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SUPREME COURT OF MARYLAND

Kobina Ebo Abruquah v. State of Maryland, No. 10, September Term 2022, filed June 20, 2023. Opinion by Fader, C.J.

Hotten, Gould, and Eaves, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2023/10a22.pdf

EVIDENCE – EXPERT EVIDENCE

Facts:

Firearms identification, a subset of toolmark identification, is "the practice of investigating whether a bullet, cartridge case or other ammunition component or fragment can be traced to a particular suspect weapon." *Fleming v. State*, 194 Md. App. 76, 100-01 (2010). The basic idea is that (1) features unique to the interior of any particular firearm leave unique, microscopic patterns and marks on bullets and cartridge cases that are fired from that firearm, and so (2) by comparing patterns and marks left on bullets and cartridge cases found at a crime scene ("unknown samples") to marks left on bullets and cartridge cases fired from a known firearm ("known samples"), firearms examiners can determine whether the unknown samples were or were not fired from the known firearm.

Kobina Ebo Abruquah was charged with first-degree murder and related handgun offenses for the murder of his roommate Ivan Aguirre-Herrera. An autopsy revealed that Mr. Aguirre-Herrera had been shot five times. The police recovered four bullets and two bullet fragments from the crime scene. The police also recovered a Taurus .38 Special revolver from Mr. Abruquah's residence. Mr. Abruquah acknowledged ownership of the revolver.

Mr. Abruquah moved to exclude firearms identification evidence the State intended to offer through an expert witness, firearms examiner Scott McVeigh. Before the Supreme Court of Maryland issued its opinion in *Rochkind v. Stevenson*, 471 Md. 1, 27 (2020), adopting the *Daubert* standard for the admissibility of expert witness testimony, the circuit court held a *Frye-Reed* hearing to assess the admissibility of Mr. McVeigh's testimony. Applying the *Frye-Reed* standard, the court concluded that firearm identification "is still generally accepted and sufficiently reliable" to admit the testimony. However, given the subjective nature of the

matching analysis, the court precluded Mr. McVeigh from "testify[ing] to any level of practical certainty/impossibility, ballistic certainty, or scientific certainty that a suspect weapon matches certain bullet or casing striations." The court thus restricted Mr. McVeigh to opining as to whether the bullets and bullet fragment "recovered from the murder scene fall into any of" a particular set of five classifications, one of which is "[i]dentification" of the unknown bullet as a match to a known bullet.

At trial, Mr. McVeigh testified about how he created known samples from the Taurus revolver and compared the microscopic patterns and markings on those samples and the samples recovered from the crime scene. Over defense objection, Mr. McVeigh opined that four bullets and one bullet fragment recovered from the crime scene "at some point had been fired from" the Taurus revolver. Mr. Abruquah was convicted. On appeal, the Supreme Court remanded to the circuit court to consider whether, applying the newly adopted evidentiary standard from *Rochkind*, it would still admit the firearms identification expert testimony. *Abruquah v. State*, 471 Md. 249, 250 (2020). On remand, the circuit court concluded that the testimony remained admissible under the new standard and sustained Mr. Abruquah's convictions.

The Supreme Court of Maryland granted Mr. Abruquah's petition for writ of *certiorari* while his appeal was pending in the Appellate Court.

Held:

Reversed in part and vacated in part. Remanded for new trial.

The Court first laid out the factors courts are to consider when determining the admissibility of expert testimony, derived from *Rochkind* and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. The Court then overviewed firearms identification theory generally and specifically the Association of Firearm and Tool Mark Examiners "Theory of Identification" (the "AFTE Theory"), the leading methodology used by firearms examiners and the methodology Mr. McVeigh employed in this case. The Court then discussed various studies and reports included in the record concerning the reliability of the AFTE Theory.

Applying the *Rochkind-Daubert* factors, the Court determined that, based on the information presented to the circuit court, the AFTE Theory cannot reliably support an unqualified opinion that a particular bullet was fired from a particular firearm. The Court found that, on balance, the factors weighed against admissibility, because, among other reasons: (1) the AFTE Theory lacks consistent standards and controls for examiners to follow; (2) the studies available do not demonstrate that the AFTE Theory has a reliable rate of error and there is no evidence that study results reflect actual casework; and (3) there is an "analytical gap" between Mr. McVeigh's unqualified testimony that the bullets found at the crime scene were fired from Mr. Abruquah's revolver and the level of reliability the AFTE Theory studies and other information in the record support.

Accordingly, the Court found that the circuit court abused its discretion in permitting Mr. McVeigh to offer that opinion. Because the Court was not convinced beyond a reasonable doubt that the error in admitting the evidence was harmless, the Court reversed the circuit court's ruling on Mr. Abruquah's motion in limine, vacated Mr. Abruquah's convictions, and remanded for a new trial.

Board of County Commissioners of St. Mary's County, Maryland v. Barbara and Christopher Aiken, et al., No. 28, September Term 2022, filed June 20, 2023. Opinion by Hotten, J.

https://mdcourts.gov/data/opinions/coa/2023/28a22.pdf

REAL PROPERTY – DEED CONSTRUCTION – FEE SIMPLE TITLE CONVEYED BY DEED

REAL PROPERTY – DEDICATION BY DEED – CREATION OF A PUBLIC ROAD

Facts:

In the 1940s, the State proposed a series of road projects to construct a seven-mile-long highway, known as "Scotland Beach to Point Lookout," running through a peninsula that borders and extends on the shore of the Chesapeake Bay. The State and St. Mary's County also agreed to extend and improve an internal road, renamed as "Bay Front Drive," through the middle of a subdivision, known as "Scotland Beach," which was intended to connect the northern and southern ends of the subdivision. In 1944, the State prepared and recorded Plats 1918 and 1919 to "lay out," "establish," and "construct" Bay Front Drive. Plats 1918 and 1919 were initially recorded on June 19, 1952, and again on March 26, 1986.

To construct Bay Front Drive, the State acquired property through conveyances and condemnation proceedings from Scotland Beach lot owners. On July 21, 1945, Joan Brady deeded portions of her property—Scotland Beach subdivision lots 17, 18, and 19, which included the disputed property (the "Property")—to the State for the construction of Scotland Beach to Point Lookout highway and the extension of Bay Front Drive (the "Brady Deed"). The Brady Deed conveyed Ms. Brady's property to the State "forever in fee simple, . . . free and clear of liens and encumbrances, in and to all the land, . . . lying between the lines designated 'right of way line' as shown and/or indicated on the aforesaid plat [No. 1919.]" While the northern portion of Bay Front Drive was constructed, the southern portion was not completed due to storm damage and erosion. The State never completed its highway project.

On September 22, 1988, the State conveyed "all right, title and interest . . . in and to all the land, . . . lying between the lines designated 'right of way line' as shown and/or indicated on . . . plats numbered 6016 [], 1918 and 1919[]" (the "1988 Deed"), to the Board of County Commissioners of St. Mary's County, Maryland (the "County").

In July 1995, Respondent John A. Wilkinson ("Wilkinson") purchased lots 17, 18, and 19. In 2004, Respondents Barbara and Christopher Aiken (the "Aikens") purchased undeveloped lots to the south of Wilkinson's property and the Property. After the Aikens purchased their property, disputes arose between the Aikens and Wilkinson concerning the Aikens' right to use the Property for ingress and egress. Thus, in December 2007, Wilkinson petitioned the County "to

close, or not to open," the Property as a road. In August 2017, the County adopted an ordinance to close Bay Front Drive (the "2017 Ordinance").

On November 13, 2018, Wilkinson filed suit against the County in the Circuit Court for St. Mary's County, asserting ownership of the Property. The County filed a counter-complaint against Wilkinson, seeking a declaratory judgment that it owns the Property in fee simple. In 2019, the Aikens intervened as defendants, asserting access rights to the Property. The parties filed cross motions for summary judgment, seeking declaratory judgment to determine their rights with respect to the Property and whether the Property is a public road. The circuit court denied Wilkinson's motion for summary judgment and granted the County's motion for summary judgment on its declaratory judgment claim, finding that the County owns the Property in fee simple absolute and that no public road exists on the Property.

Wilkinson and the Aikens appealed to the Appellate Court of Maryland in June 2020. On July 28, 2022, the Appellate Court affirmed that the County owned the Property in fee simple absolute, but concluded that the circuit court erred in determining that there was no public road over the Property. *Wilkinson v. Bd. of Cnty. Comm'rs of St. Mary's Cnty.*, 255 Md. App. 213, 270, 279 A.3d 1052, 1087 (2022). The County filed a petition for writ of certiorari, which this Court granted on November 18, 2022. *Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken*, 482 Md. 143, 285 A.3d 849 (2022).

Held: Affirmed.

This Court applies "basic principles of contract interpretation" when "construing the language of a deed[.]" *Md. Agric. Land Pres. Found. v. Claggett*, 412 Md. 45, 62, 985 A.2d 565, 575 (2009) (internal quotation marks and citation omitted). When the language of the deed "is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed." *Id*. at 63, 985 A.2d at 576 (internal quotation marks and citation omitted). In doing so, this Court "consider[s] the deed as a whole, viewing its language in light of the facts and circumstances of the transaction at issue as well as the governing law at the time of conveyance." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 123, 733 A.2d 1055, 1062 (1999). "Unless a contrary intention appears by express terms or is necessarily implied, every grant of land passes a fee simple estate." *Mayor & City Council of Balt. v. Thornton Mellon*, LLC, 478 Md. 396, 414, 274 A.3d 1079, 1089 (2022) (citation omitted).

The Supreme Court of Maryland held that the plain, unambiguous language of the Brady Deed demonstrated that the Property was conveyed in fee simple absolute. Nothing in the Brady Deed suggested a limitation, reversionary interest, or conveyance other than an interest in fee simple absolute. Property that is conveyed by deed for a public purpose does not debase or limit the estate conveyed. *Gilchrist v. Chester*, 307 Md. 422, 426, 514 A.2d 483, 485 (1986) (citation omitted); *Stuart v. City of Easton*, 170 U.S. 383, 394, 18 S. Ct. 650, 654 (1898) (citation omitted). Rather, the Brady Deed's relevant language, "forever in fee simple," "all our . . . interest," "all the land," indicates Ms. Brady's intent to convey a fee simple absolute interest.

See Md. Code Ann., Real Property § 2-101. Since the language in the Brady Deed was unambiguous, this Court did not resort to extrinsic evidence. *See Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co*., 434 Md. 37, 56, 73 A.3d 224, 235 (2013). Accordingly, the Supreme Court concluded that the circuit court correctly granted summary judgment for the County and did not err in denying Wilkinson's motion for summary judgment.

The Supreme Court of Maryland also affirmed the Appellate Court's judgment regarding the existence of a public road. In Maryland, public roads are established by: (1) public authority, (2) dedication, or (3) prescriptive easement. *Clickner v. Magothy River Ass'n Inc.*, 424 Md. 253, 269, 35 A.3d 464, 474 (2012) (citation omitted). This case did not involve establishment by public authority, which requires an exercise of eminent domain, or by prescriptive easement, which was not raised before this Court. *See* Md. Rule 8-131. Here, Ms. Brady conveyed the Property to the State in fee simple absolute "for public convenience, necessity[,] and safety[,]" which provided the State with a "material benefit[.]" Accordingly, this case fit squarely within this Court's jurisprudence regarding common law dedications. *Maryland-Nat'l Cap. Park & Plan. Comm'n v. Town of Washington Grove*, 408 Md. 37, 75–76, 968 A.2d 552, 575 (2009). "[C]ommon-law dedications are voluntary offers to dedicate land to public use, and the subsequent acceptance, in an appropriate fashion, by a public entity." *City of Annapolis v. Waterman*, 357 Md. 484, 503, 745 A.2d 1000, 1010 (2000). The "governing test[]" for a common-law dedication is the landowner's unambiguous intent "to dedicate his [or her] land to [a] particular [public] use[.]" *Blank v. Park Lane Ctr., Inc*., 209 Md. 568, 574–75, 121 A.2d 846, 848 (1956) (internal quotation marks and citations omitted).

The Supreme Court of Maryland held that a public road was established by a completed common-law dedication by Ms. Brady's offer and the State's subsequent acceptance. Ms. Brady offered to dedicate the Property "for public convenience[]" and "for a public highway" "forever in fee simple[.]" The Brady Deed's language and the recordation of the plats constituted evidence of Ms. Brady's offer to dedicate the Property to "public use[.]" *Olde Severna Park Improvement Ass'n, Inc. v. Gunby*, 402 Md. 317, 330–31, 936 A.2d 365, 372–73 (2007). The State accepted Ms. Brady's offer to dedicate by "assuming control" of the Property and recording the Brady Deed and plats. The State's acceptance was further confirmed by the subsequent 1988 Deed from the State to the County. Additionally, the State's subsequent conveyance to the County reflected that the State conveyed the entirety of the property as "a county road" for a "transportation purpose" pursuant to its statutory authority. This Court, therefore, determined that the circuit court erroneously concluded that no public road was created.

APPELLATE COURT OF MARYLAND

Elwood Charles Calloway, III v. State of Maryland, No. 202, September Term 2022, filed June 28, 2023. Opinion by Eyler, Deborah S., J.

https://mdcourts.gov/data/opinions/cosa/2023/0202s22.pdf

MARYLAND RULE 5-616(a)(4) – IMPEACHMENT OF COMPLAINING WITNESS IN CRIMINAL TRIAL BY SHOWING MOTIVE TO TESTIFY FALSELY – FINANCIAL GAIN AS MOTIVE – WORKERS' COMPENSATION CLAIM BY COMPLAINING WITNESS IN CRIMINAL CASE AGAINST DEFENDANT FOR BATTERY WAS NOT RELEVANT TO THIS FORM OF IMPEACHMENT

Facts:

The appellant was charged with second-degree assault of the battery type for hitting the complaining witness with his truck after the witness, who was working loading vehicles on a ferry, refused to allow the appellant's truck to board the ferry. The witness testified that he was injured when the truck hit him and, after work the next day, went to the hospital for treatment. On cross-examination, the court sustained an objection to a question seeking to elicit whether the witness's hospital visit was paid by workers' compensation or private insurance, for lack of relevance. On appeal, the appellant challenged that ruling, arguing that the question sought to elicit information about a workers' compensation claim by the witness, which would tend to show that he had a financial motive to testify falsely.

Held: Affirmed.

This Court and the Supreme Court of Maryland recognize that, ordinarily, evidence that the complaining witness in a criminal trial brought, has pending, or is contemplating bringing a tort action or claim before the Criminal Injuries Compensation Board based on the same events underlying the criminal charge is relevant to show that the witness has a financial motive to testify falsely against the defendant. *See Martin v. State*, 364 Md. 692 (2001); *Taylor v. State*, 226 Md. App. 317 (2016); *Maslin v. State*, 124 Md. App. 535 (1999); *Hopper v. State*, 64 Md. App. 97 (1985). In these cases, the complaining witness had a personal financial interest in those

claims that was tied to the events in the underlying criminal case and would be advanced or protected by giving testimony against the defendant sufficient to result in a conviction.

In the case at bar, to convict the appellant of criminal battery the State was required to prove that he engaged in offensive physical contact or harm to the complaining witness and that the contact was the result of an intentional or reckless act and was not accidental. To prevail in a workers' compensation claim based on the same events, however, the complaining witness merely had to show that he sustained an injury caused by the willful or negligent act of a third party directed against him in the course of his employment. Labor and Employment Article, § 9-101(b)(2). Unlike the cases in which there was a financial motive for the complaining witness to testify against the defendant, here the complaining witness would be entitled to workers' compensation benefits even if the appellant did not act intentionally or recklessly, but only negligently; and regardless of whether the appellant was convicted. In addition, there was no basis for the appellant's argument below, that evidence that the witness's hospital visit was paid by workers' compensation was relevant to impeachment because it could show that he was feigning an injury. The evidence would tend to show the opposite: that he was injured, not that he was feigning injury.

Hector Miguel Rodriguez v. State of Maryland, No. 1530, September Term 2021, filed June 1, 2023. Opinion by Getty, J.

https://mdcourts.gov/data/opinions/cosa/2023/1530s21.pdf

CRIMINAL LAW & PROCEDURE – FOURTH AMENDMENT – WARRANTLESS SEARCHES – SEARCH INCIDENT TO ARREST – *ARIZONA V. GANT*

CRIMINAL LAW & PROCEDURE – FIFTH AMENDMENT – *MIRANDA V. ARIZONA* – CUSTODY

Facts:

While on patrol, Corporal John McGroarty discovered a vehicle traveling with a rear license plate that alerted his automated license plate recognition system as stolen. The officer waited by the vehicle while it was parked in a shopping center and waited for its driver to return. As Hector Rodriguez approached the vehicle, Cpl. McGroarty asked him if the vehicle was his—to which he responded that it was—and how he obtained the license plates—to which he responded that he had bought them from a friend.

Rodriguez was arrested for theft of the license plates. Cpl. McGroarty then searched the vehicle without a warrant. He first retrieved the matching front license plate from the front passenger floorboard which had been visible from outside the vehicle. He then searched the glove compartment and seized a weapon for which Rodriguez did not have a permit.

Rodriguez was charged with theft of the license plates, possession of a regulated firearm by a person under the age of 21, and transporting a handgun in a vehicle. He moved to suppress the handgun discovered in the glove compartment and the statements he made to Cpl. McGroarty. The circuit court denied the motion, and Rodriguez plead guilty to possession of a regulated firearm by a person under 21 while preserving his right to appeal the denial of the motion to suppress.

Held: Affirmed.

The warrantless search of Rodriguez's vehicle was justified under the search incident to arrest exception to the Fourth Amendment's warrant requirement. Under *Arizona v. Gant*, 556 U.S. 332, 346 (2009), police may conduct a warrantless search under the exception "when an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest." Under the facts of this case, the officer was not necessarily justified in searching the entirety of the vehicle's passenger compartment upon seeing the front license plate on the floorboard. However, it was reasonable for Cpl. McGroarty to believe that

there might be additional evidence related to the theft of the license plate in the glove compartment, such as the vehicle's registration card or other motor vehicle records.

Additionally, the statements Rodriguez made to Cpl. McGroarty—that the vehicle was his and that he bought the license plates from a friend—were not obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* warnings are only required in custodial interrogations. When Rodriguez made the statements to Cpl. McGroarty, he was in the parking lot of a shopping center during daylight hours, his vehicle was not completely impeded from departure, the encounter occurred on foot and was brief, and Cpl. McGroarty made no show of force or physical restraint. Thus, Rodriguez was not in custody because—whether his interaction was characterized as an accosting or something greater—the circumstances of his encounter with Cpl. McGroarty did not indicate a "restraint on freedom of movement of the degree associated with a formal arrest[.]" *State v. Rucker*, 374 Md. 199, 212 (2003).

Accordingly, the circuit court did not err in denying Rodriguez's motion to suppress the handgun found in his glove compartment or the statements he made to Cpl. McGroarty.

Housing Opportunities Commission of Montgomery County v. Olusegun Adebayo, et al., No. 1488, September Term 2021, filed June 28, 2023. Opinion by Arthur, J.

https://mdcourts.gov/data/opinions/cosa/2023/1488s21.pdf

BUSINESS REGULATION – SALE OF BURIAL GROUND FOR ANOTHER PURPOSE

Facts:

In 1910, the Moses African Cemetery was established in Bethesda. The cemetery included what is known as parcel 175. White's Tabernacle No. 39, a fraternal society that supported the local African American community, purchased parcel 175. Remains were interred at the cemetery in the ensuing decades until the 1940s.

In 1958, White's Tabernacle No. 39 sold parcel 175 to a developer. The Westwood Tower apartment building was constructed between 1966 and 1968. A portion of parcel 175 was bulldozed for the construction of a parking lot next to the apartment building.

The Housing Opportunities Commission of Montgomery County ("HOC") began leasing the Westwood Tower property in 1997. In 2018, HOC exercised its option to acquire Westwood Tower, including parcel 175.

In 2021, HOC entered into a contract to sell Westwood Tower, including parcel 175, to Charger Ventures Bethesda LLC ("Charger").

A non-profit organization known as the Bethesda African American Cemetery Coalition and other plaintiffs filed suit against HOC. The Coalition sought a writ of mandamus compelling HOC to initiate an action for court approval of the sale of the burial ground under Md. Code, § 5-505 of the Business Regulation Article ("BR").

The court granted the Coalition's motion for preliminary injunction enjoining HOC from completing the sale. After the court issued the preliminary injunction, Charger informed the court that it had terminated the sale agreement.

The court entered a final order stating that HOC must comply with BR § 5-505 prior to selling Westwood Tower and parcel 175. HOC appealed.

Held: Reversed.

The Appellate Court concluded that Md. Code, § 5-505 of the Business Regulation Article ("BR") does not require HOC to seek court approval for the sale of parcel 175.

The Court held that the action to enjoin the sale of the property and to compel HOC to obtain court approval for the sale of the property became moot when the buyer terminated the sale agreement. Once the buyer withdrew from the agreement, there was no longer a sale for the court to enjoin; nor was there a sale to submit for court approval.

Although the appeal was moot, the Court decided the appeal under the exception for cases presenting recurring matters of public concern which, unless decided, will continue to evade review. The issue here was likely to recur; was likely to evade review; involved a relationship between government and its citizens or a duty of government; and the public interest would be harmed if the court did not decide the issue.

The Appellate Court held that three of the individual plaintiffs had standing to bring the action to compel HOC to seek court approval for the sale. Maryland Rule 14-401(c) provides that certain "person[s] in interest" are entitled to notice of an action for court approval of the sale of a burial ground under BR § 5-505. Under § 14-121(a)(4) of the Real Property Article, the term "person in interest" includes someone who is related by blood or marriage to a person interred in a burial site. Three individual plaintiffs produced sufficient evidence showing that there was a likelihood that their ancestors still were interred in parcel 175. To establish standing, the plaintiffs were not required to present certificates or deeds for the burial lots. Because the individual plaintiffs had standing, the Court declined to decide whether the Coalition itself might have standing.

The Court held that HOC was not required to seek court approval under BR § 5-505 before selling the property. BR § 5-505 establishes a procedure through which a person may seek court approval of the sale of certain types of burial grounds "for another purpose." Essentially, this provision operates as a quiet-title statute. If a proponent of the sale employs this statute and obtains court approval, the purchaser acquires the property free and clear of the claims of the holders of burial lots. If a proponent of a sale does not employ BR § 5-505, a sale can still occur, but the purchaser will take the property subject to the claims of the lot holders. The consequence of HOC's failure to employ the statute was that the purchaser would take the property subject to the claims of the lot holders.

ATTORNEY DISCIPLINE

*

By an Order of the Supreme Court of Maryland dated April 21, 2023, the following attorney has been disbarred by consent, effective June 7, 2023:

PHILLIP WAYNE WRIGHT

*

This is to certify that as of June 21, 2023, the name of

EVAN J. KRAME

has been replaced on the register of attorneys authorized to practice law in this State.

*

UNREPORTED OPINIONS

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

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