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Facts: On 24 September 2002, Washington Management and Development Company, Inc. applied to the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission (the "Commission") for approval of a preliminary plan of subdivision (the "Preliminary Plan") for 47 residential lots (there is one existing dwelling already on the property) in Prince George's County. Archer's Glen Partners, Inc., Respondents, subsequently acquired Washington Management and Development Company's interest in the project. The proposed subdivision (the "Property") consisted of 236.45 acres along Bald Eagle Road and is located in the so-called planned Rural Tier of Prince George's County, as defined by the 2002 Prince George's County Approved General Plan (the "General Plan"). The Planning Board approved the Preliminary Plan at a hearing on 20 February 2003, subject to certain conditions not relevant to resolution of this case. The Planning Board expressed its approval and the bases therefore in a Resolution adopted on 27 March 2003.

A group of area residents, individually and collectively referred to as the Greater Baden Aquasco Citizens Association (collectively, "Petitioners"), filed, in the Circuit Court for Prince George's County, a petition for judicial review of the Commission's action. The Circuit Court affirmed the decision of the Planning Board. Petitioners appealed to the Court of Special Appeals. In an unreported opinion (hereinafter referred to as *Archers Glen I*), a panel of the intermediate appellate court held that the Planning Board failed to articulate sufficiently its findings in support of its conclusion that the Preliminary Plan conformed to the recommendations of the relevant area Master Plan. The Court of Special Appeals vacated the Circuit Court's judgment and directed that the case be remanded to the Planning Board for further proceedings. Although resolving the issue was unnecessary to the intermediate appellate court's holding, the

court, pursuant to Maryland Rule 8-131(a), chose to comment on the parties' dispute regarding whether the Planning Board was required to consider the subdivision's compliance with both the General Plan and the Master Plan, or only the Master Plan. The court, however, noted that the parties did not litigate the issue before the Planning Board. As a result of this fact and its decision to vacate and remand the case, the court decided that it was unnecessary and inappropriate to make a definitive ruling on the issue.

On remand, the Planning Board held another public hearing, on 23 June 2005, regarding the Preliminary Plan. Following the hearing, the Planning Board approved the Preliminary Plan anew, again with certain conditions not relevant to resolution of this case. On 29 September 2005, the Planning Board adopted an Amended Resolution evidencing the reasons for its approval of the Preliminary Plan.

Petitioners filed a second petition for judicial review in the Circuit Court. The Developer and the Commission responded to the petition, indicating their intent to participate in the litigation. On 2 June 2006, the Circuit Court remanded the case to the Planning Board for "further specific and factually supported consideration[s] and findings" regarding the Preliminary Plan's conformance to the recommendations of the General Plan as "incorporated in the Master Plan when not thereby contradicted or amended." Specifically, the Circuit Court held that the Planning Board needed to make specific findings regarding the "number of new dwelling units constructed and projected to be constructed between 2000 and 2025 in the whole of Prince George's County; the number of dwelling units already approved for construction in the Rural tier of Prince George's County; and whether the addition of 46 new dwelling units in the Rural Tier will cause growth in the Rural Tier since 2000 to exceed 0.75-1.00% of overall projected dwelling unit growth." The Developer and the Commission jointly filed a timely Notice of Appeal to the Court of Special Appeals.

A panel of the Court of Special Appeals, different than the one that decided *Archers Glen I*, reversed the judgment of the Circuit Court, in a reported opinion. *Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 933 A.2d 405 (2007) (*Archers Glen II*). In the Court of Special Appeals on this occasion, Petitioners argued for the first time that the Commission lacked standing to participate in the judicial review of its own decision. The intermediate appellate court disagreed.

Petitioners also contended that the Court of Special

Appeals's unreported opinion in *Archers Glen I* discussing the potential legal effect to be accorded the General Plan in the subdivision process served as the "law of the case"; thus, the recommendations of the General Plan bound the Planning Board in considering and acting on the Preliminary Plan. The intermediate appellate court, however, held, in *Archers Glen II*, that *Archers Glen I* did not decide the issue of whether the General Plan was binding, and thus, the law of the case doctrine did not apply. The Court of Special Appeals went on to hold that the Planning Board had "discretion to determine whether the preliminary subdivision plan conformed . . . to the goals, objectives, policies, and strategies in the General Plan." Finally, the Court of Special Appeals concluded that the Planning Board's approval of the Preliminary Plan was supported by substantial evidence.

The Court of Appeals granted Petitioners' petition for a Writ of Certiorari to consider two questions. First, may the Prince George's County Planning Board participate as a party in a judicial review of its decision approving a Preliminary Plan for a residential development? Second, does the law of the case doctrine apply to a Court of Special Appeals's opinion in the same proceeding which addresses a legal question pursuant to Md. Rule 8-131(a) in order to provide "guidance" and "to avoid the expense and delay of additional appeals"?

Held: Affirmed. The Court of Appeals addressed first the issue of whether the Prince George's County Planning Board had standing to participate as a party in a judicial review of its decision approving a Preliminary Plan for a residential development. The Court noted that Petitioners conceded at oral argument before it that a challenge to the standing of the Commission was not raised in the Circuit Court, but argued that the Developer and the Commission had not asserted Petitioners' waiver of the standing challenge in the Court of Special Appeals in *Archers Glen II*. In essence, according to Petitioners, the Commission and the Developer waived their right to assert Petitioners' waiver as a defense to the Commission's lack of standing. The Court disagreed with Petitioner's proposition, however, and determined that it would not address the issue of standing because it was not raised in the trial court and because it was undisputed that one party on each side of the litigation had standing in the case.

The Court of Appeals then addressed whether the portion of the Court of Special Appeals's unreported opinion in *Archers Glen I* directed to the legal effect of the General Plan in the subdivision review process, established the "law of the case" and

bound the Commission on remand. The Court of Appeals noted that the law of the case doctrine requires that once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case. According to the doctrine, such a ruling is binding on the litigants and courts alike, unless changed or modified after reargument, and neither the question decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal. The Court held that the doctrine of the law of the case was inapplicable here because in *Archers Glen I*, the Court of Special Appeals did not decide the issue of whether the General Plan was a binding document in the subdivision review process in Prince George's County. The Court observed that *Archers Glen I* is clear that its limited reflection on the role of the General Plan is not binding on the parties. The Court also noted that even if Petitioners' application of the law of the case doctrine in the circumstances of this case were correct, it is clear that, in Maryland, dicta not adopted as a final determination may not serve as the binding law of the case. Thus, the Court held that the discussion of the legal role of the recommendations of the General Plan in the subdivision approval process in Prince George's County in *Archers Glen I* did not resolve finally the issue or preclude the parties from litigating the issue on remand. As such, it could not have been the law of the case, nor was it intended to be so by the appellate panel that decided *Archers Glen I*.

The Court concluded by noting that all parties devoted substantial portions of their briefs to arguing whether the General Plan's Growth Objectives are binding on the Commission and applicants in the subdivision review process, but that neither question in Petitioners' petition fairly embraced this disputation. The Court held that the issue was not properly before it and determined that it would not address it.

Betty Garner, et al. v. Archers Glen Partners, Inc., et al., No. 126, September Term 2007, filed 9 June 2008, Opinion by Harrell, J.

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CRIMINAL LAW – DEFENDANT'S RIGHT TO A SPEEDY TRIAL

Facts: Defendant, Mahumu Kanneh, was charged with sexual abuse of a minor and related offenses. Although Kanneh was arrested on August 18, 2004, his trial was repeatedly postponed for different reasons, mainly the time it took to process the DNA evidence, and the inability to secure a qualified interpret in Kanneh's native language of Vai. Finally, on July 17, 2007, thirty-five months later, the court dismissed the case on the grounds that Kanneh's right to a speedy trial had been violated. The State appealed to the Court of Special Appeals, and before the intermediate appellate court could hear the case, the Court of Appeals granted certiorari. *State v. Kanneh*, 402 Md. 352, 936 A.2d 850 (2007).

Held: Reversed. The Court of Appeals determined that a 35 month delay from the time of arrest to the start of a trial is of sufficient length to require a court to engage in a speedy trial analysis, but it does not necessarily support a conclusion that a defendant's right to speedy trial was violated.

Having decided that speedy trial analysis was appropriate, the Court of Appeals then applied the four factor balancing test established in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), to determine whether Kanneh's right to a speedy trial had been violated. This four factor test considers: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant.

Applying the "length of delay" factor, the Court of Appeals placed little weight on the significance of the 35 month delay for two reasons. First, as articulated in *Barker*, the length of the delay "is necessarily dependent upon the peculiar circumstances of the case." *Barker*, 407 U.S. at 530-31, 92 S.Ct. at 2192, 33 L.Ed.2d at 117. Because this case was "very complicated" and involved the presentation of DNA evidence, the Court a lengthy delay was more acceptable than it would be in a simple case. Second, under *Glover*, 368 Md. at 225, 792 A.2d at 1168, "length of delay" is not a weighty factor.

In considering the "reasons for the delay" factor, the Court of Appeals noted that under *Barker*, the extent to which this factor should be weighed against the state depends on how much responsibility the state has for the delay. *Barker*, 407 U.S. at 531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117. The Court noted that the postponements that resulted from the unavailability of DNA evidence were neutral and justified. Further postponements were

largely the result of the unavailability of an interpreter in Kanneh's native language, Vai. The Court of Appeals concluded that this delay did not weigh heavily against the State because the unavailability of an interpreter was not the result of bad faith by the State. Both parties and the court administration had gone to great lengths to find an interpreter. Finally, the trial date was also postponed in order for the court to assess Kanneh's competency to stand trial. The Court of Appeals concluded that this delay should not be weighed against the State, as it is solely for the benefit of the defendant.

In considering the "assertion of the right to speedy trial" factor, the Court of Appeals noted that under *Barker*, courts should weigh the frequency and force of speedy trial objections. Here, because Kanneh failed to object to any postponements until the very last postponement, the Court of Appeals weighed this factor against Kanneh and in favor of the State.

Finally, in considering the "prejudice" factor, the Court of Appeals recognized that under *Barker*, this factor implicates three interests: (i) preventing oppressive pretrial incarceration; (ii) minimizing anxiety and concern of the accused; and (iii) limiting the possibility that the defense will be impaired. The Court concluded that there was minimal prejudice with respect to the first two interests. With respect to the possibility that the defense would be impaired, the most important interest, the Court of Appeals concluded that there was no evidence of any actual prejudice to Kanneh's case. There was no claim that any of Kanneh's witnesses died or became unavailable as a result of the delay.

Therefore, on balance, Kanneh's right to a speedy trial was not violated.

State of Maryland v. Mahamu Kanneh, No. 94, September Term 2007, filed March 14, 2008. Opinion by Greene, J.

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CRIMINAL LAW - EVIDENCE - HEARSAY - ADMISSIONS OF A PARTY OPPONENT - A STATEMENT MADE BY A PROSECUTOR AT A PLEA HEARING ADOPTING THE STATEMENT OF ANOTHER PERSON AS TRUE MAY BE ADMISSIBLE IN EVIDENCE AGAINST THE STATE AS AN ADMISSION OF A PARTY OPPONENT AT A RELATED CRIMINAL TRIAL.

CRIMINAL LAW - APPEALS - HARMLESS ERROR - ERROR WILL BE HARMLESS WHERE THE ERROR RESULTED IN THE ERRONEOUS EXCLUSION OF FURTHER EVIDENCE OF THE DEFENDANT'S GUILT.

Facts: On 25 July 2003, the body of Jermaine "Jay" Carter was found in a wooded area near Brown Station Elementary School in Gaithersburg, Maryland. It bore two gunshot wounds, one in the back of the head and one in the right shoulder. Although the murder weapon was never located, ballistics analysis indicated that the victim's wounds were caused by two .38 caliber bullets fired from the same gun. A medical examiner testified at Bellamy's trial that either shot would have been fatal.

Police investigators retrieved four full or partial shoe impressions from the victim's body. One particular impression, on the back of the victim's shirt, came from a "lug type tread." Two impressions on the front of his shirt, as well as another on his right cheek, were made by an athletic shoe. These impressions were "consistent" with the athletic shoes being worn by Bellamy at the time of his arrest.

The State presented at Bellamy's trial the following timeline of events regarding the murder. Around 6:00 P.M. on 24 July 2003, the victim and his cousin, Jermaine Jackson, took a bus to visit the victim's ex-girlfriend, Aisha Deen. Deen was married to Bellamy, although they were not living together. There was some evidence that Deen and Carter had resumed their relationship.

They arrived back at the victim's home between 11:30 P.M. on 24 July and 12:45 A.M. on 25 July. A group of people, playing loud music, were hanging out in the parking lot of Carter's apartment complex. One of the group members, Amber Walker, testified that Carter walked past Bellamy and said "hello." Bellamy ignored Carter, but later told Walker, "We're going to get him." After making that statement to Walker, Bellamy proceeded to the home of Calvin "Southside" Welch, and told Welch that the victim was outside.

Shannon Contee, another parking lot reveler, testified that Andre Saunders, Welch, and Bellamy went into Welch's apartment at one point during the evening. The three men left the apartment,

and according to Carter's mother, Bellamy came to Carter's home and asked for Carter. Carter left a few minutes later with Bellamy. Bellamy, Carter, Welch, Saunders, and Jerrell Jackson then went to the park behind the elementary school. A few minutes after the men entered the park, Jackson rejoined the group gathered in the parking lot. Five minutes later, Contee heard two gunshots. She testified that she then saw Bellamy, Welch, and Saunders running to Welch's apartment. Amber Walker and Shenise Johnson testified that they heard the gunshots as well and that the gunshots were about two to three seconds apart.

The evening after the murder, 25 July 2003, Detective James Drury and Detective Gary Turner went to Bellamy's apartment. No one answered the door. The detectives walked around the complex and eventually found Bellamy with Jerrell Jackson. Bellamy attempted to mislead the detectives as to his name, but eventually identified himself correctly.

Around 12:30 A.M. on 26 July 2003, Bellamy arrived at the home of a girlfriend, Topeka Walker, in Gaithersburg. Bellamy appeared upset. He spent the night at her home. Around 11:00 A.M., Bellamy received a phone call from Jerrell Jackson. While they were talking, a news report appeared on the television about a body being found behind Brown Station Elementary School. Bellamy told Jackson to come to Topeka Walker's house to bring him a "bag" and his "hammer" (gun).

When Jackson arrived at Walker's home, he gave Bellamy a book bag. Bellamy gave Jackson some cocaine, with instructions to sell it to support Bellamy's sister and her child. Bellamy and Topeka Walker got a ride with Jackson to the Rockville Metro station. They took a bus to Silver Spring, where, at Bellamy's request, Walker bought him a bus ticket to Rochester, New York. On 30 July 2003, arrest warrants were issued in Maryland for Bellamy, Jackson, Saunders, and Welch. Bellamy was arrested in Rochester two weeks later at the home of his half-sister.

The State also presented the testimony of Daniel Rothwell, a jailhouse informant. Based on an agreement with prosecutors, Rothwell agreed to testify at Bellamy's trial in exchange for the State placing various charges against him on the stet docket. Rothwell claimed that Bellamy told him, while they were cellmates, that: (1) Carter and the mother of Bellamy's children were involved in a sexual relationship; (2) Bellamy did not regret killing Carter; (3) Bellamy always carried a "hammer" or gun; and (4) witnesses and the prosecutor in Bellamy's case could get hurt or killed. Rothwell also claimed that, on behalf of Bellamy, he communicated threatening messages to Saunders while

incarcerated, urging him not to cooperate with prosecutors regarding Carter's murder.

Bellamy's defense argued at his trial that it was Welch, not Bellamy, who murdered Carter. Bellamy called Welch and Saunders as witnesses. Both Welch and Saunders invoked the Fifth Amendment privilege against self-incrimination. Because Saunders's testimony was therefore unavailable, Bellamy sought to have statements attributed to Saunders from Saunders's earlier guilty plea hearing admitted as evidence.

Prior to Bellamy's trial, the State reached a plea agreement with Saunders. The terms of the agreement were that Saunders would plead guilty to being an accessory after the fact to the murder. The plea was contingent on Saunders "testifying fully and truthfully," if required, at Bellamy's trial. At Saunders's plea hearing on 28 May 2004 in the Circuit Court for Montgomery County, the court expressed some concern over the terms of the plea agreement requiring Saunders to "testify truthfully." The prosecutors at the plea hearing repeatedly and expressly stated that Saunders's statements were truthful. The State's proffer at Saunders's plea hearing identified Welch, not Bellamy, as the shooter.

Bellamy sought to have the portions of the proffer at Saunders's plea hearing admitted as evidence. The State objected that the statements were inadmissible hearsay. The trial judge agreed with the State. Bellamy was convicted by the jury of first degree murder and use of a handgun in the commission of a crime of violence. The trial court sentenced Bellamy to life in prison. The Court of Special Appeals affirmed the convictions in an unreported opinion. The Court of Appeals granted Bellamy's Petition for Certiorari to consider whether the exclusion from evidence at his trial of the part of the State's proffer from Saunders's plea hearing was reversible error.

Held: Affirmed. The Court of Appeals held that the statements at Saunders's plea hearing should have been admitted as an adoptive admission of a party opponent, in accordance with Maryland Rule 5-803(a)(2). The Court rejected the State's contention that it should not be considered a party for purposes of Maryland Rule 5-803(a)(2). The Court surveyed the national case law on this issue, noting that the various federal circuit and state courts had split on the issue. The Court found the rationale and policy justification more persuasive in those cases that treat the government as a party opponent for the purpose of the hearsay rule. Thus, the Court concluded that the statements from Saunders's plea hearing should have been admitted as an

adoptive admission of a party opponent (the State) because the prosecutors expressly manifested their belief in the truth of those statements in court at Saunders's plea hearing.

The Court of Appeals nonetheless held that the error in excluding the testimony was harmless and, thus, Bellamy's conviction must be affirmed. The Court noted that although the wrongfully excluded statements indicated that Welch, not Bellamy, was the shooter, the statements also indicated that Bellamy lured Carter from his apartment, initiated the attack against Carter, and restrained Carter so Welch also could attack. The excluded statements provided evidence that Bellamy was guilty of first degree murder as an aider and abetter. The error in excluding the statements must be considered harmless where the excluded evidence provided further evidence of the defendant's guilt. Thus, the convictions were affirmed.

Joseph Nathan Bellamy v. State of Maryland, No. 47, September Term 2007, filed 14 February 2008, Opinion by Harrell, J.

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CRIMINAL LAW - EXTORTION - MD. CODE (2002, 2005 REPL. VOL.), §§ 3-701 and 3-706 OF THE CRIMINAL LAW ARTICLE - SUFFICIENCY OF EVIDENCE - THREAT TO INITIATE CIVIL LITIGATION

Facts: Respondent Scott L. Rendelman was convicted of one count of extortion and one count of extortion by written threat. Respondent had mailed a letter to his former employer, William Elmhirst, wherein he accused Mr. Elmhirst of stealing $22,000.00 from him and demanded damages plus interest compounded at nine percent. Respondent also threatened to sue Mr. Elmhirst for this amount if Mr. Elmhirst did not pay Respondent a $100,000.00 "settlement demand." The Court of Special Appeals reversed the convictions, holding that there was insufficient evidence to support Rendelman's convictions. The intermediate appellate court stated that to be convicted of extortion, the defendant must both intend to achieve a wrongful goal and attempt to do so by a

wrongful means. Looking to the Hobbs Act, 18 U.S.C. § 1951, for guidance, the court held that a threat to sue, even if made in bad faith, is not "wrongful" within the meaning of §§ 3-701 and 3-706 of the Maryland Criminal Law Article.

Held: Affirmed. The evidence was legally insufficient to support the convictions of extortion and extortion by written threat. A threat to pursue a legal action unless a settlement payment is rendered is not extortion by wrongful threat of economic harm. We discern the meaning of "wrongful" within the meaning of §§ 3-701 and 3-706 to mean "contrary to law" or "unlawful." We look to Maryland law governing an individual's pursuit of frivolous civil litigation. If, upon examining the law, we find the individual retains a lawful right to engage in certain conduct, a threat to engage in that conduct unless payment is rendered does not constitute extortion under Maryland law. There are no criminal sanctions for the initiation or continuation of frivolous civil actions under Maryland law; therefore, a threat to litigate a meritless cause of action cannot constitute a "wrongful" act under Maryland law.

State of Maryland v. Scott L. Rendelman, No. 74, September Term, 2007, filed May 9, 2008. Opinion by Greene, J.

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CRIMINAL LAW – IDENTITY THEFT – STATUTORY INTERPRETATION – IDENTITY OF ANOTHER

Facts: On March 19, 2003, Kazeem Adeshina Ishola attempted to open a bank account using a false driver's license representing the identity of a fictitious person. Ishola was arrested, charged, and tried for violation of Md. Code, Crim. Law § 8-301 (c), which prohibits an individual from "knowingly and willfully assum[ing] the identity of another." The jury, during deliberations, inquired as to the definition of "another." The jury then convicted Ishola and the Circuit Court for Howard County sentenced him to two years.

Ishola noted a timely appeal to the Court of Special Appeals which affirmed and reasoned that the term "another" was not ambiguous, that fictitious identities were encompassed by the statute, and that the State was not required to prove the existence of a person whose identity was being assumed. *Ishola v. State*, 175 Md. App. 201, 210, 927 A.2d 15, 20 (2007). Ishola's petition for writ of certiorari was granted by the Court of Appeals. *Ishola v. State*, 401 Md. 172, 931 A.2d 1095 (2007).

Held: Reversed. The Court of Appeals held that the word "another," as it is used in the § 8-301 (c), is ambiguous. The Court noted that as a criminal statute, the rule of strict construction required that any ambiguity be resolved in favor of the defendant. The Court noted other instances in the Code in which the legislature explicitly employed the term "fictitious person." The Court concluded that the legislature did not intend to include "fictitious person" within the meaning of "another." The Court found this interpretation consistent with the legislative history of the statute, the structure of § 8-301, the purpose of the law, and a proposed amendment that would have added "or create a false identity" to the law. Consistent with this conclusion, the State is required produce evidence necessary to prove that a defendant used the identity of another actual person.

Ishola v. State, No. 66, September Term, 2007, filed April 10, 2008. Opinion by Greene, J.

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CRIMINAL LAW – IMPROPER CLOSING ARGUMENTS

Facts: Petitioner, Kevin Ricardo Lee, was indicted for various criminal offenses that allegedly occurred on September 13th, 2003, arising from a shooting involving Richard Cotton in Baltimore City. At trial, the State presented one eyewitness, who testified that on September 12, 2003, Lee and Cotton were

involved in a fight on her porch and that Lee had a gun at that time. The eyewitness further testified that the following day she heard gunshots and from an upstairs window in her home, she witnessed Lee running up the street after Cotton with an "object that looked like a gun" from which smoke appeared to be emanating. Subsequently, after being shown photographs by the police, she identified Lee as the individual involved in the altercation with Cotton on her porch, as well as the one chasing Cotton down the street on the day of the shooting. On cross-examination, she admitted that, about a year after the shooting, she told her brother that she had not seen anything, and stated on redirect that she did so because she "didn't want [her brother] in the middle of it." Two detectives and a police officer also testified regarding their investigation of the case, including the eyewitness's identification of Lee. Forensic evidence was not offered. Lee called Cotton, the victim, to the stand; Cotton testified that Lee did not shoot him. Cotton also stated that he did not recall any altercation with Lee on the day before the shooting, as well as any guns or any discussion of guns. He also responded that although he was "pretty intoxicated" when he was shot, he was "sober enough" to know that Lee was not the culprit. Lee also presented the testimony of the brother of the eyewitness, who remarked that the view of the eyewitness from the upstairs window to the street would have been obstructed and that she had told him that she had not seen anything.

After the State presented closing argument, Lee's counsel, in his closing, posited that the State's evidence was based entirely on the testimony of the eyewitness, whose account of the events had changed over time. Lee's counsel suggested, therefore, that the jury should believe Cotton, the victim, who testified that Lee did not shoot him; he remarked that it would "go[] against nature" for the victim to lie on the stand and not identify his assailant. On rebuttal, the State argued that the jurors should not believe Cotton, because he was untruthful, because Cotton was following "the law of the streets"; Lee's counsel interposed several objections, which were immediately overruled. The prosecutor continued, asserting that she represented the citizens of Baltimore City, who had a right to be safe in their neighborhoods; she asked, "and those residents ask that you teach this defendant . . . that disputes aren't settled by the blast of a gun." Lee's counsel objected, to no avail; when the judge cursorily overruled his objections, he also requested a curative instruction, after which the judge informed the jury that the prosecution was making "an argument," and, repeating the instructions given earlier, that appeals to passion and prejudice were not evidence. Immediately thereafter, the

State's Attorney completed her closing argument by repeating the "laws of the streets" and asking the jury to teach the defendant a lesson not to settle disputes with violence; Lee's counsel objected, again met with immediate denial.

The jury deliberated and found Lee guilty of several offenses. Lee noted an appeal to the Court of Special Appeals, which in an unreported opinion, affirmed the judgment of the Circuit Court. Lee filed a Petition for Writ of Certiorari, which the Court of Appeals granted. *Lee v. State*, 403 Md. 304, 941 A.2d 1104 (2008).

Held: The Court of Appeals reversed and held that the trial judge erred in permitting the State to argue to the jury during rebuttal argument that a victim's testimony was not credible because he was following "the law of the streets," that the jury should protect their community and clean up the streets, and that the jury should teach the defendant not to abide by the "laws of the streets" in settling disputes. The Court determined that the State's argument that Cotton was not credible because Cotton was following "the law of the streets" alluded to facts not in evidence and had the effect of leading to juror speculation. The Court concluded that the "law of the streets" comments were not permitted under the "invited response doctrine" because it is not applicable when defense counsel has made no improper argument. The Court noted that the argument that the jurors should consider their own interests and those of their fellow Baltimoreans, and should clean up the streets to protect the safety of their community, was improper because it clearly invoked the prohibited "golden rule" argument. The Court determined that the "laws of the streets" argument directed to teach Lee a lesson was also an improper allusion to facts not in evidence.

Considering the cumulative effect of the comments, the Court held that the improper remarks were not isolated occurrences, the weight of the evidence was less than substantial, and that the trial judge did not contemporaneously and specifically address the improper arguments such that the jury understood that the remarks were improper and not evidence to be considered in reaching a verdict. Therefore, the comments, cumulatively, were sufficiently prejudicial to deny Lee a fair trial and warrant reversal.

Kevin Ricardo Lee v. State of Maryland, No. 132, September Term, 2007, filed June 13, 2008. Opinion by Battaglia, J.

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REAL PROPERTY - MORTGAGE - FORECLOSURES - NOTICE - DUE PROCESS - PROPERTY OWNER'S RIGHT TO DUE PROCESS OF LAW IS NOT VIOLATED WHERE, PRIOR TO FORECLOSURE SALE, TRUSTEES SEND TIMELY NOTICE OF SALE TO PROPERTY OWNER (AT A VALID ADDRESS) VIA CERTIFIED MAIL AND FIRST-CLASS MAIL, AND FIRST-CLASS MAIL IS NOT RETURNED MARKED UNDELIVERABLE, BUT CERTIFIED MAIL IS RETURNED MARKED UNCLAIMED, AND PROPERTY OWNER IS FOUND, AS A MATTER OF FACT, NOT TO HAVE RECEIVED EITHER NOTICE.

Facts: On 15 May 2001, Joyce Griffin and her fiancé, Herberto Tubaya, purchased a home at 70 Bar Harbor Road (the "Property") in Pasadena, Maryland. The deed was appropriately recorded in the land records of Anne Arundel County. Griffin testified that she and Tubaya took out a mortgage on the Property in March 2003, which they refinanced on 27 July 2004 with Argent Mortgage. Tubaya died on 25 December 2004. Griffin and her daughter continued to live in the Property.

After Tubaya's death, Griffin wanted to remove his name from the deed. On or about 23 January 2005, she spoke with a representative of Ameriquest, a company at the time affiliated with and owned by the same parent company as Argent Mortgage, who informed her that he would send someone to her house that night to sign the relevant documents. Late that evening, or possibly in the early morning hours of 24 January 2005, Griffin signed the paperwork, solely in her name, taking out a new loan. The new deed of trust extinguished the 2004 mortgage on the Property, paying off a balance of $139,315.29. The new loan was for a principal amount of $153,750.00.

Initial monthly payments of principal and interest were set at $1,127.10. Paragraph 15 of the new deed of trust provided that "notice to [Griffin] in connection with this Security Instrument shall be deemed to have been given to [Griffin] when mailed by first class mail or when actually delivered to [Griffin]'s notice address if sent by other means." At all relevant times, Griffin resided at and received mail at the Property. She testified to not having problems receiving mail at the Property.

Griffin, without the financial support of her fiancé, quickly fell into default by failing to make payments on the new loan. Appellees, Howard Bierman, Jacob Gessing, Carrie M. Ward and Ralph DiPietro ("the Trustees"), were appointed as substitute trustees under the deed of trust on 15 September 2005. The Trustees docketed a foreclosure action in the Circuit Court for Anne Arundel County on 23 September 2005. The Trustees mailed concurrently to Griffin, by certified mail and first-class mail,

a letter required by Maryland Code (1974, 2003 Repl. Vol.), Real Property Article, § 7-105 informing her that a foreclosure action "may be or has been" docketed.

Mrs. Griffin did not receive either letter. The letter sent by certified mail was returned to the Trustees marked "unclaimed." The letter sent by regular mail was not returned to the Trustees by the Postal Service. On 10 October 2005, Griffin filed a chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of Maryland. The filing of the bankruptcy petition stayed the foreclosure proceedings in the Circuit Court. Griffin voluntarily dismissed the petition in March 2006.

On 5 April 2006, the Trustees again sent Griffin § 7-105 notices, via certified mail and first-class mail, regarding the revitalized foreclosure proceeding. On 19 April 2006, the Trustees mailed Griffin, again via both first-class and certified mail, the notice required by Maryland Rule 14-206(b)(2) informing Griffin of the time, date (2 May 2006), and location of the public foreclosure sale. This notice also was mailed to the Property address, addressed to "Occupant," via certified and first-class mail. The certified letter addressed to Occupant was returned to the Trustees "unclaimed." The trial court found that Griffin did not receive any of these notices. None of the regular mailings were returned to the Trustees. On 1 May 2006, the certified letter dated 5 April 2006 was received by the Trustees from the Postal Service marked "unclaimed."

The Property was sold at auction on 2 May 2006 to Elizabeth A. Strasnick for $223,000. Ms. Griffin did not attend the sale. The trial court found that she first was informed of the foreclosure sale, after it occurred, when Strasnick posted notice on the door of the house on the Property informing Griffin that Strasnick had purchased the Property. On 17 May 2006, 15 days after the foreclosure sale, the 19 April 2006 certified mail letter was returned to the Trustees marked "unclaimed." It was conceded that the Trustees took no additional actions to notify Griffin of the pendency of the sale after receiving the returned "unclaimed" certified letters. It also is without dispute that the Trustees complied with Maryland statutory law and this Court's rules regarding notice requirements in the foreclosure process.

Griffin contacted an attorney and filed exceptions to the foreclosure sale. After hearing testimony and argument, the Circuit Court issued an Order and Memorandum Opinion on 1 November 2006 refusing to set aside the foreclosure sale. The

sale was then ratified. Griffin filed a timely appeal to the Court of Special Appeals, arguing that the foreclosure process violated her right to due process of law for lack of notice. Before the intermediate appellate court could decide the appeal, the Court of Appeals issued a Writ of Certiorari to consider whether the Circuit Court was correct in denying Griffin's exceptions to the foreclosure sale.

Held: Affirmed. The Court of Appeals perceived that Griffin's constitutional challenge to the Maryland foreclosure scheme encompassed both an as-applied and facial challenge. The Court reviewed the rules governing procedural due process, finding that while due process requires notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections, it does not require receipt of actual notice. The Court then compared the instant case to a recent Supreme Court case, *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006). The Court found that the Trustees complied with the procedures recommended by the Supreme Court in *Jones*. The Court also noted that facts in *Jones* were distinguishable from the present case because the Trustees were never aware that their attempts to contact Griffin by regular mail had been unsuccessful. Finally, the Court of Appeals rejected Griffin's policy arguments, holding that those concerns should be addressed by the Executive and Legislative branches of the State government. The Court noted that deference to the other branches of government was especially necessary because they appear to be poised to act to address the systemic foreclosure problem during the 2008 legislative session.

Joyce A. Griffin v. Howard N. Bierman, et al., No. 79, September Term 2007, filed 12 February 2008, Opinion by Harrell, J.

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TRANSPORTATION - STATUTORY INTERPRETATION - SECTIONS 11-127 AND 21-101.1 (b)(1) OF THE MARYLAND TRANSPORTATION ARTICLE- "USED BY THE PUBLIC"

Facts: On June 27, 2005, Julian M. Ambrose was cited for a violation of § 16-303 (c) of the Maryland Transportation Article, driving a motor vehicle while his privilege to drive was suspended, as a result of a routine identification check at the Old Farm Road Gate of Fort Detrick. Fort Detrick is a research laboratory-oriented military installation under the control of the United States Army. When Mr. Ambrose and his vehicle approached the Fort Detrick entry gate, the civilian security guard assigned to the checkpoint stopped Mr. Ambrose's vehicle and requested to see Mr. Ambrose's identification. Upon receiving Mr. Ambrose's identification, the security guard was unable to determine a date on the card. The security guard then requested the assistance of a police officer with the United States Department of Defense, to verify Mr. Ambrose's identification. The military police officer ran Mr. Ambrose's identification through two databases and learned that Mr. Ambrose's driving privileges were suspended by the State of Maryland. Mr. Ambrose was cited and charged, under the Assimilated Crimes Act, 18 U.S.C. § 13 (a), with driving on a suspended license in violation of § 16-303 (c) of the Maryland Transportation Article. Mr. Ambrose was later convicted of the offense by a United States Magistrate Judge. Mr. Ambrose sequently appealed the conviction to the United States District Court for the District of Maryland, disputing the magistrate judge's interpretation of the phrase "used by the public" in two statutory provisions defining key terms of § 16-303 (c): the definition of "highway," § 11-127, and the private property provision, § 21-101.1 (b)(1). Md. Code (1977, 2002 Repl. Vol.), Transportation Article. The case came before the Court of Appeals after the District Court certified two questions of law pursuant to the Maryland Uniform Certification of Questions of Law Act.

Held: The Court of Appeals held that the phrase "used by the public" contained in the definition of "highway" in § 11-127 and in the private property provision of § 21-101.1 (b)(1) of the Maryland Transportation Article does not require proof of an unrestricted right of the public to use the pertinent highway or private property where the offense allegedly occurred. Instead, the proper inquiry involves a factual determination as to the character of the use of the highway or private roadway/property by the public, regardless of the restrictions placed on the public's access.

The Court first stated that the question was of first impression because the Court had never addressed Sections 11-127 and 21-101.1 (b)(1)'s requirement that the highway or private property be "used by the public." Citing to *Locklear v. State*, 94 Md. App. 39, 614 A.2d 1338 (1992); *Akins v. State*, 35 Md. App. 155, 370 A.2d 111 (1977); *State v. Walmsley*, 35 Md. App. 148, 370 A.2d 107 (1977), the Court then pointed out that the question had been before Court of Special Appeals on three separate occasions. In analyzing two of the three cases - *Walmsley* and *Akins*, the Court noted that the Court of Special Appeals had adopted a rights-based test to determine whether the roadway upon which the defendant was stopped was a highway used by the public - asking whether there is an unrestricted right of the public to "travel on the road, driveway, or parking lot." See *Walmsley*, 35 Md. App. at 152, 370 A.2d at 109. The Court held these cases to be of little persuasive authority because the Maryland General Assembly amended the statutory language contained in § 16-303 in 1978 to expand its scope to specifically include private property, thereby abrogating the intermediate appellate court's test and prior holdings.

The Court then focused its analysis on the plain meaning of the phrase, stating that in its most plain reading, the phrase means that the public must (in fact) have traveled upon the roadway/property in some manner. The Court then looked to that the statutory context of the phrase, noting that it solidified the Court's interpretation. The Court stated that utilizing the rights-based test in determining whether private property was "used by the public" would render the phrase superfluous and meaningless. The Court asserted: "The underpinning of private property is that the owner controls and restricts the access and use of the property. Requiring a private roadway, driveway, or parking lot to have an unrestricted right of use by the public would, in total, render ever private roadway, driveway, or parking lot immune to the motor vehicle laws contained in Title 21. Such a result would be illogical and violate the canons of statutory construction." The Court then concluded the applicable test for determining whether a thoroughfare, roadway, or other property is "used by the public" in conformity with either § 11-127 or § 21-101.1 (b)(1) is a factual inquiry regarding the character of the public's use of said roadway/property. Whether the public's access or use of the roadway/property is restricted in any way by the owner is of no consideration of the inquiry.

United States of America v. Julian M. Ambrose, Misc. No. 2, September Term, 2007, filed February 20, 2008. Opinion by Greene, J.

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ZONING AND PLANNING - MARYLAND CODE, ARTICLE 66B – COMPREHENSIVE ZONING – CIRCUIT COURT JURISDICTION TO REVIEW CHALLENGE TO COMPREHENSIVE ZONING IS PROPER UNDER THE DECLARATORY JUDGMENT ACT WHERE NO SPECIAL STATUTORY FORM OF REMEDY EXISTS

ZONING AND PLANNING – MARYLAND CODE, ARTICLE 66B, § 4.02 – COMPREHENSIVE ZONING – ZONING REGULATIONS DO NOT VIOLATE THE UNIFORMITY REQUIREMENT WHERE UNIFORMLY APPLIED, ALTHOUGH PROPERTIES WITHIN THE SAME CLASSIFICATION ARE AFFECTED DIFFERENTLY

ZONING AND PLANNING – COMPREHENSIVE ZONING – STANDARD OF REVIEW – UNIFORMLY APPLICABLE ZONING REGULATIONS ARE NOT ARBITRARY, CAPRICIOUS, DISCRIMINATORY, OR ILLEGAL MERELY BECAUSE THEY CREATE DISPARATE RESULTS AMONG PROPERTIES

Facts: Anderson House, LLC, owns a property in the Town-Center area of the City of Rockville. Although developed originally with a single-family detached, two-story home, the structure on the property has been converted into a commercial office use exclusively, while maintaining in general appearance the residential character of the structure. After revision of the text of Rockville's zoning ordinance by Ordinance 7-2003 created a new zone, the "C-T" (Commercial Transition) zone, the Anderson House property was rezoned from the "O-2" (Transitional Office) zone to the C-T zone by Ordinance 21-2005. Specific provisions of the C-T zone address side and rear setback requirements, lot width requirements, minimum lot size, floor area, and building height in a uniform way that creates in application disparate results among affected properties in the C-T zone.

Anderson House filed in the Circuit Court for Montgomery County a petition for judicial review of the final action of an administrative agency, pursuant to Maryland Code, Article 66B, § 4.08(f) and Rockville City Code § 25-100, challenging the rezoning of the Anderson House property to the C-T zone and attacking as violative of the uniformity standard of Maryland Code, Article 66B, § 4.02(b) and the identicality standard of City Code § 25-1 the underlying development standards created for the C-T zone through the text amendment to the Rockville City Code Zoning Article. The City responded by contesting Anderson House's right to challenge the zoning ordinance text amendment through the modality of a petition for judicial review.

Out of an abundance of caution, in light of the City's jurisdictional challenge to the text amendment aspect of the judicial review action challenge, Anderson House also filed in

the Circuit Court a Complaint for Declaratory Judgment and Injunctive Relief pursuant to Maryland Code, Courts and Judicial Procedure Article, §§ 3-403, 3-406, 3-409. The Circuit Court, at the request of Anderson House and with the consent of the City, consolidated the two proceedings under Case No. 266338-V. The records of the two cases were cross-adopted.

Anderson House's amended Complaint for Declaratory Judgment and Injunctive relief also contended that the Ordinances were arbitrary, capricious, and an invalid exercise of zoning authority and, thus, not rationally related to the general public interest. Anderson House sought an injunction permanently restraining and enjoining the enforcement, operation, and effect of the Ordinances.

The Circuit Court ruled on the consolidated cases by Memorandum Opinion and Order, giving judgment for the City of Rockville. In its memorandum, the Circuit Court reviewed first whether it had jurisdiction to hear the cases. It held that it lacked jurisdiction to determine under Anderson House's judicial review action the challenge to Ordinance 7-03 creating the C-T zone through text amendment. The court concluded, however, that it had jurisdiction in the judicial review action to consider the assertions as to Ordinance 21-05, which placed the Anderson House property into the C-T zone. The court rejected all of Anderson House's challenges to Ordinance 21-05. Without further comment as to jurisdiction, it also rejected Anderson House's challenges to the development regulations of the C-T zone.

Anderson House filed a timely Notice of Appeal to the Court of Special Appeals. Before that court could decide the appeal, the Court of Appeals exercised its discretion to issue a writ of certiorari to consider the appeal.

Held: Judgment of the Circuit Court for Montgomery County affirmed. In reaching this conclusion, the Court of Appeals determined 1) that the Circuit Court properly had jurisdiction to hear the challenges; 2) that the City's actions did not violate either the State uniformity requirement or the Rockville City "identicality" requirement; and 3) that the City's actions were not an invalid exercise of its zoning authority.

The Court noted that, despite the Circuit Court's expressed reservations concerning its jurisdiction to review the text amendment to the zoning code, the Circuit Court properly exercised that jurisdiction. Concerning Ordinance 7-03, a zoning ordinance text amendment, the Court concluded that the Circuit Court properly had jurisdiction to consider an action for

Declaratory Judgment. With regard to Ordinance 21-05, placing the Anderson House property into the C-T zone through a comprehensive map amendment, the Court determined that jurisdiction existed because Anderson House brought the combined action seeking both Declaratory Judgment and judicial review of a zoning action. The Court determined it unnecessary in this case to resolve finitely under which modality the Circuit Court properly exercised its jurisdiction, inasmuch as it clearly had jurisdiction under one or the other action.

The Court of Appeals next considered the uniformity requirement at Maryland Code, Article 66B, § 4.02(b)(2). After reviewing the history of the uniformity requirement, as well as its judicial application in other states and in Maryland, the Court found that the requirement is intended to avoid the singling-out of an individual property or group of properties for different or disparate treatment. The Court found that the requirements of the C-T zone were generally applicable, although they resulted in disparate outcomes for different properties within the same zone. Because the requirements were generally applicable, they did not violate the uniformity requirement.

The Court further held that the identicality requirement of the Rockville City Code, if there was one, was analogous to the uniformity requirement of the Maryland Code. Regulations must be applied to each property within the zone, but need not produce a uniform result for every property in the zone.

Finally, the Court determined that the City did not exceed its zoning powers by creating the C-T zone and placing the Anderson House property within the zone. The Court noted the presumed validity of a comprehensive zoning action and found that the City's actions bore the requisite relationship to the public health, comfort, order, safety, convenience, morals, and general welfare. Thus, although Anderson House's property was the largest property within the City placed in the C-T zone, and although the uniform-in-application regulations created disparate results when comparing it to other C-T zoned properties, the City of Rockville properly exercised its zoning powers.

Anderson House, LLC v. Mayor & City Council of Rockville, No. 40, Sept. Term 2007, filed 8 January 2008. Opinion by Harrell, J.

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ZONING AND PLANNING - CONDITIONAL USE - APPROVAL BY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF BALTIMORE OF A CONDITIONAL USE IS SUBJECT TO JUDICIAL REVIEW UNDER MARYLAND CODE, ARTICLE 66B, § 2.09 AS A ZONING ACTION

ZONING AND PLANNING - ZONING ORDINANCE TEXT AMENDMENT - PROVIDED THAT NO SPECIAL FORM OF STATUTORY REMEDY IS AUTHORIZED AND IMPLEMENTED, ZONING ORDINANCE TEXT AMENDMENTS ARE NOT SUBJECT TO JUDICIAL REVIEW AS A ZONING ACTION UNDER MARYLAND CODE, ARTICLE 66B, § 2.09

Facts: MBC Realty and others (Petitioners) sought relief from the Circuit Court for Baltimore City from three municipal ordinances enacted by the Mayor and City Council of Baltimore (Respondent). Ordinance 03-513 amended the text of the Urban Renewal Plan for the Market Center area of the City to allow billboards on publicly-owned stadia or arenas if approved by ordinance as a conditional use. Ordinance 03-514 amended the zoning ordinance to permit billboards on publicly owned stadia or arenas, if approved as a conditional use. Finally, Ordinance 03-515 approved, as a conditional use, the erection of 14 billboards on the exterior of the First Mariner Arena (the "Arena").

Petitioners challenged the three Ordinances initially by filing a Petition for Judicial Review, pursuant to Maryland Code, Article 66B, § 2.09(a). Respondent moved to dismiss the judicial review action, arguing that the Ordinances could not be challenged by way of judicial review because they were not "zoning actions" within the meaning of § 2.09(a). Hedging their bets against Respondent's motion to dismiss, Petitioners also filed a declaratory judgment action under Maryland's Declaratory Judgment Act making essentially the same allegations as advanced in the judicial review action. The Circuit Court ultimately agreed with Respondent and dismissed the judicial review action. That judgment was appealed.

The Court of Special Appeals, in *MBC Realty, LLC v. Mayor & City Council of Baltimore*, 160 Md. App. 376, 864 A.2d 218 (2004) (hereinafter *MBC Realty I*), affirmed the Circuit Court. The intermediate appellate court concluded that the actions taken by the Mayor and City Council of Baltimore did not work a zoning reclassification such that a "zoning action" had occurred, as defined in *Board of Commissioners of Carroll County v. Stephans*, 286 Md. 384, 408 A.2d 1017 (1979).

Concerning the declaratory action, Respondent and others next sought its dismissal on the ground that the complaint failed to state a claim upon which declaratory relief could be granted

because the exclusive means of challenging the legality of the Ordinances was via a petition for judicial review under Maryland Code, Article 66B, § 2.09. Of course, at this point in time, the dismissal of Petitioners' judicial review action had been litigated conclusively in the *MBC Realty I*. The Circuit Court dismissed Petitioners' declaratory action, with prejudice, based on Respondents' arguments. Petitioners appealed once more to the Court of Special Appeals.

While that appeal was pending before the Court of Special Appeals, a panel of that court, in *Armstrong v. Mayor & City Council of Baltimore*, 169 Md. App. 655, 906 A.2d 415 (2006), held that an ordinance enacted by the Mayor and City Council of Baltimore granting a conditional use constituted a "zoning action" for the purposes of § 2.09(a) and thus was reviewable in a judicial review action in Circuit Court. Soon thereafter, in *Maryland Overpak Corporation v. Mayor & City Council of Baltimore*, 395 Md. 16, 909 A.2d 235 (2006), the Court of Appeals, agreeing with the analysis in *Armstrong*, articulated an analytical paradigm by which courts should determine whether a discrete land use decision is reviewable under § 2.09(a) as a "zoning action." *Maryland Overpak* and *Armstrong* had the effect of eviscerating the precedential weight of *MBC Realty I*.

The Court of Special Appeals, in its unreported opinion in the appeal in the present case then before it, explained that *MBC Realty I* rested on a premise concerning the scope of section 2.09 that had been undermined by *Armstrong* and *Maryland Overpak*. The intermediate appellate court, after recounting the facts and reasoning in *Armstrong* and *Maryland Overpak*, expressed its conviction that Petitioners were entitled to challenge Ordinance 03-515 in a judicial review action as a "zoning action" under § 2.09(a). The Court of Special Appeals considered also whether a declaratory judgment action might be appropriate under the circumstances, but determined that § 2.09 was the exclusive remedy for challenging the three ordinances.

The Court of Appeals granted Petitioners' petition for a writ of certiorari to consider: 1) whether the Court of Special Appeals erred when it ruled that Article 66B, section 2.09(a) of the Maryland Code, provides the exclusive remedy and source of subject matter jurisdiction for legal challenges to the Ordinances so that the request for declaratory relief challenging the enactment of the conditional use text amendment (Ordinance 03-514) could not proceed, and 2) whether the trial court on remand could hear a challenge to the validity of a conditional use text amendment in a judicial review action.

Held: Judgment of the Court of Special Appeals vacated. The Court of Appeals noted that declaratory/injunctive relief is appropriate where no special statutory remedy exists for review of an administrative action. The Court then noted that in Baltimore City a special statutory remedy exists for a "zoning action" under Maryland Code, Article 66B, § 2.09.

As to Ordinance 03-515, the Court determined that the Court of Special Appeals correctly concluded that the challenges mounted could not proceed under a declaratory/injunction action because passage of the ordinance, a conditional use approval, constituted a zoning action. The Court of Appeals instructed that, under the unusual circumstances here present, the Circuit Court for Baltimore City should allow Petitioners to couch their challenges to this Ordinance as a petition for judicial review under Maryland Code, Article 66B, § 2.09.

The Court concluded, however, that the Court of Special Appeals improperly extended that remedy by apparently compelling Petitioners to raise their challenges to the zoning ordinance text amendment, Ordinance 03-514, in the same judicial review action, rather than in the declaratory/injunction action. The Court instructed that judicial review of a zoning ordinance text amendment by a circuit court is inappropriate under § 2.09(a) as a "zoning action." The Court further found that no other special form of remedy precluded review of the challenge to Ordinance 03-514 through a declaratory/injunction action. For these reasons, the Court determined that Petitioners properly pursued via their declaratory/injunction action their grievances with regard to Ordinance 03-514, the zoning ordinance text amendment to the Baltimore City Zoning Article.

MBC Realty, LLC v. Mayor and City Council of Baltimore, No. 48, Sept. Term 2007, filed 13 February 2008, Opinion by Harrell, J.

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COURT OF SPECIAL APPEALS

CIVIL PROCEDURE - FINAL JUDGMENT - COLLATERAL ESTOPPEL.

Facts: The Montgomery County Department of Health and Human Services ("Department") found appellant, Tamara A., responsible for indicated neglect of her daughter, Shirah. Ms. A. requested a contested case hearing at the Office of Administrative Hearings ("OAH"), and the Department filed a motion to dismiss that requested hearing, arguing that the issue whether Ms. A. had neglected Shirah had been fully litigated in the Circuit Court for Montgomery County. That court had previously declared Shirah a Child in Need of Assistance ("CINA") based on a finding that Ms. A.'s conduct toward Shirah's two older siblings placed Shirah's health and/or welfare at substantial risk of harm. The Administrative Law Judge ("ALJ") denied the Department's motion to dismiss, and the Department filed a petition for judicial review of that decision. Ms. A. filed a motion to dismiss the Department's petition, arguing that the ALJ's ruling was not subject to immediate appeal. The Circuit Court for Montgomery County denied Ms. A.'s motion to dismiss the petition but affirmed the ALJ's denial of the Department's motion to dismiss the request for a contested case hearing. The Department appealed. Ms. A. filed a motion to dismiss the appeal.

Held: Motion to Dismiss Denied; Judgment Reversed. The Department was entitled to petition for judicial review of the denial of its motion to dismiss a contested case hearing on collateral estoppel grounds under Maryland Code (1984, 2006 Repl. Vol.) § 10-222(b). Further, the circuit court should have granted the Department's petition and reversed the ALJ's denial of the Department's motion to dismiss the contested case on the grounds of collateral estoppel. The previous finding that Shirah was a CINA insofar as Ms. A. neglected her by placing her at substantial risk of harm is identical to the Department's finding that Ms. A. was responsible for indicated neglect because "substantial risk of harm" is a form of neglect under the CINA statute. Remanded to the circuit court with instructions to (1) reverse the order of the ALJ denying the Department's motion to dismiss the contested case hearing, and (2) remand the case to the OAH with directions to dismiss the contested case.

Montgomery County Dep't of Health and Human Servs. v. Tamara A., No. 1575, September Term, 2006, filed March 5, 2008. Opinion by Barbera, J.

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CIVIL PROCEDURE - TRIAL PROCEDURE - VIDEOTAPED DEPOSITION OF EXPERT WITNESS. Maryland Rule 2-419(a)(4) provides that "[a] videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose even though the witness is available to testify if the notice of that deposition specified that it was to be taken for use at trial." Maryland Rule 2-416 addresses the procedures for recording a deposition by videotape, and provides that "a party may cause a stenographic record of the deposition to be made at the party's own expense." Even though Rule 2-419(a)(4) does not specify that the stenographic transcript of a deposition that was recorded on videotape may be read to the jury in lieu of playing the recording, it was not an abuse of the trial judge's discretion to permit the reading of the transcript to save time in the absence of any contention that the videotape somehow presented a different impression of the witness's testimony.

TRIAL PROCEDURE - EVIDENCE - DATA RELIED UPON BY OPPOSING PARTY'S EXPERT WITNESS. Trial court may, pursuant to Maryland Rule 5-703(b), permit cross-examining party to introduce into evidence data reviewed by expert witness where such data could assist the jury in evaluating the validity and probative value of the expert's opinions and inferences.

TRIAL PROCEDURE - DEPOSITION OF WITNESS WHO TESTIFIES AT TRIAL AND IS SUBJECT TO CROSS-EXAMINATION CONCERNING THE DEPOSITION TESTIMONY. Maryland Rule 5-802.1(a) provides that a statement made by a witness who testifies at the trial and is subject to cross-examination concerning the statement is not excluded by the hearsay rule if the statement was given under oath at a deposition and is inconsistent with the declarant's trial testimony.

Facts: The Circuit Court for Baltimore City entered judgment upon a jury verdict in favor of the defendants in a case seeking damages for lead paint exposure. The plaintiffs — Lanay Brown, through her legal guardian and next friend Catherlina Queen, and Catherlina Queen, individually — were unsuccessful in persuading a jury that the defendants — Daniel Realty Company, Wendy Perlberg, Daniel Perlberg, and Marvin Perlberg — negligently maintained a house at 3630 Reisterstown Road in Baltimore City, where Ms. Queen and Ms. Brown resided for approximately four years.

The plaintiffs claimed that, because of the defendants' negligence, the property contained flaking, chipping, and peeling lead-based paint during the time the plaintiffs resided there. Ms. Queen alleged that Ms. Brown suffered permanent brain damage because of her exposure to the lead-based paint, and Ms. Queen also sought damages on her own behalf for medical expenses that she

incurred as Ms. Brown's legal guardian and for severe emotional distress and mental anguish that Ms. Queen allegedly suffered. At the close of the plaintiffs' case, the court granted the defendants' unopposed motion for judgment as to Ms. Queen's personal claims. At the conclusion of all evidence, the case was submitted to the jury on issues, and the jury found there was no flaking, chipping, or peeling paint at the subject property while Ms. Brown resided there. Based upon that dispositive finding of fact, the court entered judgment for the appellees.

Ms. Brown noted an appeal to the Court of Special Appeals, and contended that the trial court committed reversible errors when it: (1) allowed defendants' counsel to read the transcript of the *de bene esse* deposition of one of the plaintiffs' experts to the jury rather than playing the videotape of the deposition; (2) admitted an unredacted copy of a test report that had been prepared by an expert for the plaintiff; and (3) allowed the defendants to read into evidence portions of Ms. Queen's deposition after Ms. Queen's personal claims had been disposed of by the defendants' motion for judgment such that she was no longer an individual plaintiff.

Held: Judgment affirmed. In an opinion by Judge Meredith, the Court of Special Appeals addressed three trial procedure issues. The first issue involved the use of the stenographic transcript of a videotaped deposition. Maryland Rule 2-419(a)(4) provides that "[a] videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose even though the witness is available to testify if the notice of that deposition specified that it was to be taken for use at trial." Maryland Rule 2-416 addresses the procedures for recording a deposition by videotape, and provides that "a party may cause a stenographic record of the deposition to be made at the party's own expense." Even though Rule 2-419(a)(4) does not specify that the stenographic transcript of a deposition that was recorded on videotape may be read to the jury in lieu of playing the recording, it was not an abuse of the trial judge's discretion to permit the reading of the transcript to save time in the absence of any contention that the videotape somehow presented a different impression of the witness's testimony.

The second issue addressed the trial court's admission in evidence of an unredacted copy of a report that had been prepared by one of plaintiffs' expert witnesses. The Court of Special Appeals held that the report was relevant, and further, that a trial court may, pursuant to Maryland Rule 5-703(b), permit the

cross-examining party to introduce into evidence data reviewed by an expert witness where such data could assist the jury in evaluating the validity and probative value of the expert's opinions and inferences.

The third issue addressed a claim that Ms. Queen had been improperly impeached because, after she had testified for the plaintiff, the trial court permitted defense counsel to read into evidence inconsistent portions of her deposition at a point in time that Ms. Queen was no longer a party. Maryland Rule 5-802.1(a) provides that a statement made by a witness who testifies at the trial and is subject to cross-examination concerning the statement is not excluded by the hearsay rule if the statement was given under oath at a deposition and is inconsistent with the declarant's trial testimony. Consequently, there was no error in permitting defense counsel to read the inconsistent portions of the deposition testimony.

Lanay Brown, et al. v. The Daniel Realty Company, et al.
No. 1965 September Term, 2006. Opinion filed on May 29, 2008 by Meredith, J.

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CONSTITUTIONAL LAW - MARYLAND AUTOMOTIVE WARRANTY ENFORCEMENT ACT

The Maryland Automotive Warranty Enforcement Act, also known as the "Lemon Law," Md. Code Ann. (1984, 2001 Repl. Vol.), Com. Law §§ 14-1501 through 14-1504; appellant failed to establish (1) the existence of a defect, (2) that the defect was one that the manufacturer was unable to fix after a reasonable number of attempts and (3) that the defect substantially interfered with his use and market value of the vehicle.

The Magnuson-Moss Warranty Act, 15 U.S.C.A. §§ 2301–2312 (1982, 1997 Supp.); Burden of Production; Under the Act which supplements state law with regard to its limited and implied warranty provisions, appellant could only establish that there was a defect

in the vehicle and that the defect existed at the time of sale by producing expert testimony. 5 Lynn McLain, Maryland Practice: *Maryland Evidence*, State and Federal § 300.7 (1987).

The Maryland Consumer Protection Act, Md. Code Ann. (1975, 2006 Repl. Vol.), Com. Law § 13-301(14)(xi), captioned "Proscribed Practices"; to prevail on his § 13-301 Unfair and Deceptive Trade Practices claim, appellant was required to prevail on his Lemon Law claim because failure to prove a defect under the Maryland Lemon Law is a failure to prove unfair and deceptive trade practices.

Facts: Buyer of demonstrator vehicle filed lawsuit against manufacturer, alleging breach of warranties under Maryland Automotive Warranty Enforcement Act, Magnuson-Moss Warranty Act and Maryland Consumer Protection Act. The Circuit Court for Prince George's County granted manufacturer's motion for summary judgment. Buyer appealed.

Held: Affirmed. The Court of Special Appeals held that:

(1) Evidence proffered by buyer was insufficient under state law to prove existence of defect, precluding recovery under Maryland Automotive Warranty Enforcement Act and Magnuson-Moss Warranty Act.

(2) Buyer's failure to make successful claim under Maryland Automotive Warranty Enforcement Act precluded recovery under Maryland Consumer Protection Act.

Calbert Augustus Laing v. Volkswagen of America, Inc., No. 1040, September Term, 2007, decided May 29, 2008. Opinion by Davis, J.

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CRIMINAL LAW - EVIDENCE - IMPEACHMENT - PRIOR INCONSISTENT STATEMENTS - TO IMPEACH A WITNESS USING A PRIOR INCONSISTENT STATEMENT, THE STATE MUST LAY A SUFFICIENT FOUNDATION.

EVIDENCE - WITNESSES - THE STATE CANNOT CALL A WITNESS AS MERE SUBTERFUGE TO ENTER A PRIOR INCONSISTENT STATEMENT THAT WOULD OTHERWISE BE INADMISSIBLE.

Facts: On January 8, 2006, David W. Webb, Jr. approached a man riding, what he believed, was his stolen black Mongoose bicycle. While Mr. Webb and the man, later identified as Joshua Brown, were conversing about the bike, another man approached Mr. Webb and shot him twice in the head. Appellant, Steven Jones, was arrested and charged in the shooting.

At trial, the state called Joshua Brown as a witness. Mr. Brown testified that on January 8, 2006, he was on Locust Street with a Mongoose bicycle with "somebody named Kevin." The State then asked Mr. Brown "what happened?" In response, Mr. Brown testified that "the boy named Kev shot [Mr. Webb]." The State then asked a series of questions regarding the place and time of Mr. Brown's interview with the Hagerstown Police Department. The State asked Mr. Brown if he remembered telling the officers that "Twenty" was on Locust with him. He responded that he did not know anyone named "Twenty." When asked if he said the name "Twenty" in the interview with police, Mr. Brown responded that he did say the name "Twenty" but that "Twenty" was not on Locust Street. The State then called the police officer to testify to Mr. Brown's statement that "Twenty" shot Mr. Webb. Appellant was convicted by a jury of attempted first degree murder, first degree assault, use of a handgun in commission of a crime of violence, possession of a handgun under the age of 21, and wearing, carrying or transporting a handgun on or about one's person.

Held: Affirmed. The use of prior inconsistent statements for purposes of impeachment is governed by Rule 5-613(a). The foundational requirements under the Rule are essentially the same as existed at common law. The Rule requires that, before the end of the examination, the examiner disclose the statement to the witness and give the witness an opportunity to admit, deny, or explain the prior statement. The Court has stated that there is no unvarying formula or ritual required to establish a foundation to impeach. With respect to an oral statement, this requirement is satisfied if the witness is advised of the circumstances under which he made a statement, and the witness states that he does not recall what he said.

In the present case, Mr. Brown was asked whether he remembered being interviewed about the shooting by the Hagerstown Police Department. He testified that he did not remember what he told the police officers. The State then reminded Mr. Brown of the specifics of his prior statement. It was clear from the State's

questions and Mr. Brown's responses that Mr. Brown had the opportunity to admit, deny, or explain the statement given to the police officers.

Under Spence v. State, 321 Md. 526 (1991), Bradley v. State, 333 Md. 593 (1994), and Walker v. State, 373 Md. 360 (2003), the State may not question a witness concerning an independent area of inquiry, if it has full knowledge that the questions will contribute nothing to its case, in order to introduce a prior oral inconsistent statement. If the State does not have full knowledge, the trial court is required to balance the probative value of the witness' testimony against its prejudicial nature to determine whether the State would be allowed to introduce the prior inconsistent statement to impeach the witness.

On the facts of this case, the record does not demonstrate that the State had full knowledge that the witness would recant his testimony, and the State had a legitimate purpose for calling the witness because the witness was involved in, and had factual information concerning, the dispute. In the absence of any indication to the contrary, this Court assumes the trial court conducted a balancing test under Rule 5-403 in determining admissibility of impeaching evidence. The court did not err in permitting extrinsic evidence of the witness's prior oral inconsistent statement.

Steven Jones v. State of Maryland, No. 1603, September Term, 2006, filed February 7, 2008. Opinion by Eyler, James R., J.

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CRIMINAL LAW – FOURTH AMENDMENT

Facts: The Annapolis City Police Department conducted an investigation into the homicide of Darnell Brown. Amongst the items found on the deceased was a cell phone case, with the cell phone missing. Mr. Brown's cell phone records revealed a series of calls made just prior to his death. The calls were traced and

several officers traveled to the address obtained from the traced phone records – the home of James Jones, appellant, and Tammy Jones. The officers did not have a search warrant. Upon arriving, the officers initially veered left in the forked driveway and met the Webbs, parents of Tammy Jones. The officers learned that the Webbs, and appellant and Ms. Jones, share the property, but live in different houses on the property. Mrs. Webb was friendly and helpful with the officers. Additionally she indicated that she had some suspicions with regard to the actions of her daughter and son-in-law.

The officers then traveled to Ms. Jones's home, and knocked on the door. Ms. Jones answered a couple minutes later. Ms. Jones was also accommodating, voluntarily talking to the officers in a different building on the premises, and allowing inspection of her car. The car was found to have evidence relating to the murder, was photographed, and towed for safekeeping. Subsequently, the officers applied for a search warrant for the vehicle. One "No Trespassing" sign was on the property at the time the officers were on the premises.

Appellant moved to suppress the search of the car and all evidence which flowed from it based on the fact that the property had a "No Trespassing" sign; thus, that the police entry onto the property was unlawful. The Circuit Court for Anne Arundel County denied the motion. In a bench trial, the court convicted appellant of second degree murder.

Held: Affirmed. Police officers, on legitimate business, do not commit an unlawful search and seizure by approaching a dwelling and questioning the occupants ("knock and talk"). The presence of trespassing signs, if the approach is otherwise lawful, does not make it unlawful.

James Desmond Jones v. State of Maryland, No. 875, September Term, 2007, filed February 28, 2008. Opinion by Eyler, James R., J.

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CRIMINAL LAW - INMATE GRIEVANCE PROCEDURE

Facts: The Maryland Parole Commission is the agency charged with the responsibility of administering the laws applicable to inmates released on mandatory supervision, including the application of credits earned prior to release.

In 1990, pursuant to a policy adopted by it, the Maryland Parole Commission advised the Division of Correction, that effective July 1, 1989, it was the intent of the Commission that all diminution of sentence credits earned by an inmate prior to release on mandatory supervision be rescinded upon revocation of release by the Commission, unless expressly stated otherwise.

Appellants were convicted, sentenced, released on mandatory supervision and convicted of new crimes. The Commission revoked appellants' release on mandatory supervision, and pursuant to the Commission's policy, the Division of Correction refused to apply diminution of sentence credits when appellants were reincarcerated.

Appellants filed inmate grievances because the Division of Correction refused to apply diminution of sentence credits.

Held: Affirmed. The inmate grievance procedure was not the appropriate mechanism to challenge the Commission's policy.

Alfred Fraction v. Secretary, Department of Public Safety & Correctional Services, No. 585, September Term, 2007 & *Gregory Nutter v. Secretary, Department of Public Safety & Correctional Services*, No. 586, September Term, 2007, filed May 8, 2008. Opinion by Eyler, James R., J.

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CRIMINAL LAW - MIRANDA - INTERROGATION - SUFFICIENCY OF THE EVIDENCE.

Facts: Appellant Maurice Darryl Prioleau was arrested in connection with an operation to distribute cocaine on the streets of Baltimore City. During the arrest, an officer removed appellant from a marked cruiser and escorted him up to the door of a suspected stash house. Another officer was standing at the door and said, "What's up, Maurice?" Appellant responded, "I'm not going in that house. I've never been in that house." Appellant moved to suppress the statement as the product of un-Mirandized custodial interrogation. The court denied the motion.

Held: Affirmed. The phrase "What's up?" was merely a greeting, given the circumstances in which it was spoken, and the officer's words did not constitute interrogation as the term is understood in *Miranda* jurisprudence.

Maurice Darryl Prioleau v. State of Maryland, No. 2669, September Term 2005, filed March 6, 2008. Opinion by Barbera, J.

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CRIMINAL LAW – REGISTRY OF SEX OFFENDERS

Facts: Appellant pled guilty to and was convicted of indecent exposure. The plea agreement included an understanding that appellant would be evaluated to determine if he was a sexual predator and an understanding that he would follow any recommendations as to treatment.

The court sentenced appellant to a term of imprisonment followed by probation, with a condition that he register as an "offender" under Criminal Procedure, Title 11, Subtitle 7.

Held: The condition that appellant register as an offender was invalid because it was not within the plea agreement and the convictions did not bring appellant within the definition of "offender" in Criminal Procedure sections 11-701 (d) and 11-704. Judgment otherwise affirmed.

Michael Raheem Duran v. State of Maryland, No. 333, September Term, 2007 & No. 728, September Term, 2007, filed May 9, 2008. Opinion by Eyler, James R., J.

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CRIMINAL LAW - SENTENCING - CORRECTION OF ILLEGAL SENTENCE. A motion filed pursuant to Maryland Rule 4-345(a), asking a court to correct an illegal sentence, generally must assert an illegality that inheres in the sentence itself, rather than an error in the proceedings that led to the conviction. A claim that the underlying conviction should never have been entered because successive prosecutions are barred by double jeopardy principles is not a claim that is properly raised by way of a motion to correct an illegal sentence.

Facts: This case came to the Court of Special Appeals from the Circuit Court for Baltimore County following the denial of appellant's motion filed pursuant to Rule 4-345(a) to correct an allegedly illegal sentence. Appellant asserted in his motion that his sentence is illegal because he had previously been tried and convicted of a lesser included offense arising out of the same course of conduct which gave rise to his current sentence. As a consequence of the prior prosecution, appellant contends that the sentence he is currently serving is based upon a conviction that should have been barred by the legal protections against double jeopardy.

Held: Judgment affirmed. Although the Court of Special Appeals acknowledged that "it appears that Ingram's contention that his second trial may have been barred by the law's constitutional and common law protection against double jeopardy is supported by the decision of the Court of Appeals in *Anderson v. State*, 385 Md. 123 (2005)," the intermediate appellate court nevertheless affirmed the denial of appellant's motion to correct his sentence. Writing for the Court of Special Appeals, Judge Meredith wrote: "We hold that an argument that challenges the merits of a conviction is not properly raised by way of a motion to correct an illegal sentence." The Court of Special Appeals noted that a claim of double jeopardy can be waived if not properly preserved. Judge Meredith wrote: "It would be perverse indeed to prohibit an appellant from raising unpreserved double jeopardy claims on direct appeal, ... but permit

unpreserved double jeopardy claims to be raised by way of a Rule 4-345(a) motion. We are convinced that Rule 4-345(a) is not intended to reach every contention that the defendant was wrongly convicted." In this instance, the appellant had not raised any claim of double jeopardy on direct appeal, and could not raise the issue several years later by way of a motion attacking his sentence.

Anton Sherrod Ingram v. State of Maryland - Case No. 2895 September Term 2006. Opinion filed on May 2, 2008 by Meredith, J.

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FAMILY LAW - PATERNITY - PRESUMED FATHER - CHILD SUPPORT - BEST INTERESTS - GENETIC TESTING - FAMILY LAW ARTICLE § 5-203; § 5-1038(A) - ESTATES AND TRUSTS ARTICLE § 1-206 - LACHES - JUDICIAL ESTOPPEL - DUTY OF SUPPORT.

Facts: Vicki Jo Duckworth and Darren Kamp were married in 1983. Mr. Kamp had a vasectomy in 1987, after the birth of the couple's third child. In 1992, while Mr. Kamp and Ms. Duckworth were still married, Ms. Duckworth gave birth to Julie Kamp. Julie was the product of Ms. Duckworth's extramarital liaison. Shortly after Julie's conception, Ms. Duckworth told Mr. Kamp that she was pregnant with another man's child. Nevertheless, because the parties were still married, Julie was the presumed daughter of Kamp under Family Law § 5-1038(a) and Estates and Trusts § 1-206. For several years, while still married to each other, Kamp and Duckworth raised Julie as their daughter.

Kamp and Duckworth divorced in 1999. In the divorce proceedings, Kamp claimed that Julie was his child. The Circuit Court for Garrett County awarded Ms. Duckworth custody of Julie, and ordered Kamp to pay child support.

In 2005 the Department of Social Services, on Ms. Duckworth's behalf, requested an increase in this child support. Mr. Kamp, who had not previously challenged his paternity of Julie, responded by requesting a DNA paternity test of Julie. The court granted this request; the DNA test excluded Mr. Kamp as Julie's biological father. Mr. Kamp subsequently asked the circuit court to terminate

his child support obligation with respect to Julie, and the court granted this relief.

Held: Reversed. The Court of Special Appeals recognized that the court had discretion to order the paternity test, but determined that the circuit court first had to consider whether such a test was in Julie's best interests. It concluded: "Because the circuit court did not consider Julie's best interests, it erred in ordering the genetic testing."

The Court of Special Appeals also concluded that the lower court erred in terminating Mr. Kamp's child support obligation, because it relieved him of his statutory and common law duties of parental support, yet left intact Kamp's legal status as Julie's father. The court also failed to examine Julie's material needs and the parties' financial circumstances, and "improperly placed on Ms. Duckworth the burden of showing she 'could not get child support' from another man whom the parties assumed to be her biological father."

In addition, the Court determined that Kamp's request to vacate paternity was barred by laches, as his "prolonged delay in challenging Julie's paternity bars his request to terminate support." Kamp knew or had reason to know since 1992 that Julie is not his biological daughter. "By waiting until 2005 to assert a paternity challenge, when Julie was about thirteen years of age, appellee slept on his rights." The Court declined "to excuse [Kamp's] lack of diligence and allow him to proceed with his long-delayed claim" because it "would result in serious financial prejudice to Ms. Duckworth, as well as financial and emotional harm to Julie." The Court was also of the view that the doctrine of judicial estoppel barred Mr. Duckworth's request, as he admitted in his 1999 complaint for divorce, and subsequent requests for child custody, that Julie was his daughter.

Department of Human Resources, Garrett County Department of Social Services, Bureau of Support Enforcement ex rel. Vicki Jo Duckworth v. Darren Gerald Kamp, No. 2871, September Term, 2006. Opinion filed on May 30, 2008 by Hollander, J.

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LABOR & EMPLOYMENT – WORKERS COMPENSATION

Facts: In 1991, appellee filed a claim for compensation. Appellants paid compensation through February 2, 1993. On January 9, 1998, appellee filed a request for reopening due to a worsening of condition. On February 16, 1999, appellee's counsel sent a letter to the Commission, advising it that he was withdrawing the issues previously filed because they had been resolved by the parties. The Commission noted "CROR" on the letter, an acronym for continued reset on request. Pursuant to the informal resolution between the parties, compensation was paid through September 13,1998.

On July 14, 2006, appellee filed issues and a request for hearing. On August 25, 2006, the Commission held a hearing on appellees' request for temporary total benefits. The Commission denied the request on the ground that it was barred by the limitations period in L.E. section 9-736.

Section 9-736 requires that a request to modify an award must be filed within five years after the last compensation payment.

Held: Reversed and Remanded to the Circuit Court. The request to reopen, filed in 1998, was not effective in 2006 because the issue raised in 1998 had been resolved and the Commission's notation of "CROR" was tantamount to attempting to retain jurisdiction, which it cannot do under Vest v. Giant Food Stores, Inc., 329 Md. 461 (1993).

Giant Food LLC, et al. v. David Eddy, No. 1066, September Term, 2007, filed May 5, 2008. Opinion by Eyler, James R., J.

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MUNICIPAL CORPORATIONS - GOVERNMENTAL IMMUNITY

Facts: Ms. Bagheri parked her car in a parking garage located in Bethesda, Maryland that is operated by the Parking Operation Section of the Montgomery County Government. While walking to her car, inside the parking garage, Ms. Bagheri stepped onto an uneven portion of the concrete floor, tripped and fell, fracturing her right foot and injuring her knee and arm. The cause of her fall

was due to the county's failure to properly repair and maintain the uneven portion of the parking garage floor.

All of the funds collected from the operation of the parking garage are applied to the Bethesda Parking Lot District Fund. The revenues are used to pay principal and interest on any outstanding bonds issued to acquire, build, restore, or improve parking facilities within the parking District. The parking garage does not operate for profit.

Ms. Bagheri brought a negligence suit against the County in the Circuit Court for Montgomery County. The County's motion for summary judgment was granted on the basis that the suit was barred by governmental immunity.

Held: Affirmed. Ms. Bagheri contended, on appeal, that the operation of a parking garage is not a "governmental function" but a proprietary one because "the site of the occurrence in the subject parking garage was an area of public travel." Accordingly, she alleged that the County is, not immune from suit.

The Court of Special Appeals held that the County's operation of a parking garage is a "governmental function", entitled to immunity from liability for tortious conduct committed while acting in a governmental capacity. The operation of a parking garage fit squarely within the established definition of a "governmental function" because the parking garage was: 1) sanctioned by legislative authority; 2) operated solely for the public benefit, with no profit or emolument inuring to the County; and 3) intended to benefit the public health and promote the welfare of the whole public.

Whether the accident occurred in "an area of public travel" is not determinative of whether a municipality is engaged in a proprietary function. To accept appellant's "public travel" argument would unreasonably expand the existing "street, sidewalk, footway" exception to the usual rule of municipal immunity.

Raya S. Bagheri v. Montgomery County, Maryland, Case No. 782, September Term, 2007, filed May 6, 2008. Opinion by Salmon, J.

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TAXATION - MARYLAND PUBLIC INFORMATION ACT - STATUTORY EXEMPTION FROM DISCLOSURE FOR TAX RETURNS

Facts: Appellant, Carol MacPhail, requested under the Maryland Public Information Act ("MPIA") that appellee, the Comptroller of Maryland ("Comptroller"), disclose a copy of the Maryland tax return that was filed by her late mother's estate. Appellant asserted that she was a "person of interest" that was entitled to this particular "financial information" under Maryland Code (1984, 2004 Repl. Vol., 2007 Supp.) § 10-617(f)(2) and (3) of the State Government Article ("S.G."). The Comptroller denied the request, stating that the MPIA has a mandatory exception to its disclosure policy for those records that other Maryland statutes protect from disclosure. Included among those statutes is Md. Code (1988, 2004 Repl. Vol.), § 13-202 of the Tax-General Article ("T.-G."), which prohibits the disclosure of "tax information," including tax returns.

Appellant challenged the Comptroller's denial of her request in the Circuit Court for Baltimore County. The court upheld the Comptroller's decision, ruling that, under a plain reading of the MPIA, and absent any case law interpreting "financial information" to include tax records, "the [c]ourt could not order the Comptroller to turn over the records because the Legislature has directed that it not be done." Appellant appealed.

Held: Affirmed. Tax returns are not construed as "financial information" for purposes of the MPIA. The inspection of tax returns is contrary to S.G. § 10-615(2)(i), which prohibits disclosure of tax information. The Comptroller, as custodian of Maryland tax returns, must deny requests, under the MPIA, for disclosure of tax returns, unless a statutory exception applies.

Carol MacPhail v. Comptroller of Maryland, No. 2612, September Term 2006, filed February 5, 2008. Opinion by Barbera, J.

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ZONING - HISTORIC PRESERVATION - ADMINISTRATIVE AGENCY APPEALS.

Facts: Montgomery County's Historic District Commission denied the appellant's application for Historic Area Work Permit to demolish historic structure on the ground of substantial financial hardship. The agency denied the permit by a tie vote. In a circuit court action for judicial review, the appellant argued that the Commission's decision could not stand, because one of the members (who voted against the permit application) did not meet the statutory criteria to sit on the Commission when he was appointed or when the vote was taken. Circuit court upheld the agency decision.

Held: Affirmed. The appellant waived the issue of the qualification *vel non* of the member in question to sit on the Commission, and the effect, if any, of the member's not being qualified, by not raising it before the Commission. The issue was not one of subject matter jurisdiction and was one that required a factual inquiry only appropriately made at the agency level.

Halici, et al. v. City of Gaithersburg, Maryland, et al., No. 1048, 2007 Term. Opinion by Eyler, Deborah S., J., filed May 30, 2008.

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ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals of Maryland dated May 29, 2008, the following attorney has been disbarred, from the further practice of law in this State:

ALFRED WALKER, JR.
*

By an Order of the Court of Appeals of Maryland dated May 7, 2008, the following attorney has been indefinitely suspended by consent, effective June 1, 2008, from the further practice of law in this State:

KYRIAKOS P. MARUDAS
*

By an Order of the Court of Appeals of Maryland dated June 3, 2008, the following attorney has been disbarred by consent from the further practice of law in this State:

JONATHAN AMES STEINBERG
*

The following attorney has been replaced upon the register of attorneys in this Court as of June 5, 2008:

VIRGIL DUANE PARKER
*

By an Order of the Court of Appeals of Maryland dated June 5, 2008, the following attorney has been indefinitely suspended by consent from the further practice of law in this State:

BERNADETTE M. WILBON
*

By an Order of the Court of Appeals of Maryland dated June 11, 2008, the following attorney has been disbarred by consent from the further practice of law in this State:

HERBERT ALDON CALLIHAN, JR.
*

By an Opinion and Order of the Court of Appeals of Maryland dated June 19, 2008, the following attorney has been disbarred from the further practice of law in this State:

H. ALLEN WHITEHEAD
*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland as of June 20, 2008:

ANGELA THERESE FLOYD
*

JUDICIAL APPOINTMENTS

On May 7, 2008, the Governor announced the appointment of **VIDETTA ARTHYNE BROWN** to the District Court of Baltimore City. Judge Brown was sworn in on June 6, 2008 and fills the vacancy created by the elevation of Hon. Emanuel Brown.

*

On May 27, 2008, the Governor announced the appointment of the **HON. SALLY D. ADKINS** to the Court of Appeals of Maryland. Judge Adkins was sworn in on June 25, 2008 and fills the vacancy created by the retirement of the Hon. Dale R. Cathell.

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