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SUPREME COURT OF MARYLAND

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https://www.courts.state.md.us/data/opinions/coa/2025/31a24.pdf

EVIDENCE – MARYLAND RULE 5-615 – EXCLUSION OF WITNESSES – DESIGNATED REPRESENTATIVE OF A PARTY THAT IS NOT A NATURAL PERSON – HARMLESS ERROR

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Facts:

Petitioner Fred Cromartie was charged with second-degree assault and other offenses arising from an altercation that took place in a parking lot near the entrance to his apartment building. On the first day of trial prior to opening statements, the prosecutor designated Detective Courtney Moore, the primary investigator and a State witness, as the State's representative pursuant to Rule 5-615(b)(2). The designation excepted Detective Moore from exclusion from the courtroom during the testimony of other witnesses and permitted him to sit at the State's counsel table throughout the trial. Over a defense objection, the court allowed the designation.

At trial, the jury heard testimony from only two witnesses. The first, Jalen Hayes, was involved in the altercation. He testified about Mr. Cromartie's involvement in the incident and made an in-courtroom identification of Mr. Cromartie. He also identified the individuals depicted in a surveillance video, including himself, Mr. Cromartie, and Demonte Smith, and narrated various parts of the video. On cross-examination, defense counsel guided Mr. Hayes through another surveillance video, identifying both Mr. Cromartie and Mr. Smith by name when referring to individuals shown in the video.

The State then called Detective Moore to testify about his investigation and visit to the crime scene. Detective Moore authenticated the crime scene sketch, bullet casings, and other physical evidence. When Detective Moore used "Mr. Smith" to refer to an individual being chased in a video, defense counsel objected. The court overruled the objection, and the defense did not request a continuing objection. Neither did the defense object to any of the subsequent questions that used the names of Mr. Smith and Mr. Cromartie in reference to the individuals depicted in

the video of the altercation. And on cross-examination, defense counsel consistently identified Mr. Smith and Mr. Cromartie in the videos using their names.

Before decision by the Appellate Court of Maryland, the Supreme Court of Maryland granted Mr. Cromartie's petition for a writ of certiorari to decide (1) whether Rule 5-615(b)(2) allows the State to designate a detective who will testify at trial as its representative in a criminal prosecution, thereby excepting that representative from witness sequestration, and (2) whether Detective Moore's testimony constituted an impermissible lay opinion under Rule 5-701.

Held: Affirmed.

The Supreme Court of Maryland first concluded that it did not need to resolve whether the circuit court erred in allowing the State to designate Detective Moore as its representative under Rule 5-615(b)(2) because the State met its burden to prove that any such error would have been harmless beyond a reasonable doubt. The Court also acknowledged that the policy questions the parties raised regarding Rule 5-615(b)(2) were better addressed in the Court's rulemaking capacity through referral to the Standing Committee on Rules of Practice and Procedure.

First, the Court emphasized that the primary purpose of Rule 5-615 is to maintain the integrity of witness testimony. The circumstances here did not implicate that purpose because Detective Moore's testimony did not overlap in any meaningful sense with the testimony of Mr. Hayes, the only other witness who testified.

Second, the Court rejected Mr. Cromartie's argument that due to Detective Moore's inherent credibility as a law enforcement officer, his presence at the State's counsel table improperly bolstered the prosecution's case. The Court noted that it is not a general purpose of Rule 5-615 to prohibit witnesses from associating with parties in view of the jury. Moreover, Detective Moore's role as the investigating law enforcement officer and the State's only witness inherently tied his credibility to the prosecution. The record contained no indication that Detective Moore's presence at counsel's table bolstered the State's case anymore than already came with his role.

The Court then turned to Mr. Cromartie's objection regarding Detective Moore's use of Mr. Smith's name during testimony. The Court did not reach the merits of that question because it was not preserved. The Court held that Mr. Cromartie preserved neither a general objection to the identification of Mr. Smith or other participants nor an objection to Detective Moore's ability to identify Mr. Smith throughout the trial. That was because Mr. Cromartie did not request a continuing objection or separately object to subsequent questions that identified those parties by name. In fact, Mr. Cromartie's theory of self-defense partly depended on Mr. Smith's identification and involvement.

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Harry Davis, Jr. v. State of Maryland, Misc. No. 21, September Term 2024, filed May 21, 2025. Opinion by Watts, J.

https://mdcourts.gov/data/opinions/coa/2025/21a24m.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL – MOTION FOR MODIFICATION OF SENTENCE – FAILURE TO CONSULT

Facts:

In the Circuit Court for Baltimore City, after a trial, a jury convicted Harry Davis, Jr., Petitioner, of second-degree murder, two counts of first-degree assault, two counts of second-degree assault, and one count of openly wearing and carrying a dangerous weapon. The circuit court sentenced Mr. Davis to a total of 72 years' imprisonment, which was the top of the applicable guideline range, and approximately in the middle of the State's recommendation of a total of 103 years of imprisonment and the defense's request for a sentence of 53 years of imprisonment.

After imposing the sentence, the circuit court judge advised Mr. Davis, among other things, that he had 30 days to file an appeal and 90 days from the date of sentencing to file a motion for modification of sentence. The circuit court judge did not advise Mr. Davis as required by Maryland Rule 4-342(h) that he had a right to be represented by counsel in filing a motion for modification of sentence. Mr. Davis filed a timely appeal, and, in an unreported opinion, the Appellate Court of Maryland affirmed the judgment of the circuit court. *See Harry Davis v. State of Maryland*, No. 1285, Sept. Term, 2013, slip op. at 21 (Md. Ct. Spec. App. Nov. 25, 2014). No motion for modification of sentence was filed on Mr. Davis's behalf.

Over five years later, Mr. Davis, unrepresented, filed a petition for postconviction relief, alleging, among other things, that trial counsel rendered ineffective assistance of counsel by failing to file a motion for modification of sentence. When represented by counsel, Mr. Davis filed an amended petition for postconviction relief, alleging that trial counsel rendered ineffective assistance of counsel by failing to consult with him about filing a motion for modification of sentence and not filing a motion, and by not requesting a jury instruction on involuntary manslaughter. At a hearing on the petition for postconviction relief, Mr. Davis's trial counsel testified that he could not recall whether he had met with Mr. Davis after sentencing and that he never told Mr. Davis that he would file a motion of modification of sentence. Mr. Davis testified that he had no communication with counsel after sentencing. The circuit court issued a memorandum opinion and order, ruling that, absent any evidence that Mr. Davis asked trial counsel to file a motion for modification of sentence, it could not find that trial counsel rendered ineffective assistance of counsel on what it characterized as a "silent record."

Mr. Davis filed an application for leave to appeal, which the Appellate Court granted. After briefing and oral argument, pursuant to Maryland Rule 8-304, the Appellate Court transmitted a certification to this Court, setting forth the following questions of law:

1. To establish ineffective assistance of counsel based on the failure to file a motion for modification of sentence, must a defendant prove that he requested trial counsel to file the motion?

2. If not, should Maryland Courts adopt the framework established in *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), which addressed an ineffective assistance claim based on the failure to file a notice of appeal, and apply that framework to a claim based on the failure to file a motion for modification?

In its certification, the Appellate Court stated that, in *State v. Day*, 469 Md. 526, 230 A.3d 965 (2020), this Court left unanswered the question of whether a petitioner seeking postconviction relief based on trial counsel's failure to file a motion for modification of sentence must demonstrate that the petitioner timely requested that trial counsel file such a motion. The Appellate Court advised that it had previously addressed the issue in *State v. Adams*, 171 Md. App. 668, 912 A.2d 16 (2006), *aff'd in part and rev'd in part*, 406 Md. 240, 958 A.2d 295 (2008), and *Rich v. State*, 230 Md. App. 537, 148 A.3d 377 (2016), *aff'd*, 454 Md. 448, 164 A.3d 355 (2017), and reached conflicting conclusions. The Supreme Court accepted the certification and issued a writ of *certiorari* with respect to the entire action, with review to be based on the briefs filed in the Appellate Court. *See Davis v. State*, Misc. No. 21, Sept. Term, 2024 (Md. Dec. 20, 2024).

Held:

Judgement of the Circuit Court for Baltimore City reversed and case remanded to that court for further proceedings consist with the Supreme Court's opinion.

The Supreme Court of Maryland held that a defendant may establish ineffective assistance of counsel based on counsel's failure to file a motion for modification of sentence by demonstrating: (1) that counsel failed to consult with the defendant about the filing of a motion and that counsel's failure to consult with the defendant was not reasonable, i.e., that counsel's conduct fell below an objective standard of reasonableness; and (2) that due to counsel's deficient performance, the defendant was deprived of the opportunity to have a motion for modification of sentence considered by the court, i.e., that counsel's deficient performance prejudiced the defendant. Although proof that a defendant asked counsel to file a motion for modification of sentence and counsel failed to do so are circumstances that may establish ineffective assistance of counsel, these are not the sole circumstances under which a defendant may show the deficient performance and prejudice necessary to establish ineffective assistance of counsel based on the alleged failure to file a motion for modification of sentence. Where there is reason to believe that a rational defendant under similar circumstances would want a motion for modification of sentence to be filed, the failure to consult with the defendant about filing a motion for modification of sentence is conduct that falls below an objectively reasonable standard. In other words, where the evidence permits a finding that an attorney making reasonable choices in a similar situation would have consulted with a defendant about filing a

motion for modification of sentence and counsel failed to do so and did not file a motion, a defendant has demonstrated deficient performance under the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

The Supreme Court of Maryland stated that its holding is based on the framework outlined by the Supreme Court of the United States in *Roe v. Flores-Ortega*, 528 U.S. 470, 479 (2000), in which the Court considered the circumstances under which an attorney has an obligation to consult with a defendant about an appeal and reaffirmed that the Federal Constitution imposes the requirement that "counsel make objectively reasonable choices." (Citation omitted). The Supreme Court explained that, in assessing deficient performance under the *Strickland* test, the relevant question is whether counsel's choices were reasonable. *See Flores-Ortega*, 528 U.S. at 480-81. The Court stated that, when examining an attorney's duty to consult about an appeal, not every failure to consult with a defendant will be unreasonable. *See id*. at 479-80. The Court held:

> [C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

Id. at 480.

The Supreme Court of Maryland stated that, as the Supreme Court explained in *Flores-Ortega*, *id*. at 479-80, when discussing counsel's duty to consult concerning an appeal, it did not conclude that in every case counsel's failure to consult with the defendant about filing a motion for modification is necessarily unreasonable. Rather, the Supreme Court concluded that where it is reasonable to think that a rational defendant would want to file a motion for modification of sentence, it is not a reasonable choice for an attorney to fail to consult with the defendant.

The Supreme Court of Maryland stated that the second part of the *Strickland* test requires the defendant to demonstrate prejudice based on counsel's deficient performance. *See Flores-Ortega*, 528 U.S. at 481. In *Flores-Ortega*, *id*. at 484, the Supreme Court explained: "If the defendant cannot demonstrate that, but for counsel's deficient performance, he would have appealed, counsel's deficient performance has not deprived him of anything, and he is not entitled to relief." (Citation omitted). The Supreme Court stated that prejudice may be established where the record demonstrates that there is a "reasonable probability" that but for trial counsel's failure to consult with a defendant, an appeal would have been filed. *Id.*

The Supreme Court of Maryland stated that, in cases in which a defendant requested that trial counsel file a motion for modification of sentence and counsel failed to do so, it has held that the defendant demonstrated prejudice by establishing that due to counsel's deficient performance, the defendant lost the opportunity to have a motion for modification of sentence considered by the Court. *See State v. Flansburg*, 345 Md. 694, 705, 694 A.2d 462, 468 (1997); *see also Matthews v. State*, 161 Md. App. 248, 251-52, 868 A.2d 895, 897-98 (2005). The Supreme

Court concluded that where counsel fails to consult with a defendant about filing a motion for modification of sentence and does not file the motion, the defendant must demonstrate that there is a "reasonable probability" that but for trial counsel's failure to consult with the defendant, a motion for modification of sentence would have been filed. *Flores-Ortega*, 528 U.S. at 484. In setting forth this standard, the Supreme Court followed the direction established in case law such as *Strickland* and *Flores-Ortega*, by requiring a showing of actual prejudice in that the defendant must demonstrate that counsel's deficient performance deprived the defendant of a motion for modification of sentence that the defendant otherwise would have wanted to have filed.

The Supreme Court of Maryland overruled *State v. Adams*, 171 Md. App. 668, 912 A.2d 16 (2006), *aff'd in part and rev'd in part*, 406 Md. 240, 958 A.2d 295 (2008), and *Rich v. State*, 230 Md. App. 537, 148 A.3d 377 (2016), *aff'd*, 454 Md. 448, 164 A.3d 355 (2017), as the Court rejected a *per se* deficiency rule as inconsistent with *Strickland*'s reasonableness test. The Supreme Court concluded that, contrary to *Adams*, it is not deficient performance *per se* whenever counsel fails to file a motion for modification of sentence. The Supreme Court also concluded that, contrary to *Rich*, a record not demonstrating a defendant asked to have a motion for modification of sentence filed does not per se preclude finding deficient performance and prejudice where counsel failed to consult with the defendant and did not file a motion.

The Supreme Court of Maryland held that, in this case, trial counsel's failure to consult with Mr. Davis concerning filing of motion for modification of sentence fell below an objective standard of reasonableness and constituted deficient performance. The Supreme Court concluded that Mr. Davis was not required to demonstrate that he asked trial counsel to file a motion for modification of sentence to establish prejudice because the record demonstrated that but for trial counsel's failure to consult, there was a reasonable probability that a motion for modification of sentence would have been filed.

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Stephen Zimmerman v. State of Maryland, No. 19, September Term 2024, filed May 22, 2025. Opinion by Killough, J.

https://www.mdcourts.gov/data/opinions/coa/2025/19a24.pdf

PROBATION REVOCATION – RIGHT OF REVIEW

Facts:

Petitioner, Stephen Zimmerman pleaded guilty to second-degree assault in the District Court of Maryland for Frederick County in 2021. He was sentenced to ten years, all suspended except the time he served in pretrial detention and was placed on three years of supervised probation. Following a violation of probation, the District Court revoked Zimmerman's probation and imposed a custodial sentence. Zimmerman appealed his probation revocation to the Circuit Court for Frederick County. After a hearing on the appeal, the circuit court—sitting in its appellate capacity—again revoked Zimmerman's probation, imposing a seven-year sentence.

Zimmerman filed a *pro se* appeal of the circuit court's decision to the Appellate Court of Maryland. The Appellate Court docketed Zimmerman's appeal as an application for leave to appeal. The State moved to transfer the appeal to the Supreme Court of Maryland, arguing that the Appellate Court lacked jurisdiction over the appeal. The Appellate Court agreed and granted the State's motion to transfer.

Held: Affirmed.

The Supreme Court affirmed the Appellate Court's decision to transfer this case to the Supreme Court. The Court held that further appellate review of a circuit court's decision, when rendered in its appellate capacity following *de novo* review of a District Court probation revocation, lies exclusively by petition for writ of *certiorari* to the Supreme Court.

Maryland appellate jurisdiction is governed entirely by statute, absent a constitutional provision. *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 485 (1997). Generally, CJP § 12-301 grants a broad right to appeal final judgments of a circuit court. However, CJP § 12-302(a) limits that right *when a circuit court acts in an appellate capacity*: "[CJP § 12-301] does not permit an appeal from a final judgment … entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court."

In *Burch v. State*, 278 Md. 426, 428–30 (1976), the Court held that appeals of the District Court's revocation of probation lie initially in the circuit court. Once the circuit court issues its decision in that appellate role, further review may be pursued only by certiorari to the Supreme Court. *Id*. This rule was reaffirmed in *State v. Anderson*, 320 Md. 17, 25–26 (1990), which emphasized the exclusivity of certiorari review under CJP §§ 12-305 and 12-307. Similarly, in

Stachowski v. State, 416 Md. 276, 280–81 (2010), the Court described as a jurisdictional fact that when a circuit court acts in its appellate capacity, the Appellate Court lacks authority to review the matter.

Zimmerman argued in the alternative that CJP § 12-302(g) authorized his appeal to the Appellate Court via application for leave. Specifically, that CJP § 12-302(g) provides for discretionary appellate review by the Appellate Court of circuit court probation revocation orders. The Court rejected this argument, explaining that CJP § 12-302(g) applies *only* where the revocation order originates in the circuit court, *not* where the circuit court acts as an appellate tribunal reviewing a District Court judgment. The Court noted that CJP § 12-302(g) was designed to eliminate appeals as of right and does not create a parallel or alternative pathway for further appellate review from appellate decisions of the circuit court. Nor does the provision modify or override the clear limitations imposed by CJP § 12-302(a), which bars further appeal from a circuit court's decision in a District Court matter absent express statutory authorization.

The Court concluded that Zimmerman's filing in the Appellate Court was improper, and that further review lay only in the Supreme Court via petition for writ of *certiorari*. Accordingly, the Court treated Zimmerman's notice of appeal as a deficient petition for *certiorari* and instructed him to file a proper petition, in compliance with CJP § 12-305.

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Seamus Coyle v. State of Maryland, No. 21, September Term, 2024, filed May 21, 2025. Opinion by Watts, J.

https://mdcourts.gov/data/opinions/coa/2025/21a24.pdf

RIGHT TO COUNSEL – EFFECTIVE ASSISTANCE OF COUNSEL – MARYLAND PUBLIC DEFENDER ACT – PETITION FOR WRIT OF CERTIORARI – PREJUDICE

Facts:

In the Circuit Court for Baltimore County, after a trial by jury, Seamus Coyle, Petitioner, was found guilty of first-degree murder, conspiracy to commit first-degree murder, and use of a handgun in the commission of a crime of violence, and sentenced to life imprisonment. Because representation posed a conflict of interest for the office, the OPD assigned a panel attorney to represent Mr. Coyle in a direct appeal to the Appellate Court of Maryland.

The Appellate Court affirmed Mr. Coyle's convictions. *See Coyle v. State*, No. 0997, Sept. Term 2012 (Md. Ct. Spec. App. July 11, 2014). Mr. Coyle's panel attorney discussed filing a petition for a writ of *certiorari* with both Mr. Coyle and the OPD and was authorized to file the petition. Mr. Coyle's panel attorney failed, however, to file a petition for a writ of *certiorari*, leading Mr. Coyle to petition for postconviction relief, alleging ineffective assistance of counsel. The circuit court denied Mr. Coyle's petition for postconviction relief. Mr. Coyle filed an application for leave to appeal, which was granted. In a split decision, the Appellate Court affirmed the circuit court's judgment denying postconviction relief. *See Coyle v. State*, No. 1440, Sept. Term, 2021, 2024 WL 1250562, at *1, *13 (Md. App. Ct. Mar. 25, 2024).

Held: Reversed.

The Supreme Court of Maryland held that, based on the plain language of the Maryland Public Defender Act, Md. Code Ann., Crim. Proc. (2001, 2018 Repl. Vol.) §§ 16-101 to 16-403, where a panel attorney is authorized by the Office of Public Defender ("OPD") pursuant to the Act to represent an indigent defendant in filing a petition for a writ of *certiorari* and the attorney undertakes responsibility for filing a petition, the attorney must render effective assistance of counsel. The Supreme Court concluded that, because the plain language of Act unambiguously states that it is the policy of the State to assure the effective assistance of counsel for indigent defendants in criminal cases and the attorney was authorized by OPD pursuant to the Public Defender Act to provide representation and accepted the assignment, the attorney was required to provide effective assistance of counsel, and the Court need not address the issue of whether under the Act a defendant had the right to counsel for filing a petition for a writ of certiorari.

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The Supreme Court of Maryland held that, in this case, the attorney's conduct in failing to file a petition for a writ of *certiorari* fell below an objective standard of reasonableness and constituted deficient performance under *Strickland v. Washington*, 466 U.S. 668 (1984). The Supreme Court held that where an attorney is authorized by OPD pursuant to the Public Defender Act to file a petition for a writ of *certiorari*, accepts authorization, and fails to file a petition for a writ of *certiorari* on the defendant's behalf due to deficient performance, under *Strickland*, prejudice is established because as a result of the attorney's deficient performance the defendant has been deprived of an opportunity to have the petition considered by the Court.

The Supreme Court of Maryland did not expand the limited areas in which prejudice is presumed under *Strickland*. The Supreme Court held that Mr. Coyle satisfied the *Strickland* prejudice requirement by demonstrating that his attorney's deficient performance resulted in loss of an opportunity to have a petition for a writ of *certiorari* considered by the Court.

The Supreme Court of Maryland reversed the judgment of the Appellate Court and directed that Mr. Coyle be permitted the opportunity to file a belated petition for a writ of *certiorari*.

Sharon Saunders v. Steven Gilman, et al., No. 20, September Term 2024, filed May 22, 2025. Opinion by Killough, J.

https://www.mdcourts.gov/data/opinions/coa/2025/20a24.pdf

APPELLATE JURISDICTION – INTERLOCUTORY APPEALS – ORDER DECLARING ADVERSE POSSESSION OF PROPERTY

APPELLATE JURISDICTION – INTERLOCUTORY APPEALS – ORDER REQUIRING CONVEYANCE OF PROPERTY

Facts:

In 1972, Respondents Steven and Ellen Gilman (the "Gilmans") purchased five lots of unimproved land and constructed a residential property on each lot. The Gilmans built their home on lot 12. In 1973, the Gilmans sold the adjoining lot 13 to Petitioner Dr. Saunders's deceased husband, Elijah Saunders. That same year the Gilmans began landscaping along the property line they shared with Dr. Saunders. In 2019, Dr. Saunders commissioned a property survey revealing that the land the Gilmans had maintained since 1973 was on Dr. Saunders's property. Dr. Saunders filed suit in the Circuit Court for Baltimore County seeking among other things, to be declared the owner of the disputed property stretching approximately 541 feet long from Cavesdale Road to the rear of the properties, with a width of about 15.5 feet ("Disputed Property"). The Gilmans filed a counter-complaint alleging among other things that they were the owners of the Disputed Property via adverse possession.

The circuit court severed the equity claims from the tort claims ordering that the equity claims proceed to trial first. On October 6, 2022, the Circuit Court for Baltimore County declared the Disputed Property "to be the real property" of the Gilmans – "who are declared the absolute owners of said property by adverse possession" ("October 6 Order"). The court further ordered the Gilmans to "prepare an amended deed and an amended plat" and file it "among the land records of Baltimore County[.]" The Appellate Court dismissed the appeal as interlocutory, holding that the October 6 Order was not a final judgment and that no exception under Courts & Judicial Proceedings ("CJP") § 12-303 applied. *Saunders v. Gilman, et al.*, No. 0463, Sept. Term, 2022, 2024 WL 1003289, at *2 (Md. App. Ct. Mar. 8, 2024).

Held: Reversed and remanded.

The Supreme Court reversed the judgment of the Appellate Court; case remanded to the Appellate Court to address the merits of Dr. Saunders's appeal.

Generally, under Maryland law, "[i]t is well settled that, 'to be appealable, an order or judgment must be final.'" *Abner v. Branch Banking & Tr. Co.*, 180 Md. App. 685, 689 (2008) (quoting

Baltimore Police Dep't v. Cherkes, 140 Md. App. 282, 298 (2001)). However, certain interlocutory orders are immediately appealable under CJP § 12-303 due to "the irreparable harm that may be done to one party if [they] had to await final judgment before entering an appeal." *Flower World of America, Inc. v. Whittington*, 39 Md. App. 187, 192 (1978).

CJP § 12-303(1) provides that a party may appeal interlocutory orders "entered by a circuit court in a civil case . . . with regard to the possession of property with which the action is concerned." Although CJP § 12-303(1) does not define "possession" or "property," we find the language clear and unambiguous and must apply it according to its terms. *See Breitenbach v. N.B. Handy Co*., 366 Md. 467, 473 (2001). The October 6 Order is interlocutory and concerns "the possession of property," and therefore falls squarely within CJP § 12-303(1). Thus, the October 6 Order is an interlocutory order declaring that title to disputed real property has been conveyed by adverse possession and is therefore immediately appealable under CJP § 12-303(1).

CJP § 12-303(3)(v) provides that a party may appeal a circuit court's interlocutory order in a civil case for "the sale, conveyance, or delivery of real or personal property[.]" In this case, the Disputed Property is real property. The October 6 Order declares that ownership of the Disputed Property had transferred from Dr. Saunders—who owned it by deed—to the Gilmans, whom the trial court declared to be the owners by adverse possession. Although that portion of the order was not for the sale, conveyance, or delivery of the property, the October 6 Order also directs the Gilmans to prepare and record an amended fee-simple deed, thereby effecting a conveyance of title. Under Maryland law, "legal title is conveyed by a deed," which does not pass until recorded. *Mayor & City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396, 413-14 (2022). The October 6 Order is an interlocutory order that directs the preparation and recording of a deed to convey ownership of real property from one party to another. As a result, it is immediately appealable under CJP § 12-303(3)(v).

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APPELLATE COURT OF MARYLAND

In the Matter of Broadway Services Inc., No. 1299, September Term 2023, filed May 2, 2025. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1299s23.pdf

ADMINISTRATIVE LAW – REMAND TO AN ADMINISTRATIVE AGENCY

Facts:

Broadway Services, Inc. provides housekeeping, security, and property and facilities management services to three hospitals in the Johns Hopkins Health System. The Comptroller assessed sales tax on Broadway's purchase of cleaning supplies and equipment.

Broadway asserted that it was entitled to a tax credit and refund, on the theory that it was purchasing the supplies and equipment for resale to the hospitals. The Comptroller denied Broadway's request. The Maryland Tax Court agreed that Broadway was entitled to a refund, not because Broadway was reselling the supplies and equipment, but on the theory that Broadway was acting as an agent of the hospitals, which are tax-exempt.

The Comptroller sought judicial review, and the circuit court affirmed the tax court's decision. The Comptroller appealed, and the Appellate Court of Maryland reversed the tax court's decision. *Comptroller v. Broadway Services, Inc.*, 250 Md. App. 102 (2021), *aff'd*, 478 Md. 200 (2022). The Appellate Court determined that Broadway was not entitled to a refund on the theory that it was acting as an agent of the hospitals. The Court further determined that Broadway should be able to obtain judicial review of the tax court's rejection of its reseller theory on a subsequent appeal. Broadway petitioned for certiorari, and the Supreme Court of Maryland affirmed the judgment of the Appellate Court. *Broadway Services, Inc. v. Comptroller*, 478 Md. 200 (2022).

On remand, the tax court denied Broadway's request for a refund based on Broadway's reseller theory. Broadway petitioned for judicial review in the Circuit Court for Anne Arundel County. After a hearing, the circuit court remanded the case to the tax court and directed the tax court to explain its reasons for rejecting Broadway's reseller theory. The Comptroller appealed to the Appellate Court of Maryland.

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Held: Reversed and remanded.

In this case, the circuit court remanded a case to the Maryland Tax Court, an administrative agency, on the ground that the agency had not adequately articulated the basis for its conclusion. The Appellate Court of Maryland held that the remand order was a final, appealable judgment. The circuit court did not remand the case for further factual development. Neither party requested the remand; rather, the court ordered the remand on its own motion. The circuit court engaged in judicial review in the colloquial sense: it asked many questions that went to the merits of the case, it disposed of an independent legal theory that would have necessitated dismissal of the action, and it attempted to limit the discussion of the merits to those issues that were still pending. Finally, the court judged the agency's decision to be defective in a technical, if not a substantive, sense in that the court believed that the agency had not adequately articulated the basis for its decision.

The Comptroller argued that the Supreme Court of Maryland's opinion in *Broadway Services, Inc. v. Comptroller*, 478 Md. 200 (2022), had already rejected Broadway's reseller theory. The Appellate Court held that the Supreme Court did not rule on the reseller theory and that the Court's comment on that theory was not the law of the case.

The Appellate Court of Maryland also held that the circuit court should have affirmed the tax court's judgment. There was substantial evidence before the tax court to support its conclusion that Broadway did not resell the cleaning supplies and equipment. Witnesses testified that the supplies and equipment did not show up as line items in any monthly invoices that Broadway sent to the hospitals for the provision of management services. There was also no evidence that Broadway ever submitted resale certificates, which certify that a business is acquiring tangible personal property for the purpose of resale, with its purchases of the supplies and equipment.

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Mayor and City Council of Baltimore, et al. v. Nicole Lambert, et al., No. 255, September Term 2024, filed May 5, 2025. Opinion by Ripken, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0255s24.pdf

CIVIL PROCEDURE – DISCOVERY – PRIVILEGE – *MORGAN* DOCTRINE

Facts:

In 2019, L.L., a student in a Baltimore City public high school, received a Nexplanon contraceptive implant at a School Based Health Center, whose services were procured via contract between the Baltimore City Health Department ("the Department") and the Baltimore City Board of School Commissioners ("the Board"). L.L. alleged that she was repeatedly pressured by school personnel to receive the implant and that she experienced complications due to improper insertion of the implant. In 2022, L.L. and her mother, Nicole Lambert ("Appellees"), sued nineteen defendants ("Appellants"), including the Board. Appellees alleged that Appellants breached a duty of care owed to L.L. in enacting a policy targeting her for a Nexplanon implant.

In November of 2023, during discovery, Appellees sought to schedule depositions for nine prospective deponents, each of whom were employees of the Department and named defendants. Appellants objected to the depositions and filed a motion for a protective order. In the motion, Appellants contended that each of the nine prospective deponents were protected under the *Morgan* doctrine as high-ranking government officials. Appellees opposed the motion, arguing that the *Morgan* doctrine did not apply to each of the nine prospective deponents. Appellees further contended that even if the *Morgan* doctrine applied, the nine prospective deponents were so intertwined with the issues in controversy that an exception would be applicable.

The circuit court denied the motion for a protective order. Appellants noted this timely interlocutory appeal.

Held: Vacated and remanded.

The Appellate Court began by reviewing the *Morgan* doctrine as adopted in Maryland. The *Morgan* doctrine is federally created, arising out of *United States v. Morgan*, 313 U.S. 409 (1941), and provides that high-ranking government officials are not subject to being deposed with respect to their mental processes in performing discretionary acts. The Court noted that while the initial adoption of the *Morgan* doctrine was limited in scope, Maryland courts have since expanded the doctrine beyond the limited context of administrative appeals. The Court also noted that the *Morgan* doctrine is applicable only to high-ranking government officials, and that

the official seeking to assert the privilege bears the initial burden of demonstrating that the doctrine is applicable.

The Court observed that Maryland has no standard for determining whether an official is sufficiently high-ranking to qualify for protection under *Morgan*. Neither is there a uniform federal standard. The Court examined prior application of the doctrine, both federally and in Maryland. The general federal practice is to apply the doctrine to the heads of government agencies, and in at least some federal jurisdictions to officials with a particularly close working relationship to the agency head. The Court also found that Maryland's application of the *Morgan* doctrine has been consistent with the pattern in federal courts of recognizing the privilege for those who sit at the pinnacle of their agencies. The Court determined that whether Appellants met their burden should be assessed on a case-by-case basis, adhering to Maryland's practice.

The Court examined whether Appellants met their burden to show that the *Morgan* doctrine was applicable. The Court initially found that Appellees sought information which would be protected under the *Morgan* doctrine. Appellees sought to question the prospective deponents about the decisions that led to the creation of governmental policies and procedures, and thus the information sought concerned their mental processes in performing discretionary acts and was within the scope of the *Morgan* doctrine.

The Court next examined whether the nine prospective deponents were high-ranking government officials. Appellants contended that three of the prospective deponents were former heads of the Department and that each of the other six held nonduplicative positions. Appellants also contended that the circuit court's order contained an implicit finding that the *Morgan* doctrine applied to all nine prospective deponents. However, the Court found that it was not clear that such a finding was made, and directed the circuit court on remand to clarify its finding with respect to the applicability of the doctrine to each prospective deponent.

The Court turned next to the two recognized exceptions to the *Morgan* doctrine. If the moving party meets the burden of establishing that the *Morgan* doctrine protects the prospective deponents, the party seeking discovery then has the burden to show that one of two exceptions is applicable. There are two recognized exceptions to the *Morgan* doctrine: if (1) extraordinary circumstances are shown or (2) the official is personally involved in a material way. While Appellees asserted that the circuit court's order amounted to a finding of the personal involvement exception, the Court found that it was not clear whether such a finding was made. The Court thus directed the circuit court to determine, if it found that the *Morgan* doctrine was applicable, whether an exception applied. The Court clarified the requirements of both exceptions for guidance purposes.

The Court explained that to show extraordinary circumstances, the party seeking discovery must show: (1) that the official's testimony is necessary to obtain relevant information that is not available from another source; (2) the official has first-hand information that could not be reasonably obtained from other sources; (3) the testimony is essential to that party's case; (4) the deposition would not significantly interfere with the ability of the official to perform his or her government duties; and (5) that the evidence sought is not available through any alternative

source or less burdensome means. The party seeking discovery is required to demonstrate that each prospective deponent possesses unique information which cannot be obtained from any available alternative sources.

The Court explained that to show personal involvement, the party seeking discovery must show that the prospective deponents had a substantial, hands-on and personal involvement such that fundamental fairness requires their deposition. Because the record was unclear whether Appellants met their burden to show that the *Morgan* doctrine applied and whether Appellees then met their burden to show that an exception applied, the Court vacated the denial of the protective order and remanded to the circuit court for further proceedings.

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Michael D. Joiner v. State of Maryland, No. 1949, September Term 2023, filed May 30, 2025. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1949s23.pdf

CRIMINAL LAW – SELF-DEFENSE – DEFENSE OF HABITATION

Facts:

This appeal arises from the trial and conviction of appellant Michael D. Joiner in the Circuit Court for Carroll County. Joiner was convicted of two counts of first-degree assault, two counts of use of a firearm in the commission of a crime of violence, and two counts of reckless endangerment.

Joiner's conviction stems from shooting Ted Rill and pointing a gun at Lester Rill. The shooting and events that preceded it were captured on soundless video. When Ted and Lester went to Joiner's house to retrieve a soil tamper, allegedly stolen by two previous employees of Rill's Construction, Ted testified Joiner and his fiancée, Kristen Naill, approached with guns and told them to get off Joiner's property. Ted also testified Naill put her gun to his head, and as he grabbed the gun away from her and threw it, Ted was shot in the buttocks. On cross-examination, defense counsel attempted to ask Ted about a police report containing accusations that Ted pointed a loaded gun at someone. The court sustained the prosecutor's objection to defense counsel's question.

Lester corroborated Ted's testimony that Joiner and Naill approached with guns, and the video showed Naill putting a gun to Ted's head. Lester further testified Joiner put a gun to Lester's head.

The defense theory of the case was that Joiner acted in self-defense, defense of others, and defense of habitation. Joiner testified he was in his garage when he heard Naill screaming, and upon exiting the garage, he saw Naill and Ted "in a physical altercation." Joiner testified he then saw Ted with Naill's gun, Ted began hitting him, and Joiner then fired his weapon to defend himself.

Corporal Theodore Buck testified about the investigation into the shooting. He testified about "discrepancies" between Joiner's version of events and evidence recovered during the investigation. Defense counsel elicited on cross-examination that, in applying for a warrant to search Ted's truck, Corporal Buck wrote Ted and Lester were the initial aggressors. Corporal Buck also testified that he did not have the surveillance video when he prepared the search warrant application, so he based the application on statements from Joiner, Naill, and Lester. Corporal Buck testified on redirect, over objection, that, at the conclusion of the investigation, his assessment of the initial aggressor changed, and he deemed Joiner to be the aggressor.

The court instructed the jury on self-defense and defense of others. In its instruction on self-defense, the court instructed the jury that one of the elements of self-defense requires that the defendant make a reasonable effort to retreat before using deadly force, but Joiner had no duty to retreat if he was "in his home or upon the curtilage of his home." Joiner requested a jury instruction on defense of habitation, but the court ruled the instruction was not generated by the evidence.

The jury convicted Joiner, and he filed this timely appeal.

Held: Affirmed.

First, the court did not abuse its discretion in declining to instruct the jury on the defense of habitation. A trial court is required to give a specific instruction to the jury when three conditions are met: (1) it is a correct statement of law, (2) it is applicable under the facts of the case, and (3) its contents were not fairly covered elsewhere in the jury instructions actually given. J*arvis v. State*, 487 Md. 548, 564 (2024). The court was not required to give the instruction because it was not applicable to the facts of the case as there was no evidence from which a jury could conclude either Ted or Lester Rill entered or attempted to enter Joiner's home. Additionally, the court was not required to give the instruction because its contents were fairly covered in the trial court's self-defense instruction that advised the jury Joiner had no duty to retreat if he was in his home or upon the curtilage of his home.

Second, the court did not err in allowing Corporal Buck to testify that Joiner was the aggressor in the altercation. During the trial, Joiner elicited Corporal Buck's opinion that, at the early stages of the investigation, Ted and Lester Rill were the aggressors. In doing so, Joiner opened the door for the State to rebut the significance of that evidence on redirect by asking Corporal Buck whether his opinion as to the identity of the aggressor changed during the course of the investigation. Accordingly, the court did not err in permitting the State to elicit Corporal Buck's testimony that, at the end of the investigation, he deemed Joiner was the aggressor.

Third, the court did not err in sustaining the State's objection when Joiner attempted to cross-examine Ted about a police report containing accusations that Ted pointed a gun at someone. Joiner's examination was not logically related to Ted's character for untruthfulness, as is required under Maryland Rule 5-608(b), and it was a "hearsay accusation of [Ted's] guilt." *State v. Cox*, 298 Md. 173, 181 (1983).

Finally, the evidence was sufficient to sustain Joiner's conviction for two counts of first-degree assault. To defeat a motion for judgment of acquittal where a claim of self-defense or defense of others has been raised, it is not necessary for the State to affirmatively negate any evidence tending to support such a claim. It is up to the jury to decide whether evidence that the defendant acted in self-defense or in defense of others is worthy of belief. So, while Joiner's testimony during trial may have generated the issue of self-defense and defense of others for the jury's

consideration, that evidence did not establish he was entitled to judgment in his favor as a matter of law. The jury was free to disbelieve Joiner's testimony that Ted Rill threated to kill him and his family, and Ted initiated the confrontation. Alternatively, the jury could have reasonably concluded the degree of force used by Joiner was unreasonable. Accordingly, the court did not err in denying Joiner's motion for judgment of acquittal.

Adam James Jun v. State of Maryland, No. 2232, September Term 2024, filed May 6, 2025. Opinion by Shaw, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2232s23.pdf

EVIDENCE – LAY WITNESS TESTIMONY – IP ADDRESSES

EVIDENCE – BUSINESS RECORDS – TRUSTWORTHINESS

Facts:

The State charged Appellant, Adam James Jun, with distributing a visual representation of a minor engaged in sexual conduct, Md. Code Ann., Crim. Law § 11-207(a)(4), and possessing a visual representation of a minor engaged in sexual conduct, Md. Code Ann., Crim. Law § 11-208 in the Circuit Court of Anne Arundel County. Appellant filed a motion in limine arguing that the State needed an expert witness to testify that an IP address accessed at a specific location can identify the person responsible for the account. Appellant asserted that the State needed an expert "in order to understand the Kik records, the Verizon records, and tie the case back" to him. The court reserved ruling on the issue until trial.

At trial, the prosecution asked their witness, Detective Bruce, about the evidentiary significance of IP addresses. He answered that the "benefit of knowing the information behind an IP address is [knowing] where that activity is coming from, so specifically, a location." He added that "the subscriber information to that IP, . . . who is listed on the account," could also be found from the investigation of an IP address. He further testified that the Verizon records listed Adam Jun as the customer at 503 Darlene Avenue for the IP address 74.103.25.220, that the Kik records listed the IP address 74.103.25.220 as the IP address for the Kik account associated with the child sexual abuse material, and about why people trade child sexual abuse material.

Appellant objected to Detective Bruce's testimony about IP addresses, the Verizon records, the Kik records, and the trading of child sexual abuse material because he felt that an expert was needed to interpret the documents and to provide the testimony. Appellant also challenged the trustworthiness of the Kik records themselves. The court overruled his objections. Appellant was found guilty of distributing a visual representation of a minor engaged in sexual conduct and possessing a visual representation of a minor engaged in sexual conduct. Appellant appealed.

Held: Affirmed.

Expert testimony is required "'when the subject of the inference . . . is so particularly related to some science or profession that it is beyond the ken of the average layman.'" *State v. Galicia*, 479 Md. 341, 389 (2022) (quoting *Johnson v. State*, 457 Md. 513, 530 (2018)). A trial court must consider whether the testimony is "within the range of perception and understanding" of the

average person, not "whether the average person is already knowledgeable about a given subject[.]" *Id*. at 394. When analyzed together, "Md. Rules 5-701 and 5-702 prohibit the admission as 'lay opinion' of testimony based upon specialized knowledge, skill, experience, training or education." *Ragland v. State*, 385 Md. 706, 725 (2005).

Reviewing a string of recent Supreme Court of Maryland decisions, the Appellate Court of Maryland held that Detective Bruce did not need to be qualified as an expert witness to provide testimony. Internet usage is widespread in our present culture. Even if people do not know how an IP address is linked to a physical address, it is within the range of perception and understanding of the average layperson that the internet provided by their internet service provider allows them to use social media on their devices in their homes. Moreover, the witness did not use his expertise or his experience to narrow the data in the records or to make conclusions, rather the witness read the exhibit entries into the record.

Maryland Rule 5-803(b)(6) excepts records of regularly conducted business activity from the hearsay rule. The records, themselves, must be trustworthy. Here, the Appellate Court of Maryland held that there is no indication or evidence in the records that they were created for litigation. Instead, Kik's custodian certified that the records were kept or made in their regular course of business. The records did not include opinions or conclusions but contained images and data records that could be read in a straightforward manner as there was a legend provided to assist the reader of the data. Detective Bruce could read the data from the logs folder to connect them with the images in the content folder without extensive interpretation. Nothing about the source of the information, Kik, or the manner of its preparation indicates untrustworthiness.

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David Michael Crawford v. State of Maryland, No. 0856 September Term 2023, filed May 5, 2025. Opinion by Albright, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0856s23.pdf

CRIMINAL LAW – EVIDENCE – OTHER MISCONDUCT BY ACCUSED – NATURE AND CIRCUMSTANCES OF OTHER MISCONDUCT AFFECTING ADMISSIBILITY – FACTORS AFFECTING ADMISSIBILITY

Facts:

David Michael Crawford, appellant, was convicted by a jury in the Circuit Court for Howard County of eight counts of attempted first-degree murder, three counts of first-degree arson, and one count of malicious burning related to four separate fires that were committed in Howard County. He was sentenced to two consecutive life terms plus a consecutive term of seventy-five years.

Before trial, the State sought permission to introduce evidence of Mr. Crawford's involvement in eight other fires in Maryland. The State theorized that the eight other fires, in addition to the four Howard County fires, were all linked to a list found on Mr. Crawford's phone. The State asserted that the evidence of the eight other fires was admissible under Maryland Rule 5-404(b) as evidence to prove Mr. Crawford's identity and motive as the perpetrator of the Howard County fires.

The circuit court permitted the State to admit the evidence of the eight other fires under Maryland Rule 5-404(b) at trial. Mr. Crawford appealed the circuit court's decision on the 5-404(b) evidence. Mr. Crawford also appealed as well as the circuit court's denial of his motion for a new trial following a "blurt" during trial by an investigating officer that Mr. Crawford refused consent for a search of his phone.

Held: Affirmed.

First, the court addressed Mr. Crawford's arguments that the evidence of other fires he committed should have been precluded under Maryland Rule 5-404(b)'s balancing test based solely on the *number* of other fires. Acknowledging that Maryland Rule 5-404(b) requires a court to weigh "the *necessity for* and probativeness of the evidence concerning the collateral criminal act against the untoward prejudice which is likely to be the consequence of its admission[,]" *State v. Faulkner*, 314 Md. 630, 640–41 (1989), the Court determined that this standard requires a case-specific analysis—and that no bright-line rule applies based on the *number* of other bad acts that evidence is offered for.

Under the circumstances presented by Mr. Crawford's case, the Court affirmed the circuit court's decision to admit the evidence of the eight other fires. Mr. Crawford's case involved incidents of arson, which "is likely to be a clandestine offense and proof of it must often be by circumstantial evidence and inferences which may reasonably be drawn therefrom." *Nasim v. State*, 34 Md. App. 65, 76 (1976). A key piece of evidence against Mr. Crawford was the list that was recovered on his phone. In connection with the evidence of the eight other fires, the list showed that each fire victim was a person on Mr. Crawford's list, and each victim only had seemingly inconsequential grievances with him. As a result, the Court determined that the circuit court did not abuse its discretion by determining the need for the evidence of the eight other fires was not substantially outweighed by the danger of unfair prejudice.

The Court also held that Md. Rule 1-104(b) requires parties to indicate whether an unreported or unpublished opinion from another jurisdiction is precedential or persuasive. Since Mr. Crawford did not do so for an out-of-court case he relied upon, the Court declined to address that case.

Second, the Court addressed Mr. Crawford's contentions that he was improperly denied a new trial after an investigating officer stated that Mr. Crawford had refused consent for a search of his phone. At trial, the circuit court determined the officer's statement was a "blurt," or "an abrupt and inadvertent nonresponsive statement made by a witness during his or her testimony." *Washington v. State*, 191 Md. App. 48, 100 (2010). Neither party contended that the statement was not a blurt, but Mr. Crawford argued that such evidence was inherently prejudicial and incurable.

The Court disagreed. Applying the analysis initially laid out in *Guesfeird v. State*, 300 Md. 653 (1984), the Court determined that none of the five *Guesfeird* factors supported granting Mr. Crawford a mistrial. Further, the Court rejected Mr. Crawford's argument that *Longshore v. State*, 399 Md. 486 (2007), necessitated a mistrial. Mr. Crawford's case was distinguishable from *Longshore* because Mr. Crawford's knowledge of what a search might uncover was not a key issue at his trial. Any prejudice from Mr. Crawford's lack of consent to search his phone was also mitigated by the officer's additional statement that Mr. Crawford provided the passcode for his phone to the police.

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In the Matter of the Petition of Storm Cintron, No. 417, September Term 2024, filed May 6, 2025. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0417s24.pdf

CRIMINAL LAW – EXPUNGEMENT – CUSTODIAN OF RECORDS

Facts:

This appeal arises from the termination of Storm Cintron, appellant, from the Baltimore City Police Department ("BPD"), appellee. Cintron, a BPD officer, lived in Howard County with his wife, Venus Ortiz.

On April 18, 2021, officers from the Howard County Police Department ("HCPD") responded to a call at Cintron's residence for a reported domestic assault. Upon arrival, HCPD Officer Fogle spoke with Cintron, who explained that Ortiz threw a mirror against a wall near Cintron and brandished scissors at him, but he sustained no injuries. After Officer Fogle explained to Cintron that he needed to hear Ortiz's side of the story, Cintron told Officer Fogle he did have injuries. Officer Fogle observed fresh scratch marks, peeled-back skin, and blood on Cintron's right arm and hand, which HCPD personnel photographed.

Officer Fogle then interviewed Ortiz, who said Cintron was angry at her, began yelling, then grabbed and pushed her. She then described how she threw a mirror at the wall and ran to hide behind a locked door. Ortiz explained how Cintron punched the door numerous times until he could open it and threatened to kill Ortiz while doing so. Officer Fogle observed an approximately six-inch hole in the bathroom door, "consistent with a forceful punch of something through it." HCPD personnel also took photographs of broken glass from the mirror, the hole in the bathroom door, and broken nails on almost all of Ortiz's fingers.

On April 20, 2021, BPD opened an investigation into the incident, which was led by Detective Valdes. He sent a letter to HCPD requesting HCPD to send its records from the April 18 incident. He received copies of HCPD's reports on May 26, 2021, and copies of HCPD's photographs on June 1, 2021.

Approximately one month after the incident, Cintron was charged with second-degree assault. He was tried in the District Court for Howard County (the "District Court") on August 26, 2021, and found not guilty. Cintron filed a request with the District Court to expunge records related to the assault charge. The court's expungement order listed four specific custodians of Cintron's records: (1) Criminal Justice Information System (known as CJIS or CJIS Central Repository), (2) District Court of Maryland-Howard County, (3) HCPD, and (4) Howard County State's Attorney's Office. The order did not list BPD as a custodian.

Almost a year later, on April 14, 2022, BPD brought two administrative charges against Cintron, alleging he violated BPD's policies when he threatened to kill his wife and made a false statement to Officer Fogle concerning how injuries to his person were sustained. Cintron elected to be tried before an Administrative Hearing Board ("Board").

At the Board hearing on August 1, 2023, BPD made a preliminary motion to admit copies of HCPD's records related to Cintron's assault charge, arguing BPD obtained the records prior to the expungement order to which BPD was not a party. Cintron objected to BPD's motion, arguing the records were expunged and therefore could not be used in the Board hearing. Over Cintron's objection, the Board granted BPD's motion.

During the hearing, BPD introduced copies of the photographs taken by HCPD on April 18, 2021, depicting Cintron's and Ortiz's injuries, as well as damage to the bathroom. Officer Fogle also testified to his observation of Cintron's injuries and the hole in the bathroom door.

The Board found Cintron guilty of violating the administrative charges against him and the Acting BPD Police Commissioner accepted the Board's recommendation to terminate Cintron's employment with BPD.

Cintron appealed the Board's decision to the Circuit Court for Baltimore City, arguing the Board erred by allowing BPD to introduce copies of HCPD's photographs because those photographs were subject to the expungement order. The circuit court affirmed the Board's decision. Cintron then filed this appeal.

Held: Affirmed.

First, the photographs in BPD's custody could be used at Cintron's Board hearing because they were not subject to the expungement order issued here. The District Court of Maryland for Howard County issued a Form 4-508.1 ordering expungement of Cintron's criminal records. The order did not list BPD as a custodian of records. Because a court only needs to serve an expungement order "on each custodian of records designated in the order[,]" as specified in Rule 4-508, the District Court was not required to serve Cintron's expungement order on BPD. Because only custodians of police or court records "subject to the order of expungement" must comply with the order, as delineated in Maryland Code Annotated, Criminal Procedure Article ("CP") § 10-105(f) and Rule 4-510, BPD did not need to comply with Cintron's expungement order. Therefore, as outlined in the notice in Cintron's Form 4-508.1 expungement order, "expungement of the records in the custody of [BPD] is not complete and may not be relied upon." Accordingly, the Board did not err in allowing BPD to admit copies of the photographs taken by HCPD at Cintron's hearing.

Second, HCPD had no duty under Cintron's expungement order—or any provision of the Maryland Code or Rules—to expunge copies of the photographs in BPD's custody that BPD eventually introduced at Cintron's Board hearing. Cintron's Form 4-508.1 expungement order specifies custodians designated in the order shall "expunge all court and police records

pertaining to this action or proceeding in their custody[.]" (Emphasis added.) The notice at the end of the order also specifies "[u]ntil a custodian of records has received a copy of this Order AND filed a Certificate of Compliance, expungement of the records in the custody of that custodian is not complete and may not be relied upon." (emphasis added) Based upon this language, which is consistent with relevant Maryland Rules, only HCPD and the three other custodians listed in the expungement order needed to expunge records in their custody. HCPD received a copy of Cintron's expungement order and filed a Certificate of Compliance. So, expungement of police records in HCPD's custody, including the photographs HCPD took on April 18, 2021, was completed and Cintron can rely upon HCPD's expungement. But when the District Court issued the expungement order to HCPD, the photographs BPD eventually introduced at Cintron's Board hearing were not in HCPD's custody—they were in BPD's custody.

Third, introducing the photographs into evidence at Cintron's Board hearing did not contravene the purpose of Maryland expungement law, which is to balance an individual's privacy interest against society's need for efficient law enforcement. The General Assembly took this into account when it defined expungement in CP § 10-101(e)—namely, it did not define expungement as erasure or total destruction of court or police records but as removal from public inspection the records of a criminal arrest and any subsequent court action.

Finally, even if, purely for the sake of argument, we were to conclude the Board did err in allowing BPD to admit copies of the photographs taken by HCPD as evidence at Cintron's hearing, such error was harmless. Photos depicting Cintron's injuries and the hole in the bathroom door are cumulative as Officer Fogle testified in detail as to Cintron's injuries and the hole. Moreover, there is nothing in the record to indicate any of the photographs influenced the Board's finding of guilt and recommendation to terminate Cintron's employment with BPD.

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State of Maryland v. Jose Antonio Santamaria-Landaverde, No. 608, September Term 2024, filed May 31, 2025. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0608s24.pdf

CRIMINAL PROCEDURE – SANCTIONS FOR DISCOVERY VIOLATIONS

Facts:

In July 2023, Santamaria-Landaverde was charged in the Circuit Court for Prince George's County with committing various sexual offenses against a child. During the investigation, the Child Advocacy Center (CAC) conducted recorded interviews with the victim and her father. A detective took notes during both interviews. Detectives also swabbed Santamaria-Landaverde's car for the presence of semen or seminal fluid. The DNA analysis found no trace of Santamaria-Landaverde's semen or seminal fluid in his car. The DNA report became available to the lead detective, but the report was not sent to the prosecutor when it was generated.

In its initial discovery disclosure, the State provided the defense with the detective's notes from the CAC interviews, a video file labeled "Victim CAC," and property records indicating that DNA samples were taken during the investigation. The initial disclosure did not include the DNA report because the prosecutor did not have it. The initial disclosure did not include the video file of the victim's interview, because the video file provided contained the interview with the victim's father and was mistakenly mislabeled.

On the day before trial, the State discovered it had failed to turn over the video file of the victim's interview and the DNA report. The State sent both pieces of evidence to defense counsel on the eve and morning of trial respectively. On the morning of trial, the State requested a postponement. Santamaria-Landaverde moved to dismiss the indictment because of the State's discovery violations, which he characterized as *Brady* violations.

The circuit court granted Santamaria-Landaverde's motion to dismiss. The court concluded that the State's discovery violations violated Santamaria-Landaverde's rights under *Brady*. The court concluded that dismissal was the only remedy that could alleviate the prejudice to Santamaria-Landaverde. The State appealed from the dismissal.

In both the circuit court and the Appellate Court of Maryland, defense counsel admitted to knowing that the State failed to disclose the recording of the victim's interview and the DNA report. During oral argument in the Appellate Court, defense counsel also admitted that he chose not to inform the State of its omissions or to ask for the missing evidence so that he could attempt to persuade the circuit court to exclude the evidence or dismiss the charges altogether.

Held: Reversed and remanded.

The Appellate Court of Maryland concluded that the circuit court erred in two respects. First, the circuit court incorrectly concluded that the State's discovery violations were *Brady* violations. Second, as a consequence of the first error, the circuit court applied the incorrect standard when imposing discovery sanctions.

The Court held that the circuit court's finding of a *Brady* violation was incorrect because the belatedly disclosed evidence was not "suppressed." There is no *Brady* violation where a defendant has actual or constructive knowledge of information that the State has allegedly withheld, or where such information was available to the defense through reasonable and diligent investigation.

The Court concluded that defense counsel had, at the very least, constructive knowledge of the recording of the victim's interview and the DNA report because the State's initial discovery disclosure contained the detective's notes from the victim's interview, a mislabeled video file purporting to be the recording of the victim's interview, and property records about the collected DNA samples, all of which put the defense on notice of the missing evidence. The Court reasoned that the defense cannot acknowledge its intention to exploit the State's omissions in one breath and claim that the State suppressed evidence for *Brady* purposes in the next.

The Court held that the circuit court's decision to dismiss the indictment as a discovery sanction was based on legal error and, therefore, an abuse of discretion. Maryland Rule 4-263 provides trial courts with discretion to impose sanctions when parties violate the discovery rules. When determining an appropriate sanction, a trial court must consider the reasons why the disclosure was not made, the existence and amount of prejudice to the opposing party, the feasibility of curing the prejudice with a continuance, and any other relevant circumstances. No matter the type of discovery violation committed—under *Brady* or under the Maryland Rules—courts should impose the least severe sanction consistent with the purpose of the discovery requirements. Dismissal is reserved for cases where no less drastic remedy is available.

The Court concluded that, if the circuit court had applied the proper standard for imposing discovery sanctions, it could not have dismissed the charges. The State's discovery violations were inadvertent. The prejudice to Santamaria-Landaverde was minimal because he chose not to request the evidence he knew was missing. A continuance would have allowed defense counsel time to review the DNA report and the recording of the victim's interview to recalculate his defense.

The Court reversed the dismissal orders, revived the indictment, and remanded the case to the circuit court.

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Cathy Sue Bromberg v. State of Maryland, No. 900, September Term 2023, filed May 30, 2025. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0900s23.pdf

SUBJECT MATTER JURISDICTION – DOUBLE JEOPARDY – SUFFICIENCY OF THE EVIDENCE

Facts:

The State charged Cathy Sue Bromberg, appellant, in the District Court of Maryland for Baltimore County, with four counts of harassment in violation of Md. Code Ann., Crim. Law ("CR") § 3-803 (2021 Repl. Vol.). Defense counsel prayed a jury trial, and the case was transferred to the Circuit Court for Baltimore County. Appellant subsequently waived her right to a jury trial, and the court convicted appellant of four counts of harassment, sentencing her to consecutive sentences of 90 days imprisonment for each of her convictions, suspending all but 180 days. Approximately six weeks later, the court granted appellant's motion for modification of sentence, suspending the balance of appellant's sentence.

Held:

Judgment vacated and remanded to the circuit court to transfer to the District Court for trial.

Where appellant was charged as a first-time offender with four counts of harassment, and each charge permitted a sentence of not more than 90 days, he was not entitled to a jury trial in the circuit court. Md. Code Ann., Crim. Law ("CR") § 3-803 (2021 Repl. Vol.). The District Court, therefore, had exclusive subject matter jurisdiction over the charges against appellant, and the judgment of the circuit court was void ab initio because it had no jurisdiction over the matter. Accordingly, appellant's convictions were nullities, and they were void.

Here, where the circuit court lacked subject matter jurisdiction over the charges against appellant, jeopardy never attached, and the constitutional prohibitions against double jeopardy do not apply to bar a new trial in District Court.

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Bindu George v. Jerry Bimbra, No. 1444, September Term 2024, filed May 6, 2025. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1444s24.pdf

FAMILY LAW – ATTORNEYS' FEES – GOOD CAUSE

Facts:

This appeal arises from a custody dispute between appellant Bindu George ("Mother") and appellee Jerry Bimbra ("Father") regarding their minor child, X. Mother and Father originally shared legal and physical custody of X, but in December 2021, Mother filed a Motion to Modify Legal Custody in the Circuit Court for Montgomery County. After various motions and amendments by both parties, Mother and Father both eventually sought sole legal and primary physical custody of X.

The matter was originally set for trial in January 2023, but it was continued three times. In May and June 2024, the court held a four-day trial on Mother's and Father's competing claims regarding custody of X. Immediately prior to opening statements on the first day of trial, Father's counsel notified Mother and the court that Father was no longer contesting Mother's request for sole legal and primary physical custody of X.

At trial, Mother testified she is a physician at the Food and Drug Administration, earning $273,802 annually. She also testified she experienced financial hardship, such as maxing out loans from her retirement and spending her savings, due to litigating with Father from December 2021 through trial in 2024. The court additionally entered into evidence a summary of Father's assets, including real property, bank accounts, and investment accounts, with a total value of over $9 million. The court also entered into evidence Father's financial statement from April 2024, listing his total net worth at approximately $5.5 million.

Before the court issued its decision, Mother filed a petition seeking $622,095.12 in attorneys' fees, $31,108.60 of which Mother incurred from the trial alone. Father testified at trial his attorneys' fees totaled $445,585.51.

The court granted Mother primary physical and sole legal custody of X. The court also found Mother had substantial justification for bringing her December 2021 Motion to Modify Legal Custody, while Father's "position between December 14, 2021, and the date of trial (when he suddenly announced that he was no longer contesting physical or legal custody) was not substantially justified."

In its attorneys' fees discussion, the court explained it "considered the financial status and needs of each party" pursuant to Maryland Code Annotated, Family Law Article ("FL") § 12-103(b). The court then determined that, out of the $622,095.12 Mother sought in attorneys' fees, it would

not award the $31,108.60 Mother incurred for the trial. Of the $590,986.22 in fees Mother incurred prior to the trial, the court explained it "seriously considered awarding fees and expenses in this entire amount" of $590,986.22 pursuant to FL § 12-103(c). However, the court found "good cause not to award the entire amount, given the parties' relative financial status and the fees and expenses incurred by both sides." The court then awarded Mother $295,493.26, "representing one half of the fees Mother incurred prior to trial."

The circuit court denied Mother's Motion to Revise, articulating its "belie[f] that the relative financial positions [of the parties] must be considered 'good cause.'" The circuit court also expressed that it was "satisfied that this substantial award of fees [of $295,493.26] is consistent with [FL §] 12-103(c) and sound principles of equity." Mother then filed this appeal.

Held: Vacated and remanded.

FL § 12-103(c) reads: "Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees." FL § 12-103 does not define good cause. We followed the same approach this Court outlined in *Meek v. Linton,* 245 Md. App. 689 (2020), for analyzing a court's finding of good cause under a statute that does not define good cause. First, we consider the purpose of FL § 12-103(c) and relevant case law in order to define good cause under FL § 12-103(c). Second, under an abuse of discretion standard, we review whether the court's reasons for not awarding Mother all of the attorneys' fees she requested can constitute good cause under FL § 12-103(c).

First, good cause under FL § 12-103(c) means a substantial reason to not award a party all of their reasonable attorneys' fees if the court finds the other party did not have substantial justification for prosecuting or defending the proceeding. To develop this definition, we look to legislative history and how before the addition of FL § 12-103(c), courts awarded attorneys' fees under FL § 12-103(b) which gives courts discretion in awarding attorneys' fees. In light of this history, we determine the General Assembly's purpose in enacting FL § 12-103(c) was to limit judges' discretion in awarding fees by requiring judges—absent a finding of good cause—to award fees to a party who has to litigate against a party that lacks substantial justification in prosecuting or defending a proceeding. To understand the concept of good cause under FL § 12-103(c), we also are guided by the Supreme Court of Maryland's decision in *Davis v. Petito*, 425 Md. 191 (2012), and other family law fee shifting provisions, which our Supreme Court ruled must be construed in harmony with FL § 12-103.

Second, the circuit court abused its discretion in finding parties' relative financial status and relative fees and expenses incurred constitute good cause under FL § 12-103(c). We conclude allowing judges to consider parties' relative financial status and fees in determining whether good cause exists under FL § 12-103(c) is not consistent with FL § 12-103(c)'s fundamental purpose of limiting judges' discretion in awarding attorneys' fees when a party lacks substantial justification. We also reference *Davis* and *Fader's Maryland Family Law* § 15-4 outline of a

three-step process to awarding attorneys' fees, concluding if judges can consider each party's financial status and needs in determining whether good cause exists under FL § 12-103(c), there would essentially be no difference between the court's approach to rendering attorneys' fees when a party lacks substantial justification for prosecuting or defending a claim versus when both parties have substantial justification.

Finally, we vacate the circuit court's award of attorneys' fees and remand for the court to reconsider whether good cause exists to not award Mother all of her reasonable attorneys' fees. We instruct the court to not factor in Father's financial circumstances relative to Mother's, or Father's attorneys' fees relative to Mother's, in its reconsideration. The court could, however, consider the reasonableness of Mother's attorneys' fees, as in *Davis* where the Court concluded if a party lacked substantial justification for prosecution or defending a claim, absent a finding of good cause to the contrary, the reasonableness of the other party's fees would be the only consideration.

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In the Matter of Bodhi Sico Becker, No. 332, September Term 2024, filed May 2, 2025. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0332s24.pdf

CHANGE OF CHILD'S NAME – EXTREME CIRCUMSTANCES – BEST INTESTEST OF THE CHILD

Facts:

Bodhi Sico Becker ("Bodhi") was born in 2020 to Colleen Sico (Ms. Sico) and Ashley Becker (Ms. Becker). While Ms. Sico was pregnant, Ms. Becker and she discussed their child's name. According to Ms. Sico, the couple agreed that if they got married, the baby would take Becker as a last name. They included Sico as the baby's middle name. When Bodhi was born, although Ms. Sico and Ms. Becker remained unmarried, they both signed the baby's birth certificate naming their child Bodhi Sico Becker.

When the couple separated in 2022, Ms. Sico raised the issue of Bodhi's name, seeking to hyphenate his last name to include both the women's surnames. When they were unable to reach an agreement, Ms. Sico filed a petition seeking to change Bodhi's name to Bodhi Joseph Sico-Becker.

During the hearing, Ms. Sico argued that the couple had never agreed the name Bodhi Sico Becker because that name was predicated on the condition of marriage. Ms. Becker argued that no such condition existed and, even if it had, Ms. Sico consented to the name at the time of birth by signing the birth certificate and other legal documents bearing the child's name.

The circuit court found that the Ms. Sico and Ms. Becker agreed to Bodhi's name when he was born and, applying both the best interest of the child standard and the exceptional circumstances standard, denied Ms. Sico's petition to change his name. The court declined to apply additional extreme circumstances factors, as suggested by Ms. Sico, in conducting its analysis. Ms. Sico appealed.

Held: Affirmed.

The Appellate Court of Maryland considered two issues on appeal. First, the Court addressed whether the circuit court appropriately found that Ms. Sico and Ms. Becker had agreed to Bodhi's name at the time of his birth and applied the correct standards in denying Ms. Sico's petition.

Where the change or alteration of a child's name is concerned, Maryland recognizes two distinct situations. The first are referred to as "no name" cases in which there was no agreement between

the parents at the time of the child's birth. The second are referred to as "name change" cases, in which both parents initially agreed to the child's name, but one parent now seeks to change that name. *See Schroeder v. Bradfoot*, 142 Md. App. 569 (2001). In determining whether such an agreement existed, courts look at the facts surrounding the initial naming of the child, including whether both parties were present at the birth, who signed the birth certificate bearing the given name, and when the name became known to the challenging party. *See Dorsey v. Tarpley*, 381 Md. 109, 116-17 (2003).

In a "no name" case the court conducts a pure best interest of the child analysis in determining whether a change from the present name is appropriate. *Schroader*, 142 Md. App. at 586. In a "name change" case, in addition to considering the child's best interest, the court also conducts an extreme circumstances analysis, looking to whether there is proof of serious misconduct or willful abandonment by the parent whose name the child bears. *Id*. at 581.

Here, the Court held that the circuit court appropriately found that Ms. Sico and Ms. Becker agreed to Bodhi's name at the time of birth, and that notwithstanding their discussions regarding marriage, both parents were present at the birth, both parents signed the birth certificate, and both parents jointly announced the child's name to their friends and family.

Second, the Court considered whether the circuit court erred in failing to consider additional factors in its extreme circumstances analysis based on the specific circumstances of this case and the changing structure of families in modern society. "[N]either parent has a superior right to determine the initial surname their child shall bear." *Lassiter-Geers v. Reichenbach*, 303 Md. 88, 95 (1985). To serve this end, when both parents agree to a child's name at birth, even if a name change is in the child's best interest, "there is a presumption against granting such a change except under 'extreme circumstance.'" *Dorsey*, 381 Md. at 115. To presume otherwise would be to improperly deprive one parent or the other of their equal rights to name their baby.

Here, the Court held that the circuit court did not err by declining to consider additional factors regarding its extreme circumstances analysis. Although Ms. Sico raised legitimate concerns, these concerns did not, in the Court's view, rise to the level of extreme circumstances for the purpose of a name change. Although it may be appropriate to consider additional extreme circumstances in some cases, such circumstances must necessarily be shown to adversely affect the child. This was not demonstrated in this appeal.

In the Matter of Northpoint Realty Partners, LLC, No. 62, September Term 2024, filed May 2, 2025. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0062s24.pdf

PRINCE GEORGE'S COUNTY ZONING ORDINANCE – RETROACTIVE OPERATION OF STATUTORY CHANGES – STATUTORY INTERPRETATION

Facts:

In 2021, the Prince George's County District Council adopted a County Section Map Amendment that rezoned properties under classifications established in the county's new zoning ordinance ("New ZO"). Pursuant to the New ZO, Mixed Use-Transportation Oriented zones ("MXT") were rezoned to Town Activity Center-Edge zones (TAC-E). MXT zoning permits retail, hotel, and office use. The change to TAC-E expanded those uses to include commercial/warehouse use.

Pursuant to the prior ordinance ("Old ZO"), before obtaining approval for a detailed site plan ("DET"), a developer was required to acquire an approved conceptual site plan ("CSP") and preliminary plan of subdivision ("PPS") (among other requirements). The New ZO eliminates the CSP from the order of approvals. When first passed, the New ZO provided that one requirement for approval of a DET was that the "proposed development complies with all conditions of approval in any development approvals and permits to which the detailed site plan is subject." PGCC § 27-3605(e)(2) (2022). In 2024, this section was amended to provide instead that "[a]ll conditions of approval in any development approvals and permits previously approved for the property have been considered and imposed as necessary to satisfy the applicable standards of the Subtitle." PGCC § 27-3605(e)(2) (2024).

The New ZO also includes a number of transitional provisions addressing developers who began the process under the Old ZO. First, it permits developers to continue the approval process under the Old ZO and extends the validity of prior approvals for twenty years. It also allows developers to "elect at any stage of the development review process to have the proposed development reviewed under" the New ZO. PGCC § 27-1704(f) (2024). In 2024, this section was amended to add that when a developer elects to be reviewed under the New ZO, "all conditions of prior approval(s) shall continue to be applicable to the proposed new development." PGCC § 27-1704(f)(2) (2024).

In December 2022, Northpoint Realty Partners, LLC ("Northpoint") filed a DET and a tree conservation plan ("TCP") with the Planning Board of the Maryland National Capital Park and Planning Commission ("Planning Board") for approval of two commercial warehouses pursuant to the New ZO. Northpoint's thirty-three-acre property sat within a 487-acre plot known as Westphalia.

In submitting its DET for approval, Northpoint relied on a PPS that had been approved under the Old ZO when commercial/warehouse use was not yet permitted on the subject property. In reviewing the DET, the Planning Board, pursuant to § 27-3605(e)(2) of the New ZO, applied all the conditions of approval included in the PPS that it found relevant to Northpoint's proposed development and approved the plan.

The District Council called up this decision for review and reversed the Planning Board's approval, finding the approval was arbitrary capricious, or illegal. The District Council interpreted the New ZO's transitional provisions to require Northpoint to obtain a new or revised PPS before proceeding with development approvals because the prior PPS had been approved subject to a CSP that did not contemplate commercial/warehouse use. Northpoint petitioned the Circuit Court for Prince George's County for judicial review and the court reversed the District Council's decision, finding that the Planning Board had properly considered relevant approval conditions. The District Council appealed.

Held: Affirmed.

The Appellate Court of Maryland considered one primary issue on appeal, namely, whether the District Council's Final Decision reversing the Planning Board's approval of Northpoint's DET was supported by substantial evidence and not premised on an erroneous conclusion of law.

First, as a preliminary matter, the Court considered whether the 2024 revisions to the New ZO, effective after this action commenced, should apply to its analysis. Where zoning and land use laws are concerned, "a change in the law after a decision below and before final decision by the appellate Court will be applied by the Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent." *Yorkville Corp v. Powell*, 237 Md. 121, 124 (1964). "[I]f the new law is procedural, the decision about retroactivity will turn on what aspect of the administrative/adjudication process it changes, at what point in the administrative/adjudicative process the change is made, and the question presented to the reviewing court." *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 227 (2009).

Here, retroactive application of the New ZO's updated provisions had no effect on substantive or vested rights, and the Court discerned no legislative intent directing exclusive prospective application of the relevant sections. Further, because this case answers for the first time critical questions of interpretation surrounding the New ZO's transitional provisions that will inform future development approvals, the Court held that retroactive application of the New ZO's updated provisions was appropriate.

The Court then considered the District Council's decision to reverse the Planning Board's approval of Northpoint's DET. In doing so, the Court explored the legislative history and intent behind the New ZO's transitional provisions. The Court noted that the "transitional and grandfathering provisions were designed to avoid interference with ongoing projects," not to tie

developers who elect to be reviewed under the New ZO to conditions of prior approvals that no longer apply. The Court found no language in the New ZO requiring a developer to revise or amend a development proposal before proceeding under the Old or New ZO. Finally, the Court held that during its review, the Planning Board appropriately "considered and imposed as necessary" the "development approvals and permits previously approved for the property," as required by § 27-3605(e)(2) (2022).

Because the Planning Board's decision to approve Northpoint's DET was consistent with the plain meaning of the New ZO's transitional provisions and their spirit and goals, its decision was supported by substantial evidence. Therefore, the Court affirmed the determination of the circuit court and held that the District Council erred as a matter of law when it found that the Planning Board's approval of the DET and TCP was arbitrary, capricious, or otherwise illegal.

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In the Matter of the Petition of the Mayor and City Council of Baltimore City, Nos. 340 & 371, September Term 2024, filed May 2, 2025. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0340s24.pdf

MARYLAND PUBLIC INFORMATION ACT – MANDATORY EXEMPTION – FINANCIAL INFORMATION – DISCLOSURE OF DONOR IDENTITIES

Facts:

Appellants, the Baltimore Brew and the Baltimore Sun, sought a list of individual donors to a legal defense fund associated with then-Baltimore City Council President Nicholas Mosby. The Baltimore City Ethics Board provided a list with the names and addresses of donors redacted, asserting that such data constituted financial information that could not be disclosed. The Maryland Public Information Act Compliance Board found that the exemption for disclosure of financial information did not apply to donations made to a § 527 political organization and ordered disclosure. The circuit court reversed the decision of the Compliance Board and upheld the decision of the Ethics Board to deny access to the requested information.

Held: Affirmed.

Md. Code Ann., Gen. Prov. ("GP") § 4-336 provides that, with some exceptions, a custodian shall deny inspection of public records containing "information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness." Records relating to a donation made to another person or entity constitutes "information about the finances of a person." It provides information about an individual's financial activities, assets, and in some cases, liabilities. The donor information here, was financial information under GP § 4-336.

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Sugarloaf Alliance, Inc. v. Frederick County, Maryland, No. 1617, September Term 2023, filed May 1, 2025. Opinion by Harrell, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1617s23.pdf

MARYLAND PUBLIC INFORMATION ACT – STATUTORY ATTORNEYS' FEES – SUBSTANTIALLY PREVAILING PARTY – LODESTAR METHOD – DOWNWARD ADJUSTMENT

Facts:

Sugarloaf Alliance, Inc. ("Sugarloaf"), a nonprofit organization, submitted applications to Frederick County ("the County") under the Maryland Public Information Act ("MPIA"), requesting certain records. When the County failed to comply with its requests within eight months, Sugarloaf filed suit seeking, *inter alia*, a court order compelling the County to produce the documents. While the case was pending, the County released twenty responsive records and provided Sugarloaf with Vaughn indices identifying an additional 138 that it withheld under various asserted privileges.

Following a bench trial, the circuit court entered an order requiring the County to produce all of the previously withheld records except those subject allegedly to the attorney-client and confidential commercial information privileges. After reviewing the latter documents in camera, the court determined that they had been withheld properly. In accordance with the court order, the County produced the remainder of the records. Sugarloaf, in turn, petitioned the court for $48,813.62 in attorneys' fees. After a hearing on Sugarloaf's petition, the court took the matter under advisement. While awaiting the court's decision, Sugarloaf filed a supplemental attorneys' fees petition seeking an additional $6,648 for fees incurred litigating its original petition ("fees-on-fees").

In a written opinion and order, the court granted in part Sugarloaf's attorneys' fees petition. In determining that Sugarloaf was eligible for such an award under the MPIA, the court found that it had "substantially prevailed" because the suit against the County was necessary to compel it to release the records. The court ruled also that Sugarloaf was entitled to an attorneys' fees award, reasoning that disclosure of the documents would serve the public interest. Finally, although it deemed the $48,813.62 in attorneys' fees Sugarloaf had accrued "customary and reasonable[,]" the court awarded it ultimately only $25,000. The court denied Sugarloaf's supplemental attorneys' fees petition as untimely.

Sugarloaf appealed the attorneys' fees award, challenging both the court's decision to award only a portion of the requested amount and its denial of the supplemental petition. The County cross-appealed, arguing that the court erred in finding that Sugarloaf had "substantially prevailed" in its suit and was therefore ineligible for an attorneys' fees award.

Held:

Order denying Sugarloaf's supplemental petition for attorneys' fees vacated. Case remanded for further proceedings on that matter. Judgments otherwise affirmed.

The Appellate Court addressed first the County's contention that Sugarloaf was ineligible for an attorneys' fees award. To be eligible for attorneys' fees under the MPIA, a complainant must have "substantially prevailed in gaining the information sought." *Kline v. Fuller*, 64 Md. App. 375, 381 (1985). A complainant satisfies that requirement by establishing, *inter alia*, that the lawsuit "could reasonably be regarded as . . . necessary" to obtain the requested information. *Caffrey v. Dep't of Liquor Control for Montgomery Cnty.*, 370 Md. 272, 299 (2002) (quotation marks and citation omitted). The County claimed that Sugarloaf failed to make such a showing because it "never attempted to resolve the matter any other way." The Court disagreed.

Although the County attributed its initial delay in producing the records to an "administrative oversight," the Court reasoned that the County was on notice clearly of Sugarloaf's continued pursuit of them after it filed suit on 24 June 2022. Moreover, the County managed evidently to identify the responsive documents prior to submitting the Vaughn indices on August 16. It withheld nevertheless all but twenty of those records until after the court ordered their production nearly ten months later. The Court held that these facts supported a reasonable inference that the County would not have produced the requested records but for the court order compelling it to do so. Thus, the Court found no error in the determination that Sugarloaf prevailed substantially in its action and was therefore eligible for attorneys' fees.

The Court addressed next the County's alternative assertion that "[t]o the extent that Sugarloaf . . . prevailed . . . in the lawsuit, it did so based on legal error." The four "legal errors" alleged by the County related to the merits of the court's order to release the previously withheld records. Sugarloaf countered that, because the County had already complied with the challenged order, "no remedy [wa]s available on the merits" and the cross-appeal was therefore moot. The County responded that the alleged errors were "ripe for resolution" because the Court could vacate the attorneys' fees award predicated thereon.

The Court determined preliminarily that any challenge to the circuit court's order to disclose the records was mooted when the County released them to Sugarloaf. The County did not seek, however, reversal of the disclosure order in and of itself. Rather, it challenged that order because "an award of attorneys' fees that was premised on the party's prevailing party status necessarily falls with the merits judgment." *Giant of Md., LLC v. Taylor*, 221 Md. App. 355, 373 (2015). Although the Court acknowledged the validity of that principle, it added that "the inverse is also true[,]" elaborating: "If the underlying merits judgment in a complainant's favor is undisturbed on appeal, that complainant remains a substantially prevailing party, and, as such, continues to be

eligible for attorneys' fees." The question, therefore, was whether the County could obtain a reversal of the attorneys' fees award by way of challenging the underlying merits judgment. The Court held that it could not, reasoning:

> [B]ecause an award of attorneys' fees is collateral to a judgment on the merits, an appellate court can review the former even though the latter is nonjusticiable . . . . For precisely the same reason, however, appealing an award of attorneys' fees does not revive an underlying judgment that became moot or otherwise nonjusticiable. . . . In other words, the collateral nature of attorneys' fees prevents a party from circumventing the mootness doctrine or other barriers to appellate review by appealing such an award in a backdoor attempt to obtain reversal of a decision on the merits of the underlying claim.
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> * * *
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> [I]n determining whether one is a prevailing party for purposes of an attorneys' fees award, a reviewing court should consider solely the relief that was granted and disregard the merits of an underlying dispute that has been rendered moot on appeal.

Thus, the Court concluded that by producing the requested records in compliance with the court's order—rather than noting an appeal and seeking a stay—the County mooted any challenge to that judgment, thereby "cementing . . . Sugarloaf's status as a substantially prevailing party."

Having dispensed with the County's cross-appeal, the Court turned to Sugarloaf's contention that the circuit court abused its discretion (i) declining to award it the full amount of attorneys' fees initially sought and (ii) denying its supplemental fees petition as untimely. As to the former sub-contention, the Court explained that when calculating the amount of attorneys' fees to award a complainant eligible for and entitled to their recovery, courts use generally the lodestar method. In applying that method, a court begins by "multiply[ing] the number of hours reasonably expended on the litigation . . . by a reasonable hourly rate." *Friolo v. Frankel*, 438 Md. 304, 319 (2014) (cleaned up). A court may then exercise its discretion to adjust the product based upon, inter alia, "the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

In this case, "the . . . court found that '[t]he number of hours expended and the hourly fees were [both] reasonable,' and that $48,813.62 in fees was therefore 'customary and reasonable.'" In adjusting that figure downward, the court found that fourteen of the requested records had been withheld justifiably, while "a substantial portion of [those] produced were drafts, cover emails, and redundant[.]" It also "ascribe[d] no evil motive to [C]ounty officials" in failing to produce timely the documents. On appeal, Sugarloaf claimed that the court erred by considering these factors in calculating its attorneys' fees award. The Court disagreed, holding that each of these considerations was relevant to Sugarloaf's degree of success in obtaining the relief it sought. Although the circuit court also noted that the citizens of Frederick County would "bear the burden of an award of attorneys' fees," the Court did not interpret that passing observation as

having informed the lodestar adjustment. Accordingly, the Court held that the downward adjustment of the lodestar amount constituted neither an abuse of discretion nor clear error.

Finally, Sugarloaf claimed that the circuit court abused its discretion by denying its supplemental attorneys' fees petition based on its failure to request fees-on-fees at the hearing on its original petition. The Court agreed, reasoning that it was aware of no rule requiring Sugarloaf to seek fees-on-fees in its "initial petition or at the hearing thereon[.]" It also noted that the circuit court had not imposed any limits on when the parties could present evidence or argument on the issue of an attorneys' fees award. The Court concluded: "Absent any such rule or order, Sugarloaf's delay in making its supplemental attorneys' fees request was reasonable in view of the fact that the total amount of fees-on-fees incurred remained an open question until the [initial attorneys' fees] hearing concluded."

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Morris Jones v. Roxanne Smith, No. 185, September Term 2024, filed May 1, 2025. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0185s24.pdf

REAL PROPERTY – TEMPORARY VS. PERMANENT NUISANCE

Facts:

Morris Jones and Roxanne Smith own adjacent row homes in Baltimore. In 2010, Ms. Smith hired a construction company to build an addition or extension to the rear of her property. At some point in 2016 to 2017, Ms. Smith constructed a rear patio and fence on her property.

On July 18, 2022, Mr. Jones filed a complaint against Ms. Smith in the Circuit Court for Baltimore City. The complaint included three counts: nuisance, trespass, and negligence. Each count alleged damages to Mr. Jones's property resulting from the construction of the rear extension, built in 2010, and the patio and fence, built in 2016.

Ms. Smith moved for summary judgment. She argued that Mr. Jones's claims were barred by the three-year statute of limitations in section 5-101 of the Courts and Judicial Proceedings Article of the Maryland Code. The circuit court concluded that the statute of limitations barred Mr. Jones's claims and granted summary judgment in favor of Ms. Smith. Mr. Jones appealed to the Appellate Court of Maryland.

Held: Affirmed.

The Appellate Court of Maryland held that Mr. Jones's nuisance claim was barred by the three-year statute of limitations for civil actions.

For purposes of the statute of limitations, Maryland courts draw a distinction between permanent nuisances and temporary nuisance. A claim for a permanent nuisance must be brought within three years of the time that the permanency of the condition becomes manifest to a reasonably prudent person. With respect to a claim for a temporary nuisance, on the other hand, successive actions may be brought for damages for each invasion of the plaintiff's land until the period of prescription has elapsed.

Any nuisance in this case was permanent, not temporary. When a nuisance results from the construction of a structure that is intended to be permanent in nature, it is typically a permanent, rather than a temporary, nuisance. Even though a permanent structure may cause harm in the future, general damages are measured by the diminished value rule, whereby future effects of the initial harm are captured all at once. Under that rule, the plaintiff receives the loss in value of its property attributable to the future continuance of the harm. Because the plaintiff's recovery

encompasses the diminution attributable to the future harm, the cause of action accrues for statute of limitations purposes when the permanent nuisance first occurs. The alleged nuisances in this case were caused by permanent structures. Mr. Jones acquired a remedy to address those alleged nuisances in 2010 and 2016, when Ms. Smith built the offending structures.

The Appellate Court of Maryland also held that the continuing harm doctrine did not serve to toll the statute of limitations with respect to Mr. Jones's negligence and trespass claims. The continuing harm doctrine tolls the statute of limitations in cases where there are continuing violations. Nonetheless, the continuing harm doctrine requires that a tortious act, rather than simply the continuing effects of prior tortious acts, fall within the statute of limitations. In this case, Ms. Smith engaged in two earlier acts, namely the construction of the addition or extension and the construction of the rear patio and fence. That Mr. Jones continues to suffer alleged harms as a result of those two earlier acts does not convert the acts into continuing harms. Mr. Jones had three years from Ms. Smith's construction of the addition or extension in 2010 and three years from her construction of the rear patio and fence in 2016 to sue for negligence and trespass.

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Christina Issar, Personal Representative of the Estate of Benjamin P. Robertson, III v. Barbara Robertson, et al., No. 2112, September Term 2023, filed May 6, 2025. Opinion by Shaw, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2112s23.pdf

REAL PROPERTY – TRANSFER OF TITLE – DEED REQUIREMENTS

REAL PROPERTY – TRANSFER OF TITLE BY OPERATION OF LAW – DIVORCE DECREE

Facts:

A husband and wife owned a parcel of real property during their marriage and executed an irrevocable trust transferring the property in question to the trust for the benefit of their grandchildren. A deed transferring the property to the trust was never executed. The spouses, intending to divorce, executed a settlement agreement that referred to the trust as the owner of the property in question. The trial court incorporated that agreement into the divorce decree. The husband died, and Appellant, who is the personal representative and beneficiary of his estate, asserted that the estate retained an interest in the property because the former spouses did not execute a deed transferring the property to the trust. Appellant filed a motion for sale in lieu of partition. Appellees filed a motion for partial summary judgment and a request for declaratory relief regarding the legal owner of the property. The trial court granted Appellees' motion for partial summary judgment and declared that the trust owned the property in fee simple. Appellant appealed the grant of the motion for partial summary judgment and the declaratory judgment.

Held: Affirmed.

The legal issue is whether a deed was required to effectively transfer the title of real property to the trust. Md. Code Ann., Real Prop. ("RP") § 3-101(a) states that a deed must be granted and recorded in order to transfer the title of property. However, the ability to transfer the title of real property is not limited to RP § 3-101(a) because RP § 3-101(b) explicitly allows for the transfer of property by other lawful means, notwithstanding the language of RP § 3-101(a). RP § 5-103 provides that the transfer of property may occur by operation of law. Therefore, a deed may not be required to effectively transfer the title of real property where it has been transferred by operation of law.

We hold that a valid marital agreement executed by spouses to transfer real property is a valid transfer of title by operation of law pursuant to RP § 5-103, where the trial court incorporates the agreement into the issuance of a divorce decree. In such instances, the execution of a deed prior

to the issuance of a divorce decree is not required for the title of real property to be effectively transferred. Alternatively, we hold that, even if the property were not transferred by operation of law, the settlement agreement's provision stating that the property was to be transferred created an equitable interest for the trust in the property.

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In the Matter of City of Hagerstown, et al., No. 2114, September Term 2023, filed May 30, 2025. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2114s23.pdf

WORKERS' COMPENSATION – DE NOVO JUDICIAL REVIEW

Facts:

As of the fall of 2021, Paul Johnson worked for the City of Hagerstown as a building maintenance specialist. He encountered mold while repairing water-damaged walls in an office building. He experienced coughing, wheezing, difficulty breathing, and other respiratory symptoms. At the advice of his physicians, he did not return to work.

In March 2022, Mr. Johnson filed an accidental injury claim with the Workers' Compensation Commission. The City of Hagerstown, a self-insured employer, contested whether Mr. Johnson sustained an accidental personal injury or occupational disease and whether his disability resulted from an accidental personal injury or occupational disease.

At the time of the Commission hearings in October 2022 and January 2023, Mr. Johnson's treating pulmonologist believed that work-related asthma was the most likely explanation for his symptoms. The Commission determined that Mr. Johnson sustained an accidental personal injury and awarded temporary total disability benefits. In its opinion, the Commission described his respiratory condition as an "airways disease."

The City petitioned for judicial review in the Circuit Court for Washington County and requested a jury trial. While the action was pending, Mr. Johnson underwent a lung biopsy. Based on the biopsy results, the pulmonologist provided a new diagnosis: hypersensitivity pneumonitis.

At the de novo trial, all medical experts agreed that the primary diagnosis for Mr. Johnson's condition was hypersensitivity pneumonitis and further agreed that this condition is distinct from "pulmonary airways disease." The City moved for judgment in its favor, arguing that there was no evidence that Mr. Johnson suffered from the "pulmonary airways disease" mentioned in the Commission's opinion. The City also proposed a verdict sheet asking whether Mr. Johnson "sustained an accidental injury of pulmonary airways disease." The court denied the motion for judgment and declined to use the City's proposed verdict.

The jury found that Mr. Johnson sustained an accidental injury arising out of and in the course of his employment and that he was temporarily and totally disabled since his injury. After the court denied the City's post-judgment motion, the City appealed.

Held: Affirmed.

The Appellate Court of Maryland concluded that the circuit court was correct when it determined that the proper question for the jury was whether the employee had sustained an accidental injury arising out of and in the course of his employment, not whether the Workers' Compensation Commission had identified the correct medical diagnosis.

The Court concluded that the evidence was sufficient to uphold the decision to award temporary total disability benefits. At a de novo trial for judicial review of a decision by the Commission, the jury reviews the "decision" of the Commission, rather than its opinion or findings. Here, the statement in the Commission's opinion that the employee developed "pulmonary airways disease" (or simply "airways disease") was an intermediate factual finding. Even if the jury rejected the Commission's factual findings, the jury was required to uphold the Commission's decision if the jury concluded that the decision was correct.

The Court concluded that the circuit court did not abuse its discretion in declining to use a verdict sheet asking whether the employee "sustained an accidental injury of pulmonary airways disease." Questions of fact submitted to the jury should be confined to ultimate issues such as whether the employee suffered an accidental injury arising out of and in the course of employment and whether the employee suffered a resulting disability. The circuit court properly selected a verdict sheet confined to the ultimate issues, rather than intermediate factual issues.

The Court further determined that the circuit court correctly declined to give proposed jury instructions about occupational diseases. The employee never made any claim for benefits based on an occupational disease, either in the Commission or in the circuit court. The Commission determined that the employee sustained an accidental injury and not an occupational disease. Accordingly, the circuit court was not required to provide jury instructions about the requirements for proving an occupational disease.

Finally, the Court determined that the circuit court did not abuse its discretion by permitting the employee to introduce certain photographs into evidence. The employer was the source of the photographs. It appeared from the record that the employee had previously introduced a report containing the photographs at a hearing in the Commission. Although the employee failed to mention the photographs in his discovery responses, any resulting prejudice to the employer was minimal. The circuit court did not abuse its discretion when it declined to exclude the photographs as a discovery sanction.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

AUBREY PAIGE POPPLETON

has been replaced on the register of attorneys permitted to practice law in this State as of May 21, 2025.

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DISBARMENTS/SUSPENSIONS

By an Order of the Supreme Court of Maryland dated May 21, 2025, the following attorney has been disbarred by consent:

SARI KARSON KURLAND

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

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