UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0160

September Term, 2014

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GERALD SMITH

v.

STATE OF MARYLAND

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Leahy,
Friedman,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: May 1, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Gerald Smith, was convicted in the Circuit Court for Baltimore City of theft of property valued at less than $1,000. Appellant presents the following question for our review:

> "Did the Circuit Court err in deeming Mr. Smith's motion to suppress waived?"

We shall hold that the circuit court abused its discretion and, pursuant to Maryland Rule 8-604, remand without affirming or reversing for the court to exercise its discretion and decide whether to hold a hearing on appellant's motion to suppress.

## I.

Appellant was charged by criminal information in the District Court for Baltimore City with theft of property valued at less than $1,000 and theft of property valued at less than $100. He demanded a jury trial, and his case was transferred to the circuit court. The jury convicted appellant of theft of property valued at less than $1,000. The court sentenced him to a term of incarceration of nine months.

The following evidence was presented at trial. Appellant entered a Safeway supermarket located at 2610 Boston Street in Baltimore. Daryl Carter, a security officer, noticed appellant carrying a gift bag and walking down the produce aisle, which he estimated was forty to fifty feet from the cash registers, and towards the exit. Mr. Carter stopped appellant when appellant was approximately ten feet from the exit. Inside the gift bag, Mr.

Carter found "30 something DVDs," valued at a total of $384, for which appellant had not paid. He escorted appellant to the back room of the store and called the police. Mr. Carter obtained appellant's ID, scanned the DVDs through the cash register to determine the value of the items and photographed appellant.

A police officer, Karen Crisafulli, arrived at the scene with her partner. Officer Crisafulli did not advise appellant of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). She testified that, after she asked him some questions about his identity, he "blurt[ed] out these confessions" before she had asked him any questions about the crime or begun "questioning him." Appellant told the officers that he had stolen the DVDs and was planning to sell them for cash in order to buy medicine. Officer Crisafulli did not record the confession and did not ask appellant to sign a statement.

The State charged appellant by criminal information in the District Court for Baltimore City with theft of property valued at less than $1000 and theft of property valued at less than $100. Appellant prayed a jury trial and the case was transferred for trial to the circuit court on February 19, 2014. On February 26, defense counsel entered his appearance, and he filed an eighteen paragraph "omnibus motion" containing a wide variety of general allegations, including, in paragraph fifteen, a request to suppress any illegally seized evidence. Paragraph 15 stated as follows:

> "15. The Defendant moves that the Court suppress any and all evidence that was illegally obtained."

The motion did not cite *Miranda*, the conversation with Officer Crisafulli, or any particular evidence or testimony in appellant's case that appellant wanted to exclude at trial. The trial commenced on March 11, 2014 at about 1:15 p.m. When defense counsel appeared in the courtroom, the jury venire panel was present. The court empaneled the jury. Appellant did not mention any pre-trial motions before jury selection began. After the jury was sworn, at appellant's request, the parties approached the bench and defense counsel brought to the court's attention that he wished to make two motions. The following exchange took place:

> "[DEFENSE COUNSEL]: There is [sic.] actually two *in limine* motions I wanted to (inaudible)
>
> THE COURT: Uh-huh
>
> [DEFENSE COUNSEL]: There is supposed to be a videotape but no videotape has been provided, so my first question is to see if any testimony about what was on the tape.
>
> THE COURT: Okay. So — yeah?
>
> [DEFENSE COUNSEL]: The State says that the Detective (inaudible).
>
> THE STATE: And the Public Defender was made aware of that at the District Court so this is not new news.
>
> THE COURT: Yeah, okay.
>
> [DEFENSE COUNSEL]: But my note says (inaudible) did not intend to use and could not —

> THE COURT: [Defense counsel], why don't we do this. Okay? So after this, let's do openings and then we are going to release the jurors and then you put your pre-trial motions on the record.
>
> [DEFENSE COUNSEL]: Right."

The State and the defense presented opening statements to the jury. In the State's opening, the prosecutor stated as follows:

> "The police are called, Officer Crisafulli responds, speaks to the defendant, the defendant admits he took the DVD's. He said he needed the money to buy medicine and that DVD's were good money. That's the case. That's the evidence you're going to hear . . . ."

Appellant did not object to the State's reference to appellant's admission to the theft.

After opening statements, the court excused the jury and asked the jurors to return in two days for the trial.[1] The judge asked defense counsel the basis for his motions to suppress.[2] Although defense counsel had referred previously to his motion as a motion *in limine*, he told the court at the bench that "[w]e couldn't do the suppression motion now even if we wanted to because there's no witnesses."[3] The court ruled as follows:

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[1] The trial court was faced with nineteen cases on the docket for trial that day.

[2]One motion was related to a videotape and the other was related to appellant's admissions to the police. The court asked also about appellant's impeachable offenses, but defense counsel advised that appellant would not testify and hence, the issue became moot. The videotape issue and the impeachment matter are not involved in this appeal.

[3]It appears from the record that even though defense counsel referred initially to his motions as "motions *in limine*," all parties appeared to understand that, in addition to a (continued...)

> "THE COURT: *I know, but see these are pre-trial motions that I have to make a determination pre-trial.* We had —
>
> [DEFENSE COUNSEL]: And that's why I was trying to before we started with the opening statements to tell you what the motions were.
>
> THE COURT: Yeah, [defense counsel], you have to tell me way before that . . . .
>
> * * *
>
> THE STATE: Your Honor, and for the record I am objecting, a pre-trial motion is waived, a jury has been selected —
>
> THE COURT: Yeah, I think it has been.
>
> * * *
>
> THE COURT: [Appellant's counsel], *I am going to — this is a pre-trial motion.* We have begun this trial. I am going to determine, just like for the first trial before [appellant], the State said she couldn't get her victim here until Thursday and I said today's the day of trial, sorry, you're going to have to resolve the case and that's why she stetted that first case. *This should have been made pre-trial*, we're going to live and learn, okay, and I'm going to determine *you've waived it for now*, only, you know, it may be grounds for — if there is a conviction, post-conviction, but at this juncture I am going to deny it. Okay? . . . ." (emphasis supplied).

On the second day of trial, appellant moved as follows:

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(...continued)
motion *in limine* regarding the videotape and the prior convictions, appellant was referring to a motion to suppress an inculpatory statement he made to the police.

"[DEFENSE COUNSEL]: I think The Court denied the Suppression Motion because that [sic.] defense hadn't provided early enough —

THE COURT: Yes.

[DEFENSE COUNSEL]: — a request for the Suppression Motion. But I want to point out the defense always submits an omni requesting a Suppression Motion, and that was done in the District Court, and it was done again here — on November 9 in District Court,[4] and February 26 here in Circuit Court. And I also want to point out that the jury panel that was here when I walked in at 1:30 had actually been called for Mr. Garcia's case, and they just stayed up here, and that is why they were in here so quickly.

And the motion that I wanted to make was — I want to make a motion for mistrial, because basically the jurors have already heard what was on the videotape from the State's opening statement.

THE COURT: Okay. Anything else?

THE STATE: If I could just comment on that, Your Honor?

THE COURT: Yes.

THE STATE: I will point out that prior to starting jury selection, Your Honor asked if there were any pre-trial motions and both myself and [defense counsel] said no. So that was certainly an opportunity for him to say that there was. So I believe it is waived.

THE COURT: Okay. So I know that misdemeanor jury trials moves very quickly and we are stacking cases, and with the

[4]It appears from this colloquy that appellant filed an omnibus motion in the District Court as well as the circuit court, but the District Court record is not before us.

volume and the pace we are going, it is very easy to forget or maybe not do it in a timely fashion. But the other day on Tuesday, I said to [appellant] early when he was brought up early that morning, he will be the first trial. Then later we — then [an earlier defendant], we were going to give a trial, as I stated, when the State is ready for trial, and then they say my victim can't come until Thursday, I make them get rid of the case because they are not ready. So that case then got stetted. And you were here that morning, I believe, with us, [defense counsel]?

[DEFENSE COUNSEL]: Yes.

THE COURT: So then I told that jury — because we hadn't even selected any — at 1:15 to be back here. So then that jury of 40 came back and we started selecting a jury. We selected, did alternates, and then I said we are going to do opening statements now. And then right at that point, after we had already selected a jury, and you were about to do opening statements was the first time, [defense counsel], you asked to approach and said, 'I would like a Suppression Motion based statements to the officers.'

But see — and yes, that omnibus motion, even though it is not in the folder, in the computer it does say that they filed one, and it is your blanket — your office's blanket motion to cover all aspects. But see, even if it is a motion in District Court under 4-251, when a motion asserting a defect in the charging — a motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial. And effect of determination before trial generally [t]he Court may grant the relief if it deems appropriate, including the dismissal and without prejudice.

But because it was so late and the jury was here, and we were ready then to do opening statement, we could not — the State was not even given an opportunity — because we had already agreed that we weren't going to be putting any witnesses on that day because remember we had to end that day at 3:15. So there weren't any witnesses. *Because of the timeliness —*

> *and I understand completely because of our pace that it wasn't brought up until then. I am going to deem, as I stated the other day, that it is waived.* That is the motions for District Court. Motions for Circuit Court for Motion to Suppress has to be filed. It is a mandatory motion, and 30 days before. But because this originated out of District Court, the District — the rule should apply.
>
> So I hear your argument. I am going to deny it at this time. I don't find that there are grounds for mistrial. I don't find manifest necessity exists at this time. So that will be denied as well." (emphasis supplied).

At trial, Officer Crisafulli testified to appellant's admissions to the theft. The jury convicted him as noted above, and the trial court imposed a term of incarceration of nine months.

This timely appeal followed.

II.

We find it useful at this juncture to review some background information regarding motions practice in Maryland criminal trials. Motions filed in criminal cases in the two trial courts, the District Court and the circuit court, are governed by two different rules. In the circuit court, motions are governed by Rule 4-252. In the District Court, motions are governed by Rule 4-251. The Rules differ significantly, presumably recognizing the practical differences and volume in the two courts.

Circuit court Rule 4-252(a) sets out a list of mandatory motions that must be raised in conformity with the Rule and, if not, are waived unless the court, for good cause, orders otherwise. The Rule provides as follows:

> "(a) **Mandatory motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule, and if not so raised are waived unless the court, for good cause, orders otherwise:
>
> * * *
>
> (4) An unlawfully obtained admission, statement, or confession . . .
>
> * * *
>
> (b) **Time for filing mandatory motions**. A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when discovery discloses the basis for a motion . . . .
>
> * * *
>
> (g) **Determination**. (1) Generally. Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial . . . ."

The District Court of Maryland is a high volume, non-jury, trial court. Motions practice is different than in the circuit court. One significant difference is that in the District Court motions to suppress are determined at trial and not pre-trial. Rule 4-251 governs

motions to suppress evidence in the District Court. The Rule reads, in pertinent part, as follows:

> "(a) **Content**. A motion filed before trial in District Court shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments.
>
> (b) **When made; Determination.**
>
> * * *
>
> (2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.
>
> * * *
>
> (5) Other motions may be determined at any appropriate time.
>
> (c) **Effect of determination before trial**. (1) Generally. The court may grant the relief it deems appropriate, including the dismissal of the charging document with or without prejudice. . . ."

Rule 4-251. The crux of appellant's argument is that he falls under the District Court Rule, Rule 4-251, and that under that Rule the circuit court had discretion to decide whether to hear his motion.

III.

Appellant alleges that the circuit court erred when it ruled that his motion to suppress was waived. Appellant argues that under District Court Rule 4-251, his motion to suppress, filed pre-trial, in writing in his omnibus motion, should have been determined at trial. Appellant notes that the trial court deemed his motion waived for three reasons, all of which are inapplicable to this case and hence erroneous. The first reason given by the trial court was that the State did not have timely notice of the motion to suppress, which prevented the State from having witnesses available. The second reason was that the motion was not filed within 30 days prior to trial. The third reason the court justified deeming the motion waived was Rule 4-251(c)(1), "Effect of determination before trial," which provides that the court may grant the relief it deems appropriate, including the dismissal of the charging document with or without prejudice.

Appellant controverts each of those reasons. As to the first reason, he argues that Rule 4-251 permits the court to consider the suppression motion concurrently with trial and the State never asserted unfair prejudice or surprise. As to the second reason, he argues that there is no requirement in Rule 4-251 that a motion to suppress be filed within 30 days prior to the trial date. Moreover, given the timeline and posture of this case as a jury trial demand from District Court, compliance within 30 days would have been impossible. As to the third reason, he argues that 4-251(c)(1) is inapplicable.

The State, recognizing that District Court Rule 4-251 controls in this case, argues that the flaw in appellant's argument is that what appellant refers to as an "omnibus motion" is "not, for the purpose of the trial court's obligation to conduct a hearing, a 'motion' at all." The State construes Rule 4-251 to require that a motion be filed before trial, in writing, stating the grounds upon which it is made and setting forth the relief sought. Because appellant's written motion did not comply with this requirement, the State contends the trial court exercised properly its discretion by declining to hold a suppression hearing. According to the State, appellant's single paragraph in a generic omnibus motion, requesting that "any and all" illegally obtained evidence be excluded, does not satisfy the Rule's requirement. The State argues an omnibus "motion" is not a proper motion, and therefore appellant never filed a pre-trial motion to suppress. Thus, the State concludes that the circuit court was not required to consider appellant's motion at trial.

## IV.

This case, once again, raises a procedure that has crept into Maryland motion practice known as an "omnibus motion." Black's Law Dictionary defines an "omnibus motion" as "A motion that makes several requests or asks for multiple forms of relief; esp., in criminal law, a defense pretrial motion requesting a hearing on various in limine motions as well as on suppression issues." Black's Law Dictionary 1169 (10th Ed. 2014). That type of motion,

unlike in some other states,[5] is not mentioned in the Maryland Rules of Procedure, but has become a commonplace vehicle among some defense counsel to raise several written motions pre-trial. Often, defense counsel files the motion in a criminal case early in the process, before the State has provided discovery and hence, the motions contain little or no specificity. Judge Alan Wilner, writing for the Court of Appeals in *Denicolis v. State*, 378 Md. 646 (2003), commented on omnibus motions in the context of circuit court Rule 4-252 and the sufficiency of a charging document. The Court noted as follows:

> "Maryland Rule 4-252 requires that certain issues in criminal cases be raised by motion filed within 30 days after the appearance of counsel in the case and directs that 'if not so raised are waived unless the court, for good cause shown, orders otherwise.' Among the issues required to be raised by such a motion are '[a] defect in the institution of the prosecution' and '[a] defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense.' Rule 4-252(e) requires that a motion, including a motion under section (a) of the Rule, 'state the grounds upon which it is made' and 'contain or be accompanied by a statement of points and citation of authorities.' The obvious and necessary purpose of that requirement is to alert both the court and the prosecutor to the precise nature of the complaint, in order that the prosecutor have a fair opportunity to defend against it and that the court understand the issue before it. As we have observed, the 'omnibus' motion filed by petitioner gave no factual or legal basis for a conclusion that there was a defect either in the institution of the prosecution or in the charging document.

[5] *See, e.g.*, Ariz. R. Crim. P. 16.3; Ark. R. Crim. P. 20.3; Colo. R. Crim. P. 16; Minn. R. Crim. P. 11; Miss. Unif. R. Cir. & Cnty Ct. 9.08; Mont. Code Ann. § 46-13-110; N.D. R. Crim. P. 17.1; Or. Rev. Stat. § 135.037; Pa. R. Crim. P. 578.

> It has apparently become the practice for some defense counsel to file this kind of motion, seeking a panoply of relief based on bald, conclusory allegations devoid of any articulated factual or legal underpinning, presumably in the belief that if the motion complies with the time requirement of Rule 4-252(b), compliance with Rule 4-252(e) is unnecessary. That is not the case. If a motion fails to provide either a factual or legal basis for granting the requested relief, it cannot be granted. Recognizing the time constraints under which defense counsel and *pro se* defendants often operate, however, some courts have routinely overlooked the impermissible generality of such motions and have permitted the defendant to make the complaint more specific at, or in preparation for, a hearing on the motion. *Although that practice is not what the Rule anticipates and is not to be encouraged, we have not disturbed the discretion of the trial courts to permit defendants to supplement unsupported allegations in the motion at or before the hearing, at least where the State is not unduly prejudiced by being called upon to respond immediately to allegations of which it had no prior notice.* Here, however, petitioner not only failed to supplement the bald, unsupported request but failed as well even to mention it at the hearing. To the extent that a request to dismiss the criminal information because of any defect in it or in the institution of the prosecution generally was ever validly made, it was effectively withdrawn."

*Id.* at 659-61 (emphasis added). Interpreting circuit court Rule 4-252, *Denicolis*, therefore, stands for the proposition that, although disfavored, it is within the trial court's discretion to permit a defendant to proceed on an unsupported motion, often a motion to suppress evidence filed in an omnibus motion, so long as the State is not unduly prejudiced. *Id.* at 660-61; *Sinclair v. State*, 214 Md. App. 309, 324 (2013), *cert. granted* 439 Md. 327.

District Court Rule 4-251 anticipates an oral motions practice, at the discretion of the trial judge, even in situations that do not fall under *Denicolis*. Noticeably, the Rule provides for a determination of a motion to suppress or exclude evidence made before trial and does not, on its face, require a written motion to preserve an issue, nor does the Rule explicitly preclude an oral motion. It appears that a motion filed before trial shall be heard and determined at trial. Pursuant to District Court Rule 4-251(b)(5), other motions, inferentially including oral motions to suppress or exclude evidence, "may be determined at any appropriate time." The language of the District Court Rule assumes that motions not filed pre-trial but made at trial are left to the sound discretion of the trial court to determine what is an appropriate time, rather than waived if not raised pre-trial as is the case under circuit court Rule 4-252.

The question then arises: What is the procedure to be followed when a defendant prays a jury trial from the District Court to the circuit court? In short, District Court Rule 4-251 governs, based upon Rule 4-301(b)(2), the procedure following jury demand. Rule 4-301 provides that when a defendant demands a jury trial, the clerk of the court shall promptly transmit the file to the circuit court. The Rule provides further, in pertinent part, as follows:

> "Thereafter, except for the requirements of Code, Criminal Procedure Article, § 6-103 and Rule 4-271(a), or unless the circuit court orders otherwise, pretrial procedures shall be

> governed by the rules in this Title applicable in the District Court."

Rule 4-301(b)(2). Thus, following a jury demand and transfer of a criminal case from the District Court to the circuit court, the circuit court shall apply the rules applicable to District Court trials, and specifically, District Court Rule 4-251.

V.

We turn to the questions before this Court. Did appellant file a motion before trial that required the trial court to hear his motion during the trial? Or did the trial court abuse its discretion in declining to entertain appellant's oral motion to exclude evidence, a motion he made several times in the circuit court?

Appellant filed an omnibus motion on February 26, clearly a motion as *Denicolis* described — a bald, conclusory, boilerplate motion containing no grounds upon which it was made and devoid of any specificity.[6] Paragraph 15 of appellant's omnibus motion states

[6]As evidence that appellant's omnibus motion was a boilerplate, in-house, office motion, the motion contained generic paragraphs unrelated to this shoplifting case. Although controlled dangerous substances and motor vehicle theft played no role in this case, the motion provided as follows:

> "4. . . . demand is hereby made for the presence of all persons in the chain of custody of any substance or alleged controlled dangerous substance and any chemist, analyst, technician, or expert who performed any test or tests as to the nature, contents, presence in, or effects on the Defendant of any substance,

(continued...)

merely, "15. The Defendant moves that the Court suppress any and all evidence that was illegally obtained." The motion did not state the grounds upon which it was made and the motion was never supplemented before trial. Because appellant's pre-trial, written omnibus

(...continued)

> alleged controlled dangerous substance, or blood alcohol level.
>
> * * *
>
> 9. A demand is here made for . . .
> 10. Testing chemist's CDS Analysis Worksheet (Form LD 105 Worksheet); and
> 11. Drug Analysis Report (Form 01 LIMS/442); and
>
> * * *
>
> 13. Current CV for the testing chemist; and
> 14. Results of annual proficiency tests for the testing chemist
>
> * * *
>
> 18. Pursuant to MD Code, Criminal Law Section 7-105.1, demand is hereby made for the presence of the lawful owner of any motor vehicle that is alleged to have been taken from that owner and operated, used, or possessed without that owner's authorization."

The omnibus motion was devoid of any specificity regarding the authorities supporting its various demands.

It ended with a section titled "Points and Authorities," which reads as follows:

> "4th, 5th, 6th, and 14th Amendments to the United States Constitution; Articles 21, 22, 24, and 26 of the Maryland Declaration of Rights; MARYLAND RULES 4-251, 262, and 5-902(b)(1); MD Code, Criminal Law Section 7-105.1; Maryland Code, Courts and Judicial Proceedings Article Sections 10-306, 10-914, 10-915, and 10-1003."

There is no indication in the "Points and Authorities" section or Paragraph 15 as to which of the authorities cited, if any, appellant intended to provide support for that paragraph.

motion falls short of the requirements of District Court Rule 4-251(a), the circuit court was not *mandated* by the Rule to entertain the motion during trial. Significantly, however, the court did have discretion to consider the motion, discretion it never appeared to exercise. *See Denicolis*, 378 Md. at 660. The court did not exercise its discretion to hear the motion because the court ruled merely that the motion was untimely.

Our inquiry does not end here. At trial, defense counsel again indicated that he had motions. He tried to tell the judge, before opening statements, of his motions,[7] and the court declined to hear him, indicating that the court would entertain the discussion after opening statements. At this point, the court would have had discretion to consider the issues raised in appellant's omnibus motion or oral motion.

District Court Rule 4-251(b)(5) provides that other motions may be determined at any appropriate time. We construe this language to vest discretion with the trial court to determine motions, including motions to suppress and motions *in limine*, at any time the court determines to be appropriate. It appears from the record that the trial judge ruled that the oral motion was *per se* untimely and hence, the court could not consider the motion. The court did not exercise its discretion in deciding whether to determine the merits of appellant's motion to suppress but declined to hear the motion on the sole ground of untimeliness.

[7]The court was concerned, obviously, with the time and convenience of the jury panel, a consideration with which we have no quarrel. Nonetheless, the court needed to exercise its discretion and consider the prejudice, if any, to the State and the "appropriateness" of hearing the motion instead of merely ruling the motion "untimely."

Under circuit court Rule 4-252, the trial judge perhaps would have been correct. Under the applicable rule for jury demands from the District Court, 4-251(b)(5), however, the court could have chosen to hear the motion. *See Green v. State*, 119 Md. App. 547, 565 (1998) ("Pursuant to Rule 4-251(b), a motion to suppress filed before trial in a District Court case is determined at trial [and] does not require that the motion to suppress be made before trial"). Under these circumstances, the court ruled erroneously that because the motion was untimely, the court would not hear the motion. The failure to exercise discretion under Rule 4-251 is error, even where it is unclear whether the exercise of that discretion would have been exercised favorably. *See 101 Geneva LLC v. Wynn*, 435 Md. 233, 241 (2013) ("It is well settled that a trial judge who encounters a matter that falls within the realm of judicial discretion *must* exercise his or her discretion in ruling on the matter") (emphasis in original); *Gray v. State*, 368 Md. 529, 565 (2002) ("[O]ur cases hold that the actual failure to exercise discretion is an abuse of discretion"); *Johnson v. State*, 325 Md. 511, 520 (1992) ("The failure to exercise discretion when its exercise is called for is an abuse of discretion"); *Drax v. Reno,* 338 F.3rd 98, 118 (2d Cir. 2003) (noting that in Federal court "a failure to exercise discretion, where a judge mistakenly believes that he lacks the authority to exercise discretion, warrants a remand for resentencing.").

VI.

The State, in the alternative, argues to this Court that in the event this Court finds that appellant's motion to suppress was proper, that we should order a limited remand rather than reverse. We agree with the State.

Maryland Rule 8-604 provides, in pertinent part, as follows:

> "(a) **Generally.** As to each party to an appeal, the Court shall dispose of an appeal in one of the following ways:
>
> * * *
>
> (5) remand the action to a lower court in accordance with section (d) of this Rule . . . .
>
> * * *
>
> (d) **Remand.** (1) Generally. If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court."

Although limited remands are relatively infrequent actions taken by this Court, our cases are "replete with examples where a limited remand is proper." *Montgomery Mut. Ins. Co. v. Chesson,* 399 Md. 314, 334 (2007). *Accord Southern v. State*, 371 Md. 93, 104 (2002)

(noting that "[t]here are certain times and types of cases where the limited remand is the proper disposition . . . ."). A limited remand is proper where the purposes of justice will be advanced by permitting further proceedings and the issue is discrete from the issue at trial. *Id.* at 104-05. *See also Collins v. State*, 138 Md. App. 300, 313 (2001); *Davis v. State*, 100 Md. App. 369, 395-96 (1994); *McMillian v. State*, 65 Md. App. 21, 36-37 (1985).

This case is just one of those cases — appropriate for a limited remand. Hence, pursuant to Rule 8-604(d), we will not affirm or reverse, but will remand this case to the circuit court to exercise its discretion and decide whether to hold a hearing on appellant's motion to suppress.

**CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY WITHOUT AFFIRMANCE OR REVERSAL FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. THE JUDGMENT OF THE CIRCUIT COURT REMAINS IN EFFECT UNLESS VACATED BY THE CIRCUIT COURT IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THE FOREGOING OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.**