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ADMINISTRATIVE LAW - DISCIPLINARY ACTIONS TAKEN BY MARYLAND STATE BOARD OF PHYSICIANS - PHYSICIANS RIGHT TO AN ADMINISTRATIVE HEARING.

Facts: Michael S. Rudman (Petitioner), a physician in Frederick County, Maryland was charged in the Circuit Court for Frederick County with fourth degree sex offense and the lesser included offense of second degree assault, Petitioner entered an *Alford* plea of guilty to a second degree assault and was granted probation before judgment to Sec. 6-220 of the Criminal Procedure Article. Upon acceptance of the plea and finding of guilt, a nolle prosequi was entered was entered as to the fourth degree sex offense charge. The Maryland State Board of Physicians concluded that since Petitioner had pled guilty to a "crime of moral turpitude" and a timely appeal was not filed, the Board must revoke Petitioner's license to practice medicine under Md. Code Ann., Health Occ. (H.O.) Sec. 14-404(b)(2). The Circuit Court vacated the revocation but the Court of Special Appeals reversed that decision in *State Board of Physicians v. Rudman*, 185 Md.App. 1, 968 A.2d 606 (2009). The Court of Appeals issued a writ of certiorari to address the question of whether a hearing is required before the Board can revoke the license of a physician who entered an *Alford* plea to second degree assault at the conclusion of a guilty plea proceeding during which he expressly denied having committed any criminal offense and admitted only that testimony of the victim, if believed, would be sufficient to convict him of a fourth degree sexual offense.

Held: The Court of Appeals reversed and remanded to the Court of Special Appeals for entry of a judgment affirming the judgment of the Circuit Court for Frederick County and remanding this case to the Maryland State Board of Physicians for further proceedings not inconsistent with this opinion. The Court of Appeals held that the State Board of Physicians erred in its conclusion that Petitioner's license "must" be revoked on the basis of his *Alford* plea because, although they agreed with the Court of Special Appeals that Petitioner's *Alford* plea constituted a guilty plea for the purposes of Sec. 14-404(b)(1),

the "conviction" involved only the second degree assault charge, and when Petitioner entered his *Alford* plea to the crime of second degree assault, he never withdrew his plea of not guilty to the sexual offense charge. Since the Maryland State Board of Physicians conceded that second degree assault is not a crime of moral turpitude, the Board qas not entitled to revoke Petitioner's license under the assault charge, even after Petitioner pled guilty. Because Petitioner did not stipulate to the truth of the facts contained in the prosecutor's statement of facts, the Board did not have the authority to revoke Petitioner's license without giving him the opportunity for a hearing pursuant to the hearing provisions of H.O. 14-405.

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Motor Vehicle Administration v. Shea, Case No. 133, September Term 2008 filed June 23, 2010, Opinion by Barbera, J.

http://mdcourts.gov/opinions/coa/2010/133a08.pdf

ADMINISTRATIVE LAW - MOTOR VEHICLE ADMINISTRATIVE LAW – ALCOHOL CONCENTRATION TEST – REASONABLE GROUNDS TO ORDER TEST FOR BLOOD ALCOHOL CONCENTRATION UNDER THE "IMPLIED CONSENT STATUTE," MD. CODE (2009 Repl. Vol.) § 16-205.1 OF THE TRANSPORTATION ARTICLE.

Facts: Adam Leigh Shea, Respondent, was stopped by a police officer who observed him driving while not wearing a seatbelt. During the stop, the officer smelled a moderate odor of alcohol emanating from Respondent's person. The officer conducted field sobriety tests (the results of which are not reflected in the record) and subsequently arrested Respondent. At the police station, the officer advised Respondent of his rights and the potential penalties under § 16-205.1 of the Transportation Article ("the Statute") and asked him if he wished to take a breath test to ascertain his blood alcohol concentration ("BAC"). Respondent agreed to the test. The test result disclosed a BAC of 0.18. Pursuant to the Statute, the officer presented Respondent with an order of administrative suspension of his driver's license.

Thereafter, Respondent requested a show cause hearing, at which an Administrative Law Judge (ALJ) decided, contrary to Respondent's assertion, that the police officer had reasonable grounds to believe that Respondent was driving while under the influence of or impaired by alcohol, and, therefore, pursuant to the Statute, the officer properly asked Respondent to take a breathalyzer test. The ALJ rejected Respondent's allegation that the Toxicologist administering the test did not follow protocol because such a challenge is not subject to review at a show cause hearing, pursuant to § 16-205.1(f)(7). The ALJ determined that Respondent had not rebutted the prima facie case that he had driven with a BAC of more than 0.15. Pursuant to the Statute, the ALJ ordered that Respondent's license be suspended, and then ordered the suspension stayed for one year on the condition that Respondent participate in the Ignition Interlock Program.

Respondent sought review of the ALJ's decision in the Circuit Court for Baltimore County. The Circuit Court reversed the decision of the ALJ because, in the court's view, the record did not contain substantial evidence to support the ALJ's finding that the officer had reasonable grounds to request the test. In coming to that determination, the court decided that the officer did not have reasonable suspicion to conduct the field sobriety

tests and, consequently, by application of Fourth Amendment doctrine, "all actions thereafter, [including, presumably, the test request and results,] are legally unsupportable." The court therefore did not decide whether the ALJ erred in not finding whether the Toxicologist had followed protocol in administering the test.

The MVA filed a petition for a writ of certiorari, pursuant to Maryland Code (2009 Repl. Vol.), § 12-305 of the Courts and Judicial Proceedings Article. The Court granted the petition, *Motor Vehicle Admin. v. Shea*, 406 Md. 744, 962 A.2d 370 (2008), to address the following question:

> Does a police officer's certification that a moderate odor of an alcoholic beverage was of sufficient strength to suspect that a motorist was driving while impaired by alcohol, along with subsequent field sobriety tests that led to the driver's arrest, allow an administrative law judge to find reasonable grounds to request an alcohol content test under Transportation Article § 16-205.1(b)(2), without application of Fourth Amendment standards to evaluate the sufficiency of a police officer's reasonable grounds?

Held: Vacated and remanded. The Fourth Amendment's exclusionary rule does not apply to cases under § 16-205.1 and, therefore, the Circuit Court erred in applying such an analysis to the evidence presented to the ALJ. *See Motor Vehicle Admin. v. Richards*, 356 Md. 356, 362, 739 A.2d 58, 62 (1999). Moreover, the Circuit Court erred in reversing the ALJ's decision on whether the officer had reasonable grounds to request Respondent to take a test to determine his BAC. There was substantial evidence before the ALJ to support the ALJ's decision, including that the officer stopped Respondent after observing him driving without wearing a seatbelt; the officer detected a moderate odor of alcohol emanating from Respondent's person; and the officer arrested Respondent after conducting field sobriety tests, permitting the inference that Respondent's performance indicated alcohol impairment. These facts and inferences supported the ALJ's decision that Officer Phelps had reasonable grounds to believe that Respondent had been driving while under the influence of, or impaired by, alcohol, authorizing the officer, pursuant to the Statute, to request the test. The Court therefore reversed the Circuit Court's decision as to the reasonable grounds issue, and remanded for the Circuit Court to decide whether the ALJ erred in not reviewing the Toxicologist's actions while administering the BAC test.

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Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC. Case No. 117, September Term, 2008. Opinion filed on August 25, 2009 by Adkins, J.

http://mdcourts.gov/opinions/coa/2009/117a08.pdf

ADMINISTRATIVE LAW - ZONING

Facts: The Respondent, Frizz-King Enterprises, LLC ("Frizz-King"), was the owner of approximately 275 acres located in an agricultural zoning district in Queen Anne's County ("the County"). In 2004, Frizz-King sought to construct a subdivision called "The Highlands" near Chestertown, Maryland, where 50 residential units would be clustered within 64 acres of the 275 acre property. It submitted an application to the Planning Commission ("the Commission") for a subdivision with 114 lots, with phase one of the project consisting of 50 lots. The Petitioner, Grasslands Plantation, Inc. ("Grasslands"), owned a property known as "Grasslands Plantation" adjacent to the proposed subdivision property.

Grasslands opposed the subdivision in a series of hearings before the Commission. Grasslands's environmental science expert testified that the proposed subdivision was incompatible with (1) Maryland Code (1957, 2003 Repl. Vol.), Article 66B, Sections 1.01 and 11.01, Article 66B, Section 11.01; (2) specific policies in the County's Comprehensive Plan, and (3) provisions in Title 18 of the County Code ("QACC"). The expert argued that the subdivision was incompatible with the Comprehensive Plan policy to keep rural lands rural and to preserve agricultural lands, because the agricultural parcel proposed for subdivision was not located in an area designated for growth. Frizz-King countered by pointing to the existence of other subdivisions in the immediate vicinity of the proposed subdivision, including one contained within the adjacent Grassland's Plantation. The Commission approved the proposed subdivision without making any findings of fact, resolving that it could grant final approval on the planning and zoning staff's recommendation.

Grasslands appealed the Commission's decision to the Board of Appeals ("the Board"), listing as grounds its earlier contentions as well as the Commission's failure to articulate any findings of fact. During the hearing, Grasslands questioned whether the burden of proof should rest on Grasslands, as opposed to Frizz-King, in an appeal from a Commission decision. Although Grasslands's expert testified, the Board only allowed her to testify about the general goal of a comprehensive plan without reference to specific application of the Comprehensive Plan

because Grasslands had failed to disclose in advance of the hearing the subdivision's specific incompatibility with the Comprehensive Plan. At the completion of the hearing, the Board denied Grasslands's appeal because it did not believe the party met its burden of proof. The Board found that the subdivision complied with all of the necessary statutes and ordinances, and further held that the Commission was not required to make findings of fact and conclusions of law because appeals from the Commission go to the Board as *de novo* appeals instead of to the circuit court on record.

Grasslands filed for judicial review in the Circuit Court for Queen Anne's County and that court affirmed the Board's decision. Grasslands then appealed to the Court of Special Appeals ("CSA"). Just prior to oral argument in the CSA, the County enacted two ordinances, the "Conformity Ordinance" and the "Emergency Service Ordinance." The Conformity Ordinance prevented the Commission from approving a subdivision unless it finds that the development conforms to the visions, objectives, and policies of the Comprehensive Plan. The Emergency Service Ordinance prohibited the Commission from approving any site plan, unless it determined that the site plan complied with the State Fire Code and with any applicable County or municipal Fire Codes. The CSA affirmed the Circuit Court, holding, among other things, that the Commission was not required to make findings of fact or conclusions of law and determined that the Board gave each of Grasslands' allegations explicit consideration. It also held that the Board did not improperly place the burden of proof on Grasslands. The CSA did not address whether the Conformity Ordinance or the Emergency Service Ordinance should be applied retroactively to require the case to be reversed or remanded for administrative review.

The Court granted Grasslands's Petition for Writ of Certiorari to consider the following three questions: (1) Did the CSA err by sustaining the Circuit Court ratification of the Board of Appeals's improper allocation of the burden of proof upon the appellant (as protestant to a subdivision application) instead of upon developer appellee, as required by law; (2) Did the CSA err in affirming the decisions of the Circuit Court and the Board of Appeals in light of its failure to consider intervening legislation enacted by the Queen Anne's County commissioners that elevated the Queen Anne's County Comprehensive Plan by "mandates of compliance" to the "level of a regulatory device"; and (3) Did the CSA err by failing to remand the Highlands subdivision matter in light of the enactment of applicable local legislation prior to its decision?

Held: Reversed and Remanded. The Queen Anne's County Board of Appeals ("Board") erred in shifting the burden of proof from the subdivision applicant to the adjacent landowner appellant at the Board's review proceeding. Furthermore, on remand, the Board or Commission was required to apply the Conformity and Emergency Service Ordinances, which were enacted while the case was on appeal.

The Court began its analysis by examining the burden of proof issue. The Board's governing statutes did not call for it to accord any deference to a decision by the Commission and provided it with all the powers of the administrative officer from which the appeal was taken. Thus, these statutes were more similar to those found in *Board of County Commissioners for St. Mary's County v. Southern Resources Management, Inc.*, 154 Md. App. 10, 837 A.2d 1059 (2003) (appeal characterized as purely *de novo*) than those found in *Hikmat v. Howard County*, 148 Md. App. 502, 813 A.2d 306 (2002) (review of a partially *de novo* appeal). In a partially *de novo* appeal, the reviewing body will not overturn the decision unless, based on the facts found from the evidence, it determines that the decision was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. The Board's purely *de novo* review proceeding, on the other hand, was an entirely new hearing at which time all aspects of the case should be heard anew, as if no decision has been previously rendered. Thus, in this entirely new hearing, the burden remained on the applicant to establish facts necessary to obtain approval for its proposed subdivision because the applicant was the party attempting to change the *status quo*.

Regarding the applicability of the Conformity and Emergency Service Ordinances, the court iterated the general presumption of retroactivity in zoning and land use cases. The new ordinances were enacted during the pendency of Grasslands' appeals to the Circuit Court and Court of Special Appeals. Under *Yorkdale Corporation v. Powell*, 237 Md. 121, 124, 205 A.2d 269, 271 (1964), the Emergency Service Ordinance, as a substantive zoning/land use law, should be applied at the new hearing because it is the law in effect at the time of the hearing, and does not impair vested rights. The Conformity Ordinance, an arguably procedural law change, shall also apply because the Commission's or Board's process of making its decision will begin anew for an independent reason – a proper allocation of the burden of proof. This case was distinct from *Luxmanor Citizens Ass'n, Inc. v. Burkhart*, 266 Md. 631, 644-46, 296 A.2d 403 (1972) in which the Court declined to retrospectively apply a new procedural enactment and thereby void a valid Board decision. In a zoning or land use case, the decision about retrospective application of

a procedural law change will turn on what aspect of the administrative/adjudication process is changed, at what point in administrative/adjudication process the change is made, and the question presented to the reviewing court.

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Allen v. Dackman, No. 46, Sept. Term, 2009. Opinion filed on March 22, 2010, by Greene, J.

http://mdcourts.gov/opinions/coa/2010/46a09.pdf

COMMERCIAL LAW - SUMMARY JUDGMENT - LEAD PAINT - NEGLIGENCE - BALTIMORE CITY HOUSING CODE - LIMITED LIABILITY COMPANIES - STATUTORY DUTY

Facts: Sometime in 1999, minors Monica Allen and Shantese Thomas (Petitioners) moved into property where their grandmother, Tracy Allen (Ms. Allen), had been residing since the summer of 1998. At that time, the property was owned by Mildred Thompkins. However, Ms. Thompkins failed to pay taxes on the property and on March 16, 2000, Hard Assets, an LLC, acquired the property in lieu of foreclosure.

Following its normal business practice, Hard Assets obtained the property with the intention of subsequently selling it as is, rather than keeping it as rental property. Therefore, when Hard Assets obtained title, it did not intend to lease the property, nor were its members aware that Petitioners and Ms. Allen were living at the property. On October 23, 2000, Petitioners and Ms. Allen were removed pursuant to a forcible entry and wrongful detainer complaint filed by Hard Assets and granted by the District Court for Baltimore City.

From March 16, 2000 to March 16, 2001, when the property was sold, Respondent Jay Dackman (Respondent), as a member of Hard Assets, ran the day-to-day business affairs of the company, which primarily involved the Aas is sale of properties that were purchased and acquired through tax liens. During that time, Respondent never received rent or filed collections for rent from Petitioners or Ms. Allen. Likewise, Ms. Allen and Petitioners did not pay rent to Hard Assets or Respondent. Ms. Allen and Petitioners were not aware of who hard Assets or Respondent were.

While residing at the property, each of the minor children suffered elevated blood-lead levels. Although the minors suffered elevated blood-levels before Hard Assets acquired the property, they suffered their highest blood-levels while Hard Assets held legal title. Petitioners filed suit against Hard Assets and Respondent on June 11, 2002, claiming that they were injured by exposure to lead based paint. Respondent filed a motion for summary judgment, alleging that he could not be personally liable as a matter of law.

The trial court granted Respondents motion for summary judgment, concluding that Respondent could not be held personally liable for any claims asserted by Petitioners and that there was no evidence showing that Respondent had a landlord-tenant relationship with Petitions of their family. Petitioners appealed to the Court of Special Appeals, which affirmed the judgment of the trial court. Finally, Respondent appealed to the Court of Appeals on the issue of whether the lower court correctly affirmed summary judgment in favor of the Respondent because he did not own, hold, or control title to the property.

Held: Reversed. Respondent could be held individually liable for the lead paint-related injuries suffered by the Petitioners because the trier of fact could find that the Respondent was an "owner" of the property, as the City Housing Code defined the term, and could find that he personally committed, inspired, or participated in the alleged tort. First, because Respondent solely managed the day-to-day affairs of Hard Assets, a reasonable jury could find that he affected the title to the property in question. Second, as to Respondent's actions with respect to the property in question, a reasonable jury could find that he participated in the tort of negligence.

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Maryland Agricultural Land Preservation Foundation, et al. v. Herschell B. Claggett, Sr., No. 142, September Term, 2008. Opinion filed on December 12, 2009 by Adkins, J.

http://mdcourts.gov/opinions/coa/2009/142a08.pdf

CONSTITUTIONAL LAW - AGRICULTURE

Facts: On February 1, 2000, Respondent landowner, Herschell Claggett, conveyed an agricultural preservation easement ("the Easement") to Petitioner Maryland Agricultural Land Preservation Foundation ("the Foundation"), which restricted the use of his land to agricultural purposes only. The provisions in the document conveying the easement ("Deed of Easement") mirrored the language of Section 2-513 of the Agriculture ("AG") Article (1974, 1999 Repl. Vol.) ("AG-1999"), the law in effect at the time of easement's execution. Among other things, it permitted Claggett to obtain a release of acreage to construct a dwelling house for his use ("Owner's Lot") or that of his child ("Child's Lot"), but it restricted that right of release to Claggett, as the Grantor who originally sold the easement. The parties would later disagree as to whether the terms of the Deed of Easement permitted Claggett, after receiving a release, to transfer that released acreage to a third-party free of the agricultural restriction. The purpose of the easement was to maintain the character of the land as agricultural land or woodland.

Claggett requested a release of two acres to construct a dwelling for his use, which the Foundation approved on June 28, 2001. A Preliminary Release and Agreement was recorded in the land records. This agreement expressly conditioned the use of the released land for "the purpose of constructing a dwelling house for the owner's residence." Upon compliance with all of the conditions listed in the Preliminary Release, and a presentation of a non-transferrable building permit to the Foundation, a Final Release would be recorded in the land records.

Before Claggett requested the Final Release, the General Assembly amended AG Section 2-513. The 2003 Amendment permitted a landowner subject to a Foundation agricultural easement to exclude one unrestricted lot from the easement in lieu of all Owner's and Child's Lots to which the landowner would otherwise be entitled. This lot could be subdivided by the landowner and sold to anyone to construct one residential dwelling. The 2004 Amendment required any release to include a statement that the Owner's or Child's Lot could not be transferred for five years from the date of the final release, unless the Foundation

approved otherwise.

In 2005, Claggett submitted a request for a Final Release. The Foundation sent Claggett an unsigned Final Release and Agreement, asking him to sign it and return it so that the Foundation could also sign the document and record it in the land records. The Final Release contained the five-year restriction as required by the 2004 Amendment. Claggett rejected the Final Release because of this constraint. Despite his arguments, however, the Foundation refused to issue a final release without the five-year limiting language. Thereafter, Claggett sought relief in the Circuit Court for Kent County, requesting a Declaratory Judgment that the 2004 Amendment could not be applied retroactively to his easement. He also petitioned for a writ of mandamus ordering the Foundation to execute a final release that did not contain the language of the 2004 Amendment. Finally, he claimed $100,000 in damages.

Upon the Foundation's motion, the Circuit Court granted summary judgment in favor of the Foundation, ruling that Claggett was subject to the terms of the Final Release as written and denying his claim for damages under the doctrine of sovereign immunity. Claggett then appealed to the Court of Special Appeals ("CSA"), and the intermediate appellate court reversed the Circuit Court judgment. The CSA concluded that until the 2004 Amendment, AG-1999 Section 2-513 permitted a landowner who obtained the release of an owner's lot, and constructed a dwelling on the lot, to sell the lot and house free of easement restrictions. The CSA held, moreover, that neither the Preliminary Release nor the Deed of Easement explicitly included any restriction on the alienability of the Owner's Lot. Rather, the two documents were subject to the same ambiguities as AG-1999 Section 2-513. The CSA rejected the Foundation's contention that Claggett's release request was subject to 2004 Amendment, reasoning that the Legislature did not indicate an intent for retroactive treatment.

The Court of Appeals granted the Foundation's Petition for Writ of Certiorari to consider the following questions: (1) Do the requirements of AG Section 2-513, as amended in 2004, apply to a final release from land preservation easement for construction of a dwelling for the use of the landowner, which the landowner requested in 2005, and (2) Prior to the 2004 Amendment's effective date, did the landowner have a vested right to obtain final release of easement allowing him to construct a dwelling and to sell the dwelling and lot at any time to any unrelated third party, where such a right was not expressly provided by statute, regulation, or deed of easement, and where

the landowner did not apply for the final release or satisfy the necessary conditions by submitting the required building permit until sometime in 2005, more than six months after the effective date of the 2004 legislation?

Held: Reversed. An unrestricted right to sell an owner's lot once released would undermine the purpose of the Easement, which was to was to maintain the character of the land as agricultural land or woodland, by facilitating potential real estate speculation through an ostensible request to build a dwelling for the grantor or his children. The express language of both the Easement and the Preliminary Release prevented the landowner from transferring the dwelling constructed on his requested lot to a third-party without first obtaining approval from the Foundation.

The Court focused on the provisions contained in the Deed of Easement and the Preliminary release to determine the rights and obligations of the parties. As the answer lay in the express terms of those two documents, the Court did not need to address the applicability of the 2004 Amendment. The Deed of Easement referred to the Owner's Lot release as a "personal covenant only and one that is not intended to run with the land," and provided that, upon application by the landowner, the Foundation would release a parcel from the restrictions "for the purpose of constructing a dwelling house for the use only of that [landowner] or the [landowner's] child[.]" Furthermore, the Preliminary Release explained that "it is the intent of this instrument to release [the owner's lot] from agricultural easement restrictions set forth in the [Easement] for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person."

The Court was not persuaded by Claggett's contention that these provisions merely reserved to the original grantor the right to apply for the release of an owner's lot and thereafter construct a dwelling, instead of prohibiting the owner from subsequently transferring the parcel to a third party free of restriction. The Court began by emphasizing that, when analyzing an easement, use and not title is the issue. It interpreted the Easement's "personal covenant" language as preventing anyone other than Claggett from requesting and receiving a release. More importantly, the Easement expressly provided that Claggett could obtain a release for a parcel of land "for the purpose of constructing a dwelling house for the *use only* of [Claggett] or [his] child[.]" This provision excluded any possible inference that the parties intended that an unrelated third party could dwell in a house on the Claggett property. Claggett could not

point to any language, either in the Easement or the Preliminary Release, that expressed any intent to release these restrictions so clearly stated in the Easement.

Additionally, the Court did not agree with the CSA's interpretation of AG-1999, which provided in part that "[a]ny release, preliminary release, building permit, or other document issued or submitted in accordance with this paragraph shall be recorded among the land records where the land is located and shall bind all future owners." The CSA interpreted the statute as indicating an intent that the easements would permit transfer of a lot free of agricultural restrictions. The Court, rather, read the statute as simply recognizing that title to the parcel could be changed by execution and recordation of a deed, but that if it does, the restrictions, including limitations on who may live in the dwelling, remain in effect. Their efficacy is assured by record notice to any buyer that the covenants and restrictions run with the land and are binding on future owners. The Court reasoned that this interpretation was in line with the General Assembly's purpose in establishing the Foundation, which, according to AG-1999 Section 2-501, was to preserve agricultural land and curb the spread of urban blight and deterioration. Ultimately, Claggett, who had already benefited from the price paid by the government-supported Foundation for the Easement while retaining the ability to farm the land at a profit, would not be able to also develop the lot and sell it at a profit without the Foundation's approval. Thus, any subsequent purchaser could only use the land for agricultural activities.

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David Grant v. State of Maryland, Case No. 88, September Term, 2009, filed on June 7, 2010. Opinion by Adkins, J.

http://mdcourts.gov/opinions/coa/2010/88a09.pdf

CONSTITUTIONAL LAW - BILL OF RIGHTS - CRIMINAL LAW & PROCEDURE - TRIALS - RIGHT TO COUNSEL - ASSISTANCE OF COUNSEL

Facts: David Grant was arrested and charged with two counts of possession of counterfeit goods with intent to sell. He appeared at trial without counsel in the Circuit Court for Baltimore City, where he requested postponement in order to seek representation from the Office of the Public Defender ("OPD"). Grant claimed he had applied to the OPD for representation and was informed that there was not enough time before the start of his trial to assign counsel to him. The trial court initially granted the postponement.

The prosecutor on the case then informed the court that one of five public defenders in the room told him that Grant had previously rejected OPD representation. The trial court announced that it would make an inquiry into the matter. Later that afternoon, the court informed Grant that the OPD had a file identifying him as having rejected its services. The court stated that the form listed Grant as being arrested on May 28th. Grant was actually arrested on May 27th.

Grant specifically said that he was not trying to waive his right to counsel. He informed the court that he had spoken to the OPD and showed the prosecutor a letter from the OPD. The prosecutor noted the letter's statement that Grant did not make a timely application for representation.

The court ultimately reversed itself and denied the request for postponement. The trial court did not identify the public defender and did not place either the file or the letter in the record. Trial proceeded the next day with Grant proceeding pro se. Grant was convicted on all counts. The Court of Special Appeals affirmed the verdict. The Court of Appeals granted certiorari on the question of whether the trial court erred in denying the postponement.

Held: The trial court abused its discretion in basing its decision to deny the request for postponement on information that was wholly outside of the record. This act prevented meaningful appellate review of the exercise of the trial court's discretion. Under Maryland Rule 4-215(d), if a court finds that there is a meritorious reason for the appearance without counsel, then the

court must find no waiver of the right to counsel, and continue the action to a later time. If it finds no meritorious reason, then it may then make a finding as to whether or not the defendant has waived counsel by the failure to appear with counsel.

The trial court's obscuring of its exercise of discretion itself constitutes an abuse of discretion. The Court of Appeals previously held that a record must be sufficient to reflect that a trial court actually considered the reasons proffered by a defendant for appearing without counsel. *Broadwater v. State*, 401 Md. 175, 931 A.2d 1098 (2007). In Grant's case, because the trial court did not include the file in the record, it was not possible to make a determination as to whether or how the trial court considered those reasons in light of other relevant facts. The prosecutor's claim that an unidentified public defender had stated that Grant had previously rejected OPD representation was not dispositive, as it was not a reliable basis for the Circuit Court's self-reversal.

The appropriate remedy was a remand for a new trial. A limited remand under Maryland Rule 8-604, which would require the trial court to review the existing record without accepting new evidence, was not appropriate; the circumstances of the original trial could not be recreated due to the very paucity of the trial record and the more than twenty months since the trial court proceeding. The Court has recognized that requiring a defendant to reconstruct the events leading to his appearance without counsel creates a substantial possibility of prejudice to the defendant.

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Thanner Enterprises, LLC v. Baltimore County, Maryland, No. 113, September Term 2008. Opinion filed on May 14, 2010 by Barbera, J.

http://mdcourts.gov/opinions/coa/2010/113a08.pdf

CONSTITUTIONAL LAW - ALCOHOLIC BEVERAGES

Facts: The appellant, Thanner Enterprises, LLC, owns Dock of the Bay, a bar and restaurant for which Thanner has a Class D liquor license. The restaurant is located in Baltimore County, Maryland. In July 2007, four people lodged complaints with the Board of Liquor License Commissioners for Baltimore County ("the Board"), complaining that on July 1, 2007, outside music at Dock of the Bay was unduly loud. As a result, the Board issued a Notice of a Show Cause hearing to Thanner, alleging that the unduly loud music violated Article 2B, §10-401 of the Maryland Code and various Liquor Board Rules and Regulations ("the Rules"). Among the Rules that the Board alleged Thanner had violated was Rule 3, which provides:

> A. All holders of Alcoholic Beverage Licenses in Baltimore County shall cease the playing of mechanical music boxes, live music and sound-making devices at 11:00 p.m. every day unless such licensed establishments are sufficiently enclosed or located in an area where the sound will not disturb the peace of nearby residents.
>
> B. All licensees shall operate their establishments in such a manner as to avoid disturbing the peace, tranquility, safety, health, and quiet of the neighborhood where located. It shall be the responsibility of the licensees to take all precautionary measures to comply with this subsection.

At the Show Cause Hearing on August 6, 2007, the Board determined that Thanner had violated Article 2B, §§ 10-401 and 10-403 and Rules 2, 3, and 16. The Board imposed a $1,000 fine on Thanner and indefinitely prohibited Thanner from playing outdoor music. Thanner, arguing that the Board did not have the authority to prohibit outdoor music as a sanction, sought judicial review in the Circuit Court for Baltimore County. On May 7, 2008, the Circuit Court affirmed the Board's decision, finding that the Board had "acted within the scope of its express statutory authority in prohibiting [Thanner] from playing outside music."

On May 28, 2008, Thanner appealed to the Court of Special Appeals, but before that court considered the appeal, the Court of Appeals granted certiorari on its own motion. Thanner's appeal presented two questions:

> Whether the Board of Liquor License Commissioners exceeded its authority by prohibiting the Appellant from having outside music at the licensed premises?
>
> Whether the Board of Liquor License Commissioners' decision was arbitrary and unreasonable?

Held: The Board's sanction prohibiting Thanner from playing outdoor music exceeded the scope of the Board's authority and therefore was illegal. Noting that an "agency's authority extends only as far as the General Assembly prescribes," the Court first considered whether the General Assembly had expressly authorized the Board to impose a sanction prohibiting the playing of outdoor music. The Court determined that Article 2B, § 16-507(e) prescribed the three sanctions available to the Board: monetary fines, license suspension, and license revocation. Because a prohibition on the playing of outdoor music is none of these sanctions, the Court held that it was not expressly authorized.

In so holding, the Court rejected the Board's assertion that Article 2B, § 9-201(a)(2), which provides that, "by regulation," a local liquor board may "[r]egulate and limit the use of mechanical music boxes and other sound-making devices," expressly authorized the sanction at issue. The Court explained that § 9-201 grants the Board rule-making authority but does not authorize the Board to impose *ad hoc* sanctions to enforce those rules. Consequently, the Court held that the only sanctions expressly available to the Board to enforce the Rules are those set forth in § 16-507(e).

The Court next considered whether the General Assembly had impliedly granted the Board the authority to impose a sanction prohibiting the playing of outdoor music. The Court noted that the General Assembly granted the local liquor boards specific, rather than broad, delegated authority and thus the boards' power is more circumscribed than that of other agencies. As such, the Court concluded that "the specificity with which the legislature prescribed in Article 2B the powers of the local liquor boards, including the sanctions that they may impose," precluded the Court from inferring that "the General Assembly impliedly [had] granted the local liquor boards the power to impose sanctions other than those that appear expressly in the statute."

Likewise, the Court rejected the Board's contention that it derived implied authority to impose a sanction prohibiting outdoor music from the rule-making authority conferred by § 9-201.

Finally, because Article 2B sets forth with particularity the available dispositions for appeals from liquor board decisions and limits the disposition of appeals from the Baltimore County Board to affirmance, reversal, or modification, the Court reversed the judgment of the Circuit Court and directed that court to reverse the sanction prohibiting Thanner from playing outdoor music.

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Nick Nefedro v. Montgomery County, Maryland, No. 84, September Term 2009, filed June 10, 2010 by opinion by Greene, J.

http://mdcourts.gov/opinions/coa/2010/84a09.pdf

CONSTITUTIONAL LAW - FORTUNETELLING ORDINANCE PROHIBITING REMUNERATION FOR FORTUNETELLING IS NOT NARROWLY TAILORED AND VIOLATES THE FIRST AMENDMENT.

Facts: Nick Nefedro operates a fortunetelling business in several locations around the country. In this business, he charges customers a fee in exchange for fortunetelling, palmreading, and other related services. He wished to open a location in Montgomery County,Maryland; however, the County has an ordinance prohibiting the acceptance ofremuneration for fortunetelling. According to Nefedro, he leased property and purchased furnishings for the property, but was denied a license by the supervisor of the Licensing Department because of the Fortunetelling Ordinance.

Nefedro filed suit against the County, and asked for a declaratory judgment stating that the Fortunetelling Ordinance violated his First Amendment right to freedom of speech and Article 40 of the Maryland Declaration of Rights. Both parties filed motions for summary judgment. At the hearing, the trial court concluded the Fortunetelling Ordinance was constitutional, denied Nefedro's motion for summary judgment, and granted the County's motion for summary judgment. The court held that the regulation was narrowly drawn to serve the County's compelling governmental interest in protecting its citizens from fraud. The County was not prohibiting the speech, simply regulating it. Nefedro appealed the trial court's ruling, and while the case was before the Court of Special Appeals, the Court of Appeals granted certiorari.

Held: Reversed. Nefedro has standing to challenge the ordinance because he intends to open a fortunetelling business in Montgomery County and would be subject to penalties under the Ordinance. A restriction on compensation for protected speech is a restriction on the speaker's First Amendment right to freedom of speech. By punishing protected speech when that speech is made in exchange for payment, the County is discouraging individuals from engaging in that protected speech because there is no promise of a financial benefit. Fortunetelling is not fraudulent speech and is worthy of protection under the First Amendment. The purpose of fortunetelling is to provide entertainment or information to the individuals involved, and, therefore, is noncommercial speech worthy of full protection under the First Amendment.

The Fortunetelling Ordinance is not narrowly tailored to serve the County's compelling
governmental interest in protecting its citizens against fraud. The County already has an ordinance making fraud illegal without respect to speech, so there is no legitimate reason why an ordinance directed at speech is necessary.

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Thomas Smith v. State of Maryland, No. 102, September 2009 Term, filed May 17, 2010. Opinion by Greene, J.

http://mdcourts.gov/opinions/coa/2010/102a09.pdf

CRIMINAL LAW – APPEALS – REMAND – INCONSISTENT VERDICTS

Facts: Corporal Scott Peter and Detective James Pullen participated in the execution of the search warrant at Petitioner Thomas Smith's residence. Prior to the officers' entry into the premises, according to the record of the suppression hearing, a SWAT team had secured its four occupants by placing them in restraints. Smith was initially detained in the living room and dining room area. During the search, Smith, while in handcuffs, was permitted to remain in the apartment, but was instructed to sit on the living room sofa. During the search of Smith's apartment, the other occupants remained outside on the balcony. One of the law enforcement officers posted herself at the front door, apparently to control traffic in and out of the apartment while the other three officers conducted the search.

Corporal Peter searched the kitchen and recovered what he suspected to be crack cocaine from a glass bowl inside the microwave. Corporal Peter and Detective Pullen recovered from inside a sock drawer, in the only bedroom in the apartment, a plastic bag containing what they suspected to be an ounce of crack cocaine. Corporal Peter showed Smith the crack cocaine. Corporal Peter then announced that he was going to arrest everyone. Almost immediately after Corporal Peter made his announcement, Smith admitted, at least twice, that the drugs displayed by the officers were his. At the time, Smith had not been read any *Miranda* warnings. Subsequently, Smith and the other guests were arrested and transported to the police station for booking.

At Smith's evidence suppression hearing, the State and Smith's defense counsel argued about whether Smith's incriminating statement was the product of a police interrogation. The Circuit Court found that it was not, stating that at the point, Smith was in custody, but that there was no evidence that there had been any interrogation. In affirming the judgment of the Circuit Court, the Court of Special Appeals concluded that Smith was not in custody under *Miranda* until after his formal arrest and that Corporal Peter's announcement, which preceded his formal arrest, did not constitute interrogation. This appeal followed.

Held: Affirmed. The Court of Appeals determined that it

was not necessary to determine whether Smith was in custody under Miranda. The Court held that when an officer, in the process of executing a search warrant at the Petitioner's residence, showed the contraband discovered in the residence to the Petitioner, and declared to other officers in the Petitioner's presence that "I am going to arrest everybody here," including the Petitioner's girlfriend, the officer's actions did not constitute an interrogation as contemplated by *Miranda v. Arizona*.

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Robert L. Thomas v. State of Maryland, No. 22, September Term, 2009. Opinion filed on April 9, 2010 by Adkins, J.

http://mdcourts.gov/opinions/coa/2010/22a09.pdf

CRIMINAL LAW — CRIMES AGAINST PERSONS —BRIBERY — THEFT BY DECEPTION

Facts: Robert L. Thomas was charged with bribery, conspiracy to commit bribery, and conspiracy to commit theft by deception for his role in an alleged bid-rigging scheme relating to the award of a local government security contract. In February 2004, Prince George's County invited contractors to bid on the installation of a security management system in two County buildings. At the time, Thomas was Deputy Director of the County's Office of Central Services, responsible for managing the County's vehicle fleet and facilities. In this capacity, he was assigned to be a member of the committee considering bids for the security system.

On September 29, 2004, Melvin Pulley and Dallas Evans of ADT/Tyco provided the committee with an oral presentation of their proposal. Following their presentation Robert Isom, a social acquaintance of Pulley who was then working for the County, introduced them to Thomas. Soon after, through Isom, Thomas offered to guarantee that ADT/Tyco's bid would be successful in exchange for $250,000. Subsequently, Pulley and Evans went to the authorities and assisted the Office of the State Prosecutor in an investigation.

On October 14th, Evans called Thomas to verify the deal. At trial before the Circuit Court for Prince George's County, over Thomas's objection, Evans testified that at the time of this phone call he believed that Thomas had the authority to influence the awarding of contracts for the County. Prior to deliberations, the jury received instructions on bribery, including the following statement:

> "It is not a defense to the crime of bribery that the public employee did not have the actual authority, power, or ability to perform the act for which the money was demanded or received."

Thomas was convicted on charges of bribery and conspiracy to commit bribery, and acquitted on charges of conspiracy to commit theft by deception. He was sentenced to twelve years in prison with all but thirty months suspended in favor of five years of

supervised probation. He was also ordered to pay $10,000 restitution.

Thomas appealed the verdict on the grounds that the trial court erred in instructing the jury that Thomas's lack of actual authority to award the contract was not a defense to bribery, and that the trial court erred in allowing Evans to testify as to his belief in Thomas's actual authority to award the contract. *Thomas v. State*, 183 Md. App. 152, 166, 173, 960 A.2d 666, 674, 678 (2008). The Court of Special Appeals affirmed the judgment of the trial court on both grounds, holding that the trial court's jury instructions "fairly conveyed Maryland law on bribery." *Id.* at 171, 960 A.2d at 677. The intermediate appellate court further held that even if Evans's testimony was improper, Thomas suffered no harm or prejudice as a result of the testimony. *Id.* at 173-74, 960 A.2d at 678. The Court of Appeals granted Thomas's petition for a writ of certiorari to consider both issues. *Thomas v. State*, 407 M d. 529, 967 A.2d 182 (2009) (granting certiorari).

Held: Affirmed. A public employee cannot claim as a defense to bribery the lack of actual authority to commit an act where the act is reasonably related to the employee's official duties. The trial court's jury instruction was a proper statement of Maryland law on bribery. Further, the admission of Evans's challenged testimony was not in error because it was relevant to the charge of conspiracy to commit theft by deception. Thomas was entitled to request an instruction limiting the use of Evans's testimony to the bribery charges alone under Maryland Rule 5-105, but there was no indication that he did so.

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Leon Steven Calloway v. State of Maryland, No. 106, September Term 2009, filed June 10, 2010 Opinion by Murphy, J.

http://mdcourts.gov/opinions/coa/2010/106a09.pdf

CRIMINAL LAW - EVIDENCE - CRIMINAL PROCEDURE - MARYLAND RULE 5-616(a)(4)

Facts: In the Circuit Court for Montgomery County, Petitioner Leon Steven Calloway was convicted of second degree assault. The State's evidence was sufficient to show that he had committed that offense by inflicting life threatening injuries upon his infant son. Because of an in limine ruling, Petitioner was prohibited from questioning a State's witness – who had been Petitioner's former cellmate, and who had volunteered to testify about incriminating statements that Petitioner had allegedly made to him – about the fact that, after the witness made his phone call to the State's Attorney's office, (1) he was released from the Montgomery County Correctional Facility, (2) the charges pending against him were nolle prossed, and (3) as of the date on which he testified against Petitioner, even though he had entered a guilty plea that constituted a "Rule 4" violation of probation, no violation of probation charge had been filed against him.

The Court of Special Appeals affirmed Petitioner's conviction in an unreported opinion filed June 30, 2009. The Court of Appeals then issued a writ of certiorari to address Petitioner's single question: "Did the lower courts err in limiting defense counsel's cross-examination of the State's key witness regarding his expectation of leniency from the State?"

Held: The Court of Appeals reversed, and directed that the case be remanded for a new trial. The court held that under these circumstances, whether the State's witness had volunteered to testify against Petitioner in the hope of being released from detention, and whether he was testifying at trial in the hope of avoiding a violation of probation charge, are issues that should have been decided by the jury rather than by the Circuit Court. The Circuit Court erred in granting the State's motion in limine on the ground that it found the key witness to be credible.

While it is clear that the trial judge is not obligated to allow cross-examination about every charge pending against a State's witness, Md. Rule 5-616(a)(4) grants the criminal defendant the right to question a State's witness about facts that are of consequence to the issue of whether "the witness is biased, prejudiced, interested in the outcome of the proceeding, or has motive to testify falsely." The issue of bias is often generated

by circumstantial evidence, and does not disappear merely because the witness denies any reason to be biased. If such circumstantial evidence exists, the trier of fact is entitled to observe a witness's demeanor as he or she responds to questions permitted by Md. Rule 5-616(a)(4).

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Agurs v. State, No. 11, September Term, 2009, filed May 19, 2010. Opinion by Greene, J.

http://mdcourts.gov/opinions/coa/2010/11a09.pdf

CRIMINAL LAW – FOURTH AMENDMENT SEARCHES – EXCLUSIONARY RULE – WARRANTS – GOOD FAITH

Facts: Appellant, Gary Agurs, was an employee of the Baltimore City Department of Public Works. On April 6, 2007, two detectives from the Baltimore City Narcotics Unit applied for and obtained a search and seizure warrant to search Agurs, his home and his vehicles. Four individuals were to be searched, including Agurs, his wife and Andrew Lee Tillman – alleged associate of Agurs. The warrant authorizing the search was based on a supporting affidavit. The affidavit asserted information from several confidential informants advising that Agurs was trafficking crack cocaine. The affidavit also asserted that Agurs was living well over his means and had assets well beyond affordable on his salary. Additionally, the affidavit noted several meetings between Agurs and his alleged associate, and one occasion where Agurs was seen going into a clothing store with an unknown man for approximately one minute. Upon leaving the store, it was noticed that the unknown man had a "bulge" in his pocket not noticeable before entering the store. This evidence combined with the belief of the police officers relying on their extensive background and experience in investigations involving illegal controlled dangerous substances was the support for the warrant authorizing the search and seizure of Agurs's home and vehicles.

Agurs was arrested and charged on April 11, 2007, for a variety of offenses relating to possession and distribution of a controlled dangerous substance and possession of firearms. Agurs filed a motion to exclude all evidence recovered from his home and vehicles alleging that there was no probable cause to support the warrant authorizing the search and that the good faith exception to the exclusionary rule did not apply. On April 17, 2008, the trial judge granted Agurs's motion, finding that there was no probable cause to support the warrant authorizing the search and that there was no "nexus between any illegal activity, the home, or his vehicles."

On the State's timely appeal, the Court of Special Appeals reversed the trial court ruling, stating that even though there was no substantial basis for issuing the warrant, the case falls under the good faith limitation to the exclusionary rule.

Although there was no probable cause to issue the warrant authorizing the search, police detectives in good faith exercised the warrant and the good faith limitation to the exclusionary rule must apply.

The issue before the Court of Appeals is whether the Court of Special Appeals erred in finding good faith where the search warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable.

Held: Reversed. The good faith limitation to the exclusionary rule does not apply when based on an unreasonable affidavit that was so lacking in probable cause that no police officer could have reasonably relied on its validity. The affidavit supporting the warrant lacked any indicia of probable cause supporting the conclusion that drugs would be found in Agurs's home. There had to be probable cause to search the residence of Agurs; not based solely on Agurs's alleged participation in criminal activity. The affidavit failed to connect a causal link between the alleged criminal activity of Agurs and the search of his residence.

Accordingly, no police officer could have reasonably relied on the evidence set forth in the affidavit in exercising a search and seizure of Agurs, his residence, and vehicles.

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Thompson v. State, No. 78, September Term, 2008, filed on November 16, 2009, opinion by Adkins, J.

http://mdcourts.gov/opinions/coa/2009/78a08.pdf

CRIMINAL LAW & PROCEDURE - POSTCONVICTION PROCEEDINGS - EVIDENCE - SCIENTIFIC EVIDENCE - DNA

GOVERNMENTS - LEGISLATION - EFFECT & OPERATION - RETROSPECTIVE OPERATION

Facts: Petitioner James A. Thompson was convicted of burglary, rape, felony murder, and a weapons charge after he gave police several different accounts of a 1987 burglary, rape, and murder. First, he simply said he had found a knife in a grassy area. Then, with varying details, he implicated another person in the crimes. Eventually after the police told him that his hair and blood had been found at the scene, Thompson confessed to participating in the burglary but maintained that he took no part in the rape or the murder.

In 2006, Thompson filed a Petition for Postconviction Relief and Motion for New Trial, arguing that the newly discovered DNA evidence excluded him and his accomplice as depositors of the sperm and showed that, contrary to the State's argument at trial, the blood on his pants was not the victim's. Applying the standard set by Maryland Rule 4-331, which allows a new trial only upon a showing that the defendant was actually innocent, the court denied Thompson relief because although DNA evidence showed that he was not the rapist, it had no bearing on his burglary and felony murder convictions.

Thompson appealed under Section 8-201 of the Criminal Procedure Article ("CP"), and the Court of Appeals issued a writ of certiorari to determine whether the postconviction court failed to use the proper standard for evaluating DNA evidence pursuant to CP Section 8-201, and whether the postconviction court erred by denying Thompson's request for a new trial based on DNA testing results.

Held: Judgment vacated and the case remanded for further proceedings. At the time of Thompson's postconviction proceeding, CP Section 8-201 did not allow a direct appeal to the Court of Appeals under the circumstances of the below, and did not set forth a standard for ordering a new trial in light of DNA evidence, as it did at the time of the appeal. The Court held that a retroactive application of the 2008 version of CP Section 8-201 was proper because the statute's new provisions are

remedial in nature. Furthermore, although Thompson filed his Motion for New Trial under Maryland Rule 4-331 and the 2008 version of CP Section 8-201 provides only for a direct appeal from "an order entered under this section," the Court treated Thompson's Rule 4-331 Motion as if it was made under CP Section 8-201 in order to allow Thompson receive the benefit of the statute's remedial provisions.

Having concluded that CP Section 8-201 retroactively applied to Thompson's appeal, the Court next determined that the proper standard for ordering a new trial was the "substantial possibility" standard set forth in Section 8-201(c). Under that standard, a court may order a new trial if "a substantial possibility exists that the petitioner would not have been convicted without the [unreliable scientific identification] evidence." In this case, even though the DNA evidence exculpated Thompson from rape but not burglary, considering these two crimes as if they were separate and unrelated incidents would be improper because at trial the State could be viewed as linking the rape, the burglary, and the murder, and because evidence implicating a sexual assault generally tends to have a considerable effect on the jury's perception of the State's entire case. *See House v Bell*, 547 U.S. 518, 540-41 (2006); *Bedingfield v. Commonwealth*, 260 S.W.3d 805, 813 (Ky. 2008).

The Court held that on remand the postconviction court should consider whether the DNA evidence could have affected the jury's assessment of the other evidence presented at trial, including Thompson's confessions, the pubic hair match based on comparison microscopic examination, and the State's argument that the blood on Thompson's pants matched the victim's blood.

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Catalyst Health Solutions, Inc., f/k/a HealthExtras, Inc. v. Martin A. Magill, No. 80, September Term, 2009. Opinion filed June 2, 2010 by Battaglia, J.

http://mdcourts.gov/opinions/coa/2010/80a09.pdf

EMPLOYMENT - WAGE PAYMENT AND COLLECTION LAW — DEFINITION OF WAGE — CONDITIONALLY GRANTED UNVESTED INCENTIVE STOCK OPTIONS

Facts: Martin A. Magill accepted the position of Vice President of Sales for Catalyst Health Solutions, Inc. The terms of his compensation package included a yearly salary and the right to acquire stock options pursuant to the company's plan. Over the course of Mr. Magill's employment with Catalyst, he was awarded three separate Incentive Stock Option Award Agreements for various amounts of shares and exercise prices, as well as separate vesting schedules. The Awards were subject to Stock Option Plans that noted that upon termination of employment or service, only options that were immediately exercisable or vested at the date of termination could be exercised. Upon beginning his employment with Catalyst, the company provided Mr. Magill with a loan to help defray the costs of his relocation expenses. Later, Catalyst and Mr. Magill entered into an agreement revising the vesting schedule of his stock options, thereby allowing the acceleration of some options so that Mr. Magill could pay off his loan. After paying off the outstanding balance of his loan, Mr. Magill netted approximately $100,000 in proceeds after tax withholding, and retained 60,000 stock options under a new vesting schedule. Several months later, Mr. Magill accepted employment with a competitor of Catalyst and tendered his resignation, but continued to work at Catalyst while engaging in severance negotiations. After several attempts failed, Catalyst provided Mr. Magill with an "Employment Separation and Release Agreement," terminating his employment eleven days before 8,750 stock options were scheduled to vest. Approximately two weeks after his termination, Mr. Magill attempted to exercise his 60,000 unvested stock options to no avail, because Catalyst had placed a block on his brokerage account.

Catalyst filed a Complaint in the Circuit Court for Montgomery County requesting, among other things, a declaratory judgment that Mr. Magill had no legal claim to receive any further commission payments, or to exercise any stock options, or to otherwise receive any other monies or benefits from his former employer. Mr. Magill filed a cross-complaint alleging, among other counts, violation of the Wage Payment and Collection Law. A flurry of cross motions for partial summary judgment occurred, but relying on *Medex v. McCabe*, 372 Md. 28, 811 A.2d 297 (2002),

the Circuit Court judge entered a written order that granted Mr. Magill's Motion for Partial Summary Judgment as to his claim for 60,000 stock options and ordered, in the same document, that Mr. Magill was entitled to exercise the 60,000 remaining stock options, regardless of his termination of employment, and regardless of any contractual requirement that he remain employed for the options to vest, because the stock options "constitute[d] both 'wages' and 'wages due for work performed' under the Act," and were "deemed to have vested."

Held: The Court of Appeals granted certiorari prior to any proceedings in the Court of Special Appeals, reversed the Circuit Court, and held that the Incentive Stock Option Award Agreements were not an unconditional grant of stock to Mr. Magill; rather, the agreements explicitly conditioned the right to exercise the grant of stock options on continued employment until a date that was expressly defined. The Court reasoned that by terminating Mr. Magill's employment prior to the agreed upon vesting date, Mr. Magill did not meet all of the agreed upon conditions to exercise his stock options. Catalyst maintained that the grant of stock options, rather than wages, were a promise of conditional incentive equity compensation in exchange for continued service. Mr. Magill contended that because the first two stock option grants were part of his compensation package, and the third grant of options was awarded for meeting a specific performance sales goal, all of the options were wages earned during his employment and payable upon termination. The Court concluded that the Circuit Court judge erred in determining that Mr. Magill's conditionally granted unvested stock options were wages under the Wage Act and could be exercised after termination, despite Mr. Magill's failure to reach specific vesting dates set forth in the Grant Agreements. As a result, the case was remanded to the Circuit Court for entry of a declaratory judgment consistent with the opinion and for a grant of Catalyst's motion for partial summary judgment.

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Thomas Boemio v. Cynthia Boemio, No. 57, September Term, 2009. Opinion filed on May 11, 2010 by Adkins, J.

http://mdcourts.gov/opinions/coa/2010/57a09.pdf

FAMILY LAW - ALIMONY - USE OF INDEPENDENT GUIDELINES IN ADDITION TO REQUIRED STATUTORY CONSIDERATIONS WHEN FASHIONING AN AWARD

Facts: After 21 years of marriage, Petitioner Thomas Boemio filed for divorce from Respondent Cynthia Seixas. Boemio, who had earned his MBA during the marriage, was employed at the Federal Reserve Board, earning $180,000 per year. Seixas, on the other hand, had only a high school education, with one additional year of college, and had quit her job as a retail manager for CVS in order to raise the couple's two children. She worked the remainder of the marriage as an administrative assistant, earning only $41,000 per year. These salaries afforded the couple what the trial court referred to as a "securely middle class existence," during which they paid off their home in Silver Spring, MD and exhibited a pattern of saving funds rather than amassing possessions.

At trial, Seixas claimed that she was not self-supporting and needed alimony to maintain herself. Boemio argued that Seixas was able to support herself without alimony. The trial court analyzed the requisite factors under Section 11-106(b) and (c) of the Family Law Article ("FL") and then consulted guidelines recently promulgated by the American Academy of Matrimonial Lawyers ("AAML") in order to translate those factors into a dollar amount. The trial court found that Seixas would not be able to maintain her accustomed lifestyle without alimony and that, due to Sexias's inability to ever become self-supporting, an unconscionable disparity existed and would continue to exist between the two parties. Thus, the court awarded Seixas indefinite alimony in the amount of $3,000 per month.

Boemio appealed the ruling, arguing to the Court of Special Appeals ("CSA") that the trial court erred in its alimony award as to amount and duration by 1) consulting spousal support guidelines not expressly included in FL Section 11-106(b) or (c), and 2) looking only to the parties' disparate incomes in determining duration. In an unreported opinion, the CSA rejected Boemio's allegations and affirmed the trial court. The court found that Boemio's claims concerning the AAML guidelines were contrary to the record, given that the trial court gave a fully articulated FL Section11-106(b) and (c) analysis in addition to

stating that the AAML guidelines were not authoritative and did not control the court's decision. As for Boemio's contention concerning the duration of Seixas' alimony award, the CSA found that the trial court considered circumstances beyond income in determining Seixas' need for indefinite rather than rehabilitative alimony.

The Court of Appeals granted Boemio's Petition for Writ of Certiorari to determine whether the trial court erred by relying upon "alimony guidelines" which were not authorized by statute or rule in determining the amount and duration of alimony awarded to Seixas.

Held: Affirmed. The language of Maryland's alimony statute contemplated consideration of factors in addition to the twelve enumerated. Given the difficulty of translating predominantly qualitative factors into a numerical award, the Court of Appeals concluded that courts may consult guidelines developed by a reliable and neutral source that do not conflict with or undermine any of the considerations expressed in the statute when determining the amount and duration of alimony. The Court, however, made clear that circuit courts are not mandated to consider non-statutory guidelines in performing an analysis of the appropriate level of alimony under FL Section 11-106(b).

The Court of Appeals also addressed Boemio's challenge of the trial court's award of indefinite, rather than rehabilitative, alimony under FL Section11-106(c). In doing so, the Court noted that alimony itself is a fundamentally equitable concept that does not easily lend itself to "black-letter restatement." Further, it found that the trial court's consideration of the parties' relative incomes in finding that an unconscionable disparity existed between the parties' standards of living was not an abuse of discretion. The Court affirmed the CSA's decision to affirm the Circuit Court.

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Arnold Houghton v. Cheryl Forrest, Case No. 12, September Term, 2009, filed on February 19, 2010. Opinion by Adkins, J.

http://mdcourts.gov/opinions/coa/2010/12a09.pdf

TORTS - PUBLIC ENTITY LIABILITY - IMMUNITY

Facts: Respondent Cheryl Forrest sued Petitioner Arnold Houghton in the Circuit Court for Baltimore City for intentional and constitutional torts committed in the course of Houghton's duties as an officer of the Baltimore City Police Department ("BCPD"). On May 25, 2005, Houghton witnessed a drug sale through a security camera feed, and observed a drug dealer, male purchaser, and an alleged female purchaser. Houghton contacted a team of officers, who arrested two of the participants, but the woman had left the scene. From his video feed, Houghton then witnessed her embrace a second woman nearby, assuming that the embrace concealed the transfer of drugs between the women. Houghton then moved the camera back to the scene where officers were arresting the other purchasers, losing sight of the second woman. After monitoring the arrest, he scanned the area for the two women. Houghton spotted Forrest, who was wearing different colored pants and jacket than the second woman, but was carrying a similar umbrella. Houghton instructed an officer to arrest Forrest.

When questioned by the officer, Forrest consented to a search of her person. The search revealed no contraband. The officer suggested that Houghton review the video footage to make certain that Forrest was the second woman. Houghton did not do so, and nevertheless instructed the officer to arrest Forrest. Forrest was arrested and taken to Central Booking. She was not summoned to court, and the charges against her were eventually dismissed. Forrest filed suit in December 2006 against Houghton and her arresting officer. At trial, a jury found the arresting officer to be immune from liability, but found that Houghton had acted with malice, which in the trial court's judgment made immunity inapplicable.

Houghton appealed the verdict on the grounds that there was insufficient evidence in the trial court support a finding of malice. Forrest responded that the evidence was sufficient, and also argued that the trial court erred in requiring a finding of actual malice because public official immunity does not apply to intentional torts. On appeal, the Court of Special Appeals held that common law public official immunity did not apply to intentional torts, and that the evidence at trial did not support a finding of malice. *Houghton v. Forrest*, 183 Md. App. 15, 959

A.2d 816 (2008).

Held: Houghton's act was intentional, and therefore common law immunity did not apply. Common law public official immunity extends only to negligent acts performed by public officials, including police officers, during the course of their discretionary duties. Houghton's arrest of Forrest was a discretionary act because it involved freedom to act according to personal judgment in the absence of a hard and fast rule. Houghton showed no reason to deviate from this precedent, which has been consistently upheld for over twenty years.

Houghton could not claim immunity under any other potential source of statutory immunity. This included Section 5-507(b) of the Courts & Judicial Proceedings Article, which provides a limited immunity to officials of municipal corporations. The BCPD originates from an act of the General Assembly and is therefore a state agency, not a municipal one. As a BCPD officer, Houghton cannot claim to be a municipal official for the purposes of Section 5-507(b). The Maryland Tort Claims Act ("MTCA") was also held inapplicable, as it was not read to extend to BCPD officers. The General Assembly amended the MTCA after the Court of Appeals's decision in *Clea v. Mayor of Baltimore*, 312 Md. 662, 541 A.2d 1303 (1988), in which the Court suggested that the State might be liable for a BCPD officer's tortious conduct under the MTCA. An amendment to the MTCA clarified that MTCA immunity applies only to individuals directly paid or controlled by the state. Finally, Houghton could not claim "governmental official immunity" under Section 5-511(b) of the Courts and Judicial Proceedings Article. Immunity under this section extends to a member of a governing body of a special taxing district. This immunity is therefore inapplicable to Houghton, as the BCPD cannot reasonably be construed to be a special taxing district.

The Local Government Tort Claims Act ("LGTCA") expressly applies to the BCPD, ensuring that it will be liable for the judgment against Houghton. The LGTCA states that a local government shall be liable for any judgment against its employee for damages resulting from tortious acts within the employee's scope of employment, except for punitive damages. The test for determining whether the acts were within the scope of employment is whether the challenged acts were in furtherance of the employer's business and could fairly be termed incident to the performance of duties entrusted to the employee. Because Houghton's acts were within the scope of his employment, the BCPD will be responsible for paying the judgment against Houghton regardless of whether he acted with malice. The Court therefore

did not decide whether Houghton had acted with malice, and vacated the Court of Special Appeals's holding on that issue.

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Sylvester L. Proctor v. Washington Metropolitan Area Authority, Misc. No. 1, September Term, 2009, filed March 12, 2010. Opinion by Greene, J.

http://mdcourts.gov/opinions/coa/2010/1a09m.pdf

TORTS - STATUTORY INTERPRETATION-SOVEREIGN IMMUNITY- MARYLAND - TORT CLAIMS ACT and the WMATA COMPACT

Facts: On April 9, 2008, Sylvester Proctor was injured when his motorcycle and a Washington Metropolitan Area Transit Authority ("WMATA") Metrobus collided at the intersection of Martin Luther King Highway and Parliament Place in Lanham, Maryland. Proctor and his wife ("Plaintiffs") filed their complaint for negligence and loss of consortium in the Circuit Court for Prince George's County, Maryland. The complaint sought $7 million in damages, in addition to costs. Defendant, WMATA, removed the complaint to the District Court for the District of Maryland. WMATA made an offer to Plaintiffs of $400,000, which they rejected. WMATA moved for summary judgment, contending that under *Wash. Metro. Area Transit Auth. v. Deschamps*, 183 Md. App. 279, 297, 961 A.2d 591, 601 (2008), there was a cap on damages in actions involving the State. WMATA had made an offer of the maximum amount of recovery allowable under the cap, which Plaintiffs rejected, thereby divesting the District Court of jurisdiction under Federal Rule of Civil Procedure 68.

The outcome of WMATA's motion for summary judgment depends on whether it is a "unit" of the state when suit is brought against it such that the $200,000 cap on liability contained in the Maryland Tort Claims Act (MTCA) should apply, and whether the Maryland cap on non-economic damages applies. As to the first issue, state and federal courts in Maryland, Virginia, and the District of Columbia have rendered inconsistent interpretations of this provision of Maryland's waiver of sovereign immunity. Due to the inconsistencies in state and federal court interpretations of this issue, the District Court certified questions to the Maryland Court of Appeals. The Court of Appeals chose to answer the following: 1. Does the waiver of sovereign immunity contained in the Maryland Code §12-104(a)(1) of the State Government Article apply to WMATA in light of the broad waiver of sovereign immunity contained §80 of the WMATA compact? 2. Does the Maryland statutory cap on noneconomic damages contained in §11-108(b) of the Courts and Judicial Proceedings Article of the Maryland Code apply to civil actions filed against WMATA? 3. Does Maryland decisional law in *Oak v. Connors*, 339 Md. 24, 660 A.2d 423 (1995) apply to preclude a recovery by both spouses for a loss of

consortium claim brought against WMATA?

WMATA challenged the Court of Appeals jurisdiction to respond to the certified questions in the case arguing that the Court of Special Appeals decision in *Wash. Metro.Area Transit Auth. v. Deschamps*, 183 Md. App. 279, 297, 961 A.2d 591, 601 (2008) was a controlling appellate decision as contemplated by §12-603 of the Courts and JudicialProceedings Article.

Held: The Court of Appeals has authority to answer the certified questions pursuant to Maryland Code §12-603 of the Courts and Judicial Proceedings Article because *Deschamps*, 183 Md. App. 279, 961 A.2d 591 (2008) should not be deemed a "controlling authority" for purposes of the certification issue. The rationale of *Deschamps*, 183 Md. App. at 298-299, 961 A.2d at 602-03, is inconsistent with the reasoning in the decisions of the courts of Virginia and the District of Columbia regarding WMATA, and the Court of Appeals did not have the opportunity to review the Court of Special Appeals' reasoning in *Deschamps*.

The waiver of sovereign immunity provision contained in the Maryland Tort Claims Act, Md. Code (1984, 2009 Repl. Vol.), §12-104(a)(1) of the State Government Article, does not apply to actions filed against WMATA. The Maryland Tort Claims Act is a "gap-filler" provision that applies when the Legislature has not otherwise waived the sovereign immunity of a unit of the State. The sovereign immunity provision contained in §80 of the WMATA Compact states the extent to which WMATA has waived its sovereign immunity.

Section 80 of the WMATA Compact incorporates the substantive tort law of Maryland into claims against WMATA. Therefore, the non-economic damages cap contained in §11-108(b) of the Courts and Judicial Proceedings, and the Court's holding in *Oaks v. Connors*, 339 Md. 24, 38, 660 A.2d 423, 430 (1995) that a "a single cap for noneconomic damages applies to the whole action" pertains to claims filed against WMATA.

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Maryland Reclamation Associates, Inc. v. Harford County, Maryland, Nos. 143 & 144, September Term, 2008, filed March 11, 2010, opinion by Adkins, J.

http://mdcourts.gov/opinions/coa/2010/143a08.pdf

ZONING - "PRACTICAL DIFFICULTY" AND/OR "UNREASONABLE HARDSHIP" VARIANCE

Facts: Petitioner Maryland Reclamation Associates, Inc. ("MRA") sought to construct a rubble landfill within the borders of Respondent Harford County. In August 1989, MRA entered into a contract to purchase sixty-eight acres of land on Gravel Hill Road in Harford County. Prior to closing on the property, MRA began the process of obtaining a rubble landfill permit from the Maryland Department of the Environment ("MDE").

MRA applied to Harford County for inclusion of the Gravel Hill property in the County's Solid Waste Management Plan ("SWMP"). The Harford County Council voted to include the property in the SWMP, subject to twenty-seven separate conditions. On November 16, 1989, Harford County advised the MDE that the Gravel Hill property had been included in the County SWMP. Four days later, the MDE granted MRA Phase I approval for the construction of a rubble landfill. MRA subsequently filed with the MDE an application, including various engineering reports, for Phase II and Phase III approvals.

During the period between MRA's announcement of its plan to construct a rubble landfill and the vote to include the Gravel Hill property in the SWMP, public opposition to the construction of the rubble landfill had been growing steadily. Nonetheless, MRA completed its purchase of the property on February 9, 1990. Four days after closing, newly appointed Council President Jeffrey D. Wilson and Council Member Joanne Parrott introduced a resolution to remove MRA's property from the SWMP. MRA filed suit over this resolution, and the Court of Special Appeals ("CSA") held that the resolution was an invalid exercise of the Council's power, as it was preempted by State law governing the issuance of rubble landfill permits. *Holmes v. Md. Reclamation Assocs., Inc.*, 90 Md. App. 120, 600 A.2d 864 (1992), *cert. dismissed sub nom. County Council of Harford County v. Md. Reclamation Assocs., Inc.*, 328 Md. 229, 614 A.2d 78 (1992) ("*MRA I*")

While the litigation in *MRA I* was pending, the Council approved Bill 91-10, an emergency measure that altered the minimum requirements for the construction and operation of a

rubble landfill in Harford County, including increasing the minimum acreage requirements and buffer requirements. Bill 91-10 was made law on March 27, 1991. On April 2, 1991, the Council also introduced Bill 91-16, which authorized the Council to remove a property from the County SWMP if the property failed to comply with County zoning ordinances, if the MDE did not issue a permit within eighteen months of inclusion in the SWMP, or if the property owner had not begun to operate the landfill within that eighteen month period. (Bill 91-16 was made law on June 10, 1991.)

On April 25, 1991, Council President Wilson transmitted a copy of Bill 91-10 to the MDE, and advised the MDE that the Bill's passage called into question whether the Gravel Hill property, among others, sufficiently complied with local zoning ordinances. On May 2, the MDE informed Wilson that if MRA received a permit from the MDE, that permit would not authorize MRA to violate local zoning or land-use requirements. That same day, Harford County's Director of Planning informed MRA that the Gravel Hill property would fail to meet the requirements of Bill 91-10, and that MRA would require variances in order to operate the rubble landfill. On May 14, the Council introduced Resolution 15-91, which stated that the property was not in compliance with Harford County law as is, and removed the property from the County SWMP.

MRA did not apply for any variances, as suggested by the Director of Planning, but rather requested that the Harford County Board of Appeals "reverse the decision of the Zoning Administrator interpreting that the standards of Council Bill 91-10 appl[ied]" to the Gravel Hill property. On June 20, MRA filed suit in the Circuit Court for Harford County, seeking a declaration that Bill 91-10, Bill 91-16, and Resolution 15-91 were "null and void" with respect to the property. MRA also sought an injunction preventing the County from enforcing the three pieces of legislation, and an injunction staying all further action on its request to the Harford County Board of Appeals. On June 28, the Circuit Court issued an interlocutory injunction against enforcement of the legislation, and allowing the MDE to continue its permitting process. This suit was ultimately resolved in the Court of Appeals, which vacated the judgment of the Circuit Court and held that the issues presented were not ripe for adjudication because MRA had not exhausted its administrative remedies, including formally appealing the Zoning Administrator's ruling to the Board of Appeals, and applying to the Zoning Administrator for variances. *Md. Reclamation Assocs., Inc. v. Harford County*, 342 Md. 476, 677 A.2d 567 (1996) ("*MRA II*").

Following *MRA II*, MRA did file requests for interpretation with the Zoning Administrator, and received several unfavorable rulings. MRA appealed the rulings to the Harford County Board of Appeals, which conducted a hearing through its Hearing Examiner, and issued an opinion on April 2, 2002. The Board found, among other things, that MRA's operation of a rubble landfill on the Gravel Hill property would violate County zoning laws; that MRA was not entitled to a grading permit because it was in violation of County zoning laws; that MRA did not have vested rights in the use of the property as a rubble landfill; and that the County was neither estopped from applying Bill 91-10 to MRA's property nor preempted from doing so by state law. MRA challenged these findings in the Circuit Court for Harford County on June 21, 2002; the Circuit Court affirmed the Board's decision. Eventually, the litigation once again made its way to the Court of Appeals, which once again vacated the judgment below, and held that the Board's decision was still not ripe for review because MRA had yet to exhaust its administrative remedies by seeking variances from the applicable requirements of the Harford County Code. *Md. Reclamation Assocs., Inc. v. Harford County*, 382 Md. 348, 855 A.2d 351 (2004) ("*MRA III*").

On May 12, 2005, MRA requested several variances from the Harford County Code. The Zoning Hearing Examiner for Harford County held seventeen nights of hearings spread over ten months. On February 28, 2007, the Hearing Examiner issued an opinion that granted several of MRA's requests and denied several others. MRA appealed the denials of its requested variances to the Board of Appeals, which unanimously agreed with the conclusions of the Zoning Hearing Examiner. MRA renewed its appeal in the Circuit Court, which affirmed its October 2003 decision.

The Court of Appeals granted certiorari on its own initiative to consider the questions presented in these cases. In case No. 143, MRA addressed the denial of its requests for variances, and argued that the Board of Appeals erred in finding that granting the denied variances would be "substantially detrimental to adjacent properties and/or the public safety and welfare" as required by Harford County Code Section 267-11(A)(2). In case No. 144, MRA presented several legal theories as to why Harford County could not legitimately apply its zoning laws to the Gravel Hill property.

Held: Affirmed, in both cases.

Case No. 143:

In case No. 143, this Court applied a narrow standard of

review in considering the Board of Appeals's denials of MRA's requests for variances. The Court noted that it was limited to considering whether there was "substantial evidence in the record as a whole" to support the Board's findings and conclusions.

The Court of Appeals held that the Board did not err in denying MRA's requests for variances because there was sufficient evidence in the record to support the Board's findings. The Board had found that several different aspects of the project would "adversely affect the public health, safety, and general welfare[.]" To begin with, the Gravel Hill property was located within twenty-five feet of the St. James Church property, which included the Church's historic graveyard. The graveyard is designated as a Harford County "historic place" because interred within it are the remains of African-American soldiers who served in the United States Colored Infantry during the Civil War. The Hearing Examiner heard testimony from historical experts, including an archaeologist, that the construction of the rubble landfill would be detrimental to the physical structure of the graveyard and the historic character of the site. MRA also presented its own expert, who argued that the construction might benefit the graveyard's physical soundness, but the Hearing Examiner had sufficient grounds to favor the former testimony over the latter.

The Board also had sufficient evidence to find that the construction of the rubble landfill would be detrimental to the health and welfare of people living in the local community, as well as creating poor traffic conditions along Gravel Hill Road. The Hearing Examiner heard testimony from an environmental health scientist that the influx of diesel-fueled trucks accessing the rubble landfill could cause substantial increases in air pollution, based on comparable data from other sites, which in turn could cause or exacerbate respiratory difficulties in residents living nearby. The witness's discussion of his scientific knowledge was sufficient basis for the Hearing Examiner to find his testimony credible, even if the witness lacked a specific understanding of the legal issues in the case. The Hearing Examiner also heard testimony from a biological sciences expert and a forest conservation expert, who collectively testified as to the environmental impact of deforestation required for the project, and the difficulties with reforesting the property once the rubble landfill was sealed. The Court held that the Hearing Examiner was in the best position to evaluate this testimony, and had sufficient basis to find it credible.

Likewise, the Court held that the Hearing Examiner was in

the best position to evaluate the testimony of MRA's traffic engineer. The engineer testified that increased truck traffic on Gravel Hill Road would not substantially increase travel times on the road nor create a safety risk to nearby residents. Local residents presented counter-testimony, and spoke to the frequency of children crossing the Road on a regular basis when traveling to and from school bus stops, and expressed concern about the risk increased traffic would pose to these children. The Hearing Examiner had sufficient evidence to weigh this testimony against that of the engineer, and to draw conclusions from the testimony.

Case No. 144:

In case No. 144, this Court considered MRA's legal challenges to the application of Harford County's zoning laws to its development of the Gravel Hill property. Because these issues were all questions of law, a de novo review standard applied.

First, MRA argued that Harford County was preempted by state law from applying its zoning laws to the rubble landfill project. MRA argued that the application of Bill 91-10 to the Gravel Hill property allowed Harford County to "veto" the MDE's permitting process. The Court explained that the fundamental difficulty with MRA's argument was that it conflated "zoning" and "permitting." While Section 9-210 of the Environment Article does give authority over environmental permitting to the state government, the Express Powers Act Section (X)(2)(ii) specifically provides that "zoning controls shall be implemented by local government." *See* Md. Code (1957, 2005 Repl. Vol.), § 5(X)(2)(ii) of Article 25A. The Harford County Council's decision to enact Bill 91-10 was rooted in classic local zoning concerns, and local zoning law acts as a check on the MDE permitting process. The statutory scheme establishes a dual-natured approach to land development, and Harford County was therefore not preempted from enforcement of its zoning laws. The Court also rejected MRA's argument that the statutory history of the Environment Article supported a preemption argument. Section 9-210 of the Environment Article was amended in 1988, to require that an application for an MDE permit come directly from a permit applicant, rather than through the County Council as had previously been the case. The Environment Article was also amended in 1998 to prohibit county governments from interfering with the state permitting process. This argument once again conflated permitting and zoning. Whatever the intent of the statutory amendments, they applied solely to the permitting process, which exists as completely distinct from local zoning controls.

Second, MRA argued that its rights in the use of the Gravel Hill property for a rubble landfill had vested at the time Harford County altered its zoning laws, and that MRA therefore had the right to construct the rubble landfill. The Court rejected MRA's argument. Maryland law on vested rights is clear: in order for rights to vest in a zoning use for a parcel of land, a developer must obtain a valid permit, and in reliance on that permit the developer must make a substantial beginning in construction and in committing the land to the permitted use prior to local authorities' attempts to change the zoning of the property. In this case, MRA had not passed through these necessary steps, but argued that its rights had vested based on the inclusion of the Gravel Hill property in the County SWMP, and because it had incurred substantial expenses connected with the project. As Harford County put it, MRA sought a "vested right in zoning approval[.]" The Court rejected this line of reasoning, as well as MRA's reliance on the CSA's opinion in *National Waste Managers, Inc. v. Anne Arundel County*, 135 Md. App. 585, 763 A.2d 264 (2000). The land developer in *National Waste* had obtained a special exception from Anne Arundel County in order to allow the developer to obtain an MDE permit. After the granting of this exception, Anne Arundel County used a variety of delaying tactics to prevent the permit from being issued, including court challenges. Following multiple losses in litigation and the imposition of a contempt order, Anne Arundel County argued that the special exception was invalid because it required action within two years, which had elapsed. The CSA held that the two-year period was tolled during litigation, and implied (without stating outright) that the developer had obtained a vested right in the existing exception because of Anne Arundel County's bad faith in causing the delay. That case is distinguishable because here, as opposed to in *National Waste*, Harford County did not cause a permit to expire by enacting Bill 91-10.

Third, MRA argued, as it had done before the Board, that Bill 91-10 was applied arbitrarily and capriciously to the Gravel Hill rubble landfill. MRA had claimed before the Board that the Gravel Hill project had been singled out through passage of the Bill. The Board rejected this argument, and we reviewed the Board's action to determine if it was taken without substantial supporting evidence. The Court held that there was substantial evidence in the record to justify the Board's decision. Bill 91-10 affected other rubble landfills, as well as a proposed rubble landfill that was in the planning stage. The record showed substantial complaints from residents living near these other landfills. Given ample evidence that the Board appeared to target rubble landfills in general through the enactment of Bill

91-10, and not merely the Gravel Hill project, the Court refrained from further investigating the Board's motivations.

Fourth, MRA argued that Harford County was estopped from applying the newly enacted zoning regulations to the Gravel Hill project. MRA rested its argument on both general principles of equitable estoppel and on the doctrine of zoning estoppel. With respect to equitable estoppel, the Court held that its previous precedents had clearly stated that the doctrine of estoppel would be applicable only where a party had a vested right. *See Rockville Fuel & Feed Co. v. Gaithersburg*, 266 Md. 117, 134, 291 A.2d 672, 680 (1972). As this was not the case here, MRA could not succeed on a claim of equitable estoppel.

As to zoning estoppel, the Court began by noting that it has not explicitly recognized that the doctrine exists in Maryland, though it also recognized that the increasing complexity of modern zoning and permitting processes may demand that the doctrine be applied, albeit cautiously. The Court proceeded to hold that even if zoning estoppel were applicable in this jurisdiction, the facts of this case would not require its application. As a hypothetical definition, the Court stated that a local government would be estopped from exercising its zoning powers where a property owner, relying in good faith on some act or omission of the local government, made such a substantial change in position, or incurred such extensive obligations and expenses, that it would be highly inequitable and unjust to destroy the rights which she ostensibly had acquired. In such an instance, the burden of proving the facts necessary to support the theory must fall on the party invoking the doctrine. In addition, if a party has good reason to believe, before or while acting to her detriment, that a local government may soon reverse course on allowing a particular zoning use, then zoning estoppel may not apply. In this case, many facts were available to MRA at the time of closing on the Gravel Hill property that should have alerted it to potential difficulties with the project. In particular, the initial vote to include the property in the SWMP was by a bare majority (four yea, three abstentions), and was merely a necessary but not sufficient step in constructing the rubble landfill; this was noted by the Council at the time of the vote. MRA was also aware of strong public opposition to the rubble landfill project. In addition, newly-appointed Council President Wilson replaced one of the Councilmembers who voted to approved the project. Council President Wilson also informed Councilmember John Schafer, father of MRA President Richard Schafer and one of the abstaining Councilmembers, that he intended to pursue removal of the Gravel Hill property from the County SWMP. Even if MRA did not have actual knowledge of all of

the relevant facts, it had access to those facts. Regardless, the purchase of a property is not "the definitive mile-marker" in a zoning estoppel analysis. Purchase of land is not usually enough to constitute substantial reliance for the purposes of zoning estoppel. Nor can MRA's expenditures demonstrate substantial reliance – while MRA did spend a great deal of money in relation to the project, there is no indication that it did so in reliance on the Council's decision to include the Gravel Hill property in the SWMP.

Finally, MRA argued that its use of the property prior to the Board's ruling was a valid, non-conforming use, and that the project was therefore insulated from further zoning regulation. The Court rejected this final argument. Under Maryland law, non-conforming use status protects against re-zoning only where substantially all of the property on question was being used in a permissible means before zoning was altered. In this case, MRA relied on an industrial waste storage permit it had previously received from Harford County to prove a preexisting non-conforming use. Even assuming that the permit and the rubble landfill were "compatible" for the purpose of assessing non-conforming use status, however, the terms of the permit allowed for waste storage on less than half of the property. This cannot reasonably be construed as "substantially all" of the property being used in a permissible manner, and therefore there was no valid non-conforming use of the property prior to Harford County's zoning change.

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COURT OF SPECIAL APPEALS

Jeffrey Maurice Thompson v. State of Maryland, No. 2151, September Term 2008, filed May 27, 2010. Opinion by Wright, J.

http://mdcourts.gov/opinions/cosa/2010/2151s08.pdf

CONSTITUTIONAL LAW - BILL OF RIGHTS - FUNDAMENTAL RIGHTS - SEARCH & SEIZURE - SCOPE OF PROTECTION

CRIMINAL LAW & PROCEDURE - SEARCH & SEIZURE - WARRANTLESS SEARCHES - INVENTORY SEARCHES

Facts: Appellant was driving a vehicle at approximately 2:50 a.m., when he was stopped by a Baltimore County police officer who could not find registration information for the vehicle with the Maryland Motor Vehicle Administration. Appellant provided his name, but could not provide a driver's license or other state identification. Appellant produced various documents with temporary registration information, but the vehicle identification numbers ("VIN") on those documents differed from each other, and differed from the VIN on the vehicle. Appellant was placed under arrest. The officer then searched the vehicle and recovered a digital pocket scale, U.S. currency, and prescription pills. At that time, the officer determined that the vehicle "needed to be stored."

Subsequently, the arresting officer performed an inventory search, which revealed a book bag containing appellant's identification information and "a loaded black high point nine millimeter pistol containing four nine millimeter rounds." Appellant filed a motion to suppress the evidence, which was denied. The parties agreed to proceed to trial in the Circuit Court for Baltimore County by way of a not guilty plea on an agreed statement of facts. After the hearing, Appellant was found guilty of illegal possession of a regulated firearm. He timely appealed, arguing that the court erred in denying his motion to suppress and asking that the case be remanded for further proceedings in light of *Arizona v. Gant*, _____ U.S. _____ , 129 S. Ct. 1710 (2009).

Held: The Court of Special Appeals affirmed, holding that the circuit court acted properly in denying appellant's motion to suppress because, regardless of whether appellant was lawfully arrested, the evidence would have inevitably been discovered

during a valid inventory search performed pursuant to standardized police procedures. According to the Court, *Gant* is inapplicable as, in that case, the Supreme Court did not consider whether evidence illegally obtained under a purported search incident to arrest may be admissible if it would have inevitably been discovered during a valid inventory search.

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Livingston v. State, No. 1669, September Term, 2008, filed May 27, 2010. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2010/1669s08.pdf

CONSTITUTIONAL LAW – CRIMINAL LAW – DISEASE PREVENTION – TUBERCULOSIS – VIOLATION OF SECTION 18-325(a) OF THE HEALTH-GENERAL ARTICLE BY REFUSING TO COMPLY WITH ORDER FOR PLACEMENT IN A TUBERCULOSIS TREATMENT FACILITY AND OF SECTION 18-325(b)(1) BY BEHAVING IN A DISORDERLY MANNER IN A TUBERCULOSIS TREATMENT FACILITY

Facts: Livingston, the appellant, moved from Augusta, Georgia, to Prince George's County to receive treatment for his tuberculosis. Upon his arrival in Maryland, the Secretary of Health and Mental Hygiene issued an order pursuant to section 18-324(b) of the Health-General Article ("H-G") to place him at Deer's Head Hospital in Wicomico County for treatment. Livingston was assigned to an isolation room, and he was instructed by hospital staff to wear a mask whenever he left his room. Livingston was permitted to remove his mask in an outdoor area located on the hospital grounds so long as no one was within 50 feet of him. He was not permitted to leave the hospital grounds under any circumstances.

Several days after his arrival at the hospital, a nurse observed Livingston standing by his car in the hospital parking lot without a mask and in close proximity to unprotected individuals. Following this incident, Livingston was repeatedly seen by nurses outside his room without a mask. As a result, Livingston was confined to his room.

After having his ground privileges revoked, Livingston continued to violate the conditions of his treatment, including leaving his room and/or approaching hospital staff without a mask. On one occasion, a nurse noticed his car had moved during the time between her shifts. The nurse also noticed a coffee cup from a near-by convenience store in his room. On another occasion, Livingston became combative and physically threatened a nurse when he felt he was not receiving adequate attention. He told the nurse that it was "fucking ridiculous" that no one was coming to see him, and, as he continued to curse at the nurse, he lunged at her with his hand balled into a fist. When the nurse returned with a supervisor, Livingston remained irate and continued to curse.

Based on this behavior, a judge in the Circuit Court for Wicomico County found Livingston guilty of violating a placement

order under H-G section 18-325(a) and behaving in a disorderly manner under H-G section 18-325(b)(1). On appeal, Livingston contended that H-G section 18-325(b)(1) is unconstitutionally vague, and that the evidence was insufficient to support his convictions.

Held: Affirmed. H-G section 18-325(b)(1)'s proscription against "[b]ehav[ing] in a disorderly manner" while in placement for tuberculosis treatment is not unconstitutionally vague because it has a fairly ascertained meaning and gives sufficient guidance to government officials who enforce and administer the law. The general crime of "disorderly conduct" is clearly defined under common law as"the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area." Applied in the context of a tuberculosis treatment facility, behaving in a disorderly manner plainly means offensive, disturbing or inciteful behavior that interferes with the orderly operation of the facility.

The testimony given by nurses was sufficient to convict Livingston of both crimes. The order required Livingston to comply with the conditions imposed on him by the hospital, which the evidence showed he clearly did not do. With respect to his conviction for behaving in a disorderly manner, it was not Livingston's profane outburst alone that was the basis for his conviction; rather, his conviction was based on his words in conjunction with his conduct. By cursing at nurses and physically threatening them, Livingston interfered with their ability to give him proper treatment, and thus his behavior was sufficient to violate the statute.

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Harrod v. State, No. 1177, September Term, 2008, filed April 30, 2010. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2010/1177s08.pdf

CONSTITUTIONAL LAW – FOURTH AMENDMENT SEARCH AND SEIZURE – ARREST WITHOUT PROBABLE CAUSE VERSUS *TERRY* STOP BY MEANS OF FORCE JUSTIFIED UNDER THE CIRCUMSTANCES – SCOPE OF TERRY FRISK FOR WEAPONS – COURTS AND JUDICIAL PROCEEDINGS SECTION 10-1003(a)(1) WRITTEN DEMAND REQUIREMENT APPLIES TO RETRIAL AFTER MISTRIAL

Facts: Police officers acting as security in the lobby of a movie theater were told by a patron that a person in the concession line (the defendant) had threatened him with a knife. The officers physically moved the defendant from the concession line by grabbing one or both of his arms and directing him to a nearby pillar where they frisked him for weapons. The officer who performed the pat-down felt in the defendant's pocket an item he thought was a folded knife. He reached into the pocket to retrieve the "knife" and felt on top of the "knife" a baggie that contained other baggies of what he recognized to be crack cocaine. The "knife" turned out to be a lighter. The defendant was charged with, and convicted of, possession of cocaine with intent to distribute.

On appeal, the defendant contended that the narcotics should have been suppressed because he was arrested without probable cause, or, alternatively, if he was merely detained, the stop and frisk was not supported by a reasonable articulable suspicion and went beyond the scope permitted. He additionally contended that prior testimony from his first trial (he was convicted on retrial following a mistrial) and a chemist's report on the narcotics were improperly admitted. Regarding the chemist's report, he argued among other things that the State was required to produce the chemist in response to written demand filed prior to the first trial.

Held: The conduct of the officers in removing the defendant from the concession line was not an arrest, even though some force was used; it was a valid stop and frisk for weapons under *Terry v. Ohio*, which did not have to be supported by probable cause. The use of force did not, in these circumstances, elevate the stop to an arrest. In addition, the scope of the frisk did not exceed its purpose, which was to uncover a weapon that could be used against the police and members of the public at the movie theater. Finally, the stop and frisk was not the product of a report by an anonymous tipster; it was a report by the crime victim, who identified himself.

In retrial after mistrial, the defense was required to make a new written demand, under Courts and Judicial Proceedings section 10-1003(a)(1), to "require the presence of the chemist, analyst, or any person in the chain of custody as a prosecution witness." The written demand made before the first trial that ended in a mistrial is not sufficient.

The defendant's remaining arguments regarding the admission of the chemist's report and the prior testimony were not preserved for appellate review.

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Tyrone Armin Carter v. State of Maryland, No. 668, September Term, 2009, filed June 3, 2010. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2010/668s09.pdf

CRIMINAL LAW - APPEAL AFTER PROBATION BEFORE JUDGMENT; CP § 6-220; APPEALABILITY OF MOTION TO CORRECT AN ILLEGAL SENTENCE - PROBATION BEFORE JUDGMENT CONSTITUTING A SENTENCE - ILLEGAL SENTENCE - MD RULE 4-345 - EXTENSION OF PROBATION AFTER EXPIRATION OF PROBATIONARY TERM

Facts: On February 26, 2007, appellant pled not guilty, pursuant to an agreed statement of facts, to the charge of second degree assault. The court found appellant guilty and granted appellant probation before judgment, placing appellant on two years supervised probation. One of the conditions of probation was that appellant pay restitution to the victim for her "mental or emotional counseling," as well as any physical therapy attributable to the assault. The court did not set a specific amount of restitution at that time. The court held three subsequent hearings regarding specific restitution amounts. On March 24, 2009, almost a month after the original two-year term of probation expired, the court ordered that appellant's term of probation be extended until February 26, 2012. Appellant filed a Motion to Revise, asking the court to vacate its March 24, 2009, order, which the court denied.

Held: Judgment vacated. Md. Code (2008 Repl. Vol.), § 6-220(e) of the Criminal Procedure Article ("CP") limits the right to appeal when a defendant receives probation before judgment, precluding an appeal from the finding of guilt, as well as the imposition of conditions to which the defendant agreed. There is nothing in the statute, however, that suggests that a defendant cannot challenge a court's subsequent order that unilaterally changes the agreed upon terms of probation. When a court changes the agreed upon terms of probation without the consent of the defendant, and the defendant contends that the change amounts to an illegal sentence, CP § 6-220(e) does not preclude an appeal.

Although the appeal was not filed within 30 days of the initial order extending the term of probation, it was within 30 days of the denial of the motion to revise the order. The motion to revise substantively constituted a motion to correct an illegal sentence, although it was not filed as such. The appeal was filed within 30 days of the denial of the motion to revise, and therefore, the appeal was timely.

The extension of probation constituted an illegal sentence. In the absence of a probation violation, a court does not have

jurisdiction to extend the term of probation after the original term of probation has expired. When the court extended appellant's probation after the original probation expired, it acted without authority, and the order extending the probation was an illegal sentence.

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Antoine Levar Griffin v. State of Maryland, No. 1132, September Term, 2008. Opinion by Hollander, filed on May 27, 2010.

http://mdcourts.gov/opinions/cosa/2010/1132s08.pdf

CRIMINAL LAW - AUTHENTICATION - RULE 5-901 - SOCIAL NETWORKING PROFILE - CIRCUMSTANTIAL EVIDENCE.

Facts: A jury in the Circuit Court for Cecil County convicted Antoine Levar Griffin, appellant, of second degree murder, first degree assault, and use of a handgun in the commission of a felony or crime of violence. The convictions arose from the fatal shooting of Darvell Guest at Ferrari's Bar on April 24, 2005. A previous trial ended in a mistrial.

At the first trial, Dennis Gibbs, appellant's cousin and an eyewitness to Guest's murder, testified that he did not see appellant pursue the victim into the bathroom with a gun. At appellant's second trial in January 2008, several witnesses testified that they saw appellant with a handgun just before the shooting, and others testified that they witnessed appellant pursue Guest into the women's bathroom, where appellant fired his weapon. Gibbs testified that appellant was the only person, other than Guest, in the bathroom when the shots were fired. According to Gibbs, another cousin, George Griffin, was standing "right with me" during the shooting and did not enter the bathroom. He explained the discrepancy in his testimony at the two trials, claiming that Jessica Barber, appellant's girlfriend, had threatened him prior to the first trial.

Thereafter, the court permitted the State to introduce into evidence a redacted printout obtained in December 2006 from a MySpace profile page allegedly belonging to Ms. Barber. The profile page, introduced for the limited purpose of corroborating Gibbs's testimony, said, in part: "JUST REMEMBER, SNITCHES GET STITCHES!! U KNOW WHO YOU ARE!!"

Held: A printout of a profile appearing on MySpace, a social networking Web site, may be authenticated by circumstantial evidence of content and context. The trial court did not err or abuse its discretion in admitting a redacted version of the printout.

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Brian Anthony Hickman v. State of Maryland, No. 882, September Term, 2009, decided on June 3, 2010. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2010/882s09.pdf

CRIMINAL LAW - COMMON LAW OFFENSE OF AFFRAY - 1996 LAWS OF MARYLAND, Ch. 632 codified as Art. 27, §§ 12, 12A and 12A-1; *Robinson v. State*, 353 Md. 683 (1999) (holding that the 1996 statutory enactments codifying assault abrogated the common law crimes of assault and battery).

Facts: In the early morning hours of October 25, 2008, after appellant, along with several friends, had been drinking at a bar, the victim and one of appellant's friends engaged in a heated exchange outside after the bar closed. The exchange escalated to a point where appellant's friend punched the victim twice in the face, causing the latter to fall backward into the bar. Incensed, several friends of the victim followed appellant's friend into the parking lot, whereupon appellant confronted the victim and, after arguing, struck the victim twice in the head with his fists, causing him to collapse, striking his head on the pavement and rendering him unconscious. The victim was transported to the hospital where he died two days later from multiple hemorrhages, hematomas and contusions sustained when his head struck the pavement. Appellant was thereafter indicted for involuntary manslaughter, second-degree assault and the common law offense of an affray.

At trial, appellant contended that an affray, at common law, was a form of assault and battery and that, according to *Robinson v. State*, 353 Md. 683 (1999), when the Maryland General Assembly enacted the consolidated assault statute in 1996, it eliminated all common law forms of assault and battery. Because an affray is a form of assault at common law, contended appellant, the offense no longer exists and, accordingly, he could not be charged with the common law offense of an affray.

The trial court disagreed, concluding that it was not persuaded by appellant's assertion that the 1996 assault statutes abrogated the common law offense of an affray. Upon review of the Court of Appeals' decision in *Robinson v. State* and the committee notes to the assault statutes cited therein, the court stated that, if the General Assembly intended to include crimes other than assault and battery, "such as an affray - - which has different elements" then it would have so stated. In sum, the court determined that neither the statutes, the committee notes nor the *Robinson* case supported the conclusion that an affray was not a viable crime in Maryland.

Held: Affirmed. Case law demonstrates that common law affray has, historically, been a chargeable common law offense in Maryland. *See, e.g, Baltimore & O. R. Co. v. Cain*, 81 Md. 87, 100 (1895) ("But the right of a person not an officer to make an arrest is not confined to cases of felony, for he may take into custody, without a warrant, one who in his presence is guilty of an affray or a breach of the peace."); *Hamlin v. State*, 67 Md. 333, 338 (1887) ("As for instance, where two persons are indicted for an affray. . . ."); *Wanzer v. State*, 202 Md. 601, 609 (1953); *Lewis v. State*, 289 Md. 1, 2 (1980); *Schlamp v. State*, 161 Md. App. 280 (2005) *rev'd on other grounds*, 390 Md. 724 (2006). The common definition of an affray is "'two or more persons fight[ing] in a public place to the terror of the King's subjects.'" *Schlamp*, 161 Md. App. at 290 (quoting Halsbury, The Laws of England § 919 (1909)).

Neither *Robinson v. State* nor the 1996 statutory enactments codifying assault expressly discussed the common law offense of an affray. *Robinson* and the statutes only discussed "assault and battery." A common law affray differs from common law assault and battery in two significant respects. First, and most importantly, to sustain a conviction for common law affray, the State must prove additional and different elements from the crimes of common law assault and battery. An affray must be committed in public and requires two or more persons, while an assault may be committed out of the public eye and can be a unilateral act. *See Thompson v. State*, 70 Ala. 26, 28 (1881). A second significant difference between the crimes is the victim or party against whom the crime is committed. "An affray is an aggravated disturbance of the public peace and is an offense exclusively against the public." 2A C.J.S. Affray, § 5 (citing *Childs v. State*, 15 Ark. 204 (1854) and *State v. Weekly*, 29 Ind. 206 (1867)), whereas an assault is a crime against a person.

Based on these distinctions, while assault may be an element of an affray, an affray is not a form of common law assault or common law battery. Although an indictment charging a common law affray is, in effect, also one for several assaults and batteries, *Carnley v. State*, 102 So. 333, 334 (Fla. 1924), there are significant differences between the offenses that make clear that an affray is a separate and distinct offense from common law assault and battery.

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Lee Andrew Coleman-Fuller v. State of Maryland, No. 1913, September Term, 2008, decided May 27, 2010. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2010/1913s08.pdf

CRIMINAL LAW - CUSTODIAL INTERROGATION. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Maryland v. Shatzer*, ___ U.S. ____, 130 S.Ct. 1213 (2010)(the United States Supreme Court granted certiorari to consider "whether a break in custody ends the presumption of involuntariness established in *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct.1880, 68 L. Ed.2d. 378 (1981)" and held that a two-week break of custody is required.).

EXPERT TESTIMONY. Md. Rule 5-702 (providing that "Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.); *Wilder v. State*, ___ Md. App. ___, No. 1122, September Term, 2008.

Facts: Appellant was charged with the first-degree murder of the victim, who died as a result of multiple stab wounds. The State's theory was that appellant killed the victim because the victim, in a rehabilitative effort, had encouraged an alcoholic to evict appellant and others from her residence.

Prior to trial, appellant sought to preclude two statements he made to police, each one week apart. Appellant was interviewed by the police and requested an attorney, but the police ignored the request, continued to question him and then released him from custody. A week later, police re-interrogated appellant, at which time he made inculpatory statements. The trial court suppressed the first statement after finding that it had been obtained after appellant had made an unequivocal request for an attorney. The trial court did not, however, suppress the second statement, which was made one week after appellant was released from police custody. The trial court held that the break in custody was sufficient to end the presumption of involuntariness established in *Edwards v. Arizona*, 451 U.S. 477 (1981) and overcome his previous request for counsel. The second statement was admitted into evidence at trial.

Appellant also sought to preclude a police detective from discussing how the police tracked his movements at the time of the shootings using cellphone tracking. He posited that an expert was required to testify "where the towers are located, how close the towers are, how a phone pings off a certain tower compared to one or two miles away." The trial court disagreed and admitted the evidence at trial over appellant's objection.

Appellant was convicted and sentenced to life imprisonment without the possibility of parole.

Held: Vacated and remanded to the Circuit Court for a new trial. The Court of Special Appeals examined the United States Supreme Court's recent decision in *Maryland v. Shatzer*, ___ U.S. ____, 130 S.Ct. 1213 (2010) where the Supreme Court held that, ". . . in cases where there is an alleged break in custody, [suppression courts] simply have to repeat the inquiry for the time between the initial invocation and reinterrogation. . . . And when it is determined that the defendant pleading *Edwards* has been out of custody for two weeks before the contested interrogation, the court is spared the fact-intensive inquiry into whether he ever, anywhere, asserted his *Miranda* right to counsel." In accordance with the Supreme Court's decision, the Court of Special Appeals held that appellant's break in custody, which lasted only seven days - a full week short of the *Shatzer* standard - was insufficient to overcome his prior request for an attorney. The Court of Special Appeals held that the police should not have interrogated appellant. Accordingly, the trial court erred in denying appellant's motion to suppress his second statement to police and in subsequently admitting that statement into evidence over appellant's objections at trial.

With regard to whether an expert was required to testify about the cellphone tracking technology, the Court of Special Appeals followed its recent decision in *Wilder v. State*, ___ Md. App. ___, No. 1122, September Term, 2008. In *Wilder*, the Court of Special Appeals held that it was an abuse of discretion to admit similar evidence without expert testimony because the detective's testimony was based on special training and the procedure that he utilized, *i.e.* tracking appellant's location required "some specialized knowledge or skill . . . that is not in the possession of the jurors." The evidence before the trial court was nearly identical to that before the trial court in *Wilder*; thus, in appellant's case, it likewise was an abuse of discretion for the court to admit the subject evidence without expert testimony.

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Lee v. State, No. 164, September Term 2009, filed May 28, 2010. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2010/164s09.pdf

CRIMINAL LAW–"DEFENSE OF OTHERS" DEFENSE–EVIDENCE SUFFICIENT TO GENERATE JURY INSTRUCTION.

Facts: Tracy Samuel Lee, the appellant, worked as a security guard at Wyvill's Tavern in Upper Marlboro. In June 2007, while on duty, he shot the victim, Brian Comploier, six times, killing him. Prior to the shooting, the victim had been escorted out of the tavern by another security guard, Mario Millender. The appellant, Millender, the mother of the victim's child (Angela Osborne), a friend of the victim and numerous patrons all were in the parking lot outside of the tavern. The victim was behaving erratically and displayed a knife and, at one time, a shovel, in a threatening manner toward security personnel and Osborne shortly before the shooting.

At trial, the circuit court instructed the jury on the defense of self-defense. The court declined to instruct the jury on the defense of others defense. The jury convicted the appellant of second-degree murder and use of a handgun in the commission of a crime of violence. On appeal, the appellant argued, *inter alia*, that the court erred in failing to instruct the jury on the defense of others defense.

Held: Judgments affirmed. The evidence adduced at trial viewed in a light most favorable to the appellant did not generate a defense of others defense, either perfect or imperfect. The defense theory was that the appellant was acting in defense of others on the parking lot when he shot the victim. The perfect defense of others defense requires proof that a defendant held a subjectively genuine and objectively reasonable belief that he had to use force to defend another against immediate and imminent risk of death or serious harm, that the level of force he used was objectively reasonable to accomplish that purpose, and that he was not the initial deadly aggressor or the person who escalated the offense to a deadly level. In the imperfect defense of others defense, a defendant's belief will not have been objectively reasonable and/or the level of force he used will not have been objectively reasonable.

The evidence at trial could not support a reasonable finding that the people supposedly being protected by the appellant were coming under direct attack when he shot the victim. At that time, neither Millender nor Osborne was being attacked by the

victim. Similarly, none of the patrons in the vicinity were under direct attack. The testimony was that the victim was coming toward the appellant with the knife. Accordingly, the court correctly declined to give a defense of others instruction.

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Jeffrey Edward Allen v. State of Maryland, No. 1935, September Term, 2008, filed May 27, 2010. Opinion by Matricciani, J.

http://mdcourts.gov/opinions/cosa/2010/1935s08.pdf

CRIMINAL LAW - FELONY MURDER - CONVICTION OF PREDICATE OFFENSE IN SEPARATE PROCEEDING - OFFENSIVE USE OF COLLATERAL ESTOPPEL BY STATE - SIXTH AMENDMENT RIGHT TO TRIAL BY JURY

Facts: The cumulative evidence presented by the witnesses at appellant's second trial showed that on the evening of October 23, 2001, Butler and two of his friends drove to "the Stroll," a well-known area in the gay community where gay people meet other gay people. He met appellant and then drove to his home where he and appellant engaged in consensual sex. The next morning, appellant told Butler that he wanted to leave, but Butler made no effort to take him home. When Butler refused to take him home, appellant picked up Butler's car keys. He jingled them loudly at Butler and said that he was driving this "m-fucker" out of here. Butler approached appellant, and when he did, appellant grabbed a kitchen knife, stabbed Butler repeatedly, and then fled in Butler's car. Appellant eventually directed the police to Butler's home where Butler was found naked and dead lying next to a couch. In 2002, appellant was charged with several crimes relating to the stabbing death of John Butler. After hearing the evidence presented by the parties, the jury returned guilty verdicts on first-degree felony murder, second-degree murder, armed robbery, robbery, theft, and two counts of carrying a weapon openly with the intent to injure. On appeal, we vacated appellant's felony murder conviction because the trial court gave an erroneous jury instruction. We affirmed his remaining convictions, specifically finding that there was sufficient evidence to support the underlying felony – the armed robbery of the car. In August 2008, the State re-tried appellant on the felony murder charge. The jury again convicted appellant of felony murder, and he was subsequently sentenced to life imprisonment. On appeal, the appellant contends that the trial court erred when it instructed that because he had previously been convicted of the underlying felony, armed robbery, the jury need not decide that element in determining appellant's guilt or innocence on first-degree felony murder.

Held: Appellant preserved his collateral estoppel argument for review. We are satisfied by the Federal and state cases in which courts have concluded that the use of collateral estoppel by the prosecution against the defendant to establish an essential element of the charged offense violated the defendant's

right to trial by jury. Although several courts have gone the other way and have permitted the offensive use of collateral estoppel by the State, those cases often fall into the category of "status" cases and have been routinely criticized and limited to their peculiar facts. The principal rationale for allowing the offensive use of collateral estoppel in those cases is judicial economy because those cases concern violations that are often recurring and result in repeated retrials at great expense and burden to the United States government. Where there is little to no risk of costly repeated trials, courts have declined to apply the alienage cases as authority for applying collateral estoppel offensively against a criminal defendant. Our holding is consistent with the right of a criminally accused person to trial by an impartial jury, as guaranteed by the Sixth Amendment of the United States Constitution, and the presumption of innocence, as implicated in the Due Process Clause of the Fifth Amendment. Judicial economy, the principal rationale of the alienage cases, to the extent those cases are still viable, does not apply in the instant case because we are not concerned with that type of recurring violation. We hold that the trial court erred when it instructed the jury that they were to accept as a fact that the underlying felony had been previously proven, in determining whether appellant was guilty of felony murder. We also hold that evidence of appellant's prior conviction may be admissible as evidence of the felony murder charge, if the trial court determines that the probative value of the prior conviction is not substantially outweighed by the risk of unfair prejudice.

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Branden S. Murphy A/K/A Jawaun Antonio Fussell v. State of Maryland, No. 2905, September Term, 2007, filed May 27, 2010. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2010/2905s07.pdf

CRIMINAL LAW - MOTION TO SUPPRESS - FOURTH AMENDMENT - SEARCH AND SEIZURE - PROTECTIVE SWEEP.

Facts: In May 2007, the police went to appellant's second floor apartment in response to a report that appellant and his friends had robbed and assaulted an acquaintance with a shotgun. The victim advised the police that appellant had several friends that frequented the apartment with him, that appellant carried a shotgun when he answered the apartment door, and another man sometimes would answer the door while carrying his nine millimeter handgun. The police knocked on appellant's door, and a person, who identified himself as Brandon and who matched the description of one of the suspects involved in the assault and robbery of Shell, opened the door. The police removed Brandon from the apartment and called into the apartment, "announcing ourselves for everybody else to exit the apartment." At that point, a woman and two men, appellant and a man named Michael Dobbins, exited the apartment. They were detained on the landing. The officers "verbally challenged the apartment again," and they then conducted a protective sweep of the apartment. During the protective sweep, the police found a shotgun leaning against a dresser in the rear bedroom of the apartment.

Appellant moved to suppress the shotgun on the ground that there was no emergency requiring a protective sweep of his apartment, arguing that police had time to obtain a warrant for a search of the apartment. The State countered that, because the police had reason to believe that other suspects could have been inside appellant's apartment, and because they had concern about the existence of weapons, the police were permitted to make a protective sweep. The court denied the motion to suppress.

A jury convicted appellant of robbery with a dangerous and deadly weapon, simple robbery, first degree assault, theft less than $100, two counts of use of a handgun in the commission of a crime of violence, false imprisonment, false imprisonment in a vehicle, kidnapping, and giving a false statement to a police officer.

Held: Judgment affirmed. In *Maryland v. Buie*, 494 U.S. 325, 334 (1990), the United States Supreme Court held that, when the police conduct an in-home arrest, they may conduct a protective

sweep of the residence incident to arrest if they have reason to believe that "the area to be swept harbors an individual posing a danger to those on the arrest scene." Although *Buie* did not specifically address an arrest outside a suspect's home, an arrest that occurs outside a residence can pose a threat to arresting officers that is equally as serious as when the arrest occurs inside the residence. The test of reasonableness pursuant to *Buie* is not determined solely by the location of the arrest. *Id*. Rather, the test is whether the record shows "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id*.

Although the arrest occurred outside the apartment, the police had reason to believe that an individual posing a danger to the officers was in the apartment. The victim told the police that he had been assaulted and robbed by five men, but only three men emerged from the apartment following the officers' orders for all of the occupants to exit the apartment. The crimes that the officers were investigating occurred hours earlier and involved robbery and assault at gunpoint. Moreover, the victim told the officers that both appellant and another suspect carried a gun when they answered the front door of the apartment. Neither appellant nor another suspect had a gun when they exited the apartment, and another suspect who was believed to be armed did not emerge from appellant's apartment.

Under these circumstances, there were sufficient facts to warrant a reasonably prudent police officer to believe that the other two suspects were in the apartment, along with the guns used in the robbery and assault. With these potential co-defendants on the other side of the door from where appellant was being arrested, the police acted reasonably and lawfully in conducting a protective sweep of appellant's apartment for their safety. The circuit court properly denied appellant's motion to suppress the shotgun discovered in plain view during the sweep.

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Brandenburg v. LaBarre, No. 2080, September Term 2009, filed June 2, 2010. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2010/2080s09.pdf

FAMILY LAW - GRANDPARENTS VISITATION STATUTE - EXCEPTIONAL CIRCUMSTANCES - EVIDENCE OF DELETERIOUS EFFECT ON THE CHILD FROM CESSATION OF CONTACT BETWEEN THE CHILD AND THE GRANDPARENT - PERMISSIBLE INFERENCES.

Facts: In the Circuit Court for Anne Arundel County, Laura and David LaBarre, the appellees, filed a petition for visitation with their four paternal grandchildren. They alleged that the children's parents cut off all contact between the grandparents and the children. Jason and Nicole Brandenburg, the parents of the minor children and appellants, opposed the petition. At the time contact was cut off, the children were ages 9, 6, 3 and 9 months. Prior to then, the LaBarres had been active as daycare parents for the children and were closely bonded with them.

At trial, no direct evidence of harm to the children caused by the cessation of contact with the grandparents was produced, nor was there circumstantial evidence from which harm could be inferred. The LaBarres did not offer expert testimony concerning the mental health of the children and the issue of harm. The trial judge granted the LaBarres's petition, awarding them one weekend per month and one continuous week each summer of unsupervised visitation with their grandchildren. The trial judge inferred from the mere fact that the grandparents had been rendering full-time daycare for the children for a substantial period of time and that the grandparents and the children had a close relationship that the cessation of contact must have had a deleterious effect on the children.

Held: Judgment reversed. The trial judge erred in drawing an inference of harm from the mere fact of a close relationship between the grandparents and the children. Such an inference is not permissible in the absence of factual evidence, either direct or circumstantial, that would support a finding of harm to the children. A parent has a constitutional right to control his or her child's upbringing, including deciding with whom the child may associate. That right only will be overcome upon a showing of unfitness of the parent or exceptional circumstances indicating that the absence of contact with a third party, which includes a grandparent, has had a substantial deleterious effect upon the child. Exceptional circumstances of that sort may not be inferred solely from the cessation of contact between a grandparent and a child who previously were close.

Dziamko v. Chuhaj, No. 453, September Term 2009, filed June 2, 2010. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2010/453s09.pdf

FAMILY LAW - MARITAL PROPERTY - DIVISION OF DEFINED BENEFIT PENSIONS UNDER FORMULA ESTABLISHED IN *BANGS V. BANGS*, 59 MD. APP. 350 (1984).

Facts: In the Circuit Court for Baltimore County, Hanna Dziamko and Taras Chuhaj were divorced. Prior to the divorce, they entered into an agreement concerning distribution of marital property, including Husband's two pensions. The agreement was not in writing, but was stated orally on the record by counsel. As stated, the parties agreed to a 50/50 distribution of the Husband's two pensions on an "if, as, when" basis. In accepting the settlement, the trial judge commented that the formula being adopted meant that the Wife's share of the pensions would be "frozen" as of the time of the divorce.

Afterward, the parties could not agree upon the language of the orders adopting the pension agreements. Wife's proposed orders called for the pensions to be distributed under the *Bangs* formula. Husband's proposed orders called for the pensions to be distributed based upon a fraction that included the amount of money husband had contributed to the pensions during the period of the marriage, ending with the date of the divorce, and also called for any denominator in the formulas to end with the date of divorce. The court signed the orders proposed by Husband.

Held: Orders vacated. The reference to "if, as, when" on the record clearly was a reference to the formula for distribution of defined benefit pensions under the *Bangs v. Bangs* case. The court's remark, although inartful, was a reference to the numerator of the *Bangs* fraction being "frozen" as of the end of the marriage, and not a reference to the denominator of the fraction. Moreover, the court, by its comments, could not alter the agreement of the parties, which was clearly stated.

The Husband's proposed orders erroneously conflated distribution of defined contribution pension payments with the distribution of defined benefit pension payments. The plans at issue both were defined benefit plans in which the amounts contributed by Husband were not necessarily related to the amounts payable as benefits upon retirement. The Husband's proposed orders incorrectly used the months during which the pension accrued up until the date of the divorce as the denominator in the *Bangs* formula.

Kelly Lynn Strub et al. v. C & M Builders, LLC et al., No. 53, September Term, 2009, decided on May 28, 2010. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2010/53s09.pdf

LABOR AND EMPLOYMENT - MARYLAND OCCUPATIONAL SAFETY AND HEALTH ACT (MOSHA), Md. Code (1991 Rep. Vol., 2006 Supp.), Labor & Employment, L.E. § 5-101 *et seq.* (§ 5-104. providing in pertinent part: "General duties of employers and employees (a) Safe employment and places of employment. -- Each employer shall provide *each employee* of *the employer* with employment and a place of employment that are: (1) safe and healthful; and (2) free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.")

OCCUPATION SAFETY AND HEALTH ACT (OSHA), 29 U.S.C. § 651, *et seq.*

THE MULTI-EMPLOYER DOCTRINE (providing that an employer who controls or creates a worksite safety hazard may be liable under the Occupational Safety and Health Act even if the employees threatened by the hazard are solely employees of another employer.)

MULTI-EMPLOYER WORK SITE EXCEPTIONS: "THE CREATING EMPLOYER, THE EXPOSING EMPLOYER AND THE CONTROLLING EMPLOYER CITATION POLICY
See Universal Construction Company, Inc. v. Occupational Safety and Health Review Commission, 182 F.3d 726, 730 (10th Cir. 1999); *Beatty Equipment Leasing, Inc. v. Secretary of Labor, United States Dep't of Labor*, 577 F.2d. 534 (9th Cir. 1978); *Solis v. Summit Contractors, Inc.*, 558 F.3d 815 (8th Cir. 2009); *Murphy v. Stuart M. Smith, Inc.*, 53 Md. App. 640 (1983); *Baltimore Gas & Electric Co. v. Thompson*, 57 Md. App. 642, 651-52 (1984) (recognizing the "actual control exception"); *Brady v. Ralph M. Parsons Co.*, 82 Md. App. 519, 528 (1990), *aff'd*, 327 Md. 275 (1992) (recognizing the "assumed duty" exception).

Facts: Pursuant to an oral contract between C&M and Bayside Properties, Inc. (Bayside), the general contractor, C&M was to finish framing a row home. Bayside began the renovation project, "gutting" the building and framing the first floor, leaving nothing but a "shell." When C&M began its work, all that was in place were the exterior walls and a roof. The first floor had a rectangular opening prior to C&M's work for the steel staircase that was to be installed in the basement at a later date. C&M had agreed to frame the second and third floors of the building,

leaving openings in the floors for staircases to be installed directly above the existing opening in the first floor. Nocar, an HVAC sub-contractor, had been working on the third floor of the row home when he asked one of the other two employees working on the second floor to bring him his ladder. Nocar then leaned over the opening and told his co-worker "never mind," that he would climb without the ladder. Shortly thereafter, the co-worker heard a loud noise and the third co-worker heard a scream. Nocar had fallen through the opening from the third floor into the basement. Finding no primary negligence on C&M's part, the jury returned a verdict in favor of appellee.

Held: As this Court previously recognized in *Murphy*, 53 Md. App. at 643, employers "who have either actually created a hazardous condition which violated specific OSHA regulations and to which its own and another's employees were exposed . . ." may be liable for OSHA violations. Accordingly, the circuit court erred in precluding all testimony regarding OSHA or MOSHA because C & M, as an employer that created the openings in the stairwells, exposed its own employees to the hazard and left them unguarded, in violation of MOSHA and could therefore be liable under MOSHA for its violation; C & M, thus, owed Nocar a duty to maintain a safe workplace. To the extent that the court prohibited the expert from testifying to the *existence* of a legal duty, it did not err because the existence of a legal duty is a question of law to be decided by a court.

In addition, the trial court did not err in submitting the issues of assumption of the risk or contributory negligence to the jury because inferences could be drawn in favor of either party based upon the facts presented at trial.

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Stephen P. Norman v. Scott C. Borison, et al., No. 54, September Term, 2009, filed May 7, 2010. Opinion by Wright, J.

http://mdcourts.gov/opinions/cosa/2010/54s09.pdf

Torts - Intentional Torts - Defamation - Procedure

Torts - Intentional Torts - Defamation - Defenses - Privileges - Absolute Privileges

Facts: Appellant, Stephen Norman, was the owner, operator and attorney for Sussex Title, LLC ("Sussex"). Appellees are attorneys who filed a class action lawsuit on behalf of homeowners alleging that several companies and real estate professionals engaged in mortgage fraud.

Appellees posted copies of complaints filed in both state court and federal court on the World Wide Web. Appellees did not name Norman as a defendant or identify him by name in the state complaint, federal complaint, or first amended federal complaint. The second amended federal complaint does not name Norman or Sussex as defendants, but the complaint does refer to Norman several times. Two of the appellees were also quoted in published articles in The Baltimore Sun, The Washington Post, and The Daily Record; however, the quotes did not specifically identify Norman or Sussex.

Norman filed suit for defamation in the Circuit Court for Montgomery County alleging that appellees defamed him by circulating copies of the state and federal complaints on the internet and speaking to reporters. On appellees' motion, the circuit court dismissed the complaint because: 1) Norman lacked standing to file suit for defamation, and 2) the statements were protected by the absolute judicial privilege.

Held: The Court of Special Appeals affirmed. A company is a separate entity from its owners and shareholders, and the rights and responsibilities of the company are separate and distinct from those of its owners and shareholders. The owner of a company, therefore, does not have standing to sue for damages arising from the alleged defamation of his company. Accordingly, the Court held that Norman does not have standing to file suit for defamation.

The Court next explained that, even if it were to assume that Norman does have standing, the circuit court was nevertheless correct in dismissing the case because the allegedly defamatory statements are protected by the absolute privilege.

In so holding, the Court rejected Norman's argument that the republication of court documents on the World Wide Web voided the privilege. The Court reiterated that complaints are public documents and that court proceedings, records, and documents are open to the public. The law does not distinguish based upon where, or in what manner, a public document is viewed by members of the public. The Court concluded that the redistribution or dissemination of pleadings to parties outside the judicial process did not void the privileged status.

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Hansen v. City of Laurel, No. 425, September Term, 2009, filed June 2, 2010. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2010/425s09.pdf

TORTS - LOCAL GOVERNMENT TORT CLAIMS ACT (LGTCA) - NOTICE OF CLAIM -SERVICE UPON CITY ADMINISTRATOR OF MUNICIPALITY WITHIN PRINCE GEORGE'S COUNTY IS NEITHER STRICT COMPLIANCE WITH NOR SUBSTANTIAL COMPLIANCE WITH SECTION 5-304 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE.

Facts: Jerry P. Hansen, the appellant, sued the City of Laurel (the "City"), a local government under the Local Government Tort Claims Act (the "LGTCA"), in the Circuit Court for Prince George's County, alleging that he had been discharged wrongfully from employment with the City on the basis of a disability. The City filed a motion to dismiss asserting that Hansen had not satisfied the LGTCA's notice requirements codified in section 5-304. Hansen responded that he gave notice to the City Administrator within the 180-day notice period. The court granted summary judgment in favor of the City on the ground that the notice had not been given to the proper recipient under section 5-304.

Held: Affirmed. Hansen did not strictly comply with the notice requirement because the plain language of the notice statute required that notice be given to the county attorney for Prince George's County, as the City is located in that county. Hansen did not substantially comply with the notice requirement because the City Administrator, to whom notice in fact was given, did not occupy a position that is charged with investigating tort claims against the City.

Hansen v. City of Laurel, No. 425, September Term, 2009, filed June 2, 2010. Opinion by Eyler, Deborah S., J.

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ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated May 10, 2010, the following attorney has been disbarred by consent from the further practice of law in this State:

PHILIP MICHAEL STOFFAN
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By an Order of the Court of Appeals of Maryland dated May 10, 2010, the following attorney has been placed on inactive status by consent, effective immediately, from the further practice of law in this State:

ROBERT PHILIP THOMPSON
*

By an Order of the Court of Appeals of Maryland dated June 4, 2010, the following attorney has been disbarred, effective immediately, from the further practice of law in this State:

RICHARD WAYNE ALLISON, II
*

The following attorney has been replaced upon the register of attorneys in this State as of June 22, 2010:

C. TRENT THOMAS
*

By an Order of the Court of Appeals of Maryland dated June 28, 2010, the following attorney has been indefinitely suspended by consent from the further practice of law in this State:

NELSON BERNARD DORSEY, JR.
*

JUDICIAL APPOINTMENTS

On May 27, 2010, the Governor announced the appointment of V. Michael Whalen to the Circuit Court for Cecil County. Judge Whalen was sworn in on June 24, 2010 and fills the vacancy created by the retirement of the Hon. Dexter M. Thompson.

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On May 27, 2010, the Governor announced the appointment of Karen Christy Holt Chesser to the District Court for St. Mary's County. Judge Chesser was sworn in on June 30, 2010 and fills the vacancy created by the retirement of the Hon. John F. Slade, III.

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RULES ORDERS AND REPORTS

Rules Order pertaining to the **164th Rules Report** regarding foreclosures was filed on June 8, 2010:

http://mdcourts.gov/rules/ruleschanges.html