

Circuit Court for Montgomery County
Case No. 472632V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1260

September Term, 2022

JAAMI ALI

v.

MONTGOMERY COUNTY POLICE
DEPARTMENT

Reed,
Ripken,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: November 1, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The *pro se* appellant, Jaami Ali, appeals from the Circuit Court for Montgomery County’s denial of her motion seeking leave to “publish” on social media an audio recording of a summary judgment hearing. Much of Ms. Ali’s brief is hard to understand, and it does not appear that she has made attempts to comply with relevant Maryland Rules governing appellate procedure. As an example, in her brief, Ms. Ali does not have a section entitled “Questions Presented.” This violates Md. Rule 8-504(a)(3), which reads:

A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

Instead, of listing questions presented, she lists four “issues” phrased as follows:

Issue 1. Per the Maryland Public Information Act’s fifth chapter, titled “Judicial Review and Alternative Dispute Resolution” a requestor may seek judicial enforcement on agency denials. Further, that chapter’s subsection titled “Limitations,” categorizes petitions to the circuit court due to agency denials as Administrative Appeals.

Issue 2. The First Amendment Over[r]iding Open Government State Laws and MD 1-201.

Issue 3. Currentness [sic] of Issues.

Issue 4. Fourth Issue: Broadcasting Good Content.

None of those four “issues” presents discernable questions. Nevertheless, from reading her brief as a whole, there is one question presented.

Did the circuit court commit reversible error by prohibiting Ms. Ali from electronically disseminating a lawfully obtained copy of the official audio recording of a noncriminal court proceeding to which she was a party?

For the following reasons, we shall answer that question in the negative.

BACKGROUND

On September 20, 2019, Ms. Ali petitioned the Montgomery County circuit court for judicial review of the Montgomery County Police Department’s (“the Department”) denial of her request to inspect certain records pursuant to the Maryland Public Information Act (“MPIA”).¹ The Department moved to dismiss Ms. Ali’s petition with prejudice, arguing that it had “provided all information sought by [her].” The circuit court granted the Department’s motion in an order entered on January 6, 2020.

Ms. Ali appealed the dismissal of her petition for judicial review. In an unreported opinion, this Court vacated the order of dismissal and remanded the case for further proceedings, holding that “there were two . . . claims in Ms. Ali’s petition that were not addressed in the Department’s motion to dismiss” and were therefore “still pending for judicial review.” *Ali v. Montgomery Cnty. Police Dep’t.*, No. 2457, Sept. Term 2019, slip. op. at 5 (filed July 8, 2021).

On remand, the Department filed a motion to dismiss, or in the alternative, for summary judgment, asserting that the requested records were properly withheld pursuant to the investigatory records exception to the MPIA. The court held a hearing on the Department’s motion on February 4, 2022, at which Ms. Ali presented oral argument. Thereafter, the circuit court granted summary judgment in favor of the Department.

¹ The nature of the requested records is irrelevant to our resolution of this appeal.

On July 25, 2022, Ms. Ali, *pro se*, sent a letter to Montgomery County Circuit Court Judge Debra L. Dwyer that the judge treated as a motion. In the motion Ms. Ali sought leave to “broadcast” over social media a copy of the official audio recording of the summary judgment hearing (hereinafter “the Motion”). In the Motion, Ms. Ali alleged that she had ordered an audio recording of the summary judgment hearing on July 13, 2022. In a response sent that same day, the circuit court’s Technical Services Department advised her that it provides “electronic recordings (Audio CDs) of [c]ircuit [c]ourt proceedings for the limited purpose of verification of testimony only.” It further informed her that “[a]ny broadcast of such electronic recording is strictly prohibited by law and [a]dministrative [o]rder of this [c]ourt.” The assertion by the Technical Services Department that broadcast was “prohibited by law” was based, in part, on Md. Code, Criminal Procedure Article (“CP”) § 1-201.²

² CP §1-201 provides:

(a) *Prohibited.* — (1) Except as provided in subsection (b) of this section, a person may not record or broadcast any criminal matter, including a trial, hearing, motion, or argument, that is held in trial court or before a grand jury.

(2) This prohibition applies to the use of television, radio, and photographic or recording equipment.

(b) *Exceptions.* — Subsection (a) of this section does not apply to the use of electronic or photographic equipment approved by the court:

(continued . . .)

Ms. Ali argued in her motion, correctly, that CP § 1-201 was inapplicable because it did not apply to civil cases, such as the one she had filed. Her motion ignored the fact that the denial of the right to broadcast was also prohibited by administrative order.

Judge Dwyer denied the motion in an order entered on August 23, 2022.

DISCUSSION

On appeal, Ms. Ali contends, as she did below, that because CP § 1-201 applies exclusively to “criminal trials, . . . hearings, [and] motions,” the circuit court erred by basing its denial of the motion thereupon. Alternatively, Ms. Ali claims, for the first time on appeal, that CP § 1-201’s prohibition against broadcasting lawfully obtained recordings of court proceedings is unconstitutional. Judge Dwyer did not state her reasons for denying the motion, but Ms. Ali’s argument impliedly assumes that CP § 1-201 was the legal authority that restricts the reproduction and transmission of lawfully obtained copies of court proceedings. The assumption overlooks the fact that the denial was not based entirely

(. . . continued)

(1) to take the testimony of a child victim under § 11-303 of this article; or

(2) to perpetuate a court record.

(c) *Penalty.* — A person who violates this section may be held in contempt of court.

on CP § 1-201 but was also based on administrative orders that were provided to Ms. Ali at the time of the denial.

The administrative orders to which the Technical Services Department referred were issued on December 7, 2006, and September 6, 2018, by Montgomery County Administrative Judges Ann S. Harrington and Robert A. Greenberg, respectively. Both orders provide: “[A]ny electronic recording of a [c]ircuit [c]ourt proceeding being provided by Technical Services is for verification of testimony only and that any broadcast of such electronic recording is strictly prohibited.” Those orders are facially consistent with (albeit not identical to) restrictions imposed by Title 16, Chapter 500 of the Maryland Rules, which applies generally “to the recording of proceedings in the circuit . . . courts,” and not solely to criminal cases. At the time of Judge Dwyer’s ruling, Rule 16-504 provided, in pertinent part:

(j) Right to Obtain Copy of Audio-video Recording. —

(1) Who May Obtain Copy. — Upon written request and subject to the conditions in this section, the custodian shall make available to the following persons a copy of the audio-video recording, including a recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

* * *

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party[.]

* * *

(2) **Restrictions on Use.** — Unless authorized by an order of court, *a person who receives a copy of an electronic recording under this section shall not:*

(A) *make or cause to be made any additional copy of the recording; or*

(B) *except for a non-sequestered witness or an agent, employee, or consultant of the party or attorney, give or electronically transmit the recording to any person not entitled to it under subsection (j)(1) of this Rule.*

(3) **Violation of Restriction on Use.** — A willful violation of subsection (j)(2) of this Rule may be punished as a contempt.^[3]

Md. Rule 16-504(j) (emphasis added).

While Ms. Ali’s argument that CP § 1-201 applies exclusively to criminal proceedings and was not, therefore, a valid basis for the court to deny the Motion, she is correct but Judges Harrington’s and Greenberg’s orders coupled with the restrictions imposed by Rule 16-504, constitute independent legal authority supporting the court’s

³ At the recommendation of the Standing Committee on Rules of Practice and Procedure, on September 22, 2023, the Supreme Court of Maryland amended Maryland Rules 16-502, 16-503, 16-504, and 16-901, and adopted a new Rule 16-504.1. Supreme Court of Maryland Rules Order (September 22, 2023), available at <https://www.mdcourts.gov/sites/default/files/rules/order/ro217.pdf>. The Court ordered that those changes “take effect and apply to all actions commenced on or after January 1, 2024 and, insofar as practicable, to all actions then pending[.]” *Id.* at 2. The amendments to Rule 16-504 dispense with the broad restrictions on reproducing and electronically transmitting copies of official recordings of court proceedings currently codified therein. Subject to certain exceptions, the amended Rule will impose narrower prohibitions against the reproduction or electronic transmission of any shielded or redacted portion of such a recording to an unauthorized individual.

decision to deny the Motion. In her brief, Ms. Ali did not discuss the administrative orders much less argue that the orders were invalid. In fact, in the argument section of her brief, the orders are not even mentioned.

Ms. Ali asserts that any “broadcast ban” unconstitutionally infringes upon her First Amendment right to free speech.⁴ Ms. Ali did not, however, raise a constitutional argument before Judge Dwyer. Accordingly, we decline to address the merits of this unpreserved challenge. *See* Md. Rule 8-131(a) (“Ordinarily, [except for jurisdictional issues] the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”); *Balt. Tchrs. Union v. Bd. of Educ.*, 379 Md. 192, 205-06 (2004) (“It is particularly important not to address a constitutional issue not raised in the trial court in light of the principle that a court will not unnecessarily decide a constitutional question.”); *Hall v. State*, 22 Md. App. 240, 246 (1974) (“[N]othing is better settled than the rule that a question as to the constitutionality of a statute will not be considered on appeal when not properly raised and decided by the lower court.” (quoting *Vuitch v. State*, 10 Md. App. 389, 398 (1970))).

⁴ We are mindful the United States Court of Appeals for the Fourth Circuit recently held that because CP § 1-201’s “broadcast ban” “is properly assessed as a penal sanction for publishing information released to the public in official court records—it is subject to strict scrutiny[.]” *Soderberg v. Carrion*, 999 F.3d 962, 964 (4th Cir. 2021). We are also aware of the United States District Court for the District of Maryland’s (“the District Court”) ensuing declaratory judgment that CP § 1-201 is too under – and overinclusive to survive strict scrutiny and does not therefore pass First Amendment muster. *Soderberg v. Carrion*, 645 F.Supp.3d 460 (D. Md. December 9, 2022).

CONCLUSION

Judges are presumed to know the law and to have correctly applied it. *Powell v. State*, 394 Md. 632, 643 (2006). That presumption was not rebutted in this case. The provisions of Md. Rule 16-504 along with the administrative order referred to above, gave Judge Dwyer a sound basis for denying Ms. Ali’s motion to broadcast the audio recordings at issue.

For the foregoing reasons, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**