

Circuit Court for Prince George's County  
Case No. CT200146B

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 2376

September Term, 2023

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RAYMOND TYLER THOMPSON

v.

STATE OF MARYLAND

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Leahy,  
Beachley,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: August 11, 2025

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

In November 2019, Samie Davon Neil was shot and killed in Prince George’s County. After an investigation, the police determined that appellant, Raymond Tyler Thompson, was a suspect in the shooting. Following an investigation, Thompson was arrested, and on December 5, 2019, he was charged with Neil’s murder in the District Court for Prince George’s County. On December 9, 2019, following his initial appearance before a District Court Commissioner, Thompson was held without bond. While in jail, his cellmate Anthony Boyd, operating as an informant for the Prince George’s County Police Department, recorded statements in which Thompson incriminated himself as the shooter in Neil’s murder.<sup>1</sup> On February 6, 2020, Thompson was indicted in the Circuit Court for Prince George’s County.

Thompson moved to suppress his statements to Boyd, arguing that Boyd’s questioning, as an agent of the police, violated his Sixth Amendment right to counsel under *Massiah v. United States*, 377 U.S. 201 (1964). In response, the State argued that *Massiah* only applies after an indictment in the circuit court. The circuit court agreed with the State and denied Thompson’s motion to suppress. Thompson later entered into a conditional plea agreement with the State pursuant to Maryland Rule 4-242(d), agreeing to plead guilty to first-degree murder while retaining the right to appeal the denial of his motion to suppress the recorded statements he made to Boyd.<sup>2</sup>

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<sup>1</sup> In a prior interview with the police, Thompson had acknowledged being present at the scene during the shooting but claimed that another man was the shooter.

<sup>2</sup> Md. Rule 4-242(d) provides, in pertinent part:

Thompson then filed a timely notice of appeal and presents one question for our review, which we have rephrased as follows: did the circuit court err in denying Thompson’s motion to suppress the jailhouse statements?<sup>3</sup>

On appeal, the State concedes that Thompson’s statements to Boyd should have been suppressed based on the U.S. Supreme Court’s holding in *Rothgery v. Gillespie County*, 554 U.S. 191 (2008). Now the State argues that the suppression ruling Thompson challenges was not “dispositive of the case” under Maryland Rule 4-242(d)), and therefore,

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(2) *Entry of Plea; Requirements.* With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant’s favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

(3) *Withdrawal of Plea.* A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Pursuant to Maryland Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”) § 12-302(e)(2)-(3), although an appeal generally is not permitted from a final judgment entered following a guilty plea, “[a]n appeal from a final judgment entered following a conditional plea of guilty may be taken in accordance with the Maryland Rules.”

<sup>3</sup> Thompson’s question, as originally presented, is:

Did the Circuit Court for Prince George’s County err in denying the defense motion to suppress Appellant’s statements, made in response to interrogation by a jailhouse informant and agent for the police, where that jailhouse informant interrogated Appellant about the same murder for which he had already been arrested, had already been formally charged, had already been held without bail, and already had defense counsel, whose appearance had been entered on the court record?

could not serve as the basis for a conditional guilty plea. The State argues that we should dismiss the appeal and remand the case “so that the circuit court can vacate Thompson’s conviction and return the parties to where they were before the [plea] agreement took place.” For the reasons that follow, we are not persuaded by the State’s procedural argument, and shall reverse the circuit court’s judgment. We remand the case to that court with instructions to grant the motion to suppress, and in accordance with Maryland Rule 4-242(d), Thompson may then withdraw his plea.

### **BACKGROUND**

In his motion to suppress the surreptitiously recorded statements he made to Boyd, Thompson argued that his Sixth Amendment right to counsel during police interrogation had been violated according to the U.S. Supreme Court’s holding in *Massiah v. U.S.*, 377 U.S. 201 (1964). Thompson contended that “[o]nce an ‘accused’ takes on his entitlement to counsel, upon indictment, the police and their agents, absent a waiver from him, are barred from questioning him without his lawyer being present.” Therefore, he argued, Boyd’s questioning violated his Sixth Amendment right to counsel.

The State responded to Thompson’s motion by asserting that Thompson’s Sixth Amendment right to counsel had not attached at the time of his conversation with the informant. The State pointed out that the charges brought against Thompson in the district court were not a “charging document under which a defendant may be tried” because “felony is in the exclusive jurisdiction of the circuit court[.]” (Quoting *Webster v. State*, 299 Md. 581, 611 (1984)). The State analogized Thompson’s case to *Wallace v. State*, 237 Md. App. 415 (2018), in which the defendant’s Sixth Amendment right to counsel did not

attach when he was charged in the district court, but later attached when he was indicted in the circuit court.

At the December 21, 2023 hearing on his motion to suppress, Thompson argued, relying on the Supreme Court’s decision in *Massiah*, that although his incriminatory statements were made prior to his indictment for murder, adversarial criminal proceedings had already commenced against him—he had been charged in the district court and held without bail—and he was therefore entitled to a Sixth Amendment right to counsel. To the contrary, the State urged that, in light of our holding in *Wallace*, suppression was not warranted because Thompson had not been indicted at the time of the conversations with the informant, and he was therefore not yet an “accused” whose right to counsel had attached.

On January 4, 2024, the circuit court, invoking *Wallace*, ruled that Thompson’s Sixth Amendment right to counsel was not triggered until he became an accused, with the State’s filing of an indictment against him. The court therefore denied the motion to suppress on that ground.<sup>4</sup>

On January 22, 2024, Thompson entered into a conditional plea agreement with the State. As detailed in the agreement, upon entry of a plea of guilty to the first-degree murder of Neil,

the Defendant reserves the right to appeal the denial of his Motion to Suppress the recorded confessions made to his cellmate, Anthony Boyd, who

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<sup>4</sup> Thompson moved for reconsideration of the court’s ruling, which the State opposed. The State later asserted that the motion for reconsideration became moot when Thompson entered into the conditional plea agreement, waiving all previous arguments.

was acting as a police informant while incarcerated at the Prince George’s County Detention Center. The Defendant’s Motion to Suppress was based upon *Massiah v. United States*, 377 U.S. 201 (1964) and related case law. The State’s opposition was based upon *Wallace v. State*, 237 Md. App. 415 (2018) and related case law. The parties agree that the Motion to Suppress the recorded jailhouse confessions was raised pretrial, litigated orally and in writing, and ultimately determined adversely against the Defendant. **The parties further agree that the Court’s ruling on the motion to suppress the recorded confessions was significant to the evidence that would have been presented at trial.**

This agreement does not permit the Defendant to appeal any other issue that was raised and litigated pretrial.

(Emphasis added). The State agreed to recommend a life sentence, suspending all but 50 years. If Thompson were to prevail on appeal of the denial of his motion to suppress, the State further agreed that he could withdraw his guilty plea and proceed to trial.

On January 22, 2024, the circuit court sentenced Thompson to a life sentence with all but 50 years suspended, as recommended by the State. Thompson timely filed his notice of appeal on February 14, 2024.<sup>5</sup>

## DISCUSSION

### Parties’ Contentions

As he did below, Thompson argues that the circuit court erred in denying his motion to suppress the recorded statements he made to Boyd. Thompson points to the U.S. Supreme Court’s holding in *Massiah* and related cases, some of which held that the right to counsel arises before indictment if a defendant has been formally charged. For instance,

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<sup>5</sup> On or about January 30, 2024, Thompson moved, *pro se*, to withdraw his plea, although it appears from the docket entries that the court did not receive the motion until March 5, 2024. Thompson subsequently withdrew his motion at a hearing on August 16, 2024.

Thompson cites to *Brewer v. Williams*, 430 U.S. 387 (1977), for the proposition that “the right to counsel arises before indictment, if the defendant has been charged, arrested, and held without bail.” Thompson also briefly quotes from *Rothgery v. Gillespie County*, 554 U.S. 191, 211 (2008), in which the Supreme Court stated that “*Brewer* expressed ‘no doubt’ that the right to counsel attached at the initial appearance.” To the extent the holding in *Wallace* appears to differ from the rationale of *Massiah* and its progeny, Thompson suggests that *Wallace* misconstrued earlier precedent and adopted “the fatally flawed analysis” contained in earlier Maryland cases.

The State, in its brief, contends, for the first time, that Thompson’s challenge to the suppression of his jailhouse statements could not have served as the basis for his conditional plea agreement. This is because, the State posits, the State’s investigation independently produced significant evidence of Thompson’s participation in Neil’s murder before he made the incriminating statements to Boyd and, therefore, the resolution of the suppression issue in his favor would not have been dispositive of his case, as required for the entry of a conditional guilty plea under Maryland Rule 4-242(2)(d)(2).<sup>6</sup> Because the plea agreement was fatally flawed on that basis, the State urges, this appeal should be

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<sup>6</sup>Md. Rule 4-242(2)(d)(2) states, in pertinent part:

*Entry of Plea; Requirements.* With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) **if determined in the defendant’s favor would have been dispositive of the case.**

(Emphasis added).

dismissed with no ruling on the merits, with the matter remanded to the circuit court with instructions to vacate Thompson’s conviction and guilty plea, after which he could elect to enter into a new plea agreement or go to trial.

If we elect not to dismiss Thompson’s appeal, the State alternatively acknowledges that based on the U.S. Supreme Court’s decision in *Rothgery v. Gillespie County*, the circuit court should have granted his motion to suppress. In *Rothgery*, 554 U.S. at 213, the U.S. Supreme Court held that the defendant’s initial appearance before a judicial officer, where he learned of the charges against him and his liberty became restricted, marked the start of the adversarial judicial proceedings that triggered the attachment of the Sixth Amendment right to counsel. The *Rothgery* holding, the State continues, makes clear that its argument during the suppression hearing—that Thompson’s right to counsel did not attach until he was indicted in the circuit court—erroneously relied on *Wallace*, which involved a defendant who, unlike Thompson and Rothgery, had not yet had an initial appearance before a judicial officer when he made the statements he later sought to suppress. Therefore, the State now concedes that *Wallace* is inapposite, and agrees that if we do not dismiss Thompson’s appeal pursuant to Maryland Rule 4-242, we should instruct the circuit court to vacate Thompson’s conviction and permit him to withdraw his guilty plea.

In reply, Thompson suggests that we should not consider the State’s argument urging dismissal of his appeal on the ground that the issue permitted to be appealed was not dispositive of the case, as that issue was neither raised in, nor considered by, the circuit court and was therefore not preserved under Md. Rule 8-131(a). Moreover, Thompson continues, the State’s newly advanced argument in favor of dismissal of the appeal directly



contradicts its prior explicit agreement that consideration of the suppression issue would be permitted upon appeal. In other words, dismissal of the appeal would be unfair to Thompson, who was encouraged to enter into the conditional plea agreement permitting appeal by the same entity now arguing for dismissal of that appeal. For these reasons, Thompson supports the State’s alternative position, that is, based on the U.S. Supreme Court’s holding in *Rothgery*, that the matter be remanded to the circuit court with instructions to vacate his conviction and sentence imposed pursuant to the conditional guilty plea and to grant his motion to suppress the jailhouse statements he made to Boyd.

### **Analysis**

#### **A. Dismissal of Appeal**

First, we observe that the “dispositive of the case” requirement of Maryland Rule 4-242(d)(2) is not jurisdictional. Pursuant to CJP § 12-302(e)(3), “[a]n appeal from a final judgment entered following a conditional plea of guilty may be taken in accordance with the Maryland Rules.” That statute does not require that the issues raised on appeal would have been dispositive of the case. The Maryland Rules couch the “dispositive of the case” requirement in terms of the “right to appeal[.]” Md. Rule 4-242. Thus, there is daylight between when this Court has jurisdiction—any final judgment following a conditional plea of guilty—and what issues *must* be considered on appeal—those “issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if

determined in the defendant’s favor would have been dispositive of the case.”<sup>7</sup> *See id.* This Court may exercise its discretion to consider an issue raised in a conditional plea that is not dispositive. *Cf. Walters v. State*, 197 P.3d 1273, 1278 (Wyo. 2008) (noting that court could exercise discretion to consider non-dispositive issues under Wyoming’s conditional plea rule).

Here, there is no doubt that final judgment was entered following a conditional plea of guilty. Therefore, at minimum, this Court has jurisdiction to consider the issue raised on appeal. In an appropriate case, when it is clear that an issue specified in a conditional plea would not have been dispositive of the case, this Court may vacate the defendant’s conviction and remand for further proceedings without considering the merits.<sup>8</sup> *Cf. United States v. Bundy*, 392 F.3d 641, 650 (4th Cir. 2004) (vacating conviction and remanding for further proceedings without considering issues raised in conditional plea when defendant “attempt[ed] to appeal a pretrial order denying a motion for production of certain documents”). But in this case, based on concerns of judicial economy, we decline to do so.

The issue specified in Thompson’s conditional plea—the suppression of a jailhouse statement in which Thompson admits to the substance of the charges against him—is

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<sup>7</sup> Maryland Rule 4-242(d)(3) permits “[a] defendant who prevails on appeal with respect to an issue reserved in the plea” to “withdraw the plea.” The rule does not mandate dismissal of the charges against the defendant. Thus, the rule clearly contemplates that proceedings in the circuit court may continue even after a reversal.

<sup>8</sup> Notably, if the “dispositive of the case” requirement were jurisdictional, this Court would have no power to vacate the underlying conviction and the defendant would be forced to invalidate the plea agreement through post-conviction proceedings.

plainly critical to the underlying case. For this Court to re-evaluate the circuit court’s conclusion, in accepting Thompson’s conditional plea, that the suppression of this statement would have been dispositive of Thompson’s case, we would be required to (1) evaluate the State’s other proffered evidence, (2) determine whether that evidence would be admissible in a hypothetical trial, and (3) determine whether that alternate evidence, if admissible, would be sufficient to support Thompson’s conviction. On the other hand, the State now concedes that Thompson’s jailhouse statement should have been suppressed based on the Supreme Court’s decision *Rothgery*. Moreover, the court and the parties agreed that “the Defendant reserves the right to appeal the denial of his Motion to Suppress the recorded confessions made to his cellmate, Anthony Boyd, who was acting as police informant while incarcerated at the Prince George’s County Detention Center[,]” and that “the Court’s ruling on the Motion to Suppress the recorded confessions was significant to the evidence that would have been presented at trial.” Therefore, we shall deny the State’s request to dismiss this appeal.

#### **B. Sixth Amendment Right to Counsel**

The Sixth Amendment to the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” The United States Supreme Court has held that “[o]nce formal criminal proceedings begin, the Sixth Amendment renders inadmissible in the prosecution’s case in chief statements ‘deliberately elicited’ from a defendant without an express waiver of the right to counsel.” *Michigan v. Harvey*, 494 U.S. 344, 348 (1990). “[T]he Sixth Amendment is violated when the State obtains incriminating statements by

knowingly circumventing the accused’s right to have counsel present in a confrontation between the accused and a state agent.” *Maine v. Moulton*, 474 U.S. 159, 176 (1985).

The Sixth Amendment right to counsel “does not attach until a prosecution is commenced[.]” *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). Commencement of a prosecution is pinned to “the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment[.]” *Rothgery*, 554 U.S. at 198 (quoting *United States v. Gouveia*, 467 U.S. 180, 188 (1984)). It is at that point that “‘the government has committed itself to prosecute,’ ‘the adverse positions of government and defendant have solidified,’ and the accused ‘finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.’” *Id.* (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)).

In *Massiah v. United States*, a merchant seaman was arrested and subsequently indicted for possession of narcotics aboard a U.S. vessel. 377 U.S. 201, 202 (1964). An alleged co-conspirator elected to cooperate with the government, so federal agents installed a radio transmitter in his vehicle. *Id.* at 202-03. While both men were on pretrial release on bail, Massiah made incriminating statements to his co-conspirator. *Id.* at 203. The U.S. Supreme Court held that Massiah “was denied the basic protections of [the Sixth Amendment] guarantee when there was used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel.” *Id.* at 206.

The Fourth Circuit has summarized the salient factors establishing a *Massiah* violation: “that the inmate witness was a paid informant acting on instructions from the government, that the informant was ostensibly no more than a fellow inmate of the defendant, and that the defendant was in custody and under indictment at the time he incriminated himself.” *Thomas v. Cox*, 708 F.2d 132, 134 (4th Cir. 1983) (citing *United States v. Henry*, 447 U.S. 264, 270 (1980)).

Two decades later, the Supreme Court clarified in *Rothgery* that “a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.” 554 U.S. 191, 213 (2008). The Court explained why the Sixth Amendment right to counsel attaches at a defendant’s initial appearance before a judicial officer:

[B]y the time a defendant is brought before a judicial officer, is informed of a formally lodged accusation, and has restrictions imposed on his liberty in aid of the prosecution, the State’s relationship with the defendant has become solidly adversarial. And that is just as true when the proceeding comes before the indictment (in the case of the initial arraignment on a formal complaint) as when it comes after it (at an arraignment on an indictment).

*Id.* at 202. The Court went on to specify that the federal government, along with 43 States—including Maryland—take the first step toward appointing counsel “before, at, or just after initial appearance.” *Id.* at 204.

Following the Supreme Court’s decision in *Rothgery*, Maryland courts have held similarly. In *In re Darryl P.*, 211 Md. App. 112, 177 (2013), this Court held that the juvenile defendant’s Sixth Amendment right to counsel attached when he appeared before

a District Court judge for a bail hearing. And the Supreme Court of Maryland cited *Rothgery* in holding that, under the Public Defender Act, indigent defendants were entitled to public defender representation at a bail hearing before a District Court Commissioner.<sup>9</sup> See *DeWolfe v. Richmond*, 434 Md. 403, 428, 432 (2012), *on reconsideration*, 434 Md. 444 (2013). The Court noted that “the initial appearance before a Commissioner in Maryland is an event that marks the beginning of the formal criminal adversarial process.” *Id.* at 428.

As the State correctly notes in its brief, *Wallace v. State*, 237 Md. App. 415 (2018), is inapposite here because the case did not involve a defendant who had an initial appearance before a judicial official. Wallace was a suspect in a murder committed on August 10, 2014. *Id.* at 419. He obtained counsel, who informed prosecutors that Wallace would turn himself in to the authorities on August 12, 2014. *Id.* Wallace failed to appear on that date, and after a lengthy manhunt, he was found and arrested on September 16, 2014. *Id.* That same day, Wallace was interrogated by police and, in a taped interview, provided information linking himself to the murder. *Id.* He was subsequently indicted by a grand jury on November 18, 2014. *Id.* at 420. We held that Wallace’s Sixth Amendment right to counsel did not attach until he was indicted on November 18, and therefore his interrogation on September 16 did not violate that right. *Id.* at 424. At first blush, it does appear that *Wallace* requires an indictment as the trigger for the attachment of the right to

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<sup>9</sup> The Public Defender Act was later amended, and the Supreme Court of Maryland subsequently held that indigent defendants have the right to state-furnished counsel at their initial appearance before a District Court Commissioner under Article 24 of the Maryland Declaration of Rights. *DeWolfe v. Richmond*, 434 Md. 444, 456 (2013).

counsel. However, in *Wallace*, the defendant had not been formally charged, indicted, or arraigned, nor had he attended a preliminary hearing when he was interrogated on September 16. *See id.* at 419.

The State now concedes that *Rothgery* controls, and that Thompson’s right to counsel attached from the moment he appeared before the District Court Commissioner on December 9, 2019. *See Rothgery*, 554 U.S. at 199. After that point, the police could not solicit an incriminating statement from Thompson without an explicit waiver of his Sixth Amendment right to counsel. *See Harvey*, 494 U.S. at 348. Boyd questioned Thompson in January 2020, after Thompson’s Sixth Amendment right to counsel attached. Boyd was operating as an informant for the Prince George’s County Police Department. This jailhouse questioning by Boyd, as an agent of the police, violated Thompson’s Sixth Amendment right to counsel. *See Moulton*, 474 U.S. at 176 (holding that police violated defendant’s Sixth Amendment right to counsel when they arranged to record conversations between defendant and undercover informant). Thompson’s motion to suppress his jailhouse statements to Boyd should have been granted. Therefore, we remand the case to that court with instructions to grant the motion to suppress, and in accordance with Maryland Rule 4-242(d), Thompson may then withdraw his plea.

**JUDGMENT OF THE CIRCUIT COURT FOR  
PRINCE GEORGE’S COUNTY REVERSED;  
CASE REMANDED TO THAT COURT WITH  
INSTRUCTIONS TO GRANT THE MOTION TO  
SUPPRESS. COSTS TO BE PAID BY APPELLEE.**