

Circuit Court for Prince George's County  
Case No. CT-16-1428X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1312

September Term, 2017

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JUAN F. HERNANDEZ

v.

STATE OF MARYLAND

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Graeff,  
Nazarian,  
Fader,

JJ.

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Opinion by Fader, J.

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Filed: June 15, 2018

\* 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.

While an officer with the Prince George’s County Police Department, the appellant, Juan Hernandez, responded to a 911 call. As he arrived on the scene, a suspect began to flee. Mr. Hernandez gave chase in his cruiser while another officer pursued the suspect on foot. While continuing the pursuit through a nearby field, Mr. Hernandez hit the suspect with his cruiser.

The State tried Mr. Hernandez before a jury in the Circuit Court for Prince George’s County on charges of second-degree assault and misconduct in office. Mr. Hernandez argued that the court should only instruct the jury as to the malfeasance modality of the offense of misconduct in office. Over his objection, the trial court also instructed the jury as to the misfeasance modality of that crime.<sup>1</sup> The jury convicted Mr. Hernandez of second-degree assault but acquitted him of misconduct in office.

Normally, an appellant challenges his or her conviction by attacking some part of the trial associated with the charge for which he or she was convicted. Mr. Hernandez, however, does not challenge any aspect of his assault conviction. Instead, his sole challenge on appeal is to the propriety of the trial court instructing the jury as to the misfeasance modality of misconduct in office, the crime of which he was acquitted.

Notably, Mr. Hernandez does not make any viable argument that the allegedly erroneous jury instruction on the misconduct in office count prejudiced his defense of the assault count. Indeed, Mr. Hernandez waived any such argument by failing to raise it in

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<sup>1</sup> In essence, the malfeasance modality requires proof that the defendant corruptly performed an unlawful act, while the misfeasance modality requires proof that the defendant corruptly performed a lawful act. *See generally Chester v. State* 32 Md. App. 593, 602-04 (1976).

his brief. Md. Rule 8-504(a)(6) (“A brief shall . . . include . . . [a]rgument in support of the party’s position on each issue.”); *see also Darling v. State*, 232 Md. App. 430, 465-66 (2017) (refusing to address argument contained in only a single, conclusory statement).

Instead, Mr. Hernandez’s counsel conceded at oral argument that his purpose in undertaking this appeal was to seek an advisory opinion to provide guidance for future cases in which he will represent different defendants. Although candid, that concession also puts into sharp focus why we cannot provide Mr. Hernandez with any relief. The appellate courts of this state “do[] not give advisory opinions[.]” *O’Brien & Gere Eng’rs, Inc. v. City of Salisbury*, 447 Md. 394, 404-05 (2016) (quoting *Dep’t of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007)); *see also Rodriguez v. Cooper*, 458 Md. 425, \_\_\_, 182 A.3d 853, 862 (2018) (stating that issuing advisory opinions is “a long forbidden practice”) (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 591 (2014)); *United States v. Richardson*, 418 U.S. 166, 171 (1974) (indicating that the rule against rendering advisory opinions dates “[a]s far back as *Marbury v. Madison*”).

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**