Amicus Curiarum

VOLUME 31
ISSUE 10

OCTOBER 2014

A Publication of the Office of the State Reporter

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COURT OF APPEALS

Glenn Joseph Raynor v. State of Maryland, No. 69, September Term 2012, filed August 27, 2014. Opinion by Barbera, C.J.

Harrell, Adkins, and Greene, JJ., dissent.

http://www.mdcourts.gov/opinions/coa/2014/69a12.pdf

CRIMINAL PROCEDURE – SEARCH AND SEIZURE – REASONABLE EXPECTATION OF PRIVACY – DNA TESTING

Facts:

On April 2, 2006, a perpetrator broke into a victim's home in Bel Air, Maryland and raped her repeatedly. The victim could not see her attacker because he had immediately blindfolded her. After the attack, the victim called the police and reported the rape. Investigators collected possible DNA evidence from the victim's home and accompanied the victim to the hospital, where she underwent a rape examination.

Over the next two years, the victim contacted investigators with the names of about 20 potential suspects. Officers took consensual DNA samples from each of the suspects, but there were no matches to the DNA found at the crime scene. In July 2008, the victim contacted investigators to report her suspicions that Petitioner was the rapist. Police contacted Petitioner and he agreed to speak with them.

Police interviewed Petitioner for about 30 minutes, during which time Petitioner sat in an armchair and repeatedly rubbed his arms against the armrests. An officer asked Petitioner if he would consent to a DNA swab of his mouth, but Petitioner refused.

After Petitioner left the station, an officer took swabs of the armrests where Petitioner had been sitting. A DNA analysis revealed that the DNA from the armrests matched the DNA found at the crime scene. The police used the results of the analysis to obtain additional warrants for Petitioner's arrest, a second DNA sample, and a search of Petitioner's home. An analysis of the second DNA sample again matched the DNA found at the crime scene, and also matched the DNA extracted from the rape examination. Petitioner was then charged with rape, assault, burglary, and related crimes.

Prior to the jury trial, Petitioner sought suppression of the DNA evidence obtained from the armrests, and the analysis and evidence that followed. Petitioner argued that the police violated

his Fourth Amendment rights by taking his DNA material from the armrests and then testing 13 identifying "junk" loci on the DNA to connect Petitioner to the crime.

The suppression court denied the motion, holding that the Fourth Amendment does not apply because Petitioner has no expectation of privacy as to what he leaves on a chair in a police station.

The Court of Special Appeals affirmed the suppression court's decision, holding that the Fourth Amendment does not apply to the testing of the genetic material because the DNA was used for identification purposes only and Petitioner has "no objectively reasonable expectation of privacy in the identifying characteristics that could be gleaned from the normal biological residue he left behind."

Held: Affirmed.

The Court of Appeals held that particular conduct qualifies as a search under the Fourth Amendment only if (1) the defendant demonstrates an actual, subjective expectation of privacy in the item or place searched, and (2) the expectation is one that society is prepared to recognize as objectively reasonable.

Assessing the DNA analysis performed here, the Court of Appeals recognized that only 13 identifying junk loci within Petitioner's DNA were tested. The information obtained from these loci was used for identification purposes only, and did not reveal any intimate information about Petitioner. The Court noted that a person does not have a reasonable expectation of privacy of his or her identifying characteristics and, thus, the DNA analysis performed here does not fall under the Fourth Amendment's protection.

COURT OF SPECIAL APPEALS

Potomac Shores, Inc. v. River Riders, Inc., et al., No. 40, September Term 2013, filed August 29, 2014. Opinion by Kehoe, J.

http://www.mdcourts.gov/opinions/cosa/2014/0040s13.pdf

INTERSTATE RIVER BOUNDARIES – BOUNDARY BETWEEN MARYLAND AND VIRGINIA ALONG THE NON-TIDAL POTOMAC RIVER

Facts:

Potomac Shore filed a trespass action against several outdoor adventure outfits that operated fishing, tubing, and whitewater rafting tours along a stretch of the non-tidal Potomac River below Harper's Ferry. Potomac Shores contended that it owned a narrow strip of land located along the southern bank of the Potomac River, and that, as part of the outdoor adventure tours offered by the outfits, the companies and their customers had trespassed on this strip. The companies disputed Potomac Shores' claim of ownership, and contended that the Circuit Court of Washington County lacked jurisdiction over the allegations because the land along the south bank was located in the Commonwealth of Virginia, and not Washington County, Maryland. The circuit court agreed with the companies, and dismissed the case for lack of jurisdiction.

Held: Affirmed.

In order to determine whether the strip of land was located in Maryland or Virginia, the Court of Special Appeals looked to the unique history of the formation of the interstate boundary along the Potomac River. Important in this history is the Black-Jenkins Award of 1877, which established that the boundary between Maryland and Virginia along the Potomac River followed the river's south bank at low-water mark. Applying the terms of the award and other historical authorities, as well as several Supreme Court cases interpreting these authorities, the Court concluded that the boundary between Maryland and Virginia along the upper river's south bank follows the low-water mark as it presently exists, shifting with gradual changes in the shoreline due to accretion, erosion, or reliction. Because the land at issue was located in Virginia, the Court affirmed the circuit court's dismissal of the case for lack of jurisdiction.

Gary James Smith v. State of Maryland, No. 1832, September Term 2012, filed August 28, 2014. Opinion by Nazarian, J.

http://www.mdcourts.gov/opinions/cosa/2014/1832s12.pdf

CRIMINAL LAW – PRESERVATION – INVITED ERROR

Facts:

Gary Smith was convicted of involuntary manslaughter and use of a handgun in the commission of a felony for his involvement with the September 26, 2006 shooting death of Army Ranger Michael McQueen, Mr. Smith's then roommate. Upon his arrest, Mr. Smith gave three different versions of the events leading up to Mr. McQueen's death, ultimately stating that he had left a loaded handgun on the floor of their apartment, warned Mr. McQueen about the presence of the loaded weapon, and exited the room. Shortly thereafter, Mr. McQueen purportedly shot himself with the handgun, and Mr. Smith, panicking, disposed of the handgun in a nearby river.

At trial in the Circuit Court for Montgomery County, counsel for Mr. Smith requested to ask a mandatory Defense-Witness question during *voir dire*. The trial judge omitted the question from *voir dire* intentionally. When counsel for Mr. Smith challenged the omission of the Defense-Witness *voir dire* question, counsel for the State erroneously informed the court that the question had already been asked. Relying upon this statement from the counsel for the State, the court did not ask the Defense-Witness question. The jury later convicted Mr. Smith of involuntary manslaughter and use of a handgun in the commission of a felony, and Mr. Smith appealed the conviction.

On appeal, Mr. Smith argued that the circuit court erred in refusing to ask the Defense-Witness *voir dire* question. In response, the State admitted that the court erred in not asking the question, but asserted that Mr. Smith had "invited" the court's error by failing to correct the prosecutor's misstatement that the question had already been asked. Mr. Smith also challenged the relevancy of admitted evidence relating to eight firearms that he owned and ammunition that was found in the apartment he shared with Mr. McQueen. A third issue raised on appeal concerned the admission of testimony against Mr. Smith that he had mishandled a gun at a social gathering the year before the shooting of Mr. McQueen.

Held: Reversed and remanded for further proceedings.

The Court of Special Appeals described the "invited error" doctrine as the principle prohibiting an appellant from appealing from an error resulting from his or her own action. The Court of Special Appeals noted that prior applications of the invited error doctrine had barred an appellant from appealing error arising from either jury instructions requested by the appellant, the

appellant's own jury tampering, or testimony the appellant had elicited on cross-examination. Each of these contexts reflected affirmative acts of the appellant. However, in the present case, the Court declined to extend the invited error doctrine to include an appellant's failure to catch and correct an error committed by the State. The broader principle underlying preservation decisions is only reviewing errors that the appealing party gave the circuit court a legitimate opportunity to avoid or resolve. The Court of Special Appeals reasoned that applying the "invited error' doctrine to the case would disregard the Mr. Smith's otherwise well-preserved objection and would punish the appellant for the State's mistake.

After deciding that Mr. Smith's objection to the omitted Defense-Witness question was properly preserved, the Court concluded, citing *Moore v. State*, 412 Md. 635 (2012), that a *voir dire* question aimed at revealing bias among prospective jurors fell "within the very core of the purpose of *voir dire*." *Id*. at 663. The failure to ask such an important question "is not, by definition, harmless" error, and the omission of the mandatory *voir dire* question necessarily required a new trial. *Id*. at 668.

Having held that the omitted Defense-Witness *voir dire* question required a new trial, the Court of Special Appeals also addressed two evidentiary issues likely to occur again on remand. These issues concerned analysis of whether admitted evidence was relevant, *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013), and if relevant, whether the evidence was unfairly prejudicial to Mr. Smith. *See Carter v. State*, 374 Md. 693, 705 (2003).

The Court of Special Appeals ultimately decided that the evidence of Mr. Smith's ownership of firearms and ammunition found in Mr. Smith's apartment was not sufficiently relevant to justify its admission. The Court stated that the evidence was minimally relevant, at best, and highly prejudicial, creating the potential for the jury to convict Mr. Smith "''because of something other than what he did in th[e] case.'" *Snyder v. State*, 210 Md. App. 370, 395 (2013) (quoting *Odum v. State*, 412 Md. 593, 611 (2010), *cert. denied*, 432 Md. 470 (2013)).

However, the Court of Special Appeals upheld the circuit court's admission of testimony that Mr. Smith had mishandled a handgun at a social gathering a year before the events of the present case. Several factors worked against admission of the testimony of the prior mishandling event: the prior mishandling event took place a year before the McQueen shooting and other factual dissimilarities separated the prior event from the circumstances surrounding the McQueen shooting. However, the testimony of the prior encounter could well have imparted to Mr. Smith a warning about the need for caution when handling a weapon and demonstrated his awareness of the risks of mishandling a weapon. In light of this potential inference, the Court of Special Appeals held that the circuit court did not abuse its discretion in admitting testimony of the prior mishandling event.

Luis A. Morales v. State of Maryland, No. 2262, September Term 2012, filed August 29, 2014. Opinion by Raker, J.

http://www.mdcourts.gov/opinions/cosa/2014/2262s12.pdf

PUBLIC SAFETY ARTICLE – OUT OF COURT IDENTIFICATIONS – POLICE PROCEDURES – CRIMINAL LAW – OUT OF COURT IDENTIFICATIONS – SUGGESTIVENESS

Facts:

Luis Morales was convicted in the Circuit Court for Prince George's County of robbery with a deadly weapon and related charges. Morales set-up and robbed two individuals at gunpoint before escaping. A third individual, who was a family member of the two victims, witnessed the incident. The three individuals met with a police detective to make a statement and look through a photo book containing pictures of potential suspects. The detective put two of the witnesses in the same room to view the photo book. He instructed them not to communicate with one another and to look through the photos, individually, to see if anyone looked like the assailant. The detective did not see or hear the witnesses communicating. The witnesses selected two individuals, including Morales, with similar features to the assailant. They did not assert that either individual was, in fact, the person who robbed them. Ultimately, the witnesses identified Morales as the assailant in a separate photo array.

Following a jury trial, Morales was convicted of robbery with a deadly weapon and related charges.

Held: Affirmed.

As to the primary issue in this case, the Court of Special Appeals highlighted the importance of the United States Department of Justices' (DOJ) standards on obtaining extrajudicial identifications. Maryland Code (2003, 2011 Repl. Vol.) § 3-506 of the Public Safety Article requires law enforcement agencies to implement policies that comply with the DOJ's standards on obtaining accurate eyewitness identifications. The standards include a requirement to instruct witnesses separately as to procedure for viewing a photo book. In this case, the Court of Special Appeals held that the joint procedure was improper, but it was not impermissibly suggestive because the witnesses did not communicate during the procedure, were not influenced by law enforcement to identify a particular suspect, and failed to make a positive identification

Jamar Scribner v. State of Maryland, No. 1265, September Term 2013, filed September 2, 2014. Opinion by Eyler, Deborah S., J.

http://www.mdcourts.gov/opinions/cosa/1265s13.pdf

FOURTH AMENDMENT SEARCH AND SEIZURE – WARRANTLESS SEARCH OF AUTOMOBILE INCIDENT TO ARREST – *ARIZONA V. GANT*, 556 U.S. 332 (2009) – SEARCH WHEN POLICE HAVE REASONABLE BELIEF THAT VEHICLE CONTAINS EVIDENCE OF THE OFFENSE OF ARREST.

Facts:

The home of Jamar Scribner, appellant, was under surveillance by the Annapolis City Police Department for suspected drug activity and the police had obtained a warrant to search it. There also was an open arrest warrant for Scribner for second-degree assault. On January 16, 2013, the police watched as Scribner and a woman got in the woman's car, with the woman at the wheel, and drove to a local grocery store. The police watched the car as Scribner and the woman entered the store and then exited, returning to the car. At that point, the police decided to arrest Scribner on the open warrant. As Scribner was about to open the door to get in the front passenger seat of the car, the police arrested him. A search of Scribner's person incident to that arrest revealed a baggie of cocaine. The police removed the car from the parking lot, drove it to the police station, and searched it. That search revealed a handgun on the floor of the front passenger seat, where Scribner had been sitting. Scribner was charged with drug and firearm offenses. Before trial, he moved to suppress the handgun from evidence on the ground that the warrantless search of the car was not a permissible search incident to arrest, under *Arizona v. Gant*. The Circuit Court for Anne Arundel County denied the motion and Scribner was convicted of several crimes, including one of the firearm offenses.

Held:

The motion to suppress properly was denied. In *Arizona v. Gant*, the Supreme Court held that when the occupant of a vehicle is arrested, the vehicle may be searched incident to that arrest, without a warrant, "only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." 556 U.S. at 351. In this case, Scribner was not within reaching distance of the passenger compartment of the car at the time of the arrest. The Court, however, rejected his argument that he only was arrested for second degree assault, pursuant to the open warrant, and therefore it was not reasonable for the police to believe that the car would contain evidence of the "offense of arrest." Scribner was arrested for second degree assault, on the open warrant, and

then when the search incident to that arrest revealed cocaine, he was also under arrest for possession of cocaine. It was reasonable for the police to believe that the car would contain evidence of that "offense of arrest." Therefore, under *Arizona v. Gant*, the warrantless search of the car incident to Scribner's arrest did not violate his Fourth Amendment rights.

State of Maryland, v. Devin Ferguson, Nos. 576 & 2184, September Term 2012, filed August 28, 2014. Opinion by Sharer, J. (Retired, Specially Assigned)

http://www.mdcourts.gov/opinions/cosa/2014/0576s12.pdf

CRIMINAL LAW – INDICTMENT – SUPERSEDING INDICTMENT – PROSECUTORIAL DISCRETION – DISMISSAL OF INDICTMENT

Facts:

The State, believing an indictment to be defective, obtained a superseding indictment. The trial court, following a hearing, dismissed the superseding indictment "with prejudice."

Held: Vacated; case remanded for trial.

The State has broad discretion to file a superseding indictment at any time before jeopardy attaches. There is no statute, rule, or precedent that would allow a court to invalidate a grand jury's decision to re-indict a criminal defendant under a superseding indictment, by dismissing the original indictment "with prejudice" on the ground that the State belatedly notified the defendant and the court of the superseding indictment. The prosecutor's inadvertent failure to notify the court and defense counsel about the superseding indictment before the trial date scheduled on the original indictment was not the type of prosecutorial misconduct that would warrant dismissal of an indictment and, in any event, did not taint the superseding indictment itself.

In re: Cristian A., No. 345, September Term 2013, filed August 29, 2014. Opinion by Nazarian, J.

http://www.mdcourts.gov/opinions/cosa/2014/0345s13.pdf

JUVENILES – INTAKE PROCEDURE – INTAKE INTERVIEW

JUVENILES – INTAKE PROCEDURE – ACTUAL PREJUDICE

JUVENILES – INTAKE PROCEDURE – RESPONSIBILITIES OF INTAKE OFFICER

JUVENILES – INTAKE PROCEDURE – COMPLAINT

JUVENILES – INTAKE PROCEDURE – PETITION FILING

Facts:

On the afternoon of October 26, 2012, Cristian's younger brother Ricardo was involved in a fight. Cristian was not involved in the altercation, but heard about it and went looking for Ricardo. Cristian found his brother as an officer was putting Ricardo into handcuffs with his gun drawn. Cristian ran towards them, though several officers told him to stop. As Cristian continued to run, one of the officers subdued him with his taser and he was arrested.

The State filed a complaint with the Department of Juvenile Services ("DJS") on November 15, 2012, twenty days after Cristian's arrest on October 26. Also on November 15, Cristian was arrested for first-degree assault in an unrelated incident, though these charges were subsequently *nol prossed*. A juvenile intake officer reviewed the complaint that day. The intake officer determined that Cristian's detention in the assault action would likely last beyond the 25-day timeline allotted for an intake officer to make a decision on whether to file a petition under Md. Cod (1974, 2006 Repl. Vol.), § 3-8A-10(c) of the Courts & Judicial Proceedings Article ("CJP"). Accordingly, the intake officer authorized the filing of a formal delinquency petition without conducting an intake interview with Cristian.

The State then filed the petition on December 11, 2012, charging Cristian with second-degree assault, disorderly conduct, conspiracy to commit disorderly conduct, resisting and interfering with arrest, attempting to resist and interfere with arrest, and attempting to obstruct and hinder a police officer. Cristian moved to dismiss on February 13, 2013, claiming that the State had violated CJP §3-8A-10(m), which requires law enforcement officers to file the initial complaint with DJS within fifteen days of when a juvenile is brought into custody. The State had filed the complaint on November 15, 2012, twenty days after Cristian's arrest on October 26, 2012, and five days late under the statute. Cristian argued that the State's delay in filing violated the statute and his due process rights and caused him actual prejudice since he was not provided the opportunity for an intake interview. He argued an interview may have convinced the intake officer to refrain from authorizing the filing of the petition.

The Circuit Court for Montgomery County denied the motion to dismiss, finding that Cristian had not established actual prejudice. The circuit court found that Cristian was involved in attempting to interfere with arrest and attempting to obstruct and hinder a police officer performing his lawful duties and sustained his probation. Cristian appealed.

Held: Affirmed.

The Court held that the ultimate responsibility of an intake officer is to conduct a thorough investigation of the juvenile's case, and this investigation need not necessarily include an intake interview. The Court found that the intake officer's rationale for his decision not to conduct an intake interview in this case was proper and that Cristian's claims of actual prejudice were too attenuated.

First, the Court determined that if the intake officer does not conduct an intervew, the appropriate inquiry is whether a thorough investigation has otherwise been completed and if he has provided a satisfactory reason for not doing so. By way of example, the Court noted that an intake interview is not required if the juvenile has declined or is unable to participate. *In re Kevin Eugene C.*, 90 Md. App. 85, 92-93 (1992). Dismissal of a petition because of a procedural violation should only be allowed in the most "extraordinary circumstances," especially since the rehabilitative purpose behind juvenile statutes "is not ordinarily best served by dismissal of proceedings." *In re Keith W.*, 310 Md. 99, 106, 109 (1987); *see also In re Timothy C.*, 376 Md. 414, 434-435 (2003). In this case, the Court determined that the intake officer's decision for not conducting an interview, based on his belief that Cristian would be unavailable because of his arrest in an unrelated charge, was valid.

Second, the Court found that even if Cristian was entitled to an intake interview and could have participated in one, the State's delay in filing the initial complaint did not cause him actual prejudice under CJP § 3-8A-10. Since the statute does not provide a framework for identifying actual prejudice, the Court adopted the test from *Barker v. Wingo*, 407 U.S. 514, 530 (1972), an analogous speedy trial case, as to whether prejudice exists. The *Barker* test considers the defendant's interests in protection from prejudice: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." 407 U.S. at 532. Since Cristian did not claim that he faced oppressive pretrial incarceration, failed to argue on appeal that the delay caused him anxiety or concern, and openly conceded that the delay in the filing of the complaint did not impair his defense, the Court determined that he had not faced actual prejudice. Furthermore, as Cristian himself admitted, there is no guarantee that the intake officer would have come to a different conclusion even if the complaint had been filed on time and he had participated in an interview.

Finally, the Court noted Cristian's lengthy history with the Department of Juvenile Services and his clear need for its rehabilitative services. The Court emphasized that the intake officer's decision to authorize the petition's filing without conducting an intake interview did not result in Cristian being deprived of these services.

Prince George's County, Md. on Behalf of Prince George's County Police Department v. Prince George's County Police Civilian Employees Association, et al., No. 1198, September Term 2013, filed September 2, 2014. Opinion by Wright, J.

http://www.mdcourts.gov/opinions/cosa/2014/1198s13.pdf

LABOR AND EMPLOYMENT – APPLICABILITY OF GENERAL ARBITRATION STATUTES

ALTERNATIVE DISPUTE RESOLUTION – APPEAL OR OTHER PROCEEDINGS – MISTAKE AND ERROR

Facts:

This appeal arises from the Circuit Court for Prince George's County's decision to uphold the opinion and award of an arbitrator in favor of appellee, Prince George's County Police Civilian Employees Association ("PCEA") against appellant, Prince George's County ("County"). PCEA and the County are parties to a negotiated collective bargaining agreement ("CBA") concerning the wages, hours, and other terms and conditions of employment for civilian employees of the Prince George's County Police Department ("Department"). The arbitrator issued an Opinion and Award sustaining a grievance filed by PCEA challenging the County's decision to terminate the employment of Marlon Ford, a civilian employee of the Department, whose terms and conditions of employment are covered by the CBA.

The County challenged the arbitrator's Order and Award in the circuit court, asserting that the Order and Award should be vacated because the arbitrator: (1) exceeded his authority by independently assessing facts and exercising his own judgment in concluding that the Department lacked "just cause" to terminate Ford's employment and (2) issued an award that is contrary to clear public policy by finding that Ford was entitled to be informed of his right to have a union representative present during an investigatory interview when his employer was conducting a criminal investigation.

Held:

Vacated and remanded for further proceedings pursuant to Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article § 3-225(a). Requiring the police to give an employee his or her rights under *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) when questioning the employee regarding criminal behavior violates public policy. Although the arbitrator did not

exceed his authority in concluding that the Department lacked just cause to terminate Ford's employment, the arbitrator did exceed his authority when he directed the Department to adjust Ford's punishment based on the Department's failure to read Ford his *Weingarten* rights.

Lana Daniels v. Brenda Daniels, No. 415, September Term 2012, filed June 24, 2014. Opinion by Sharer, J. (Retired, Specially Assigned)

http://www.mdcourts.gov/opinions/cosa/2014/0415s12.pdf

REAL PROPERTY – DEEDS – HUSBAND AND WIFE – DELIVERY – CONSTRUCTIVE DELIVERY

Facts:

Husband executed a deed to property owned by him in fee, indicating title in the names of himself and his wife, as tenants by the entireties. After execution of the deed he informed his wife of his action, placed the deed, which had not been recorded, in a file containing the couple's important papers. Husband died before the deed was recorded.

Subsequent to husband's death, his widow recorded the deed. His personal representative filed a complaint to quiet title. The trial court ruled that, on the facts presented, the deed had not been delivered, either actually or constructively, to the widow. The court ordered that title was vested in husband's estate.

Held: Affirmed

Delivery of a deed may be either actual or constructive. Here, despite husband's clear intent to transfer title, because the deed was neither actually nor constructively delivered, the deed was invalid. The burden is on the party seeking to validate the conveyance to prove all elements of a valid transfer, including grantor's intent to transfer, relinquishment of control of the deed, delivery, and acceptance. Because there was no consummated delivery of the deed, without the right of recall or access by husband, widow failed in her burden of proving constructive delivery.

John S. Johnson, Jr. v. Jeffrey Nadel, et al., No. 1863, September Term 2012, filed June 25, 2014. Opinion by Sharer, J. (Retired, Specially Assigned)

http://www.mdcourts.gov/opinions/cosa/2014/1863s12.pdf

REAL PROPERTY – FORECLOSURE – TRUSTEE'S FIDUCIARY DUTY

Facts:

Johnson's residential property was in foreclosure. Following extended pre-sale posturing, a sale was conducted and the property was purchased by the lien holder. Thereafter, Johnson moved to dismiss the proceedings, claiming that he had obtained a short sale purchaser and that the trustees failed in their fiduciary duty by not delaying the sale to pursue the prospective purchaser. The trial court denied Johnson's motion to dismiss and overruled his exceptions.

Held: Affirmed.

A trustee on a deed of trust is a fiduciary for all parties - the lien holder as well as the property owners, and has the obligation to bring the property to market to obtain a fair price. A trustee is not bound to halt or reschedule a foreclosure sale when the trustee learns of a putative higher offer just prior to sale. Rather, when faced with an eleventh hour bid, the trustee is entitled to exercise personal judgment when determining the price to accept. A trustee is not obligated to reopen the sale to entertain an offer, either sound or speculative, that is made after the sale is concluded.

Vadim Roshchin, et al. v. State of Maryland, et al., No. 547, September Term 2013, filed August 29, 2014. Opinion by Kehoe, J.

http://www.mdcourts.gov/opinions/cosa/2014/0547s13.pdf

STATUTORY CONSTRUCTION – REQUIREMENT TO POST REGULATIONS – TRANSPORTATION ARTICLE §§ 5-426 AND 5-427 — COMAR § 11.03.01.05-1(A)

THE POWER TO ARREST – PROBABLE CAUSE – ARTICLE 24 OF THE DECLARATION OF RIGHTS

FALSE ARREST – FALSE IMPRISONMENT – TRANSPORTATION ARTICLE § 5-1104 – STATUTORY LIMITATIONS ON THE POWER TO ARREST

Facts:

The defendant was arrested for operating a limousine and attempting to transport passengers from BWI Thurgood Marshall Airport without displaying a permit issued by the Maryland Aviation Administration. The limousine the defendant was operating was also temporarily impounded in a lot at the airport. The defendant was eventually released and the charges against him were *nolle prosequi*. The defendant and his employer filed suit against various state agencies alleging constitutional and common law torts arising from his arrest and the impoundment of the limousine. The circuit court granted summary judgment in favor of the State, concluding that: 1) the arresting officer had probable cause to believe that the defendant had violated the regulation requiring display of a permit, and 2) it followed that all of the claims alleged by the defendant and his employer failed as a matter of law.

Held: Affirmed in part; reversed in part

The Court of Special Appeals explained that Transportation Article §§ 5-426 and 5-427(b) require that an applicable regulation be "adopted and posted" before a person can be held responsible for its violation. The Court concluded that, on the record before it, there remained a dispute of material fact as to whether the regulation was properly posted on the night of the defendant's arrest.

Turning to the defendant's Article 24 claim, the Court concluded that the defendant's constitutional rights were not violated because the arresting officer had probable cause to believe that the defendant had committed a misdemeanor.

As for the defendant's false arrest and false imprisonment claims, the Court explained that, under certain circumstances, an arrest can be without legal authority even if the arresting officer has probable cause, and that one such circumstance is when there is a statutory limitation upon a

police officer’s authority to make an arrest. The Court concluded that Transportation Article § 5-1104 provided such a limitation on the facts at bar, and as a result the officer was without authority to arrest the defendant. The Court affirmed the circuit court’s grant of judgment as to the Article 24 claim, but reversed the court’s decision as to the remaining counts and remanded the matter for further proceedings.

Board of Trustees, Community College of Baltimore County v. Patient First Corporation, No. 568, September Term 2013, filed August 29, 2014. Opinion by Graeff, J.

http://www.mdcourts.gov/opinions/cosa/2014/0568s13.pdf

INDEMNIFICATION AGREEMENT – PROOF OF INDEMNITEE'S NEGLIGENCE- AFFIRMATIVE DEFENSE – PROOF OF NEGLIGENCE - EXPERT TESTIMONY – ATTORNEY'S FEES.

Facts:

Patient First Corporation ("Patient First"), appellee, and the Board of Trustees of the Community College of Baltimore County ("CCBC"), appellant, entered into an agreement pursuant to which Patient First allowed CCBC students to work as phlebotomists at Patient First centers in the Baltimore area. The agreement contained an indemnification provision, which provided that CCBC would indemnify Patient First for any liability arising from negligent acts of CCBC students.

On January 13, 2007, a CCBC student phlebotomist at a Patient First clinic accidentally stuck herself with a needle and then drew blood from a child using the contaminated needle. As a result of the ensuing lawsuit by the child's family, Patient First was required to pay $10,000 to settle the case. Patient First sought to enforce the indemnification provision of the agreement to recover its payment, as well as the attorney's fees incurred in defending the negligence action. The circuit court found that CCBC breached the agreement by failing to indemnify Patient First for its costs, and awarded Patient First the $10,000 it spent in settlement funds as well as its attorney's fees.

Held: Affirmed.

The circuit court properly determined that CCBC was required to indemnify Patient First for the CCBC student's negligence. Where CCBC sought to avoid payment based on the presumption against indemnification for a party's own negligence, CCBC had the burden to prove that Patient First was negligent in supervising the student. CCBC failed to introduce proof of negligence at trial. Expert testimony generally is required to establish a professional standard of care for a negligence claim, unless the negligence is obviously proven.

The circuit court did not abuse its discretion in awarding Patient First its attorney's fees incurred in defending the negligence lawsuit. Testimony of Patient First's general counsel that the attorney's fees were reasonable, along with a detailed breakdown of fees incurred, was sufficient to support the circuit court's finding that the fees were reasonable.

ATTORNEY DISCIPLINE

*

By and Opinion and Order of the Court of Appeals dated August 27, 2014, the following attorney has been disbarred by consent, effective September 1, 2014:

NEIL JEROME LEWIS

*

By an Order of the Court of Appeals dated September 4, 2014, the following attorney has been indefinitely suspended by consent:

JOHN J. WOLOSZYN

*

By a Per Curiam Order of the Court of Appeals dated September 10, 2014, the following attorney has been disbarred:

JOSEPH MUA KUM

*

By a Per Curiam Order of the Court of Appeals dated September 11, 2014, the following attorney has been disbarred:

THOMAS WESLEY FELDER, II

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By an Order of the Court of Appeals dated July 17, 2014, the following attorney has been indefinitely suspended by consent, effective September 15, 2014:

SCOTT BRIAN BLUMENFELD

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This is to certify that the name of

SUDHA NARASIMHAN

has been replaced upon the register of attorney in this state as of September 18, 2014.

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This is to certify that the name of

JAMIE BLUM SEWARD

has been replaced upon the register of attorneys in this state as of September 18, 2014.

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By an Order of the Court of Appeals dated September 22, 2014, the following attorney has been suspended:

RONALD ALLEN WRAY

*

By an Order of the Court of Appeals dated September 22, 2014, the following attorney has been suspended:

PHILIP JAMES SWEITZER

*

This is to certify that the name of

GWYN CARA HOERAUF

has been replaced upon the register of attorneys in this state as of September 23, 2014.

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By an Order of the Court of Appeals dated September 24, 2014, the following attorney has been suspended:

MIRA SUGARMAN BURGHARDT

JUDICIAL APPOINTMENTS

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On August 26, 2014, the Governor announced the appointment of **CLAYTON ANTHONY AARONS** to the District Court – Prince George's County. Judge Aarons was sworn in on September 15, 2014 and fills the vacancy created by the retirement of the Hon. Patrick R. Duley.

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On August 26, 2014, the Governor announced the appointment of **ANN LOUISE WAGNER-STEWART** to the District Court – Prince George's County. Judge Wagner-Stewart was sworn in on September 16, 2014 and fills the vacancy created by the elevation of the Hon. Lawrence V. Hill, Jr. to the Circuit Court for Prince George's County.

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On August 26, 2014, the Governor announced the appointment of **VIKI MARIE PAULER** to the Circuit Court for Washington County. Judge Pauler was sworn in on September 19, 2014 and fills the vacancy created by the retirement of the Hon. John H. McDowell.

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On August 26, 2014, the Governor announced the appointment of **RAYMOND GEORGE STRUBIN** to the Circuit Court for Garrett County. Judge Strubin was sworn in on September 22, 2014 and fills the vacancy created by the retirement of the Hon. James L. Sherbin.

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On August 26, 2014, the Governor announced the appointment of **DANIEL ALAN FRIEDMAN** to the Court of Special Appeals. Judge Friedman was sworn in on September 23, 2014 and fills the vacancy created by the retirement of the Hon. Albert J. Matricciani, Jr.

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On August 26, 2014, the Governor announced the appointment of **BRIAN CHARLES DENTON** to the District Court – Prince George's County. Judge Denton was sworn in on September 23, 2014 and fills the vacancy created by the retirement of the Hon. Thomas J. Love.

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On August 26, 2014, the Governor announced the appointment of **STEPHEN HUGHES KEHOE** to the Circuit Court for Talbot County. Judge Kehoe was sworn in on September 30, 2014 and fills the vacancy created by the retirement of the Hon. Broughton M. Earnest.

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