts the enforcement of Maryland tort law in this context.

Held:

The court concluded that the Conditions of Carriage, coupled with 14 CFR 253, permit an airline to incorporate by reference the Conditions of Carriage to an “E-Ticket confirmation” email, and the Conditions of Carriage are thus part of the contract. The limitation of liability clause in the Conditions of Carriage would justify denial of an airline’s liability for a passengers’ tort claims based on the airline’s “failure to make connections, or to operate any flight according to schedule, or for a change to the schedule of any flight.” The injuries allege by the Lavines were not foreseeable. The Lavines’ claims for economic injuries, which were based on a denial of boarding as provided in the Conditions of Carriage, were preempted by the ADA.

ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

STACY ENID LEBOW SIEGEL

has been replaced on the register of attorneys permitted to practice law in this State as of
September 19, 2025.

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DISBARMENTS/SUSPENSIONS

By a Per Curiam Order of the Supreme Court of Maryland dated September 4, 2025, the
following attorney has been disbarred:

DAVID B. MINTZ

*

By an Order of the Supreme Court of Maryland dated September 9, 2025, the following attorney
has been placed on disability inactive status by consent:

PAUL HOWARD ZUCKERBERG

*

JUDICIAL APPOINTMENTS

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On August 1, 2025, the Governor announced the appointment of **SHERRIE M. WALDRUP** to the District Court for Prince George's County. Judge Waldrup was sworn in on September 8, 2025, and fills the vacancy created by the retirement of the Hon. Herman C. Dawson.

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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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