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Chesapeake Bay Foundation, Inc., et al. v. CREG Westport, LLC, et al., No. 1063, September Term 2020, filed September 8, 2021. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2021/1063s20.pdf

ADMINISTRATIVE LAW – EXHAUSTION OF REMEDIES – FINALITY OF ADMINISTRATIVE REVIEW – FOREST CONSERVATION PLANS

Facts:

CREG Westport I, LLC, et al., sought to develop several parcels of land located in Harford County into a multi-use business park. As mandated by the county's development process, CREG submitted a Forest Conservation Plan ("FCP"), among several other requirements. During the administrative process, the county approved the FCP. The Chesapeake Bay Foundation and several local residents (collectively, "the Foundation") sought immediate judicial review of the FCP in the Circuit Court for Harford County, even though the county had not approved the entire project. CREG moved to dismiss, arguing that approval of an FCP is not a final decision of the county's zoning department. The circuit court agreed and dismissed the complaint.

Held: Affirmed.

Both parties agreed that the theories of exhaustion of administrative remedies and finality applied in this case. They disagreed on whether the county's approval of an FCP constituted administrative exhaustion or finality, before an aggrieved party could seek judicial review.

The Foundation contended that the Department's approval of an FCP is a "final agency action," because the Forest Conservation Act and the Harford County Code "prioritizes retention of '[c]ontiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.'" Consequently, in the Foundation's view, the Harford County Director of Planning and Zoning's decision on whether an applicant's FCP application is "complete and

approved" ends the administrative process, at least as far as forest retention is concerned, and thus was immediately appealable under one section of the county code.

CREG asserted that the administrative development process is neither exhausted nor final until the Department issues "a preliminary plan approval letter and/or site plan approval letter." It is only then that a developer may begin construction. In this case CREG needed both preliminary plan approval and site plan approval. The Foundation did not challenge the county's approval of either of the plans.

After reviewing the concepts of exhaustion and finality in the administrative setting, the Court of Special Appeals held that the county's approval of an FCP is not a final administrative act. The approval of an FCP leaves the county's Department of Planning and Zoning "more to do." As part of the site plan application, a developer must submit an FCP, among several other requirements, such as site plans, a landscaping/lighting/buffer plan, a storm water management concept, and a traffic impact analysis "to ensure acceptance of the plan for processing" under the county code. Different and seemingly conflicting code provisions must be read together so that the overall zoning scheme makes sense. In this case, the different provisions in the county code and the charter made apparent that challenging the approval of an FCP may only be done in the context of challenging a preliminary or site plan, there being no independent "stand alone" mechanism for reviewing solely an FCP, as the Foundation contends.

Nina Bolling v. Bay Country Consumer Finance, Inc., No. 699, September Term 2019, filed July 1, 2021. Opinion by Leahy, J.

https://mdcourts.gov/data/opinions/cosa/2021/0699s19.pdf

COMMERCIAL LAW – CREDIT GRANTOR CLOSED END CREDIT PROVISIONS – CAUSE OF ACTION – ACCRUAL

Facts:

Nina Bolling entered into a loan agreement ("Agreement") with Bay Country Consumer Finance, Inc., which elected the Credit Grantor Closed End Credit Provisions ("CLEC"), Maryland Code (1975, 2013 Repl. Vol., 2019 Supp.), Commercial Law Article ("CL"), §§ 12-1001-12-1029, as the governing law. Pursuant to the Agreement, Bay Country took a security interest in Ms. Bolling's personal property. After Bay Country repossessed her property, Ms. Bolling filed a one-count complaint against Bay Country, which alleged that Bay Country violated CLEC by refusing to provide Ms. Bolling with a requested written statement. In response, Bay Country moved to dismiss on the grounds that venue was improper and the court lacked subject matter jurisdiction because Ms. Bolling's complaint did not specifically allege damages.

In response, Ms. Bolling filed an amended complaint, which, besides providing additional allegations relating to venue and an additional cause of action for violation of the Maryland Consumer Debt Collection Act ("MCDCA"), Maryland Code (1975, 2013 Repl. Vol., 2019 Supp.), Commercial Law Article, §§ 14-201-14-204, stated in a footnote that Ms. Bolling's claim "totals . . . $35,000.00." Ms. Bolling did not allege in her amended complaint that Bay Country collected more than the principal loan amount.

Bay Country then filed a motion to dismiss Ms. Bolling's first amended complaint or, in the alternative, for summary judgment. Relying on decisions by the United States Court of Appeals for the Fourth Circuit and the Maryland federal district court interpreting CL § 12-1018(a)(2), Bay Country posited that, because Ms. Bolling failed to allege that she paid amounts in excess of the principal, she did not assert a proper claim under CLEC.

Ms. Bolling countered that "CLEC damages are available regardless of whether a credit grantor has collected more than [the] principal amount of the loan." Relying on cases primarily interpreting the Secondary Mortgage Loan Law ("SMLL"), CL § 12-413, she contended that Maryland courts interpret SMLL to entitle a consumer to "declaratory and injunctive relief immediately upon the creditor's statutory violation," and urged the circuit court to interpret the same language found in CLEC in the same manner.

After a hearing on Bay Country's motion, the court entered an order granting Bay Country's motion to dismiss, in part, as to the CLEC claim. The court found the reasoning of the federal decisions persuasive and held that Ms. Bolling was not entitled to relief under CLEC as a matter

of law because she failed to allege that she paid amounts in excess of the principal. The court denied Bay Country's motion to dismiss Count II, relating to the MCDCA. Ms. Bolling then voluntarily dismissed her MCDCA count with prejudice and timely noted an appeal.

Held: Affirmed.

The Court of Special Appeals reached four holdings. First, the Court concluded that, under the plain meaning of the CLEC statute taken as a whole, a cause of action may accrue after a violation has occurred where the borrower can show that she has suffered damages that are compensable under CLEC, subject to the credit grantor's right to cure pursuant to CL §§ 12-1018(a)(3) and 12-1020, or where the borrower requests appropriate declaratory or injunctive relief. Second, the Court determined, based on an examination of the applicable legislative history, that section 12-1018 of the CLEC statute and section 12-413 of the SMLL statute should be read *in pari materia*. Accordingly, the Court interpreted CL § 12-1018 to allow a cause of action under CLEC for declaratory and injunctive relief, as well as a claim solely for damages seeking penalties under CL § 12-1018(a)(2). Third, the Court held that CL § 12-1018 is remedial in nature. Section 12-1018 of CLEC was designed to provide "protections for consumer borrowers, as well as penalties for lenders who violated those provisions." *Patton v. Wells Fargo Fin. Md., Inc*., 437 Md. 83, 105 (2014). The "evil" in this context is the failure of credit grantors to follow the dictates of CLEC, and the "remedy" for such a violation is primarily the prohibition from collecting "any interest, costs, fees, or other charges with respect to the loan." CL § 12-1018(a)(2). The remedy protects a borrower from a credit grantor's unbridled violation of CLEC. Finally, turning to Ms. Bolling's amended complaint, the Court held that the underlying complaint failed to allege actual damages or request other appropriate relief under CLEC. Missing from Ms. Bolling's complaint, or her response to the motion to dismiss, were any factual allegations that Bay Country collected more than the principal loan amount or that support her claim that Bay Country demanded "money . . . in an amount not collectible under her credit contract." Ms. Bolling did not seek declaratory or injunctive relief but only prayed "actual damages" and statutory penalties under CL 12-1018(a) and (b) and did not identify her damages sustained.

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Bryant Bennett v. State of Maryland, No. 1756, September Term 2019, filed September 10, 2021. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2021/1756s19.pdf

CRIMINAL LAW – BATSON – DISCRIMINATORY MOTIVE – COURT'S EVALUATION OF MOTIVES AND CIRCUMSTANCES

Facts:

The State charged Bryan Bennett with second-degree assault, conspiracy to commit robbery, conspiracy to commit second-degree assault, and conspiracy to commit theft arising from a teen's attempt to sell Bennett a mobile phone in exchange for a vape pen containing a marijuana derivative.

At jury selection, the State exercised a peremptory challenge striking the sole Black juror in the venire based on the supposition that the juror could not be fair because the juror's mother was the victim in an unsuccessful robbery prosecution twenty years prior. The defense raised a *Batson* challenge noting that the State seated two White jurors who had more recent and direct experiences involving theft-related offenses that resulted in unsuccessful prosecutions. The trial court accepted the State's proffered race-neutral reason and excused the Black juror. All of the seated jurors were White. Bennett is Black.

The jury convicted Bennett of second-degree assault, conspiracy to commit robbery, conspiracy to commit second-degree assault, and conspiracy to commit theft. The circuit court sentenced Bennett to four years' imprisonment for the assault conviction, and to a concurrent term of four years for the conspiracy to commit robbery conviction. The court did not sentence Bennett on the other counts based on principles of lenity and merger.

Held: Reversed.

When evaluating a *Batson* challenge the circuit court must undertake a three-step analysis. First, the party challenging the strike must make a *prima facie* showing that the strike was made on a constitutionally prohibited basis. Second, the striking party must provide an explanation for the strike that is neutral as to race, gender, and ethnicity. Third, the court must decide whether the challenging party has proved purposeful racial discrimination.

Under *Batson*, a party must prove by a preponderance of the evidence that a peremptory strike was exercised in a way that shifts the burden of production to the striking party. The striking party must then respond to the presumption of purposeful discrimination that arises under certain circumstances. In determining whether a striking party had a discriminatory motive, courts must

also assess whether the striking party acted consistently; that is, whether jurors that do not belong to the protected class (race, gender, or ethnicity), but that are otherwise similarly situated to the stricken juror, were also struck on identical or comparative grounds.

Although an appellate court will accord a trial court great deference in factual determinations, that deference is not absolute. Here, the trial court did not look to the attendant circumstances in evaluating whether the State provided a valid race-neutral reason for striking the sole Black prospective juror while seating two similarly situated White prospective jurors. Specifically, while the State grounded its facially race-neutral reason for striking the Black juror over a concern that the Black juror would not be fair to the State because the juror's mother was the victim in an unsuccessful robbery prosecution twenty years ago, the State expressed no such concern in seating two White jurors who also were also involved in unsuccessfully prosecuted theft-related incidents, including one juror who was herself the victim of such a crime and who stated her belief that there would be no prosecution in her case. The Court of Special Appeals cautioned that in addition to evaluating the striking party's demeanor and race-neutral reasons for striking a juror, a trial court evaluating a *Batson* challenge must also account for the attendant circumstances in evaluating the validity of the proffered reason.

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Neil Dennis Morgan v. State of Maryland, No. 2288, September Term 2019, filed September 8, 2021. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2021/2288s19.pdf

CRIMINAL LAW – DOUBLE JEOPARDY – MERGER – REQUIRED EVIDENCE TEST– LEGISLATIVE INTENT

Facts:

Neil Morgan and the victim, Larissa Costa, previously had been romantically involved and had two young sons. Ms. Costa had physical custody of the boys, and Mr. Morgan had visitation twice a week. Before the time of the offenses at issue here, on "multiple" occasions, a domestic violence protective order had been issued against Mr. Morgan, and, at the time of the incident described below, such an order was in effect.

One Saturday, Ms. Costa asked Mr. Morgan to help her move a television. The two got into an argument that quickly escalated with Mr. Morgan physically attacking Ms. Costa. Several neighbors who overheard the initial argument intervened, forcing Mr. Morgan off of Ms. Costa, who tried to leave in her car. Mr. Morgan pursued her and opened the car door to continue the attack before Ms. Costa drove off. Ms. Costa called 911 and, ultimately, the police charged Mr. Morgan with violating the protective order and second-degree assault.

At the jury trial, the State's primary, but not sole theory, was that the assault was the basis for the violation of the protective order. The jury convicted Mr. Morgan of both charges. The court sentenced him to concurrent terms of ten years' imprisonment, all but eighteen months suspended, for second degree assault and 90 days for violation of the protective order.

Mr. Morgan appealed arguing that at sentencing his conviction for second-degree assault must merge into the conviction for violation of the protective order under the required evidence test.

Held: Affirmed.

Sentence for violation of the protective order vacated.

In reaching its decision, the Court of Special Appeals first reviewed the history of the protective order statute. Relevant cases decided by the Court of Appeals through the evolution of the domestic violence statute concluded that the statute was "remedial," in that the General Assembly's purpose in adopting and modifying the statute was to prevent victims of intimate partner (or familial relationships) from future violence. The Court strongly suggested that the legislature did not intend for violators of protective orders to escape criminal prosecution.

Under the required evidence test, merger applies only if the two offenses are based on the same act or acts. If each offense requires proof of a fact which the other does not, in other words, if each offense contains an element which the other does not, there is no merger under the required evidence test even though both offenses are based upon the same act or acts. And when considering a multi purpose criminal statute, which examines alternate methods of completing the offense, we examine each of the relevant alternative elements.

Mr. Morgan argued under *State v. Lancaster*, 332 Md. 385, 392 (1993), that "[w]hen there is a merger under the required evidence test, separate sentences are normally precluded," and "a sentence may be imposed only for the offense having the additional element or elements." The State countered that we previously held in *Quansah v. State*, 207 Md. App. 636 (2012), that second degree assault and violation of a peace order do not merge under the required evidence test.

We agree with the State for several reasons. We first note that *Lancaster* concerned merger of two criminal offenses under the criminal code. But, unlike that case, here, we are faced with violation of a criminal statute and violation of a court order issued under the Family Law Article. The proof of a violation of an order of protection is different from the elements necessary to prove assault. Second-degree assault is not an element of a violation of a protective order any more than is first-degree assault, attempted rape, or second-degree murder. Any of those crimes may be described as "abuse, or threatening abuse" under the protective order statute.

Further, on this same point, the mens rea of the two offenses at issue here are different. The mens rea for second-degree assault is a general intent to harm. On the other hand, the mens rea for the violation of a protective order is knowledge of the protective order.

Finally, the evolution of the domestic violence statute over 40 years shows that the General Assembly sought to protect citizens who were related by blood, marriage, or who were in otherwise intimate relationships, from future physical harm or harassment by persons to whom they are related. The Court of Appeals not only recognized this "remedial" aspect of the protective order statute, the Court also observed that the General Assembly never intended that individuals who were subject to a domestic violence order should escape criminal sanction if the protective order was violated. Indeed, the protective order's statutory scheme establishes that it is a civil remedy whose violation is punishable by something close to criminal contempt. The protective order statute seeks to compel compliance with a civil order of court, unlike the criminal statute. We conclude that the legislature did not intend to allow individuals who violate domestic violence orders to be able to do so and not face a separate sanction for their underlying criminal conduct.

Although the required evidence test does not compel merger, the Rule of Lenity does. When statutory interpretation is necessary in deciding a criminal case, the Rule of Lenity states that the defendant is given the benefit of the doubt if the court is uncertain as to the legislature's intent. Under the Rule of Lenity, we merge the sentences by vacating the lesser sentence in favor of the greater sentence. We comply with the Rule of Lenity in this case by vacating Mr. Morgan's

sentence for violation of the protective order, leaving only his conviction and sentence for second-degree assault.

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Robert Rainey v. State of Maryland, No. 3094, September Term 2018, filed September 28, 2021. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2021/3094s18.pdf

CRIMINAL LAW – CONCIOUSNESS OF GUILT JURY INSTRUCTION BASED ON CHANGE OF APPEARANCE

Facts:

On May 2, 2017, a victim was fatally shot in Baltimore City. An eyewitness saw a man with dreadlocks standing near the body. The man with dreadlocks ran off.

According to the eyewitness, the street on which the shooting occurred was heavily infested with drugs. In an interview with police, the eyewitness said that she did not know the shooter's name but that she had seen him frequently in the neighborhood. The eyewitness said that the shooter was "usually doing him on the corner."

One month after the murder, the eyewitness recognized the shooter on the street. He no longer had dreadlocks; instead, his hair closely cropped to his head. The eyewitness called the police, who then arrested Robert Rainey.

At a jury trial in the Circuit Court for Baltimore City, the eyewitness identified Rainey as the shooter. Over a defense objection, the court admitted a recording in which the eyewitness said that Rainey was "usually doing him on the corner."

Over Rainey's objection, the court gave Maryland Criminal Pattern Jury Instruction 3:26, which instructs jurors that they may consider a defendant's concealment or destruction of evidence as evidence of the defendant's consciousness of guilt.

The jury found Rainey guilty of first-degree murder, use of a handgun in the commission of a crime of violence, and possession of a firearm after a disqualifying conviction. The court sentenced Rainey to life in prison for first-degree murder, plus concurrent terms of 20 years for use of a handgun and five years for illegal possession of a firearm.

Rainey appealed.

Held: Affirmed.

As the first issue on appeal, Rainey contended that the trial court abused its discretion in admitting the eyewitness's statement that Rainey was "usually doing him on the corner." Rainey argued that jurors would understand that the phrase "doing him" meant selling heroin. Rainey

argued that the probative value of the statement was substantially outweighed by the danger of unfair prejudice. The Court of Special Appeals held that the trial court did not abuse its discretion in admitting the statement. The statement supplied information about the basis for the eyewitness's identification of Rainey. Any potential prejudice was mitigated by other testimony about Rainey's regular presence amidst the drug dealing in that neighborhood.

As the second issue on appeal, Rainey contended that the trial court abused its discretion in giving the pattern jury instruction on concealment or destruction of evidence. The State had requested that instruction based on the evidence that, after the murder, Rainey altered his appearance by cutting off his dreadlocks and almost all of his hair.

Here, the court could give the requested instruction only if the jury could infer: (1) from Rainey's change in appearance, a desire to conceal evidence; (2) from a desire to conceal evidence, consciousness of guilt; (3) from consciousness of guilt, consciousness of guilt of the murder of the victim; and (4) from consciousness of guilt of the murder of the victim, actual guilt of the murder. The trial court was not required to articulate its analysis of each of these inferences before giving the requested jury instruction.

Here, the State presented evidence that Rainey was a constant presence on the street before the shooting. Rainey wore shoulder-length dreadlocks at the time of the murder. Rainey abruptly disappeared for a month after the shooting. When he returned, his hair was cropped closely to the skull. The Court held that this evidence was sufficient to support the required inferences.

The Court reasoned that, when defendants do something to remove, erase, eliminate, or obliterate some aspect of their physical appearance, they can properly be said to have destroyed or concealed evidence. In this case, where the defendant cut off almost all of his hair, the trial court could properly give the destruction-of-evidence instruction.

The Court rejected Rainey's contention that the instruction "presupposed" his guilt by telling jurors that they had heard evidence that Rainey destroyed or concealed evidence.

In cases where a defendant has allegedly changed his appearance to avoid identification, it is preferable to employ a custom instruction that focuses on the change of appearance rather than destruction of evidence. Here, even if the evidence did not support an instruction concerning the destruction or concealment of evidence, the evidence did support a custom instruction concerning alteration of appearance. As this case was presented to the jury, the jury would have understood "destruction of evidence" to mean "alteration of appearance." If the court erred in giving the concealment-or-destruction-of-evidence instruction rather than a custom change-of-appearance instruction, any error was harmless.

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Alexander L. Manuel v. State of Maryland, No. 1495, September Term 2019, filed September 2, 2021. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2021/1495s19.pdf

CRIMINAL LAW – POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE

Facts:

In the Circuit Court for Harford County, Alexander Manuel was charged with two counts of distribution of heroin, two counts of distribution of fentanyl, and two counts of knowingly distributing a mixture containing heroin and fentanyl.

At trial, the State established that a detective arranged to buy heroin from Manuel for $150. Manuel delivered a package containing cocaine, heroin, and fentanyl. Later, the detective arranged to buy another $150 of heroin from Manuel. Manuel delivered one bag containing a mixture of heroin and fentanyl and two bags containing fentanyl alone.

Defense counsel moved for judgment of acquittal on all counts, asserting that the State had not produced any evidence that Manuel knew that the substances he distributed contained fentanyl. The circuit court granted a judgment of acquittal on the counts for knowingly distributing a mixture containing heroin and fentanyl. The court denied the motion for judgment of acquittal on the counts for distribution of heroin and distribution of fentanyl.

Defense counsel requested that the court instruct the jury that knowledge is an element of the crime of distribution of fentanyl. The court declined to give the requested instruction, reasoning that Manuel was no longer subject to any penalty for knowingly distributing fentanyl. Defense counsel also requested that the court give a "general intent" instruction. The court concluded that the instruction was not warranted because it was not included in the pattern jury instruction for distribution of a controlled dangerous substance.

During jury deliberations, the jury submitted a note asking: "Does it matter that the Defendant was aware of what drugs were in the bag, a/k/a does intent matter?" Manuel again requested a jury instruction on intent. The court denied the request and directed the jury to consider the elements outlined in the written jury instructions.

The jury convicted Manuel of two counts of distribution of heroin and two counts of distribution of fentanyl. Manuel appealed.

Held: Affirmed.

Manuel challenged his convictions on two grounds. First, he contended that the evidence was insufficient to sustain his convictions for distribution of fentanyl. Second, he contended that the court erred in failing to instruct the jury about the knowledge required to establish the distribution of a controlled dangerous substance.

The Court of Special Appeals held that, to prove the element of possession of a prosecution for distribution of a controlled dangerous substance, the State is not required to prove that defendants knew exactly which illegal substance they possessed. Rather, the element of knowledge is satisfied when the evidence demonstrates that the defendant is aware of the "general character or illicit nature" of the substance. *Dawkins v. State*, 313 Md. 638, 651 (1988). Here, the evidence at trial was sufficient to prove that Manuel knew that what he sold to the detective was heroin, a controlled dangerous substance. Therefore, the evidence was sufficient to support a finding that Manuel knew of the general character or illicit nature of the substance.

The Court held that the trial court erred in refusing to give a supplemental jury instruction concerning the State's obligation to prove that the defendant had knowledge of the illicit character of the substance. The Court concluded, however, that this error was harmless beyond a reasonable doubt. The defense implicitly conceded that Manuel sold heroin to the detective. The State was required to prove only that Manuel was aware of the illicit nature of the substance. Consequently, the only conclusion the jury could have reached was that Manuel knew that he possessed a controlled dangerous substance.

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Dru Darren Brown v. State of Maryland, No. 1103, September Term 2019, filed September 2, 2021. Opinion by Woodward, J.

https://mdcourts.gov/data/opinions/cosa/2021/1103s19.pdf

CRIMINAL LAW – RAPE AND SEXUAL OFFENSES – FORCE OR THREAT OF FORCE – SUFFICIENCY OF THE EVIDENCE – PERPETRATOR'S CREATION OF FEAR OF IMMINENT BODILY HARM – VICTIM'S GENUINE AND REASONABLE FEAR OF SUCH HARM

CRIMINAL LAW – CONFESSIONS – MARYLAND COMMON LAW –IMPROPER PROMISES AND INDUCEMENTS

Facts:

In 2017 and 2018, appellant, Dru Darren Brown, sexually assaulted his girlfriend's teenage daughter multiple times in their home in Hagerstown, Maryland. Appellant moved in with the victim, her mother, and her young sister in 2013. Appellant became the father figure in the home and was responsible for disciplining the victim, who was eleven years old at the time, usually in the form of spankings or taking away toys. In 2017, however, when the victim was almost sixteen years old, appellant's discipline turned to sexual assaults. In 2018 while appellant and the victim's family were on vacation in Tennessee, the victim told her family that appellant had been abusing her. Detectives in Tennessee interviewed appellant, during which appellant provided incriminating statements.

At trial, the victim described the first sexual assault. Appellant went to the victim's bedroom, which was isolated in the attic, to discipline her for having "an attitude." Instead of spanking the victim as he had in the past, appellant asked the victim if she wanted a massage. When she declined, appellant told her to take off her clothes. The victim told appellant, "I can defend myself," and he immediately put his hands around her neck, shoved her to the floor, held her there for several minutes, and tried to choke her. The victim attempted to, but couldn't, get away because appellant was twice her size. When appellant released her, the victim complied and removed her clothes because she was "scared" of being choked. Appellant told the victim to place a towel on the bed and lie face down. He then massaged her, told her to flip onto her back, put his hands between her legs, and inserted his fingers into her vagina. Using the same *modus operandi*, appellant sexually assaulted the victim once or twice a month for the next year. Appellant did not use actual force during any of the subsequent assaults.

Appellant was charged and convicted of one count of sexual abuse of a minor and a combined thirty-one counts of sexual offense in the second degree, rape in the second degree, and sexual offense in the third degree.

Held: Affirmed.

On appeal, appellant argued that the evidence was insufficient to sustain his convictions for the second and subsequent assaults because the State had failed to prove force or threat of force. He further argued that his incriminating statements to the Tennessee detectives should have been suppressed because his statements were induced by improper promises and therefore involuntary under Maryland common law.

First, the Court held that there was sufficient evidence for the jury to find the essential element of "force" or "threat of force" for all of appellant's convictions, including those that stemmed from the second and subsequent assaults. The Court reviewed and synthesized the relevant case law on threat of force in *Hazel v. State*, 221 Md. 464 (1960), *Rusk v. State*, 289 Md. 230 (1981), and *Martin v. State*, 113 Md. App. 190 (1996), and explained that "threat of force" has two elements: The evidence must support a finding that (1) the conduct and words of the perpetrator were reasonably calculated to create in the mind of the victim a real apprehension, due to fear, of imminent bodily harm, serious enough to impair the victim's will to resist; and (2) the victim's fear of imminent death or serious bodily harm must be both genuine and reasonable. The Court noted that the first sexual assault involved actual force when appellant choked the victim and pinned her to the floor. For the second and subsequent assaults, however, there was no actual force. The Court held (a) that appellant's use of the same *modus operandi* in the assaults, which triggered in the victim's mind a reminder of the actual force used by appellant and a fear of its repetition, combined with "(1) appellant's role as a father figure and disciplinarian, (2) appellant's physical size, (3) the isolated location of the attacks, (4) the lack of available assistance, and (5) the inability to escape" were calculated to create a fear of imminent bodily harm in the victim's mind; and (b) that the victim's fear was genuine and reasonable.

Next, applying Maryland common law on the question of voluntariness of appellant's incriminating statements to the Tennessee detectives, the Court held that the detectives did not make any improper promises to induce appellant's confession. Appellant pointed to the following statements by the detectives during his interview: (1) "We want to help you out," and (2) "Regardless of what you tell us you're walking out that door without us" and he was not in "trouble with" them. The Court, citing the Court of Appeals's recent opinion in *Madrid v. State*, No. 50, Sept. Term 2020 (Md. July 9, 2021), explained that under Maryland common law a confession is involuntary where it is the product of an improper promise by the police that the suspect "will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession." *See Madrid*, slip op. at 34. Because the detectives' statements about helping appellant out never expressly or impliedly offered appellant any "special consideration" in exchange for a confession, and because the detectives' statements about not arresting appellant or appellant not being in trouble with them did not promise, expressly or impliedly, that appellant would not be prosecuted in exchange for a confession, the Court held that appellant's statements were voluntary under Maryland common law.

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Annera Georges v. State of Maryland, No. 2186, September Term 2019, filed September 9, 2021. Opinion by Moylan, J.

https://mdcourts.gov/data/opinions/cosa/2021/2186s19.pdf

SEXUAL ABUSE OF A MINOR – THIRD-DEGREE SEXUAL OFFENSE – DISCRETION TO DECLARE MISTRIAL – UNITS OF PROSECUTION

Facts:

Annera Georges was convicted in the Circuit Court for Wicomico County of two counts of sexual abuse of a minor, one count of second-degree rape, two counts of a third-degree sexual offense, and three counts of incest for the repeated sexual abuse of his daughter (referred to in opinion as "G"), which occurred from approximately March of 2012 to November of 2013. He was convicted by a jury and was given a cumulative sentence of 74 years with all but 33 years suspended, to be followed by five years of supervised probation.

Georges appealed his convictions on two grounds. The first contention on appeal was that the trial judge erred by failing to declare a mistrial due to remarks made by the prosecutor during closing argument. Secondly, Georges contended that the court erred by imposing multiple sentences for third-degree sexual offenses.

Held: Affirmed.

The Court of Special Appeals held that the trial judge acted within her discretion in refusing to declare a mistrial and that Annera Georges was properly sentenced for multiple instances of criminal sexual behavior. On the issue of declaring or not declaring a mistrial, the Court specified that not every improper remark would be cause for a mistrial and, in fact, it seldom is. The Court also indicated that the judge plays an important role in responding to any improper remark and that the decision to declare a mistrial is rightly entrusted to the broad discretion of the trial judge. In this case, Judge Seaton immediately sustained the appellant's objection to the improper remark and instructed the jury to disregard the statement, actions that enabled her to properly deny the motion for mistrial.

On the issue of the imposition of multiple sentences for third-degree sexual offenses, the Court held that Criminal Law Article, Sect. 3-307 provides for various forms of prohibited sexual contact (separate and distinct from each other) and, therefore, a number of potential units of prosecution. Each distinct sexual contact is a viable unit of prosecution and may be the subject of separate convictions and sentences regardless of the time period in which they occur. The Court distinguished this from Criminal Law Article, Sect. 3-315, which addresses a continuing course of conduct against a victim who is under the age of fourteen. That section was not applicable to

this appeal. The multiple sentences based on separate units of prosecution for third-degree sexual offenses that were imposed in this case were proper.

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Raphael Battle v. State of Maryland, No. 1654, September Term 2019 & No. 485, September Term 2020, filed September 3, 2021. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2021/1654s19.pdf

CRIMINAL LAW – SUPREMACY CLAUSE IMMUNITY

EVIDENCE – HEARSAY AND CONFRONTATION

Facts:

Raphael Battle, a federal law enforcement officer, had an altercation with Devin King at a convenience store in Baltimore City. Battle, claiming that he felt threatened, drew his service weapon and pushed King to the ground. Store employees called the police, who arrested Battle after they interviewed both Battle and King.

In the Circuit Court for Baltimore City, the State charged Battle with first-degree assault, reckless endangerment, and use of a handgun in the commission of a crime of violence. A jury acquitted him of first-degree assault but did not reach a verdict on the other charges, including the lesser-included offense of second-degree assault.

During his second trial, the circuit court admitted bodycam footage from the officer who interviewed King outside of the convenience store. Battle objected to the admission of the footage on two grounds: (1) that King's statements were inadmissible hearsay and (2) that their admission violated his rights under the Confrontation Clause of the Sixth Amendment. The court overruled the objection, stating that defense counsel opened the door to the admission of the footage with certain questions he posed to the officer on cross-examination. King, who was unable to be located, did not testify at trial.

After the State rested, Battle moved for judgment of acquittal, arguing that the State failed to prove necessary elements of each of the charges and that the State has not shown that Battle's actions were not justified. In denying the motion, the court cited the video footage showing King's account of the encounter.

The jury convicted Battle of second-degree assault, reckless endangerment, and use of a handgun in the commission of a crime of violence. The court sentenced Battle to five years' incarceration without the possibility of parole. Battle appealed.

While his appeal was pending, Battle moved to vacate the jury verdict on the basis of jurisdictional mistake. Battle invoked the doctrine of Supremacy Clause immunity, under which a state cannot prosecute federal officers who were authorized by federal law to perform an act and who did no more than they subjectively believed was necessary and proper, as long the belief was reasonable under the circumstances. He contended that the circuit court lacked

subject-matter jurisdiction over his case because, as a federal officer, he was immune from state prosecution. The court denied his motion.

Battle noted a second appeal. The Court of Special Appeals consolidated the two appeals.

Held: Affirmed in part and reversed in part.

The Court of Special Appeals held that the circuit court did not err in denying Battle's post-judgment motion to vacate the jury verdict on the ground of Supremacy Clause immunity. Federal law did not actually or impliedly grant Battle authorization to engage King. Even assuming that he acted with federal authority, Battle's actions were neither necessary nor proper. Therefore, Battle could not claim Supremacy Clause immunity from state criminal prosecution.

Consequently, the Court of Special Appeals affirmed the order denying Battle's motion to vacate the jury verdict.

The Court of Specials Appeals held that the trial court committed prejudicial error in admitting King's hearsay statements from the bodycam footage. The State argued that the circuit court admitted the bodycam interview solely for the non-hearsay purpose of showing King's demeanor following the incident. The trial court, however, explicitly referred to the footage to support its ruling that an assault by Battle occurred. The trial court admitted the footage at least in part to prove the truth of the matters asserted therein.

Further, the Court of Special Appeals determined that the admission of King's recorded statements violated Battle's rights under the Confrontation Clause of the Sixth Amendment. Because King's statements were testimonial, the State was required to produce him at trial so that Battle had the opportunity to confront and cross-examine him. Though King was unavailable, Battle did not have a previous opportunity to cross-examine King.

Accordingly, the Court of Special Appeals reversed Battle's convictions and remanded the case for new trial.

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Catherine Ashley Hoggle v. State of Maryland, No. 237, September Term 2020, filed September 1, 2021. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2021/0237s20.pdf

CRIMINAL PROCEDURE – INCOMPETENCY TO STAND TRIAL

Facts:

In September of 2014, the State arrested Catherine Hoggle in connection with the disappearance of her two minor children. The State charged Hoggle in the District Court of Maryland for Montgomery County with two counts of neglect of a minor, one count of obstruction of justice, and one count of abduction or unlawful detention of a child by a relative.

On January 10, 2015, the district court found that Hoggle was incompetent to stand trial and ordered that she be committed at Clifton T. Perkins Hospital. At each subsequent review hearing, the district court concluded that Hoggle continued to meet the criteria for commitment based on incompetency to stand trial.

Three years after Hoggle's arrest, the State entered a nolle prosequi as to all charges against her in district court. On the same day, the State obtained an indictment charging Hoggle in the Circuit Court for Montgomery County with first-degree murder of her two children. On December 1, 2017, the circuit court found that Hoggle was incompetent to stand trial on the murder charges and committed her to the Department of Health.

On January 10, 2020, five years to the day after the district court had found Hoggle incompetent to stand trial, Hoggle moved for dismissal of the murder charges in circuit court. The motion relied on section 3-107(a)(1) of the Criminal Law Article of the Maryland Code, which states that, in cases where a defendant is charged with a felony or crime of violence, the court must "dismiss the charge against a defendant found incompetent to stand trial . . . after the . . . expiration of 5 years." The circuit court denied the motion, concluding that the five-year period for dismissal of the murder charges did not begin until December 1, 2017, when the circuit court found that Hoggle was incompetent to stand trial on those charges.

Hoggle appealed from the order denying the motion to dismiss.

Held: Affirmed.

In cases where a defendant is charged with a felony or crime of violence, the court must "dismiss the charge against a defendant found incompetent to stand trial . . . after the . . . expiration of 5 years" from the date that the defendant was found incompetent to stand trial. Md. Code (2001, 2018 Repl. Vol.), § 3-107(a)(1) of the Criminal Procedure Article. In cases where a defendant is

charged with an offense other than a felony or crime of violence, the court must dismiss the charge against a defendant found incompetent to stand trial "after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged." *Id.* § 3-107(a)(2).

In this case, the defendant was originally charged in district court with various misdemeanor offenses. The district court found that the defendant was incompetent to stand trial and committed the defendant to a health care facility. Three years after the defendant's arrest, the State entered a nolle prosequi as to the district court charges. At the same time, the State obtained an indictment charging the defendant in circuit court with two counts of first-degree murder. The circuit court found that the defendant was incompetent to stand trial and ordered that the commitment should continue.

Under these circumstances, the five-year period for dismissal of the murder charges under § 3-107(a)(1) of the Criminal Procedure Article began when the circuit court found that the defendant was incompetent to stand trial on those charges, not when the district court had found the defendant incompetent to stand trial on the earlier charges (which had since been dismissed).

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Gene Uzoukwu v. State of Maryland, et al., No. 409, September Term 2020, filed September 2, 2021. Opinion by Nazarian, J.

https://www.mdcourts.gov/data/opinions/cosa/2021/0409s20.pdf

HOME IMPROVEMENT – LICENSING REQUIREMENT – RESTITUTION

Facts:

Eugene Uzoukwu hired Kevin Servance to, among other things, remove a fire escape from an exterior wall of a building he owns. Mr. Servance, who misrepresented himself as having a Maryland contractor's license, tied the fire escape to a truck and pulled a portion of the wall down with the fire escape. Mr. Servance pleaded guilty in the Circuit Court for Baltimore City to acting as a home improvement contractor without a license, a violation of § 8-601 of the Business Regulations Article ("BR"). Mr. Uzoukwu sought restitution under § 11-603 of the Criminal Procedure Article ("CP") for the damage to his building, but the circuit court denied his request on the ground that removal of the fire escape was demolition, not home improvement, and thus not a "direct result" of the crime for which Mr. Servance pleaded guilty, as required by CP § 11-603.

Held: Reversed and remanded.

The Court of Special Appeals reversed, holding that the building owner was entitled to restitution for damage that Mr. Servance caused in removing a fire escape. Removal of the fire escape in connection with a contract to do other work on the building constituted "home improvement" under BR § 8-601 and not "demolition" as the circuit court had found. The property damage was a "direct result" of Mr. Servance's conducting home improvement without a license under CP § 11-603.

In re: M., No. 807, September Term 2020, filed June 30, 2021. Opinion by Leahy, J.

https://mdcourts.gov/data/opinions/cosa/2021/0807s20.pdf

FAMILY LAW – CHILDREN IN NEED OF ASSISTANCE – PERMANENCY PLAN

Facts:

M. was born in February 2011. M.'s mother has a history of substance abuse, mental health issues, and lack of stable housing. Father, the appellant, also has a history of incarceration and unstable housing, with periods of homelessness and unemployment. At the time M. was approximately five months old, L.A., her mother's maternal cousin, was informally given primary responsibility for M.'s care, and M. has consistently been in L.A.'s care ever since.

When M. was three-years old, the Circuit Court for Baltimore City, sitting as a juvenile court, declared her to be a child in need of assistance ("CINA") due to neglect, removed her from her parents' custody, and authorized relative placement with L.A. For six years following the CINA adjudication, during which M.'s mother was largely absent, the Baltimore City Department of Social Services ("the Department") attempted to reunify M. with Father. Obstacles and setbacks to reunification included Father's multiple incarcerations, living situations, and failure to care for M. during unsupervised visitations in a safe manner. After a series of incidents in Father's care, the juvenile court temporarily suspended visitation with Father. M.'s therapist reported that M.'s relationship with Father had been deteriorating as visitation increased, to the point that M. was reporting that she did "not feel safe." Her therapist testified that, by August 2019, M. had identified Father and her desire to live with L.A. as sources of conflict, sadness, and distress. The juvenile court suspended unsupervised visitation but permitted supervised visits, subject to M.'s consent. Subsequently, in December 2019, M. and Father began participating in family therapy.

By the time the COVID-19 pandemic was declared in March 2020, M. had not had recent contact with her mother, whose whereabouts were unknown; and she only had limited, voluntary, and supervised contact with Father. Contrastingly, her relationship with L.A. had remained one of continuous care and custody, resulting in what M., her therapist, and the juvenile court characterized as a strong mother-daughter bond.

The Department, M., and L.A. asked the juvenile court to order custody and guardianship to L.A. and supervised visitation with Father. As grounds, the Department cited the long history of failure in reunifying M. with Father beyond supervised visitation and the unlikelihood that M. could be fully reunified safely within a reasonably foreseeable time, together with evidence that the lack of permanent placement endangers M.'s mental health. In October 2020, after an evidentiary hearing, the juvenile court granted custody and guardianship to L.A. and approved supervised visitation for Father, and then closed the CINA case. Father noted a timely appeal.

Held: Affirmed.

The Court of Special Appeals held that the juvenile court did not err or abuse its discretion in ordering custody and guardianship to L.A. or in closing the CINA case. Consistent with its statutory obligations, the juvenile court focused its determination on M.'s best interests. The juvenile court's detailed factual findings reflect appropriate consideration of "[a]ll factors necessary to determine the best interests of the child," as required by Maryland Code (1973, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 3-819.2(f)(1)(ii), and Maryland Code (1984, 2019 Repl. Vol.), Family Law Article, § 5-525(f)(1).

The Court then addressed Father's three primary contentions of error. First, because progress toward reunification undisputedly halted long before COVID-19 curtailed contact between M. and Father, the Court held that the juvenile court did not err or abuse its discretion in failing to treat pandemic-related restrictions on visitation as grounds for extending CINA proceedings beyond the six years that M. was in the Department's custody. Second, the Court held that the juvenile court did not err or abuse its discretion in a manner that violated the CINA statutory framework. The juvenile court expressly found "exceptional circumstances" warranting custody and guardianship to L.A. and considered future funding for the guardianship, as required by CJP § 3-819.2(f)(1). Third, the Court concluded that the juvenile court did not abuse its discretion in deciding that prolonging the lack of permanency would be detrimental to M. and that, after more than six years, Father had yet to make enough progress that reunification was foreseeable. The juvenile court made clear that Father is not an unfit parent, that he sincerely desired to reunite with M., and that he made efforts and progress toward that goal. But the court also concluded that his parental priority and preferences were outweighed by the overwhelming evidence that for over six years he was unable to parent M. consistently or safely, and that remaining with L.A., while continuing visits with Father as she has throughout her life, was in the best interests of M.

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In re: K.L., No. 1302, September Term 2020, filed September 1, 2021. Opinion by Eyler, D., J.

https://mdcourts.gov/data/opinions/cosa/2021/1302s20.pdf

CHILD IN NEED OF ASSISTANCE – MINOR CHILD – JUVENILE COURT ORDER GRANTING DEPARTMENT OF SOCIAL SERVICES SOLE AUTHORITY TO CONSENT TO FILING OF PETITION TO CHANGE NAME AND DECLARE GENDER IDENTITY OF MINOR CINA – BEST INTERESTS OF THE CHILD STANDARD – CHANGE OF FIRST NAME TO CONFORM TO GENDER IDENTITY – DECLARATION OF GENDER IDENTITY WHEN GENDER IDENTITY DIFFERS FROM SEX-ASSIGNED-AT-BIRTH – PERTINENT FACTORS – HARMONIZING NATURE OF EVIDENCE SUPPORTING ADMINISTRATIVE CHANGE OF SEX DESIGNATION ON BIRTH CERTIFICATE WITH NATURE OF EVIDENCE SUPPORTING JUDICIAL DECLARATION OF GENDER IDENTITY – APPEALABILITY OF ORDER UNDER SECTION 12-203(3)(X) OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE.

Facts:

Seventeen-year-old child has been a CINA for ten years due to Mother's neglect. Child's sex-assigned-at-birth is male, but her gender identity is female. When child was thirteen, juvenile court ruled, over Mother's opposition, that Department could consent to child's receiving puberty blockers and feminizing hormones to transition physically from male to female. Mother has never accepted child's gender identity. When child was sixteen, she filed a motion to grant the Department sole authority to consent to the filing of a petition to change her first name and to have her gender identity declared to be female. Juvenile court granted the motion, over Mother's opposition. Mother appealed. Child and Department moved to dismiss the appeal as not taken from an appealable order.

Held:

Order is appealable under CJP section 12-303(3)(x), which permits a party to appeal from an interlocutory order "[d]epriving a parent . . . of the care and custody of his child …." A parent whose child is a CINA does not lose the fundamental constitutional right to raise the child, although that right must be balanced against the State's interest in protecting the child from harm. Care and custody of the child includes right to make decisions about important aspects of the child's life. The right of a parent to consent to a legal course of action that could result in the child's name being changed and a judicial declaration of gender identity different from sex-assigned-at-birth is fundamental to raising the child. Because the order in this case deprived Mother of that right, it is appealable under CJP section 12-303(3)(x).

The standard governing the juvenile court's decision whether to expand the Department's limited guardianship as requested is the best interests of the child. The "extreme circumstances" test applied in disputes between parents over changing their child's last name when the child has been using that last name has no relevance to a case in which a child is seeking a change in first name to conform to the child's gender identity. Two jurisdictions that have addressed the question whether it was in the best interests of a transgender child to grant a change in first name to correspond to the child's gender identity have identified relevant factors, which are different than the factors relevant to cases where parents are disputing whether a child's last name should be changed.

In 2003, in *In Re Heilig*, the Court of Appeals held that a circuit court has the power to declare that a transgender person's gender had "changed" from the gender the person was born with. (Gender identity now is understood to be immutable once formed, and usually formed at an early age). The Court harmonized the proof necessary to obtain such a declaration with the proof necessary, at that time, for the person to obtain an amended birth certificate with a new sex designation. Since then, the General Assembly has amended the law to provide that a person may obtain a new birth certificate with a change in sex designation upon proof of treatment short of surgery, such as medical treatment to achieve physical transition. The principle of *In re Heilig* dictates that treatment short of a permanent and irreversible physical transition will suffice to obtain a judicial declaration of gender identity different from sex-assigned-at-birth.

The undisputed facts before the juvenile court showed that the child likely could present satisfactory proof to a circuit court to support the petition, that the child had identified as a gender different from her sex-assigned-at-birth for many years, and that Mother was not accepting of the child's gender identity and had engaged in a long history of neglect of child. The court did not err or abuse its discretion in ruling that it was in the child's best interests to grant the Department sole authority to consent to the filing of a petition to change name and declare gender identity on child's behalf.

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B. O. v. S. O., No. 1202, September Term 2020, filed September 8, 2021. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2021/1202s20.pdf

FAMILY LAW – *DE FACTO* PARENTHOOD – PARENTAL FITNESS

Facts:

B. O. ("Aunt"), attempted to obtain custody of K, a boy born on January 18, 2017, to S. O. ("Mother"), and L. R. ("Father"), claiming she was a de facto parent and that Mother was unfit.[1] Aunt claimed that Mother was unfit because she struggled with addiction and depression and was occasionally without a place to live. After the parties filed an extensive number of pleadings and participated in several hearings regarding K's custody, the Circuit Court for Montgomery County ultimately awarded custody to Mother and Aunt appealed.

Held: Affirmed.

Aunt argued below that she was a *de facto* parent to K, because for an extensive period of K's short life he lived with Aunt. Mother countered that her struggles with addiction led her to place K with Aunt. Under *Conover v. Conover*, 450 Md. 51 (2016), recently augmented by the holding in *E.N. v. T.R.*, No. 44, September Term, 2020 (decided: July 12, 2021), a third party claiming de facto parentage bears the burden of proving four factors. First, the third party must prove that the biological or adoptive parents consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child." *Conover*, 450 Md. at 74; *E.N.*, slip op. at 70. Second, the third party must establish "that the petitioner and the child lived together in the same household." *Conover*, 450 Md. at 74. Third, the third party must prove "that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation." *Id*. Finally, the third party must demonstrate "that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature." *Id*.

Here, Aunt could not prove that Mother, despite numerous challenges, had ever consented to the establishment of a "parent-like relationship" between Aunt and K. Therefore, Aunt could not prove the first prong of *Conover* and *E.N*. No less important, Aunt did not sustain her burden of proving that Mother was unfit. Mother had successfully received help for her addictions, including completing a residential treatment program, sought medical help for her depression,

[1] Father was convicted of multiple counts of murder and was serving multiple life sentences. He declined to participate in any of the proceedings involving custody of K.

had not overly disciplined K, and had made strides to find stable housing. Because the court did not conclude that Mother was unfit, the court did not have to undertake a best interests analysis, as Aunt contended. As the court found that Aunt had failed to prove de facto parentage or that Mother was unfit, the court properly excluded Aunt from future proceedings, as Aunt was now a non-party.

CX Reinsurance Company Limited, et al. v. Devon Johnson, et al., No. 691, September Term 2020, filed September 7, 2021. Opinion by Beachley, J.

https://mdcourts.gov/data/opinions/cosa/2021/0691s20.pdf

INTENDED THIRD-PARTY BENEFICIARIES – INSURANCE POLICIES – PUBLIC POLICY FOR INJURED TORT CLAIMANTS – RIGHTS VEST AT TIME OF INJURY

Facts:

Numerous plaintiffs, who were children in the 1990s and early 2000s, were allegedly exposed to lead paint while residing in homes owned by certain landlords. These landlords had obtained insurance policies through commercial general liability policies with appellants CX Reinsurance Limited Company ("CX") and Liberty Mutual Mid-Atlantic Insurance Company ("Liberty Mutual"), ("Insurers"). The insurance policies required the Insurers to defend against and potentially indemnify the landlords for liability as to lead paint injuries sustained on their properties.

In 2015, CX filed contract rescission actions against the landlords in federal court, alleging that the landlords had made fraudulent misrepresentations in their insurance applications. CX and the landlords eventually reached settlement agreements (the "Rescission Settlement Agreements") that either eliminated or greatly reduced the insurance coverage for lead paint injuries under the insurance policies. The Rescission Settlement Agreements consequently modified the plaintiffs' abilities to recover damages from their landlords for their alleged lead paint injuries.

Thereafter, the plaintiffs filed a complaint in the Circuit Court for Baltimore City seeking a declaratory judgment against the Insurers that: 1) the plaintiffs were intended third-party beneficiaries of the insurance policies, 2) that they had vested rights in those insurance policies prior to the execution of the Rescission Settlement Agreements, and 3) that the Rescission Settlement Agreements did not impact those vested rights.

The circuit court granted the plaintiffs' request for declaratory judgment, and the Insurers appealed.

Held: Affirmed.

Although there is no case in Maryland that explicitly holds that injured tort claimants such as the plaintiffs in this case constitute intended third-party beneficiaries of insurance policies, Maryland appellate courts have consistently asserted, albeit in *dicta*, that they are. Accordingly, the plaintiffs here, who are injured tort claimants, are intended third-party beneficiaries of the insurance policies and therefore possess vested rights to enforce those policies.

By virtue of their status as intended third-party beneficiaries, the plaintiffs' rights to enforce the insurance policies vested at the time of their injuries. Although there is no Maryland authority directly on point, the overwhelming weight of authority in other jurisdictions and secondary sources indicates that an intended third-party beneficiary's right to enforce an insurance policy vests at the time of injury, and may not be subsequently modified by the insurer and the insured. Accordingly, the plaintiffs' rights to enforce the insurance policies vested when they suffered their injuries at the landlords' properties, and the Rescission Settlement Agreements were ineffective in modifying those vested rights.

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NRG Energy, Inc., et. al. v. The Maryland Public Service Commission, et al., No. 1181, September Term 2020, filed September 30, 2021. Opinion by Graeff, J.

https://www.courts.state.md.us/data/opinions/cosa/2021/1181s20.pdf

MARYLAND PUBLIC SERVICE COMMISSION – STANDARD OFFER SERVICE ADMINISTRATIVE ADJUSTMENT RATES

Facts:

On May 24, 2019, BGE sought to increase its Maryland retail electric and gas rates through proposed tariff revisions. Pursuant to PU §§ 4-203 and 4-204, BGE was required to file an application with the Maryland Public Service Commission ("Commission") regarding any change in its rates. As part of its application, and pursuant to the Commission's 2016 Order, BGE included a completed cost of service study to address the appropriate rate for the Administrative Adjustment component of BGE's charge to supply standard offer service ("SOS") electricity to its customers. After receiving extensive testimony, the Commission determined the appropriate costs to be allocated to SOS, and it set the SOS Administrative Adjustment rate at 1.09 mills per kWh.

Held: Vacated and remanded.

PU § 7-505(b)(8) gives the Commission the authority to "determine the terms, conditions, and rates" of SOS. The Commission, after listening to all the testimony, decided on the appropriate rate for the Administrative Adjustment component of SOS. This decision was committed to the Commission's broad discretion, and we give its decision in that regard deference. The Commission determined that BGE's recommendation was reasonable, with a couple of modifications suggested by Commission Staff. It acted within its discretion in rejecting the analysis set forth by ESC, and its decision was not arbitrary and capricious.

Two portions of the Order, however, require clarification and/or correction. First, the Commission states that two accounts should be excluded from the SOS analysis, and then, several sentences later, includes them in the calculations. Second, the Commission's mathematical calculations appear incorrect. Accordingly, although the Commission's decision, in general, was supported by substantial evidence and was not arbitrary and capricious, the Commission must clarify whether the accounts discussed should be included in the total costs and recalculate the Administrative Adjustment consistent with those calculations.

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Laura H. G. O'Sullivan, et al. v. Joan Kimmett, et al., No. 699, September Term 2020, filed September 30, 2021. Opinion by Salmon, J.

https://mdcourts.gov/data/opinions/cosa/2021/0699s20.pdf

COURTS AND JUDICIAL PROCEEDINGS – FORECLOSURES – APPEALS – ENROLLED JUDGMENTS – UNENROLLED JUDGMENTS

Facts:

On April 20, 2007, Jonathan Kimmett took out a $550,000 loan from American Brokers Conduit, the terms of which were included in an adjustable rate note ("Note"). Joan Kimmett, his wife, initialed the Note below her husband's signature although she was not named in the Note as a borrower. To secure the Note, Mr. and Mrs. Kimmett executed a deed of trust that encumbered their property which was located in Crownsville, Maryland (the "Property"). In 2013, American Brokers Conduit, by its agents, transferred its beneficial interest in the Note to Deutsche Bank National Trust Company ("Deutsche Bank"), as trustee for some other entities.

Mr. and Mrs. Kimmett defaulted on the loan secured by the deed of trust in May of 2009. They subsequently filed for bankruptcy. After a bankruptcy stay was lifted, Ocwen, the loan servicer, executed a "deed of substitution trustee" on September 23, 2016, which appointed Laura H. G. O'Sullivan and three other women as substitute trustees.

On May 28, 2016, the substitute trustees began a foreclosure action against the Property, and on the same date, sent a "notice of intent to foreclose" to Mr. and Mrs. Kimmett.

On July 5, 2017, the Kimmetts filed a request for mediation, which was held on August 23, 2017, but no agreement was reached.

The Property was advertised for sale with the sale to take place on November 7, 2018. Two days before the sale, on November 5, 2018, the Kimmetts, *pro se*, filed an emergency motion to shorten time and to stay foreclosure. They did not, however, ask that the foreclosure action be dismissed. That motion was untimely because Md. Rule 14-211(a)(2)(A)(iii)(a) requires, *inter alia*, that such a motion be filed, at the latest, within 15 days after the date the "postfile mediation was held." The "postfile" mediation hearing was held more than 14 months prior to the date that the Kimmetts filed their motion to shorten time and to stay foreclosure. Besides being untimely, the Kimmetts gave no excuse for their late filing.

No stay of the foreclosure sale was entered and the substitute trustees, at public auction, sold the Property on November 7, 2018 to Deutsche Bank, the only bidder, for $482,000. After the sale, the circuit court signed an order, on November 9, 2018, noting that the Kimmetts did not comply with Md. Rule 1-204, which requires, among other things, that a movant show that the failure to

act in a timely manner was the "result of excusable neglect." The order also stated that the motion filed by the Kimmetts was "moot" inasmuch as the sale had already taken place.

On November 26, 2018, a substitute trustee filed a report of sale and the clerk of the Circuit Court for Anne Arundel County, Maryland filed a notice of sale of the Property on December 7, 2018.

The Kimmetts, on January 6, 2019, filed exceptions to the ratification of sale in which they claimed: 1) that the substitute trustees were not "individuals authorized to make the sale." That assertion was based on the allegation that American Brokers Conduit ceased to exist as of November 30, 2010 by virtue of the fact that on that date, it was liquidated by the U.S. Bankruptcy Court and therefore, according to the Kimmetts, it could not have validly assigned the deed of trust to Deutsche Bank (as the substitute trustees maintain it did) on September 17, 2013. The Kimmetts also alleged that the advertisement of sale was "defective" because the substitute trustees represented, falsely, that they had the power to sell even though (allegedly) they did not have such power.

On January 16, 2019, the substitute trustees filed a response in which they alleged that the exceptions to sale were not timely filed. The circuit court agreed with that contention and, on that grounds, dismissed the exceptions. Later, the sale was ratified whereupon the Kimmetts filed an *in banc* appeal in which they claimed that the circuit court erred when it had ruled that the exceptions were not timely filed. The *in banc* court, correctly, agreed with the Kimmetts and remanded the case to the Circuit Court for Anne Arundel County.

On remand, a hearing was set and on the morning that hearing commenced, the circuit court disposed of several pending motions as follows: 1) struck the order signed May 28, 2019 and docketed on May 30, 2019 that ratified the sale; 2) granted the request of the Kimmetts to strike the deed to the Property that Deutsche Bank had previously recorded in the land records. After taking the aforementioned actions, the trial judge heard evidence and at the conclusion of the evidentiary phase of the hearing, signed an order that granted the exceptions to the sale that the Kimmetts had filed and ordered that "a full evidentiary hearing, pursuant to Rule 14-211, be heard no sooner than sixty days from August 10, 2020."

The substitute trustees filed an immediate appeal to the Maryland Court of Special Appeals in which they raised one question, viz. "Whether the Circuit Court erred in granting the Appellees' Rule 14-305 postfile Exceptions and Ordering a Rule 14-211 Hearing where Appellees' Rule 14-305 exceptions consisted of the same Rule 14-211 pre-sale challenges to [appellants'] standing that the Circuit Court had previously dismissed."

In the Court of Special Appeals, the Kimmetts, *inter alia*, filed a motion to dismiss the appeal on the grounds that no final order had been entered and no exceptions to the usual rule that an appeal may only be filed from a final judgment were applicable.

Held: Appeal dismissed.

In response to the motion to dismiss appeal, the substitute trustees admitted that no final order had been filed in the subject case. Nevertheless, for three reasons, the substitute trustees claimed that their appeal came within at least one of the exceptions to the rule that an appeal may not be taken from a non-final judgment. First, the substitute trustees, citing *Bank of New York Mellon v. Nagaraj*, 220 Md. App. 698 (2014), claim that an order of the circuit court vacating a final order of ratification in a foreclosure sale was immediately appealable. The Court rejected the argument that the *Nagaraj* case was apposite. In *Nagaraj*, the circuit court struck an *enrolled* judgment that had ratified a foreclosure sale. Striking such a judgment is appealable. *See First Federated Com. Tr. v. Comm'r*, 272 Md. 329, 333 (1974). But the Court held that the same rule does not apply to an *unenrolled* order ratifying foreclosure sale. A circuit court order vacating an unenrolled order of ratification is not immediately appealable. *See Standish Corporation v. Keane*, 220 Md. 1, 6 (1959); *Hunting v. Walter*, 33 Md. 60, 61 (1871). The Court also rejected the substitute trustees' argument that it could entertain this appeal under the collateral order doctrine. The Court held that that doctrine was not applicable in this case for several reasons. Contrary to the argument of the substitute trustees, they had no right to avoid trial and therefore they had not met the fourth element of the collateral order doctrine which provides: that the issue raised would be "effectively unreviewable" if the appeal had to await the entry of a final judgment. The Court held that the fourth element cannot be satisfied unless an appellant can prove that he or she has a well-established right to avoid trial such as when forcing a party to go through a trial would violate a federal or state constitutional right to avoid double jeopardy. No such proof was presented in the subject case.

Lastly, the substitute trustees contended that this appeal should be allowed to go forward because, prior to the hearing, the trial judge denied Deutsche Bank's possession of the Property. The substitute trustees argued that the aforementioned action put this case under the ambit of § 12-303(1) of the Courts & Judicial Proceedings Article, which allows an immediate appeal of an interlocutory order "when a controversy exists over the right to possession of property . . . during the pendency of the litigation." The Court agreed with the substitute trustees that when the circuit court judge struck Deutsche Bank's motion for possession of the Property, the court, in effect, denied the substitute trustees' possession of the Property pending ratification of the sale. Nevertheless, the Court held that § 12-303(1) of the Courts & Judicial Proceedings Article was not here applicable because the appeal did not "pertain" to the issue of possession of property, this was shown, *inter alia*, by the sole issue raised by the substitute trustees (quoted *supra*) that had nothing to do with the applicability, *vel non*, of section 12-303(1).

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Thornton Mellon, LLC, et al. v. Frederick County Sheriff, Baltimore County Sheriff, Anne Arundel County Sheriff, et al., and Howard County Sheriff, Nos. 2224, 2330, & 2580, September Term 2019 and No. 151, September Term 2020, filed September 3, 2021. Opinion by Friedman, J.

https://mdcourts.gov/data/opinions/cosa/2021/2224s19.pdf

SHERIFFS – IMPLIED POWERS

REAL PROPERTY – FORECLOSURE

Facts:

After obtaining foreclosure judgments for properties purchased at tax sales throughout Maryland, Thornton Mellon obtained writs of possession for their newly owned properties. Thornton Mellon then sought to have the sheriffs in each respective county serve the writs. The sheriffs refused, because in each county, Thornton Mellon failed to comply with at least one of three policies that the sheriffs adopted and enforced to govern how they would fulfill their statutory duty to serve writs of possession.

Each of the sheriffs adopted and enforced a mover policy, a weather policy, and a 60-day policy. The mover policy instructed the tax sale purchaser to provide a moving van and movers based on the size of the property. The weather policy gave the sheriffs discretion to postpone or cancel service of a writ for inclement weather. And the 60-day policy provided that writs more than 60 days old would not be served.

Thornton Mellon argued that the sheriffs could not adopt and enforce these policies, because no statute or rule provided the sheriffs with the authority to do so. In Thornton Mellon's view, the sheriff could only place them in possession of their newly owned property and do nothing more. The sheriffs each argued that their power to adopt and enforce these policies was fairly implied from their express duty to serve writs of possession, and they each moved for summary judgment. The Circuit Courts for Frederick County, Baltimore County, Anne Arundel County, and Howard County each agreed with the sheriffs, found that the policies were valid and enforceable, and granted summary judgment in their favor. Thornton Mellon noted a timely appeal in each of the four cases, which this Court consolidated on appeal.

Held: Affirmed in part, reversed in part.

The sheriffs, like any other state official, have a set of fairly implied powers that they may exercise. Whenever a state or local official in Maryland is granted an express power, or given an express duty, that express grant of authority carries with it all those fairly implied powers

incident to exercising or fulfilling the power or duty. The exercise of a fairly implied power must be reasonable, and neither arbitrary nor capricious. *Harvey v. Marshall*, 389 Md. 243, 303 (2005). A government official may not exercise their fairly implied powers in a way that is "inconsistent, or out of harmony with, or which alters, adds to, extends or enlarges, subverts, impairs limits, or restricts the [statutory] act being administered." *Bd. of Liquor License Comm'rs for Baltimore City v. Hollywood Prods., Inc*., 344 Md. 2, 11 (1996) (quoting *Ins. Comm'r v. Bankers Independent Ins. Co*., 326 Md. 617, 624 (1992)). A public official's interpretation of how to accomplish a statutory directive should "be given great deference unless it is in conflict with legislative intent or relevant decision law, or is clearly erroneous, arbitrary or unreasonable." *Dep't. of Economic & Employment Dev. v. Lilley*, 106 Md. App. 744, 762 (1995) (cleaned up). Our courts have not previously recognized that the sheriffs may exercise a set of fairly implied powers, but we do so here. The sheriffs—like all other state and local officials—may exercise their fairly implied powers subject to the limits on the exercise of fairly implied powers set by this Court and the Court of Appeals.

The mover policy and the weather policy are valid exercises of the sheriffs' fairly implied powers. These two policies are reasonable, neither arbitrary nor capricious, and are consistent with the statutory act being administered. These two policies impose minimal, incidental costs on the tax sale purchaser, and do not undermine or disincentivize participation in the tax sale process. The Court, therefore, affirmed the grants of summary judgment as to the mover and weather policies,

The 60-day policy is not valid because a writ of possession does not expire. This policy directly conflicts with the statutory act being administered. The sheriffs' 60-day policy invalidates an otherwise valid writ of possession and is therefore unreasonable. Once the writ of possession has been issued to a tax sale purchaser, it necessarily means that the prior owner's right to redeem the property has been foreclosed. The Court, therefore, reversed the grants of summary judgment as to the 60-day policy, and remanded the matter with instructions to enter a declaration of rights pursuant to MD. CODE, CTS. & JUD. PROC. § 3-409.

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Administrative Office of the Courts, et al. v. Abell Foundation, Case No. 1955, September Term 2019, filed September 2, 2021. Opinion by Nazarian, J.

https://www.mdcourts.gov/data/opinions/cosa/2021/1955s19.pdf

MARYLAND PUBLIC INFORMATION ACT – ADMINISTRATIVE RECORDS – DISCLOSURE OF RECORDS

Facts:

On any given business day, a member of the public can walk into the District Court in Baltimore City, take a seat in a courtroom, and watch a judge hear and decide that day's docket. If, however, they try to look up those same cases on the Judiciary's Case Search website, the identity of the judge appears in the form of a three-character alphanumeric code that isn't translated on Case Search itself. On July 20, 2018, the Abell Foundation (the "Foundation") submitted a request to the Administrative Office of the Courts (the "AOC") under the Maryland Public Information Act (the "MPIA") seeking "a copy of the list of unique identifiers assigned to judges serving in the District Court for Baltimore City." The AOC, through its custodian of records, denied the request on the ground that the "list of unique identifiers" was "an administrative record under Maryland Rule 16-905(f)(3) and is non-disclosable." The Foundation sought judicial review in the Circuit Court for Baltimore City, and after motions from both sides, the court granted summary judgment in favor of the Foundation, reasoning that the "list of unique identifiers" "functions as 'a local rule, policy, or directive that governs the operation of the court'" and was not exempt from disclosure.

Held: Affirmed.

The Court of Special Appeals held that Maryland Rule 16-905 requires the custodian of an administrative record to deny a request to disclose that record unless (among other things) the record is a local rule, policy, or directive that governs the operation of the court. The Administrative Office of the Courts could not rely on Rule 16-905 to deny inspection of a table listing codes used to identify individual district court judges because the table embodied the AOC's policy to display codes on Case Search rather than judges' names.

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Christine Pifer, et al. v. Irwin Industrial Tool Co., No. 1849, September Term 2019, filed September 1, 2021. Opinion by Nazarian, J.

https://www.mdcourts.gov/data/opinions/cosa/2021/1849s19.pdf

EVIDENCE – AUTHENTICITY – MD. RULE 5-901 – LEGAL STANDARD

EVIDENCE – AUTHENTICITY – MD. RULE 5-901 – CHAIN OF CUSTODY

Facts:

The Estate of Richard Pifer ("the Estate") brought a wrongful death asbestos product liability claim against Irwin Industrial Tool Company ("Irwin"), alleging that chalk it sold from 1960 to 1982 contained asbestos that caused Richard Pifer to contract and die of mesothelioma. Irwin filed a motion *in limine* to exclude from evidence vintage chalk samples, obtained by the Estate on eBay, that tested positive for asbestos. Irwin also filed a motion for summary judgment. The trial court held a hearing and granted Irwin's motion *in limine* to exclude the eBay chalk exemplars on the ground that the Maryland Rule's 5-901 authenticity requirement had not been met, and denied Irwin's motion for summary judgment. Two days after the motions hearing, though, the court granted Irwin's motion for summary judgment. The Estate appealed the trial court's rulings on both motions.

Held: Reversed in part, vacated in part, and remanded.

The Court of Special Appeals reversed the circuit court's grant of the motion *in limine*, reasoning that the circuit court required more certainty about the contents and provenance of the chalk samples than the law requires. The Court held that the Estate demonstrated a reasonable probability that the chalk exemplars obtained on eBay are authentic for the purposes of admissibility under Rule 5-901: it was undisputed that (1) the exemplar containers are Irwin's, (2) noncommercial amphibole asbestos is regulated and not easily found, (3) the exemplars came from nine different sellers in seven different states who, to tamper, would have had to lace the chalk exemplars with asbestos intentionally, (4) a majority of the exemplars tested positive for asbestos, (5) each exemplar contained chalk matching the color designated on the label, and (6) an overwhelming majority of the samples arrived sealed and with no evidence of tampering. Based on those undisputed facts, the Estate established that there is a reasonable probability that the exemplars are representative of the chalk alleged to have exposed Mr. Pifer to asbestos that caused his mesothelioma. Moreover, the gap in the chain of custody resulting from sourcing the exemplars from eBay did not render them categorically inadmissible; instead, the gap is part of the factual picture the jury should consider in determining whether the evidence is reliable and whether the plaintiff has met its burdens of proof on the merits.

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The Court vacated the grant of the summary judgment in light of its ruling regarding the admissibility of the eBay samples and remanded to the circuit court for further consideration.

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Brandon Gambrill, et al. v. Board of Education of Dorchester County, et al., No. 886, September Term 2019, filed September 7, 2021. Opinion by Friedman, J.

https://mdcourts.gov/data/opinions/cosa/2021/0886s19.pdf

COVERDELL ACT – FEDERAL PREMPTIONS

TORTS – SCHOOL BOARD LIABILITY – DEFERENCE TO DISCIPLINARY DECISIONS

Facts:

The Gambrills' minor daughter, S., was injured as a result of bullying she suffered while she attended Mace's Lane Middle School in Dorchester County. There were several incidents throughout the school year—S. was sometimes the instigator, and sometimes the victim—but the administration took steps to ensure that S. would have minimal contact with the students that bullied her. After S. was involved in a full-blown fistfight, the Gambrills sued the principal and assistant principal of Mace's Lane Middle School, the Supervisor of Student Services for the Board of Education of Dorchester County and the substitute teachers who were in the classroom with S. during two separate incidents. The Gambrills also sued the Board of Education of Dorchester County. The complaint alleged that the individual defendants and the Board negligently disciplined the students who bullied S. The Circuit Court granted the defendants' motion for summary judgment.

Specifically, the Circuit Court granted summary judgment to the individual defendants under the federal Coverdell Act, which immunizes teachers from tort liability, and to the Board under a line of cases beginning with *Hunter v. Bd. of Educ. of Montgomery Cty*., 292 Md. 481 (1982), recognizing that complaints for educational negligence are not cognizable causes of action. The Gambrills noted a timely appeal.

Held: Affirmed

The Gambrills' first issue concerned the applicability of the federal Coverdell Act, which provides that no "teacher, principal, administrator, or other educational professional," shall be liable for harm caused if the teacher was acting within the scope of employment, and the harm was not caused by willful or criminal misconduct. 20 U.S.C. § 7946(a). Under the facts of the case here, the Court found that the Coverdell Act's immunity preempted Md. Code, Cts. & Jud. Proc. § 5-518, which provides teachers with indemnification from the local board, but not complete immunity. The Court also rejected the Gambrills' contention that a party seeking protection under the Coverdell Act needs to plead and prove the receipt of federal education funds.

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The second issue concerned whether the Board was entitled to summary judgment under *Hunter*. *Hunter* stands for the proposition that when educators make discretionary decisions related to any aspect of student education, they cannot be liable in tort if those decisions result in harm to students. Here, the Court held that because student discipline is an integral part of the educational process, discretionary decisions relating to student discipline cannot form the basis for tort liability and are thus precluded under *Hunter*.

Therefore, the Court affirmed the grant of summary judgment as to both the individual defendants and the Board.

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ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated August 17, 2021, the following attorney has been disbarred by consent, effective September 1, 2021:

BERNARD SETON GRIMM

*

This is to certify that the name of

BRUCE NICHOLAS DESIMONE

has been replaced upon the register of attorneys in this State as of September 7, 2021.

*

By an Order of the Court of Appeals dated September 13, 2021, the following attorney has been temporarily suspended:

ISAAC A. MARKS

*

By an Order of the Court of Appeals dated September 13, 2021, the following attorney has been suspended for six months:

CHRISTOPHER BROUGHTON SHEDLICK

*

By an Order of the Court of Appeals dated September 13, 2021, the following attorney has been temporarily suspended:

JON EDWARD SHIELDS

*

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*

By an Order of the Court of Appeals dated August 20, 2021, the following attorney has been indefinitely suspended by consent, effective September 20, 2021:

JOHN WAYNE WALKER-TURNER, SR.

*

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JUDICIAL APPOINTMENTS

*

On September 3, 2021, the Governor announced the appointment of **HON. JOSEPH M. GETTY** as the Chief Judge of the Court of Appeals. Judge Getty was sworn in on September 10, 2021 and fills the Chief Judge position vacated by the retirement of the Hon. Mary Ellen Barbera.

*

On September 3, 2021, the Governor announced the appointment of **HON. STEVEN B. GOULD** to the Court of Appeals (Seventh Appellate Judicial Circuit). Judge Gould was sworn in on September 10, 2021 and fills the vacancy created by the retirement of the Hon. Mary Ellen Barbera.

*

On August 12, 2021, the Governor announced the appointment of **VICTORIA JEANNE LOBLEY** to the District Court – Washington County. Judge Lobley was sworn in on September 17, 2021 and fills the vacancy created by the retirement of Terry A. Myers.

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RULES ORDERS AND REPORTS

*

A Rules Order pertaining to the third supplement to the 207th Report of the Standing Committee on Rules of Practice and Procedure was filed on September 20, 2021.

http://mdcourts.gov/sites/default/files/rules/order/ro207supplement3.pdf

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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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