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COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Melinda Maldonado, Misc. Docket AG No. 11, September Term 2017, filed March 6, 2019. Opinion by Getty, J.

https://mdcourts.gov/data/opinions/coa/2019/11a17ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel filed a Petition for Disciplinary or Remedial Action ("Petition") with the Court of Appeals alleging that Melinda Maldonado ("Ms. Maldonado") had violated the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"). The Petition alleged that Ms. Maldonado, during her representation of Gladys Duren ("Ms. Duren"), violated the following Rules: 1.1 (Competence); 4.1 (Truthfulness in Statements to Others); 4.4 (Respect for Rights of Third Persons); 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law); 8.1 (Bar Admission and Disciplinary Matters); and 8.4 (Misconduct).

The hearing judge found the following facts: Ms. Maldonado was not licensed to practice law in Maryland and Ms. Maldonado had a *pro hac vice* sponsor for only a portion of her representation of Ms. Duren. During her representation of Ms. Duren, Ms. Maldonado called her client's doctor, held herself out as a medical doctor, and sought alternation of her client's medical records. When Ms. Maldonado was unable to reach the doctor, Ms. Maldonado repeatedly called the doctor's office over the course of two days and eventually made unprofessional comments about the doctor. Furthermore, while not authorized to practice law in Maryland, Ms. Maldonado drafted and filed various pleadings on behalf of her client before Maryland courts. Finally, Ms. Maldonado failed to obtain the trial transcript required for her client's appeal in the Court of Special Appeals.

The hearing judge concluded that Ms. Maldonado had violated Rule 1.1, 4.1, 4.4, 5.5, 8.1, and 8.4.

Held: Disbarred

The Court of Appeals sustained all the hearing judge's conclusions of law except for Rule 4.4. The Court of Appeals found there was insufficient clear and convincing evidence of a Rule 4.4, Respect for Rights of Third Persons, violation.

The Court disbarred Ms. Maldonado and explained due to her unauthorized practice of law, refusal to accept any responsibility for her actions, and avoidance of the disciplinary action, disbarment is an appropriate sanction to protect the public and public's confidence in the legal profession. Ms. Maldonado's conduct encompassed both an unauthorized practice of law and intentionally dishonest misconduct. Either of which could warrant disbarment. There were also countless aggravating factors, including: a dishonest or selfish motive; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or order of the disciplinary agency; submission of false evidence, false statements, or other deceptive practice during the disciplinary process; refusal to acknowledge the wrongful nature of conduct; substantial experience in the practice of law; illegal conduct; and likelihood of repetition of misconduct in this case. Further, there existed no compelling extenuating or mitigating factors to warrant a different type of sanction. As a result, Ms. Maldonado was disbarred.

Anne George, et al. v. Baltimore County, Maryland, et al., No. 37, September Term 2018, Opinion by Adkins, J.

Watts, J., concurs.

https://mdcourts.gov/data/opinions/coa/2019/37a18.pdf

STANDING – TAXPAYER STANDING DOCTRINE – SPECIFIC INJURY

Facts:

Baltimore County taxpayers, Anne George, Jody Kesner, and Jody Rosoff (collectively, "Taxpayers") filed suit against Baltimore County ("County") and various County agencies alleging waste in the operation of Baltimore County Animal Shelter ("BCAS"). Taxpayers filed a complaint in the Circuit Court for Baltimore County seeking preliminary and permanent injunctions, a declaratory judgment, and a writ of mandamus. Taxpayers alleged that the County, through its management and operation of BCAS, violated numerous provisions of Baltimore County Code, Article 12.

The County filed a motion to dismiss or, in the alternative, motion for summary judgment, claiming, *inter alia*, that Taxpayers "failed to adequately allege any illegality or *ultra vires* act that reasonably may result in a pecuniary loss or a tax increase," and thus lacked standing. Taxpayers responded alleging that the County's mismanagement caused Taxpayers to suffer pecuniary loss "from the illegal expenditure of taxpayer funds," which included the waste of tax-derived funds "on excess veterinary care and medications, food and other necessities, euthanasia, and employees." Moreover, with fewer animals suitable for adoption, Taxpayers asserted a loss of revenue from adoption and licensing fees. In a separate motion for preliminary injunction, Taxpayers submitted 18 affidavits containing numerous reports of poor conditions at BCAS, mistreatment of animals, and waste.

The trial court overruled the County's motion to dismiss but granted the motion for summary judgment because Taxpayers did not "specifically allege waste" and did not demonstrate the taxes would increase. The Court of Special Appeals affirmed the trial court, holding that "the County's actions were not reasonably likely to result in a pecuniary loss to [Taxpayers] because the County's actions were not likely to affect [their] taxes."

Held: Reversed.

First, the Court of Appeals considered whether affidavits, attached to a motion other than the responsive filing, can be utilized to determine whether there is a "genuine dispute as to any material fact" for summary judgment. The Court noted that courts should look to the "pleadings,

depositions, and admissions on file, together with the affidavits, if any" to determine whether a dispute exists. *Cox v. Sandler's, Inc.*, 209 Md. 193, 197 (1956). Consequently, they could consider supplemental affidavits filed separately from the plaintiff's response and prior to the hearing on the motion for summary judgment.

Next, the Court of Appeals discussed whether Taxpayers adequately pleaded taxpayer standing. The Court analogized it to a derivative shareholder suit—recognizing that the taxpayer suit consists, in essence, of taxpayers, as "shareholders," asserting the rights of their government against local administrators. The Court closely followed its decision in *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451 (2014), distilling its taxpayer standing framework as follows.

There are two broad requirements to assert taxpayer standing: (1) "taxpayer status" and (2) a "special interest." Taxpayer status necessitates that: (a) "the complainant is a taxpayer," and (b) "the suit is brought, either expressly or implicitly, on behalf of all other taxpayers." *State Center*, 438 Md. at 547. A special interest requires a taxpayer to establish two prongs: (a) the "illegal or *ultra vires* act" prong—"an action by a municipal corporation or public official that is illegal or *ultra vires*"—and (b) the "specific injury" prong—"that the action may injuriously affect the taxpayer's property, meaning that it reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes." *Kendall v. Howard Cty.*, 431 Md. 590, 605 (2013) (citation omitted).

Specific injury requires that the taxpayer demonstrate: (i) they have suffered the appropriate type of harm; (ii) a nexus between the illegal or *ultra vires* act and the alleged harm; and (iii) some modest showing regarding the degree of harm. *See State Center*, 438 Md. at 560. The specific injury prong was at issue in *George*, specifically the first required showing regarding the type of harm. To demonstrate the type of harm necessary for specific injury, plaintiffs must show, first, that they "reasonably may sustain a pecuniary loss or a tax increase," *Inlet Assocs. v. Assateague House Condominium Assn.*, 313 Md. 413, 441 (1988), and, then, that they have a "special interest distinct from the general public," *State Center*, 439 Md. at 556.

Here, Taxpayers allege excess expenditures on veterinary care, food, and medications; the cost of maintaining animals that, if cared for properly, would be eligible for adoption; lost revenue due to these non-occurrent adoptions; and excessive staffing resulting from an inadequate volunteer program, among other things. These allegations amount to waste. The Court recognized substantial waste in government operations, even without potential tax increase, as a pecuniary loss sufficient to confer standing. This is because taxpayers, as "shareholders," are reasonably entitled to a sound and careful use of funds. Moreover, Taxpayers are liable to replenish the fisc, via taxation, from which BCAS is funded and, thus, had an interest distinct from the general public. For these reasons, we hold that Taxpayers have demonstrated specific injury and, thus, possess standing to pursue their claim under the taxpayer standing doctrine.

State of Maryland v. Adnan Syed, No. 24, September Term 2018, filed March 8, 2019. Opinion by Greene, J.

Watts, J., concurs.
Barbera, C.J., Hotten and Adkins, JJ., concur and dissent.

https://mdcourts.gov/data/opinions/coa/2019/24a18.pdf

CRIMINAL LAW – POST CONVICTION – INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL – FAILURE OF TRIAL COUNSEL TO INTERVIEW POTENTIAL ALIBI WITNESS – STRICKLAND V. WASHINGTON

CRIMINAL LAW – POST CONVICTION – INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL – APPLICATION OF WAIVER PRINCIPLES

Facts:

On February 25, 2000, a jury in the Circuit Court for Baltimore City convicted Adnan Syed ("Mr. Syed") of the first-degree murder, robbery, kidnapping, and false imprisonment of Hae Min Lee ("Ms. Lee"). Mr. Syed challenged his conviction on direct appeal and on March 19, 2003, the Court of Special Appeals affirmed his conviction in an unreported opinion. *Syed v. State*, No. 923, Sept. Term 2000. On May 28, 2010, Mr. Syed filed a petition for post-conviction relief that he supplemented on June 27, 2010. Mr. Syed alleged that he received ineffective assistance of counsel from his trial counsel, his sentencing counsel, and his appellate counsel.

In the post-conviction petition, Mr. Syed asserted nine bases for his claim that he received ineffective assistance of counsel. Among them included the claim that Mr. Syed's trial counsel was ineffective for failing to investigate or call Asia McClain ("Ms. McClain") as a potential alibi witness. After a two-day hearing on the petition, the post-conviction court issued an order and memorandum denying post-conviction relief for Mr. Syed.

Mr. Syed then timely filed an application for leave to appeal in which he again raised the issue of his trial counsel's failure to interview or investigate Ms. McClain as a potential alibi witness. After filing his application for leave to appeal, Mr. Syed supplemented his application and requested that the Court of Special Appeals remand the case to the post-conviction court to consider a recently-filed affidavit from Ms. McClain. The Court of Special Appeals granted Mr. Syed's request and issued a limited remand in which it gave Mr. Syed the opportunity to file a request to re-open post-conviction proceedings with the Circuit Court. *Syed v. State*, 236 Md. App. 183, 181 A.3d 860.

As part of Mr. Syed's request to the Circuit Court to reopen his post-conviction proceedings, Mr. Syed filed, for the first time, a request for the Circuit Court to consider a new basis for his claim of ineffective assistance of counsel. The new basis related to a *Brady* violation concerning the

cell tower location evidence used against him. Mr. Syed continued to argue that his trial counsel was ineffective in failing to pursue Ms. McClain as a potential alibi witness. The Circuit Court granted Mr. Syed's request to reopen his post-conviction proceedings and review both of Mr. Syed's proffered issues.

After a five-day hearing, the post-conviction court denied relief to Mr. Syed as to his counsel's failure to investigate Ms. McClain as a potential alibi witness. The post-conviction court found that Mr. Syed's defense counsel was deficient, but that the deficiency did not prejudice Mr. Syed. Concerning Mr. Syed's claim of ineffective assistance of counsel for his trial counsel's failure to challenge the cell tower location evidence, the post-conviction court determined that Mr. Syed did not knowingly and intelligently waive the claim. The post-conviction court concluded that Mr. Syed's trial counsel's failure to challenge the cell tower location evidence was both deficient and prejudicial to Mr. Syed, and granted Mr. Syed a new trial on that ground.

In reviewing the post-conviction court's order, the Court of Special Appeals reversed the ruling. With regard to the claim that Mr. Syed suffered ineffective assistance of counsel because of his trial counsel's failure to investigate a potential alibi witness, the intermediate appellate court applied the tenets of *Strickland v. Washington*, 466 U.S. 668 (1984). That court held that Mr. Syed's trial counsel's performance was deficient and that the deficiency prejudiced Mr. Syed. As to the second claim of ineffective assistance of counsel for failing to challenge the cell tower location, the Court of Special Appeals ruled that Mr. Syed waived this claim because it was not included within the original post-conviction petition.

Upon the issuance of the Opinion by the Court of Special Appeals, the State petitioned this Court for *certiorari*, and Mr. Syed filed a conditional cross-petition for writ of certiorari. Both petitions were granted *certiorari* by this Court.

Held: Affirmed in part and reversed in part.

The Court of Appeals agreed with the Court of Special Appeals' conclusion that Mr. Syed's trial counsel's performance was deficient under the standard set forth in *Strickland v. Washington*. The Court of Appeals, however, departed from the conclusion that Mr. Syed was prejudiced by his trial counsel's deficiency. In holding that trial counsel was deficient for failing to investigate Ms. McClain as a potential alibi witness, the Court of Appeals reasoned that trial counsel's failure to contact Ms. McClain before trial did not constitute a reasonable tactical or strategic decision because it was not based on an adequate investigation of the facts.

As to the prejudice determination, the Court of Appeals concluded that given the evidence the jury heard, there was not a significant or substantial possibility that the verdict would have been different had trial counsel presented Ms. McClain as an alibi witness. The Court noted that Ms. McClain's alibi for Mr. Syed, in addition to being internally inconsistent to the alibi he presented, contradicted Mr. Syed's own statements to the police concerning what he did on the day of Ms. Lee's murder. Also, Ms. McClain's testimony concerned a narrow window of time.

While it encompassed the time at which the State theorized that Mr. Lee was killed, it did not rebut the evidence presented by the State as to Mr. Syed's actions in the afternoon and evening hours of January 13, 1999. Nor did it rebut the evidence the State offered to prove Mr. Syed's motive for killing Ms. Lee. Considering the totality of the direct and circumstantial evidence pointing to Mr. Syed's guilt, there was not a substantial or significant possibility that the jury's verdict would have been affected by Ms. McClain's testimony.

Finally, the Court of Appeals agreed with the Court of Special Appeals that Mr. Syed waived his claim of ineffective assistance of counsel related to his trial counsel's failure to challenge the cell-tower location data. Mr. Syed, in his original post-conviction petition, advanced nine bases for ineffective assistance of counsel which did not include his trial counsel's failure to challenge the cell-tower location data. Pursuant to the Uniform Postconviction Procedure Act, § 7-106 ("UPPA"), when a petitioner could have made an allegation of error in his/her original petition, but did not, there is a rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation. The Court pointed to the UPPA's legislative history, which indicates the Legislature intended to discourage a post-conviction petitioner from failing to raise all claims and grounds for post-conviction relief in one petition. The Court of Appeals held that Mr. Syed waived any claim that was not made in his original petition.

State of Maryland v. Harry Malik Robertson, No. 40, September Term 2018, filed April 2, 2019. Opinion by Hotten, J.

McDonald and Watts, JJ., dissent.

https://mdcourts.gov/data/opinions/coa/2019/40a18.pdf

CRIMINAL LAW – EVIDENCE – OPEN DOOR DOCTRINE – STANDARD OF REVIEW

CRIMINAL LAW – EVIDENCE – OPEN DOOR DOCTRINE

Facts:

On the evening of February 1, 2016, Robertson, then a student at Coppin State University, was involved in an altercation between two groups of men near the Morgan State University campus. The fight concluded after one of the participants, Gerald Williams ("the decedent"), was stabbed and ultimately died.

The impetus for the fight began nearly a week earlier. Daequon Gordon, a Prince George's Community College student, purchased ten dollars' worth of marijuana from Brandon Parker, a Morgan State University student. Gordon purchased the marijuana with a counterfeit fifty-dollar bill and received the marijuana and forty dollars in return.

When Parker learned that the fifty-dollar bill was counterfeit, he contacted Gordon and demanded his money back. A meeting was arranged, and both Parker and Gordon showed up with friends. Among them was the decedent, who was one of Gordon's friends, and Robertson, who was one of Parker's friends. The details of the fight were disputed at trial.

Gordon, testifying for the State, contended that when the two groups met that evening, he told Parker, "I got your money. You'll have to take it from me. I'm not paying you." Gordon then punched Parker, provoking a larger fight among the group. As Robertson and others ran from the area, the decedent collapsed and Gordon, observing that the decedent was bleeding, called an ambulance.

Two State witnesses testified that they saw Robertson and the decedent fighting. Robertson denied stabbing the decedent and further denied having a knife. He also testified that he heard the decedent say "I'm bleeding."

Robertson testified that after the men dispersed, he told his cousin, Ron, who was also engaged in the fight, that they should leave. Robertson got into Ron's car along with four of their friends. One of the friends was Abayomi Akinwold.

During the drive, Robertson testified that Akinwold was "beating himself up" and had blood on his hand and jacket. At one point, the car stopped, Akinwold exited, and tossed a knife into a

storm drain. The car subsequently stopped at a friend's home, which Akinwold entered. When Akinwold returned to the car moments later, his hands were clean.

Police subsequently arrested Robertson. At a jury trial, defense counsel engaged in a colloquy, questioning Robertson about whether he had been in any kind of trouble as a juvenile or as an adult. When the State questioned Robertson about potential trouble in his past during cross-examination, defense counsel objected. At a bench conference, the circuit court determined that the State could pursue its questioning because Robertson's counsel had opened the door to rebut the image of Robertson's good character. During cross-examination, the State questioned Robertson regarding his participation in a previous, unrelated incident during which a knife had been brandished ("previous incident"). The jury found Robertson guilty of accessory after the fact to murder, but acquitted him of first- and second-degree murder and of carrying a weapon openly with intent to injure.

On appeal, the Court of Special Appeals held that the circuit court erred in permitting the State to question Robertson regarding his participation in the previous incident because the door had not been opened for questioning by the State. The Court of Special Appeals also held that, because the introduction of the previous incident was not harmless error, Robertson's conviction for accessory after the fact must be reversed and the case remanded for a new trial.

Held: Affirmed.

The State appealed to the Court of Appeals to determine the appropriate standard of review for the open door doctrine, and specifically, to determine whether defense counsel had opened the door for the State's line of questioning.

The Court of Appeals held that application of whether particular evidence may be admitted based on the open door doctrine, is *de novo*. The Court further concluded that defense counsel opened the door, thereby enabling the State to question Robertson regarding the previous incident. However, despite the application of the open door doctrine, the State used the evidence of Robertson's participation in the previous incident in a manner that exceeded the scope of the doctrine.

State of Maryland v. Purnell Shortall, No. 31, September Term 2018, filed April 2, 2019. Opinion by Rodowsky, J.

https://www.mdcourts.gov/data/opinions/coa/2019/31a18.pdf

POST-CONVICTION – INEFFECTIVE ASSISTANCE OF COUNSEL

Facts:

The appellant, Purnell Shortall, owns property in Talbot County where he operates a building supply business. Constructed on the premises are both a main building and a maintenance building. While the former has an approved septic system for the disposal of bodily waste, the latter does not. During a routine inspection of Shortall's property on December 5, 2012, two inspectors from the Maryland Department of the Environment observed feces and toilet paper on the ground near the open end of a PVC pipe, which they traced to a toilet and sink that had been installed, sans permit, in the maintenance building. Subsequent inspections of the property were conducted on December 6 and 7, 2012, January 24, 2013, March 15, 2013, and May 3, 2013. It was not until the final inspection that an inspector found that the end of the pipe had been tightly capped.

The appellant was charged with five counts of violating COMAR 26.04.02.02.D ("Reg. D")—one count for each pre-capping inspection—which prohibits "disposing of sewage in a manner which may cause pollution." In addition, he was charged with five counts of violating COMAR 26.04.02.02.E ("Reg. E")—one count for each pre-capping inspection—which prohibits "failing to dispose of sewage in accordance with an approved permit."

The day before Shortall's trial, the State distributed its requested instructions, one of which stated "every day on which a violation is still present constitutes a separate offense until the date the violation is corrected." The State relied on this continuing violation theory throughout trial. During the State's case in chief, the inspectors testified that though Shortall had disposed of waste on the day of the December 5 inspection, any waste discovered during the subsequent inspections was the same as that initially discovered on December 5. When the State rested, Shortall moved for a judgment of acquittal on all counts. In response to the court's asking the State what proof it had that waste was deposited after December 5, the State replied: "It's a continuing violation by the penalty Statute … until the pipe is capped." The court denied Shortall's motion. After the defense rested, the court reviewed the State's requested instructions with counsel. Given that the defense did not except to the instruction, the court adopted it verbatim. The jury convicted Shortall on all ten counts.

Shortall filed for post-conviction relief alleging ineffective assistance of counsel based on trial counsel's failure to object to the continuing violation instruction. The court denied his petition, concluding that trial counsel's belief that the instruction was accurate was "a reasonable interpretation of the law." The Court of Special Appeals reversed, holding that, based on their

plain language, Regs. D and E merely impose a duty to refrain from disposing—and do not impose a duty to remediate. The court further held that counsel's failure to object to the instruction was "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and that that error prejudiced Shortall. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984).

Held: Affirmed.

By failing to preserve for appellate review a defense based on the plain language of Regs. D and E, trial counsel's performance fell below an objective standard of reasonableness.

Under the plain language of Regs. D and E, violations occur when one disposes of waste (1) "in any manner which may cause pollution of the ground surface" or (2) without "an approved on-site ... method of disposal." The State's proposed instructions both omitted the word "dispose" and added that a violation persists until "the violation is corrected." In contradistinction to the State's recommended instruction, however, neither Reg. D nor Reg. E impose a duty to remediate damage or to dismantle an unapproved septic system. The plain language of those regulations merely prohibits the disposal of waste via an unapproved method.

The authorities cited by the State, to which the defense deferred, were either wholly inapposite or minimally relevant to the instant case. Reasonably competent counsel could readily have argued that the minimal relevance of said authorities was far outweighed by the plain language of Regs. D and E.

In *Testerman v. State*, 170 Md. App. 324, 907 A.2d 294 (2006), *cert. granted*, 397 Md. 396, 918 A.2d 468, and *cert. dismissed*, 399 Md. 340, 924 A.2d 308 (2007), the Court of Special Appeals held that trial counsel's failure to invoke the axiom *ejusdem generis* to move for a judgment of acquittal, and thereby preserve that issue for appellate review, fell below the *Strickland* standard. *A fortiori*, trial counsel's failure to invoke the "plain meaning" doctrine fell below the *Strickland* standard of effectiveness.

It was reasonably probable that the ineffective assistance of counsel resulted in Shortall's having been convicted on eight of the ten counts submitted to the jury because of the erroneous instruction. Contrary to the State's contention, Shortall's unwarranted convictions were prejudicial in and of themselves. While the State maintains, moreover, that Shortall's failure to request that his trial counsel appeal amounted to a waiver of his right to challenge the instruction, the Court of Appeals held that defense counsel's continued misinterpretation of the Regs. D and E precluded Shortall from having waived a *known* right.

While the State contends that, if Shortall was afforded inadequate representation of counsel, the proper remedy is a new trial embracing all ten counts, Shortall claims that he is entitled to a new trial on counts two and three (to wit, his violations of Regs. D and E on December 5, 2012). Neither remedy, however, is appropriate. While the State's preferred remedy impermissibly

would afford it a second “bite at the apple,” the erroneous instruction did not prejudice Shortall as to counts two and three. The Court of Appeals, therefore, affirms the mandate of the Court of Special Appeals, remanding the case for a resentencing hearing on counts two and three.

Gordon Collins v. State of Maryland, No. 54, September Term 2018, filed April 2, 2019. Opinion by Watts, J.

Harrell, J., concurs.
Barbera, C.J., and McDonald, J., dissent.

https://www.mdcourts.gov/data/opinions/coa/2019/54a18.pdf

RIGHT TO FAIR AND IMPARTIAL JURY – VOIR DIRE – COMPOUND QUESTIONS – PROPERLY-PHRASED QUESTIONS – "STRONG FEELINGS" QUESTION

Facts:

In the Circuit Court for Anne Arundel County, the State, Respondent, charged Gordon Collins, Petitioner, with first-degree burglary and theft of property with a value of less than $1,000. During *voir dire*, the circuit court asked whether any prospective jurors had ever been the victim of a crime, or a member of a law enforcement agency. Multiple prospective jurors responded to each question. The circuit court asked the following compound "strong feelings" questions: "Does anyone on this panel have any strong feelings about the offense of burglary to the point where you could not render a fair and impartial verdict based on the evidence?"; and "Does any member of this panel have strong feelings about the offense of theft to the extent that it would make you unable to be fair and impartial and base your decision only on the evidence in this case[?]" None of the prospective jurors responded to either of the compound "strong feelings" questions. Collins's counsel requested that the circuit court ask properly-phrased "strong feelings" questions, and the circuit court refused.

The jury was seated and sworn, and heard preliminary jury instructions and opening statements. After a recess, the prosecutor advised the circuit court that the compound "strong feelings" questions were improper, and proposed that the circuit court ask the jury properly-phrased "strong feelings" questions. Over Collins's counsel's objection, the circuit court did so. None of the jurors responded.

Collins appealed, and the Court of Special Appeals affirmed.

Held: Reversed and remanded.

The Court of Appeals reaffirmed its holding in *Pearson v. State*, 437 Md. 350, 354, 86 A.3d 1232, 1234 (2014), that, on request, a trial court is required to ask a properly-phrased—*i.e.*, non-compound—"strong feelings" question. In other words, under *Pearson*, during *voir dire*, on request, a trial court must ask: "Do any of you have strong feelings about [the crime with which the defendant is charged]?" The Court reiterated that, during *voir dire*, on request, a trial court

must ask the "strong feelings" question in the form set forth above, and it is improper for a trial court to ask the "strong feelings" question in compound form, such as: "Does any member of the jury panel have such strong feelings about [the charges in this case] that it would be difficult for you to fairly and impartially weigh the facts?"

The Court held that, in this case, the circuit court abused its discretion by asking compound "strong feelings" questions and refusing to ask properly-phrased "strong feelings" questions during *voir dire*. The Court declined the State's invitation to determine that other questions that the circuit court asked during *voir dire* could substitute for properly-phrased "strong feelings" questions. The Court concluded that the circuit court did not cure its abuse of discretion by later asking the selected jury properly-phrased "strong feelings" questions, after the conclusion of *voir dire* and opening statements.

Celso Monterroso Romero v. Josefa Perez, No. 27, September Term 2018, filed April 1, 2019. Opinion by Barbera, C.J.

https://mdcourts.gov/data/opinions/coa/2019/27a18.pdf

IMMIGRATION – SPECIAL IMMIGRANT JUVENILE STATUS – BURDEN OF PROOF

IMMIGRATION – SPECIAL IMMIGRANT JUVENILE STATUS – LEGAL STANDARD – VIABILITY OF REUNIFICATION – ABUSE, NEGLECT, OR ABANDONEMENT

Facts:

This case stems from a father's attempt to obtain "Special Immigration Juvenile ("SIJ") status" for his son, an undocumented child immigrant from Guatemala. SIJ status is a federal immigration classification that protects undocumented immigrant children residing in the United States from being reunified with an abusive parent in the child's home county. The policy allows these children to become lawful permanent residents of the United States if, among other eligibility criteria, the child, or someone acting on the child's behalf, obtains an order from a state juvenile court containing certain factual findings, namely that reunification with one of the child's parents is not viable due to abuse, neglect, or abandonment. Without that order, the child cannot apply for SIJ status and, in turn, is unable to adjust status to a lawful permanent resident, unless the child qualifies for another type of immigration relief.

Petitioner here, Celso Monterroso Romero ("Romero"), filed a motion seeking sole legal and physical custody of his son, R.M.P., in the Circuit Court for Baltimore City. Romero also requested an order containing the requisite SIJ status factual findings for R.M.P. At a hearing in October 2016, Romero and R.M.P. testified about R.M.P.'s eligibility for SIJ status. Their uncontested testimony revealed that R.M.P.'s mother, Josefa Perez ("Perez"), forced R.M.P. to work in dangerous conditions (e.g., unsupervised logging in mountainous terrain surrounded by venomous snakes) starting when he was merely ten years old. The forced labor occurred daily for seven years and ceased only when R.M.P. fled to the United States.

Despite this uncontroverted testimony, the circuit court declined to find that R.M.P.'s reunification with Perez was not viable due to neglect. When announcing its ruling, the circuit court expressed confusion about which burden of proof applied—preponderance of the evidence or clear and convincing evidence—but ultimately concluded that under either standard, there was insufficient evidence to establish a finding of neglect. Romero appealed, and the Court of Special Appeals affirmed the circuit court's ruling. The Court of Special Appeals held that the preponderance of the evidence standard applies in SIJ cases and, under that standard, the circuit court did not commit clear error in finding that Perez was not neglectful.

The Court of Appeals granted Romero's petition for further review. After oral argument on December 7, 2018, the Court issued a *per curiam* order vacating the judgments of both lower

courts and remanding the case to the circuit court to issue an amended order with the requisite SIJ status findings. Both courts have complied with the order, rendering R.M.P. eligible to apply for SIJ status. The Court's recently published decision explains the reasoning behind the December 7, 2018 order.

Held:

The Court of Appeals first addressed the proper burden of proof in SIJ status cases. The Court held that the proper burden of proof is the preponderance of the evidence standard, the standard generally applicable in civil cases. Consequently, to obtain an order with the requisite SIJ findings, petitioners must prove that they satisfy the SIJ status eligibility criteria, enumerated under federal law, by a preponderance of the evidence.

The Court next addressed the appropriate legal standard for circuit courts to apply when determining whether a child's reunification with a parent is not viable due to abuse, neglect, or abandonment—i.e., what does an SIJ petitioner need to prove by a preponderance of the evidence to warrant the requisite findings. The Court held that the terms "abuse," "neglect," and "abandonment" should be interpreted broadly when assessing whether the child's reunification with a parent is not viable, defined as, "workable or practicable," due to prior parental mistreatment. The Court enumerated several factors for circuit courts to consider when conducting such inquiries, including the history of the child's relationship with the parent, the effect reunification might have on the child, and the realistic facts on the ground in the child's home country. Applying that standard to the facts before it, the Court concluded that R.M.P.'s reunification with Perez was not viable because the labor she forced him to endure constituted neglect under Maryland law and any forced reunification would harm R.M.P.'s health and welfare, as he has lived a stable life under his father's care in the United States.

Joan Floyd, et al. v. Mayor and City Council of Baltimore, No. 35, September Term 2018, filed April 1, 2019. Opinion by Watts, J.

Barbera, C.J., McDonald and Adkins, JJ., concur.

http://www.mdcourts.gov/data/opinions/coa/2019/35a18.pdf

COMPREHENSIVE REZONING – TAXPAYER STANDING – SPECIAL INTEREST REQUIREMENT – NEXUS

Facts:

On October 22, 2012, City Council Bill 12-0152, also known as "TransForm Baltimore," was introduced, and assigned to the Council's Land Use and Transportation Committee ("the Committee"). Bill 12-0152 involved comprehensive rezoning in Baltimore City. Over the next several years, the Committee held a public hearing on Bill 12-0152 that was recessed and reconvened numerous times. On October 20, 2016, the Committee voted on a Committee Report, in which the Committee recommended that the Council consider Bill 12-0152 favorably with amendments. On October 24, 2016, the Council held a meeting and voted favorably on Bill 12-0152 with amendments. On December 5, 2016, the Council voted to pass Bill 12-0152, the Mayor signed it, and it was enacted as Ordinance 16-581. The Mayor and the Council President also signed the accompanying Zoning Map, which was dated October 24, 2016. Ordinance 16-581 was to take effect on June 5, 2017.

After Ordinance 16-581 was enacted, typographical errors in the Ordinance were noticed, and, on February 27, 2017, City Council Bill 17-0021 was introduced. On April 5, 2017, the Committee held a public hearing on Bill 17-0021, and voted favorably on the bill with amendments. On April 24, 2017, the Council held a meeting, and approved amendments to Bill 17-0021. On May 8, 2017, the Council voted to pass Bill 17-0021. On May 16, 2017, the Mayor signed Bill 17-0021, which was enacted as Ordinance 17-015. Ordinance 17-015's effective date was the same as Ordinance 16-581's, *i.e.*, June 5, 2017.

On May 26, 2017, Joan Floyd, Paul Robinson, and Deborah Tempera (together, "Petitioners"), Baltimore City taxpayers, filed in the Circuit Court for Baltimore City a complaint for declaratory judgment against the Mayor and City Council of Baltimore ("Respondent"), challenging the comprehensive rezoning, adopted and enacted through Bill 12-0152/Ordinance 16-581 and Bill 17-0021/Ordinance 17-015, as *ultra vires* or illegal. On May 26, 2017, the same day that the complaint was filed, Petitioners filed a motion for summary judgment and accompanying memorandum in support.

A few days later, on May 31, 2017, Petitioners filed a motion for a temporary restraining order, seeking to block the Zoning Map from going into effect on June 5, 2017. On June 2, 2017,

Respondent filed an opposition to the motion. On the same date, the circuit court conducted a hearing on the motion for a temporary restraining order, and denied the motion.

On June 29, 2017, Respondent filed a motion to dismiss and/or for summary judgment, alleging that Petitioners lacked the requisite taxpayer standing to maintain their case. On July 19, 2017, Petitioners filed an opposition to the motion. On August 7, 2017, the circuit court conducted a hearing on the motion. Following the hearing, on August 14, 2017, the circuit court issued an order granting the motion to dismiss, ruling that Petitioners failed to allege a specific harm unique to them or their property and that Petitioners lacked taxpayer standing.

Petitioners filed a notice of appeal, and on June 15, 2018, while the case was pending in the Court of Special Appeals, they filed in the Court of Appeals a petition for a writ of *certiorari*. On August 30, 2018, before the Court of Special Appeals heard oral argument or issued an opinion, the Court of Appeals granted the petition. *See Floyd v. Mayor & City Council of Balt*., 460 Md. 494, 190 A.3d 1037 (2018).

Held: Affirmed.

The Court of Appeals held that the circuit court correctly granted the motion to dismiss because Petitioners failed to allege facts sufficient to establish taxpayer standing to maintain a challenge to the comprehensive rezoning ordinances and Zoning Map. The Court concluded that Petitioners failed to show a special interest in the subject matter of this case distinct from that of the general public by failing to show that the allegedly illegal or *ultra vires* acts by Respondent may reasonably result in a pecuniary loss or an increase in taxes. The Court of Appeals further determined that Petitioners failed to demonstrate a nexus between any alleged potential pecuniary harm and the challenged act, *i.e*., a connection between the allegedly illegal or *ultra vires* act and the harm caused to the taxpayer. Petitioners also failed to seek a remedy that, if granted, would alleviate any alleged tax burden or pecuniary loss that would result if the Zoning Map remains in place.

The Court of Appeals concluded, as an initial matter, that Petitioners had sufficiently demonstrated eligibility to maintain the action under the taxpayer standing doctrine by alleging in the complaint that they are Baltimore City taxpayers and that the suit was brought on behalf of all other Baltimore City taxpayers. And, with respect to the first part of the special interest requirement—*i.e*., the illegal or *ultra vires* requirement—the Court had no difficulty in concluding that Petitioners sufficiently alleged illegal or *ultra vires* acts by Respondent.

With respect to the specific injury requirement, however, the Court of Appeals held that Petitioners had failed to show a special interest in the subject matter of this case distinct from that of the general public by failing to sufficiently allege pecuniary loss or an increase in taxes. Put plainly, Petitioners simply had not shown that the allegedly illegal or *ultra vires* acts by Respondent may result in a pecuniary loss or an increase in taxes. Rather, the allegations of the complaint demonstrated that Petitioners' theory of pecuniary loss or increase in taxes was vague

and not easily understandable. Petitioners did not allege, with any explanation or particularity, the pecuniary losses or tax increases expected or how the new Zoning Map potentially would result in such harm. Petitioners simply stated that pecuniary loss and tax increases would occur. This was a bare allegation that, in and of itself, was insufficient to establish taxpayer standing.

The Court of Appeals determined that, even had Petitioners satisfied the specific injury part of the special interest requirement, Petitioners failed to establish taxpayer standing because they failed to show a nexus between the potential pecuniary damage and the challenged act. The Court of Appeals concluded that there was no meaningful connection between the allegedly illegal or *ultra vires* acts and the harms claimed; *i.e.*, there was no connection between the comprehensive rezoning and any alleged pecuniary loss or tax increase. Put simply, a sufficient nexus was not alleged.

The Court of Appeals concluded that, additionally, Petitioners failed to seek a remedy that, if granted, would alleviate any alleged tax burden or pecuniary loss that would result if the Zoning Map remains in place. In the complaint, as to the remedy, Petitioners sought declarations that Respondent failed to comply with applicable notice, publication, and public hearing requirements in adopting and enacting the Zoning Map, and that the Zoning Map was null and void. However, it was difficult to comprehend how nullifying the Zoning Map would alleviate an alleged tax burden, which depends on challenges being made to the Zoning Map. In short, the Court of Appeals failed to discern not only a nexus between the allegedly illegal or *ultra vires* acts and the harms allegedly caused to taxpayers, but also any nexus between the requested remedy and its ability to alleviate the alleged harms.

COURT OF SPECIAL APPEALS

Anthony Bean v. State of Maryland, No. 601, September Term 2017, filed March 28, 2019. Opinion by Leahy, J.

https://mdcourts.gov/data/opinions/cosa/2019/0601s17.pdf

CRIMINAL LAW – OUT OF COURT IDENTIFICATION

Facts:

The Baltimore City Police Department disseminated a Be On the Lookout flyer ("BOLO") on social media to ask the public for help in identifying suspects in an armed robbery and carjacking. The victim's brother saw the BOLO online and showed it to the victim, who recognized her assailants, one of whom was Anthony Bean. After the victim informed police that she identified two men in the BOLO, police confirmed her identification of Bean at the police station using the BOLO and Bean's MVA photo. The circuit court denied Bean's motion to suppress the out-of-court identification and Bean appealed.

Held: Affirmed.

The Court of Special Appeals held that, with no evidence that police *arranged* for the victim to view the BOLO, which was extremely suggestive, there was no state action. Absent "improper law enforcement activity," the Due Process Clause and its check on the reliability of witness identifications were not implicated in this case. *See Perry v. New Hampshire*, 565 U.S. 228, 238-39 (2012). The police department's use of the BOLO to confirm the victim's identification at the police station does not alter this result. Once the victim had already volunteered an out-of-court identification of Bean based on her independent viewing of the BOLO, it was not improper nor unreasonable for police to confirm her identification.

ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated April 3, 2019, the resignation of the following attorney from the further practice of law has been accepted and his name has been stricken from the register of attorneys in this State:

PETER WOODBURY RAND

*

By an Opinion and Order of the Court of Appeals dated April 3, 2019, the following attorney has been disbarred:

JONATHAN DAVID ROBBINS

*

By a Per Curiam Order of the Court of Appeals dated April 5, 2019, the following attorney has been disbarred:

GARLAND MONTGOMERY JARRAT SANDERSON

*

By an Order of the Court of Appeals dated April 18, 2019, the following attorney has been indefinitely suspended by consent:

JOHN FRANKLIN BLEVINS

*

By an Order of the Court of Appeals dated April 18, 2019, the following attorney has been indefinitely suspended:

BRET KIESLING

*

*

By an Order of the Court of Appeals dated April 24, 2019, the resignation of the following attorney from the further practice of law has been accepted and his name has been stricken from the register of attorneys in this State:

JOHN ANTHONY KOMENT

*

This is to certify that the name of

YOLANDA M. THOMPSON

a non admitted attorney has been reinstated in this Court to be eligible to practice law in this State as of April 25, 2019.

*

By an Order of the Court of Appeals dated February 8, 2019, the following attorney has been indefinitely suspended, effective April 30, 2019:

BRIAN DAVID SADUR

*

JUDICIAL APPOINTMENTS

*

On March 12, 2019, the Governor announced the appointment of **Brynja McDivitt Booth** to the Court of Appeals of Maryland. Judge Booth was sworn in on April 18, 2019 and fills the vacancy created by the retirement of the Hon. Sally D. Adkins.

*

On March 12, 2019, the Governor announced the appointment of **Hon. Edward Gregory Wells** to the Court of Special Appeals of Maryland. Judge Wells was sworn in on April 18, 2019 and fills the vacancy created by the retirement of the Hon. Deborah S. Eyler.

*

On March 12, 2019, the Governor announced the appointment of **Steven Bennett Gould** to the Court of Special Appeals of Maryland. Judge Gould was sworn in on April 18, 2019 and fills the vacancy created by the retirement of the Hon. Patrick L. Woodward.

*

UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

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Austin, David v. Estate of Blair	0580 *	April 25, 2019
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Brown, Clinton v. J&M Sweeping	0762 *	April 5, 2019
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C.		
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Collins, Vernon v. State	1599 *	April 22, 2019
Consumer Protection Div. v. Linton	2609 *	April 22, 2019
Cooper, Brian Keith v. State	1031 *	April 22, 2019
Corbett, Terry Alan, II v. State	0030	April 25, 2019
Corporate Office Properties v. Howard Cnty.	1597 *	April 15, 2019

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DeLong, Daniela v. Yacko	1052 *	April 11, 2019
Deminds, Emanuel v. State	0477	April 29, 2019
Dickerson, Gregory v. Streamside Association	2363 *	April 17, 2019
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F.		
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Ft. Myer Construction v. M-NCPPC	1684 *	April 29, 2019
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Hull, Kaneilus v. State	2218 *	April 3, 2019
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W.		
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