

Amicus Curiarum

VOLUME 43
ISSUE 5

MAY 2026

A Publication of the Office of the State Reporter

Table of Contents

THE SUPREME COURT

Maryland Rules

Grand Jury – Secrecy

In re: Criminal Investigation CID 18-26733

Torts

Asbestos – Strict Liability

Quinn v. General Electric5

THE APPELLATE COURT

Correctional Services

Interstate Agreement on Detainers

Smith v. State8

Criminal Law

Assault and Battery – Provocation

Johnson v. State; Johnson v. State10

Criminal Procedure

Ineffective Assistance of Post-Conviction Counsel

State v. Robb13

Estates & Trusts

Testimony – Dead Man’s Statute

In re: The Estate of Duraiswamy16

Family Law

Military Retirement Pay

Campbell v. Campbell.....19

Torts	
Defamation	
<i>Royall v. Dicks</i>	21
ATTORNEY DISCIPLINE	23
UNREPORTED OPINIONS	24

SUPREME COURT OF MARYLAND

In Re: Criminal Investigation No. CID 18-2673 in the Circuit Court for Baltimore City, Nos. 4, 5, & 6, September Term 2025, filed April 27, 2026. Opinion by Biran, J.

<https://www.mdcourts.gov/data/opinions/coa/2026/4a25.pdf>

MARYLAND CONSTITUTION – ARTICLE V, § 3 – ATTORNEY GENERAL’S INVESTIGATORY AUTHORITY – GOVERNOR’S AUTHORITY TO DIRECT INVESTIGATIONS

GRAND JURY – SECRECY – MARYLAND RULE 4-642(d) – DISCLOSURE – PARTICULARIZED NEED

Facts:

The 17 Petitioners in this case include unindicted current and former clergy and non-clergy employees of both the Archdiocese of Baltimore (“AOB”) and the Archdiocese of Erie, Pennsylvania. Former Governor Larry Hogan issued a letter to Respondent Office of the Attorney General (“OAG”) directing OAG to investigate certain “crimes of exploitation,” including crimes involving “child abuse.” OAG subsequently investigated allegations of child sexual abuse committed by AOB clergy and non-clergy employees. As part of its investigation, OAG issued two grand jury subpoenas to AOB for documents. OAG used information it learned from documents AOB produced in response to the grand jury subpoenas to create a report (the “Report”) detailing its findings. OAG named each of the Petitioners in the Report. The Report alleged that one of the Petitioners had committed acts of child sexual abuse. OAG included each of the remaining Petitioners in the Report for allegedly concealing abuse within AOB or allowing it to continue.

Under Maryland Rule 4-642(d), OAG filed a motion in the Circuit Court for Baltimore City seeking an order allowing it to publicly disclose information in the Report that it obtained by way of the grand jury subpoenas. OAG argued that the public’s interest in public accountability outweighed Petitioners’ interest in continued secrecy of their identities. The court initially permitted OAG to release a redacted version of the Report until people named in the Report, including Petitioners, could receive notice and an opportunity to respond. Once that occurred, the court authorized the Report’s disclosure as to all but three individuals’ identities, reasoning that “the need for individualized accountability for both actions and inactions” outweighed

Petitioners' interests in not having their identities revealed. The circuit court stayed its order pending appeal.

On appeal, the Appellate Court of Maryland considered whether OAG had constitutional authority to investigate AOB and whether the circuit court erred in permitting OAG to disclose unindicted individuals' identities. The Appellate Court concluded that OAG received proper authority from the governor to conduct its investigation. However, the court held that the circuit court abused its discretion in ordering the disclosure of unindicted individuals' identities because the circuit court did not individually analyze whether OAG had a particularized need to disclose each individual's identity. As such, the Appellate Court remanded for such individualized analyses.

Held: Reversed and remanded.

The Supreme Court of Maryland agreed with the Appellate Court that OAG had constitutional authority to investigate AOB. Article V, § 3(a)(2) of the Maryland Constitution grants OAG the authority to “[i]nvestigate, commence, and prosecute or defend any civil or criminal suit or action or category of such suits or actions” that the Governor directs OAG to investigate, commence, prosecute, or defend. The Court determined that, on its face, § 3(a)(2) gave Governor Hogan the authority to broadly direct OAG to investigate “crimes of exploitation,” including crimes involving child abuse. As such, the Court concluded OAG had authority to investigate child abuse within AOB.

However, the Court held that public accountability does not give rise to a particularized need to disclose unindicted individuals' identities from secret grand jury materials when those individuals object to disclosure. In *In re Report of Grand Jury*, 152 Md. 616 (1927), this Court prohibited the disclosure of grand jury material that would tend to accuse unindicted individuals of misconduct. The Court recognized that Rule 4-642(d) permits a court to order the disclosure of grand jury materials when the requestor demonstrates a particularized need for disclosure. However, the Court noted that centuries of grand jury practice prioritize secrecy to prevent unindicted individuals from facing the court of public opinion without having an appropriate opportunity to contest those allegations in a court of law. Furthermore, the Court noted that grand jury secrecy is essential to the grand jury's efficacy, as permitting disclosure for the purpose of public accountability would discourage cooperation in grand jury investigations. As such, the Court concluded that public accountability is not a particularized need.

Therefore, the Court held that a circuit court may not order disclosure of secret grand jury information about unindicted individuals, over those individuals' objections, for the purpose of public accountability. Thus, the Court reversed the Appellate Court's judgment and remanded with the instruction to further remand the case to the Circuit Court for Baltimore City to enter an order consistent with its opinion.

Robin B. Quinn, Personal Representative for Jo Ann Allen v. General Electric Company, et al., Misc. No. 2, September Term 2025, filed April 27, 2026.
Opinion by Watts, J.

<https://mdcourts.gov/data/opinions/coa/2026/2a25m.pdf>

PRODUCTS LIABILITY – STRICT LIABILITY – DESIGN DEFECT – ASBESTOS

Facts:

According to a certification order of the District of Columbia Court of Appeals (“the Court of Appeals”), in the Superior Court of the District of Columbia, Jo Ann Allen (“Mrs. Allen”), the wife of a deceased worker, brought a products liability action, with a strict liability for design defect claim, against her husband’s former employer and various other defendants, including General Electric Company (“General Electric”), Appellee, seeking damages for mesothelioma and lung cancer caused by exposure to asbestos from dust brought home on her former husband’s work clothes. The trial court granted General Electric’s motion for summary judgment.

On appeal, the Court of Appeals vacated the trial court’s grant of summary judgment and remanded the case for further proceedings. On remand, the trial court again granted summary judgment in General Electric’s favor as to the strict liability design defect claim, and the plaintiff appealed. After briefing and oral argument, the Court of Appeals certified a question of law to the Supreme Court of Maryland, which reformulated the question as follows:

Under Maryland law, in a strict liability design defect claim, must a person in the position of the decedent, Mrs. Allen—a household member of a “consumer” or “user” as the terms are defined in *Valk Mfg. Co. v. Rangaswamy*, 74 Md. App. 304, 318, 537 A.2d 622, 629 (1988), *rev’d on other grounds sub nom.*, *Montgomery Cnty. v. Valk Mfg. Co.*, 317 Md. 185, 562 A.2d 1246 (1989), who alleges injury based on exposure to asbestos dust brought home on the work clothing of the consumer or user—prove an additional element, the element of duty, beyond the four “essential elements of an action in strict liability [as] set forth in [the Restatement (Second) of Torts §] 402A,” *Phipps v. Gen. Motors Corp.*, 278 Md. 337, 344, 363 A.2d 955, 958 (1976), to recover, and if so, what factors are used to determine whether a duty is owed?

Held:

The Supreme Court of Maryland answered the reformulated question “no.”

The Supreme Court of Maryland held that with respect to an asbestos product strict liability design defect claim, a person in the position of Mrs. Allen—a household member of a consumer or user of the product at issue who alleges injury caused, through no fault of her own, by exposure to asbestos from dust brought home on the work clothing of the consumer or user—is not required to prove the element of duty in addition to the four elements of an action in strict liability set forth in *Phipps*, 278 Md. at 344, 363 A.2d at 958.

The Supreme Court’s holding flowed directly from the Court’s holding in *Phipps*, *id.* at 352, 363 A.2d at 963—that “[p]roof of a defect in the product at the time it leaves the control of the seller implies fault on the part of the seller sufficient to justify imposing liability for injuries caused by the product”—and the Appellate Court’s holding in *Valk*, 74 Md. App. at 323, 537 A.2d at 632, with which the Court agreed, that bystanders—nonusers and non-consumers—“are protected under the doctrine of strict liability in tort.”

The Supreme Court of Maryland determined that what could be gleaned from cases relied upon by the Appellate Court in *Valk* is that courts in California and Kentucky have required that for a bystander to recover on a strict liability design defect claim, the plaintiff must demonstrate that the alleged injury was reasonably foreseeable. The Supreme Court of Florida answered a question certified to it—whether strict liability coverage applied to a foreseeable bystander who comes within the range of danger—“yes” and explained that public policy should protect innocent bystanders. In New York and Louisiana, courts have permitted bystanders to recover on strict liability design defect claims without imposing an additional requirement outside of the factors set forth in the Restatement (Second) Torts § 402A. The Court observed that in none of the cases did a court conclude that a bystander was required to prove the seller owed a duty to the bystander in order to recover for a strict liability claim.

The Supreme Court of Maryland concluded that, as to the requirement of contact with the product, the factors adopted by this Court in *Phipps*, 278 Md. at 344, 352-53, 363 A.2d at 958, 963, based on § 402A of the Restatement (Second) of Torts, unequivocally require that to prevail on a claim of strict liability based on a design defect, a plaintiff must have had contact with the product at issue and that the contact must have been reasonably foreseeable. Whether a plaintiff is a user or consumer or a person in Mrs. Allen’s position, to prevail on a strict liability design defect claim, under the second and fourth elements set forth in *Phipps*, *id.* at 344, 352, 363 A.2d at 958-59, 963, a plaintiff is required to prove, among other things, that the product at issue was unreasonably dangerous to the person and that the product was expected to and did reach the person, *i.e.*, that the person had contact with the product.

The Supreme Court of Maryland explained that its holding stemmed from the concept that it is reasonably foreseeable that a person in Mrs. Allen’s position may come into contact with the product and that, therefore, the seller may be subject to liability for physical harm caused thereby, if the elements of a strict liability design defect claim are satisfied. The fourth element of a strict liability design defect claim incorporates not only a requirement that a person have contact with the product at issue but also the requirement that the person’s contact with the allegedly defective product be foreseeable.

The Supreme Court of Maryland determined that, to recover under a strict liability design defect claim, a plaintiff must demonstrate that a product was expected to and did reach the person without substantial change in its condition. *See Phipps*, 278 Md. at 344, 363 A.2d at 958. This requires that the plaintiff prove: (1) that contact with the product was expected, *i.e.*, foreseeable; (2) that contact with the product occurred; and (3) that the product reached the person without substantial change in its condition.

The Supreme Court of Maryland concluded that, after a thorough review of its holding in *Phipps* and the Appellate Court's holding in *Valk*, it saw no basis on which to extend case law requiring proof of duty as an element in failure to warn claims to require that a person in Mrs. Allen's position satisfy the element of duty in proving a strict liability design defect claim.

The Supreme Court of Maryland explained that it was not necessary that it set forth a definition of the word "bystander" or declare whether Mrs. Allen was one. It was enough to conclude that, in a case involving alleged exposure to asbestos, to establish a claim of strict liability based on a design defect, a person in Mrs. Allen's position, who is neither a user nor consumer, is not required to prove the additional element of duty to establish the claim. The Court did not answer the question of whether, in other contexts, with respect to a strict liability design defect claim, a person who is not a user or consumer of a product must prove elements in addition to those set forth in *Phipps*.

APPELLATE COURT OF MARYLAND

John William Smith, Jr. v. State of Maryland, No. 1736, September Term 2024, filed April 6, 2026. Opinion by Kehoe, S., J.

<https://www.mdcourts.gov/data/opinions/cosa/2026/1736s24.pdf>

CORRECTIONAL SERVICES – INTERSTATE AGREEMENT ON DETAINERS

Facts:

In the Circuit Court for Washington County, Mr. Smith filed a motion to dismiss his then pending criminal charges on the basis that the State had not complied with the Interstate Agreement on Detainers (“IAD”), Md. Code Ann., Corr. Serv. § 8-401 *et seq.*, when the State did not bring him to trial within 180 days of his request that they do so. The circuit court, without holding a hearing, signed an order summarily denying Mr. Smith’s motion to dismiss.

This opinion is a logical extension of the Appellate Court’s opinion in *State v. Meadows*, 261 Md. App. 464 (2024), which held that it is tantamount to malpractice for defense counsel to remind the court that it has set a trial date outside the 180 day requirement of Md. Code Ann., Corr. Serv. § 8-405(a). In this case, the trial, which had originally been set within the 180 day limit, was postponed after a chamber’s conference between the judge and counsel. The judge issued an order that for good cause the trial was postponed. Section 8-405 permits postponements for good cause if the defendant or defense counsel is present and good cause is shown in open court. In this case, there was no record of good cause because the proceedings were not held in open court. This case will serve to remind trial judges to operate in open court when considering requests to postpone cases brought under the IAD outside of the 180 day window.

Held:

Once the prisoner requests disposition under the IAD, the burden shifts entirely to the State to ensure compliance with statutory deadlines and procedural requirements. Defense counsel has no obligation to remind the State of the IAD’s requirements. Because the State failed to comply with the IAD’s procedural requirements and did not bring the defendant to trial within the statutory period, dismissal of the charges with prejudice is mandated.

A defendant may waive IAD time limits by requesting or expressly agreeing to a continuance; however, silent acquiescence or failure to object is insufficient to constitute waiver. The absence of any record reflecting consent to a post-deadline trial date precludes a finding of waiver. The State's assertion that defense counsel "cleared dates" during an unrecorded chambers conference is insufficient to establish waiver, particularly where there are no open court proceedings to indicate consent to exceed the 180-day deadline.

A continuance granted during an unrecorded, in-chambers scheduling conference is not a continuance granted "in open court" within the meaning of the IAD. The absence of a verbatim record precludes appellate review of whether good cause existed. Where a trial court grants a continuance beyond the IAD deadline without creating a record explaining the basis for good cause in open court, appellate courts cannot perform meaningful review; the absence of such a record requires reversal.

Terance Johnson, Jr. v. State of Maryland, No. 772, September Term 2024, and *Teriquo Lamont Johnson v. State of Maryland*, No. 881, September Term 2024, filed April 2, 2026. Opinion by Berger, J.

<https://www.mdcourts.gov/data/opinions/cosa/2026/0772s24.pdf>

CRIMINAL LAW – ASSAULT AND BATTERY – PROVOCATION – CRIMINAL LAW – INSTRUCTIONS: NECESSITY, REQUISITES, AND SUFFICIENCY – FLIGHT OR SURRENDER – CRIMINAL LAW – EVIDENCE – CIRCUMSTANTIAL EVIDENCE

Facts:

The State of Maryland charged Terance Johnson, Jr. (“Terance”), Teriquo Lamont Johnson (“Teriquo”), and Hilton Pulley (“Pulley”) with crimes arising from an altercation outside of Frank’s Den (“the bar”), a bar and liquor store in Glen Burnie, that left Jamie Marshall-Bates (“Bates”) with a traumatic brain injury. Terance and Teriquo were both charged with attempted first- and second-degree murder, conspiracy to commit first-degree murder, conspiracy to commit first-degree assault, first- and second-degree assault, and reckless endangerment. Additionally, Teriquo was charged with “rogue and vagabond.”

At trial, the State’s case relied principally on the bar’s surveillance video, which was shown to the jury. The video, which did not have audio, depicted Terance and Teriquo speaking with Bates in front of the bar. Shortly thereafter, Terance approached Bates swinging a can of spray paint as Bates opened the door to a vehicle and tossed something inside. Terance hit Bates in the head with the can of spray paint and then continued to swing at and, at a minimum, graze Bates as the two circled cars in the parking lot. Meanwhile, the video depicts Teriquo reaching into the car which Bates had opened the door to, with his body half-way in the vehicle. Bates then hit Terance. Terance fell to the ground and Bates proceeded to punch him for approximately five seconds before Pulley pulled him away.

Subsequently, Teriquo got out of the car and rushed towards Bates, wrapping his arms around him. Teriquo then pulled Bates, who was flailing, towards the corner of the building, which was outside of the view of the bar’s surveillance camera. Approximately two minutes later, Pulley helped Terance up and Terance stumbled towards the corner of the building where Bates was. Terance proceeded to make a stomping motion in Bates’s direction. Roughly two minutes after that, Pulley corralled Terance and Teriquo to a car across the parking lot before walking back to Bates. Terance and Teriquo then departed the scene in a vehicle driven by Teriquo, driving around the tight corner of the building where Bates had been dragged as they left. Approximately five minutes later, paramedics arrived at the scene.

At the close of the State’s case-in-chief, Terance and Teriquo moved for judgment of acquittal on all charges. The trial court granted Terance’s motion with respect to the attempted first- and second-degree murder and conspiracy to commit first-degree murder charges because the State

did not prove the requisite mens rea beyond a reasonable doubt. The trial court denied Terance's motion for judgment of acquittal with respect to the charges related to assault and reckless endangerment, reasoning that there was sufficient evidence from which the jury could infer that Terance possessed the requisite mens rea. The trial court granted Teriquo's motion for judgment of acquittal with respect to the first-degree murder charge but denied the motion for the remaining charges. The motions were renewed at the close of evidence and were denied.

At the initial charging conference, proposed jury instructions included flight or concealment, hot-blooded response to adequate provocation, and mutual combat. Terance and Teriquo objected to the flight instruction. Terance and Teriquo requested instructions on hot-blooded response to adequate provocation and mutual combat. Among the instructions the trial court subsequently read to the jury were a flight instruction, a hot-blooded response instruction applying only to Teriquo, and a mutual combat instruction applying only to Teriquo. Before the jury retired to deliberate, the trial court withdrew the mutual combat instruction.

The jury returned a verdict convicting Terance of first- and second-degree assault, and reckless endangerment. Teriquo was convicted of second-degree assault, reckless endangerment, and rogue and vagabond. Pulley was acquitted of all charges. Terance and Teriquo timely appealed.

Held: Affirmed.

The Appellate Court of Maryland considered four primary issues on appeal. First, the Court analyzed whether the trial court erred by declining to instruct the jury on hot-blooded response to adequate provocation for Terance and mutual combat for Terance and Teriquo. The Court discussed the requisite elements to invoke the defense of hot-blooded response and explained that mutual combat is merely one variety of adequate provocation sufficient to establish the defense. The Court then discussed the evolution of hot-blooded response to adequate provocation's application to assault. The Court explained that, historically, hot-blooded response was only available in the murder context because the defense operates to negate malice, thereby mitigating murder charges to manslaughter. Application of the defense, therefore, has only been expanded to "shadow forms" of homicide, namely crimes requiring an element which could supplant the requisite malice of a murder charge. The Court went on to explain that, following this rationale, the Supreme Court of Maryland held in *Christian v. State*, 405 Md. 306 (2008) that hot-blooded response is an available defense to defendants charged with first-degree assault when such a crime could serve as the basis of a felony murder charge if the victim dies. The Court then noted that the Supreme Court adopted the merger doctrine in *State v. Jones*, 451 Md. 680 (2017) meaning that first-degree assault no longer supplies the malice necessary for felony-murder if the victim dies. Accordingly, the Court held that hot-blooded response to adequate provocation is no longer a defense available to defendants charged with first-degree assault because post-*Jones*, first-degree assault can no longer serve as the underlying felony to sustain a felony murder charge. Accordingly, the trial court did not err by declining to so instruct the jury.

Second, the Court addressed whether the flight instruction was applicable under the facts of the case. The Court discussed the inferences which a jury must be able to reasonably draw from the facts of the case for a flight instruction to be proper. The Court went on to explain the distinction between “flight” and “mere departure.” The Court then concluded that there was some evidence from which the jury could infer that: (1) Terance and Teriquo’s leaving the scene constituted flight, rather than mere human locomotion, and (2) Teriquo was able to formulate the requisite consciousness of guilt. As such, the Court concluded that the trial court did not err by granting the flight instruction.

Third, the Court considered whether there was sufficient evidence for a reasonable jury to convict Terance of first-degree assault. The Court discussed the State’s burden of proof and explained that circumstantial evidence alone is sufficient to sustain a conviction, provided that the inferences drawn from such evidence rest upon more than speculation. The Court then concluded that: (1) there was sufficient circumstantial evidence from which a reasonable jury could infer that Terance possessed the requisite intent to cause serious physical injury to Bates, and (2) there was sufficient evidence, circumstantial or otherwise, from which a reasonable jury could conclude that Terance caused offensive physical contact or physical harm to Bates. The Court, therefore, concluded that there was sufficient evidence to sustain Terance’s conviction of first-degree assault.

Fourth, and finally, the Court addressed whether there was sufficient evidence for a reasonable jury to convict Teriquo of rogue and vagabond. After discussing what the State was required to prove, the Court noted that the State was entitled to prove the required elements through circumstantial evidence. The Court went on to conclude that: (1) there was sufficient circumstantial evidence that the vehicle Teriquo was rummaging through was Bates, despite the State not proffering proof via a registration record, and (2) there was sufficient circumstantial evidence from which the jury could infer that Teriquo intended to steal property from the vehicle. Accordingly, the Court concluded that there was sufficient evidence to sustain Teriquo’s rogue and vagabond conviction.

State of Maryland v. Michael Robb, No. 837, September Term 2024, filed April 3, 2026. Opinion by Kenney, J.

<https://www.mdcourts.gov/data/opinions/cosa/2026/0837s24.pdf>

CRIMINAL PROCEDURE – POSTCONVICTION PROCEDURE – WAIVER –
INEFFECTIVE ASSISTANCE OF POSTCONVICTION COUNSEL – DEFICIENT
PERFORMANCE – DEFENDANT SELF REPRESENTED AT TRIAL – UNDERLYING
STRUCTURAL ERROR – PREJUDICE GENERALLY NOT PRESUMED

Facts:

Mr. Robb was charged with attempted murder, robbery with a dangerous weapon, and related charges. In 2015, he and an alleged accomplice, Rupert Stamps, were tried jointly before a jury in the Circuit Court for Montgomery County. Prior to trial, Mr. Robb discharged counsel and represented himself at trial.

During a status hearing the Friday prior to the scheduled start of trial, the trial court discussed with Mr. Robb the procedure during jury selection. The court advised Mr. Robb of his right to approach the bench to question potential jurors but noted that, if he did, sheriffs would be “in close proximity” to him, which “would not be a positive thing for the jurors to see.” The court asked him to think about it over the weekend. After doing so, Mr. Robb told the court that he did not “need to be at the bench” during jury selection. The trial court declared for the record that Mr. Robb “has waived his right to be present at the inquiry at the bench for the voir dire.”

Mr. Robb did not request any voir dire questions. Among the questions the trial court propounded were “compound feelings” questions, which were disapproved in *Dingle v. State*, 361 Md. 1 (2000), and its progeny. Neither Mr. Robb nor Mr. Stamps’s counsel objected to the “compound feelings” questions.

The jury found Mr. Robb guilty of two counts of armed robbery, two counts of attempted armed robbery, two counts of attempted murder, and four counts of conspiracy to commit armed robbery. Prior to sentencing, Mr. Robb filed a notice of appeal. After imposing sentences, the trial court advised Mr. Robb of his right to file a notice of appeal, which he did not do. In 2016, we dismissed his prior appeal because “it [was] a premature appeal from a non final judgment.”

Mr. Robb, with the assistance of counsel, sought postconviction relief, ultimately raising a single claim—that he had been denied his Sixth Amendment right to the effective assistance of counsel in perfecting his appeal. The postconviction court denied his claim, and after we denied his application for leave to appeal, the Supreme Court of Maryland denied his petition for writ of certiorari.

In 2021, Mr. Robb, through counsel, moved to reopen his postconviction proceeding, raising four allegations of error, three of which are relevant here:

The trial court denied Mr. Robb his constitutional right to an impartial jury by asking improper questions during voir dire and postconviction counsel was ineffective for failing to raise this issue.

He was denied his constitutional right to due process, to a fair and impartial jury, and to be present at all critical stages when the court would only permit his presence at the bench during voir dire when accompanied by a sheriff.

The trial court denied him his constitutional right to an impartial jury by not requiring his presence at the bench when the jurors were individually questioned and postconviction counsel was ineffective for failing to raise this issue.

Following a hearing, the postconviction court issued a Memorandum Opinion and Order, granting Mr. Robb's motion to reopen and awarding him a new trial. The court concluded that he had not knowingly and intelligently waived his right to be present at bench conferences during jury selection; that his failure to perfect his direct appeal was not a knowing and intelligent waiver of his right to be present at those bench conferences; that he did not knowingly and intelligently waive his challenge to impermissible compound questions during voir dire by failing to object at trial; that postconviction counsel performed deficiently in failing to raise claims based upon the flawed voir dire process and compound questions; that the deprivation of his right to be tried by an impartial jury "unquestionably qualifies as structural error"; and that he "was presumptively prejudiced by counsel's unprofessional errors."

We granted the State's ensuing application for leave to appeal.

Held: Reversed.

The Appellate Court reviewed the waiver provisions of the Postconviction Procedure Act and observed that, under *Curtis v. State*, 284 Md. 132 (1978), those provisions applied only to a subset of core rights that are subject to the knowing and voluntary waiver standard of *Johnson v. Zerbst*, 304 U.S. 458 (1938), and its progeny. The Court further observed that other situations are beyond the scope of the statute and are "governed by case law or any pertinent statutes or rules." *Curtis*, 284 Md. at 150. "Tactical decisions, when made by an authorized competent attorney, as well as legitimate procedural requirements, will normally bind a criminal defendant." *Id.*

The Appellate Court reviewed case law addressing waiver of a defendant's right to be present during bench conferences and of claims of voir dire error and concluded that Mr. Robb had waived his underlying claims of error. The Appellate Court further concluded that the postconviction court erred in applying the knowing and voluntary standard to the underlying

claims, postconviction counsel did not perform deficiently in failing to raise claims that had virtually no chance of succeeding. The postconviction court erred in concluding otherwise.

In addition, the Appellate Court, after reviewing case law addressing ineffective assistance of counsel claims based upon unpreserved structural errors, observed that, generally, a postconviction petitioner raising such a claim must still prove prejudice. Therefore, it would be error to presume prejudice.

In Re: The Estate of Sam Duraiswamy, No. 1758, September Term 2024, filed April 3, 2026. Opinion by Ripken, J

<https://www.courts.state.md.us/data/opinions/cosa/2026/1758s24.pdf>

TRIAL ADMINISTRATION – COURT’S DISCRETION TO RECEIVE ADDITIONAL EVIDENCE AFTER EVIDENTIARY HEARING

EVIDENCE – TESTIMONY – DEAD MAN’S STATUTE

STANDARD OF REVIEW – FACTUAL FINDINGS – NON-PERSUASION

Facts:

Sam Duraiswamy (“Decedent”) died intestate in November of 2021, leaving behind an estate worth of \$2.7 million. His long-time romantic partner Diane Adams (“Adams”) died the following week. Thereafter, an estate was opened, and the personal representative attempted to locate Decedent’s relatives living in India. While the search for Decedent’s relatives was ongoing, Adams’ estate requested to be recognized as an heir of Decedent’s estate, alleging that Adams and Decedent had established a common-law marriage in Washington, D.C. As no heirs or legatees had been established, the Montgomery County Board of Education (“the Board”) was an interested party pursuant to statute.

An evidentiary hearing was held in September of 2023. Adams’ first cousin, Dominick Adams (“D. Adams”), who also served as personal representative of Adams’ estate (the “Adams Estate”), testified concerning his observations of Adams’ and Decedent’s relationship. D. Adams recalled that Adams and Decedent were together his entire life. His earliest memory of their relationship was in 1986, when he was 4 years old. Between approximately 1986 and 1994, he spent every other weekend with them at a two-bedroom apartment in Washington, D.C. He considered them a married couple and thought of Decedent as his uncle. He recalled Decedent living at a home in Maryland in the late 1990s.

D. Adams also provided testimony regarding an incident that occurred at a car dealership in which Decedent referred to Adams as his wife (“the Car Dealership Statement”). An objection was made to this testimony based on the Dead Man’s Statute. D. Adams further sought to introduce a patient information sheet (“the Patient Information Sheet”) completed during Decedent’s hospital stay, in which the Decedent stated that his marital status was “Married.” While Adams was listed as Decedent’s emergency contact, Adams’ relationship to Decedent was listed as “Other.” An objection was made to this testimony based on hearsay. D. Adams’ wife S. Adams testified that she first met Adams in 2012 and first met Decedent in 2020. In 2018, Adams attended S. Adams’ bridal shower. When the host asked all the married women to offer advice to the bride-to-be, Adams participated along with all the other married attendees, stating that that she had been married for 35 years—a statement S. Adams understood to be referring to

Adams' relationship with Decedent ("the Bridal Shower Statement"). An objection was made to this testimony based on the Dead Man's Statute. The court reserved ruling on each of the objections based on the Dead Man's Statute and hearsay pending additional briefing on evidentiary issues, which were to be heard at a later hearing.

At the continued hearing in February of 2024, the personal representative advised the court that he had located surviving relatives of Decedent. The court appointed counsel to represent the relatives' interests and ordered that counsel be paid out of Decedents' Estate. The court then continued the matter until August of 2024.

In August of 2024, the court ruled that the Dead Man's Statute barred the admission of the Car Dealership Statement and the Bridal Shower Statement. The court also excluded the Patient Information Sheet as hearsay following a finding that it was not pathologically germane to a diagnosis or treatment. The court reserved ruling on a motion for judgment that the elements of a common-law marriage were not demonstrated by the evidence. The court allowed Decedent's relatives to introduce exhibits into evidence and allowed the Adams Estate to present additional testimony in response to that which was presented by Decedent's relatives.

The court issued its opinion and order approximately one month later. In sum, the court found the evidence presented was legally insufficient to demonstrate that Decedent and Adams established a common-law marriage in Washington, D.C. Accordingly, the court granted the motion for judgment.

Held: Affirmed.

On appeal, the Adams Estate asserted that the orphans' court erred by permitting the Board to remain as an interested party after the Decedent's relatives were located and by appointing counsel to represent the Decedent's relatives and ordering that their attorneys' fees be paid out of the Decedent's estate. The Appellate Court of Maryland held that these issues were unpreserved because the Adams Estate did not raise them before the orphans' court. Accordingly, the court decline to address them.

The court next examined the contention that the orphans' court abused its discretion by permitting Decedent's relatives to present argument and introduce evidence at the August 2024 hearing. The court observed that trial courts have broad discretion to receive additional evidence following a trial or evidentiary hearing. An abuse of that discretion may occur if the court's decision is arbitrary or unfairly prejudicial. In this case, where the orphans' court reopened evidence before entertaining motions for judgment and closing arguments and permitted a previously unidentified party to submit exhibits, present motions, and argue, and where the opposing party had an opportunity to respond to the additional evidence, there was no abuse of discretion.

Next, the court addressed the orphans' court's evidentiary ruling concerning the Dead Man's Statute. Section 9-116 of the Courts and Judicial Proceedings Article to the Maryland Code

states that in a proceeding by or against an estate, a person who has an interest in the property sought or who has a direct pecuniary and proprietary interest in the outcome of the case may not testify concerning a transaction or statement made by the dead person, unless that witness has been called by the opposite party or unless the testimony of the same transaction or statement has already been given into evidence in the same proceeding. The court held that here, where D. Adams was the personal representative of the Adams Estate—an opposing estate that had filed a claim in the present estate—and was a potential distributee of that estate, he had a pecuniary interest in the outcome and was prohibited from testifying regarding statements made by the Decedent.

The court further held that the spouse of an interested party does not have a pecuniary interest in the outcome of an action simply by virtue of their relationship with the interested party and the spouse's testimony concerning statements made by a dead person is not prohibited by section 9-116 of the Courts and Judicial Proceedings Article. Here, S. Adams' status as the spouse of an interested party did not prohibit her from testifying regarding statements made by a deceased person.

Finally, the court reviewed the Adams Estate's contention that the orphans' court erred in concluding that the evidence was legally insufficient to establish a common-law marriage between Adams and Decedent. The court explained that appellate review of an orphans' court decision requires deference to its findings of fact, which will not be set aside unless clearly erroneous. If a case involves the application of Maryland statutory and case law, appellate courts must determine whether the lower court's conclusions are legally correct under a de novo standard of review. An orphans' court, as the finder of fact, is entitled to determine the weight and credit of the evidence. Non-persuasion of a fact requires nothing but a state of honest doubt on the part of the trial judge. Here, where the orphans' court was not persuaded that the evidence demonstrated a common-law marriage was entered into in another jurisdiction, there was no clear error because there was evidence in the record to support the court's factual findings.

Kelly Marie Harrigan Campbell v. Kevin John Campbell, No. 911, September Term 2023, filed April 3, 2026. Opinion by Meredith, J.

<https://www.mdcourts.gov/data/opinions/cosa/2026/0911s23.pdf>

DIVORCE – MILITARY RETIREMENT PAY – CALCULATION OF MARITAL PROPERTY COMPONENT OF RETIRING SPOUSE’S RETIREMENT BENEFIT

Facts:

Husband and Wife were divorced in 2009. Prior to entry of the judgment of divorce, the parties had negotiated a marital settlement agreement wherein they agreed that a portion of Husband’s military retirement benefits would constitute marital property which would be divided equally. That provision provided, in pertinent part:

The “marital property portion” of the monthly retired pay shall be a fraction of the total monthly retired pay, and shall be defined as follows: the numerator shall be the total number of points accumulated during Husband’s creditable service during the parties’ marriage, and the denominator of which shall be the total number of points credited to Husband for retirement purposes.

Husband’s military service was served partly on active duty, but the majority of his service during the marriage was in the reserves. Four years after the divorce, Husband resumed active-duty service, and he remained on active-duty status until he retired from the military.

After Husband retired from the military, Wife sought a court order directing the Defense Finance and Accounting Service (“DFAS”) to pay directly to her the portion of Husband’s military retirement pay that she was entitled to receive pursuant to the marital settlement agreement. The parties disagreed about the portion of Husband’s military retirement benefits Wife was entitled to receive. Wife argued that her share should be computed using years of service rather than points, with the numerator being the number of months of marriage during Husband’s creditable military service, and the denominator being Husband’s total number of months of creditable service. Husband disagreed, arguing that Wife’s share should be computed using points.

Held:

In analyzing the portion of military retirement pay earned by a divorcing spouse that constitutes marital property, a Maryland court will generally utilize a computation based upon months of time in service for a service member who retired from active duty and will generally utilize a computation based upon service points for a service member who retired from reserve duty. When the military retirement benefit is the result of a combination of both active duty and

reserve service, the court may—and generally should—use a computation based upon points to calculate the portion of the retirement pay that is marital property.

Charles M. Royall v. Allen Dicks, et. al., No. 597, September Term 2024, filed April 3, 2026. Opinion by Wells, C.J.

<https://www.mdcourts.gov/data/opinions/cosa/2026/0597s24.pdf>

DEFAMATION – PUBLICATION – PLEADING SUFFICIENCY

DEFAMATION – CONDUCT AS DEFAMATORY STATEMENT

DEFAMATION – DEFAMATION PER QUOD – INSUFFICIENT PLEADING OF ECONOMIC INJURY

Facts:

Charles Royall appealed from the Circuit Court for Prince George’s County’s dismissal without prejudice of his amended complaint alleging defamation against his former supervisors, Allen Dicks and Keith Jewell, and his former employer, C&C Meat Sales (“C&C”).

Royall was a former employee of C&C who worked under the supervision of Dicks and Jewell until his termination in June 2018. He had previously settled claims of sexual harassment and age discrimination arising from his employment. In the complaint at issue on appeal, Royall alleged that on November 22, 2021, Dicks stated to a former co-worker, Timothy Mobley, “Mr. Royall is no longer at C&C . . . , at least we don’t have to smell that fag,” and that Jewell responded with a “right on” hand gesture. Royall further alleged Dicks reiterated those exact words later the same day to another co-worker, Mark Close.

Royall alleged the statements were defamatory per se, made with actual malice, and caused him to lose business opportunities, face scorn from former co-workers, and suffer embarrassment, humiliation, and emotional distress. He also alleged he could not seek an employment reference from C&C as a result. Royall initially filed suit in circuit court, and after removal to federal court and amendments eliminating his Title VII claims, the case was remanded back to the circuit court. Appellees moved to dismiss, and the circuit court granted the motion, ruling Royall failed to state a claim for defamation. This appeal followed.

Held: Affirmed.

The Appellate Court of Maryland held the circuit court did not err in dismissing Royall’s amended complaint.

First, the Court held that Royall sufficiently alleged publication. Publication occurs whenever a defamatory statement is communicated to someone other than the person being defamed, and mass distribution is not required. Royall alleged statements were made to two former co-workers

whom he identified by name at his former workplace, which met the low threshold to plead publication at the pleading stage.

Second, the Court clarified that *Wetherby v. Retail Credit Co.*, 235 Md. 237 (1964) does not establish Maryland precedent that false statements about sexual orientation are defamatory per se. In *Wetherby*, the defamatory nature of statements about the plaintiffs' sexual orientation was neither contested nor litigated; the case was tried on agreed premises that the statements were libelous per se, and it went to the jury solely on whether the defendant credit company abused its qualified privilege.

Third, the Court held that under Maryland law, false statements about a person's sexual orientation are not defamatory per se. A statement is defamatory per se only when its injurious character is a self-evident fact of common knowledge. Profound changes in the legal and cultural landscape—including the decriminalization of consensual same-sex activity, constitutional recognition of same-sex marriage, and extensive federal and state antidiscrimination protections—reflect that misstating a private person's sexual orientation does not presumptively demean that person or suggest he or she is deserving of social approbation. The Court concluded that treating such statements as defamatory per se would rest on the flawed premise that non-heterosexual orientation is inherently shameful, which is inconsistent with Maryland public policy and the judiciary's obligation under Maryland Rule 18-102.3(b) not to manifest bias based on sexual orientation.

Fourth, the Court held that Royall failed to state a claim for defamation per quod. While Dicks' statements were sufficient at the pleading stage to constitute defamatory statements about Royall's sexual orientation, Jewell's single, silent, and equivocal hand gesture did not constitute an affirmative adoption of the defamatory statement. Regarding reputational injury, the Court concluded that Royall's allegations—that he lost unspecified employment opportunities, was scorned by former co-workers, and believed he could not seek a reference from his former employer—did not establish a reasonable expectation that false statements about his sexual orientation would be repeated to prospective employers or otherwise cause economic loss sufficient to plead defamation per quod.

ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

SHERWOOD R. WESCOTT

has been replaced on the register of attorneys permitted to practice law in this State as of
April 24, 2026.

*

DISBARMENTS/SUSPENSIONS/INACTIVE STATUS

By an Order of the Supreme Court of Maryland dated April 8, 2026, the following attorney has
been suspended for 30 days by consent:

JANEL ASHELEY SOUTHERLAND

*

RESIGNATIONS

By its April 28, 2026, Order the Supreme Court of Maryland has accepted the resignation of the
following attorney from the practice of law in this state:

GABRIELA REZETKO

UNREPORTED OPINIONS

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

<https://mdcourts.gov/appellate/unreportedopinions>

	<i>Case No.</i>	<i>Decided</i>
101103105 E. Washington Trust v. City of Hagerstown	0865 *	April 16, 2026
2015 REO LLC v. Griffin	1601 *	April 29, 2026
<u>A</u>		
Amodei, Domenico v. Amodei	0770 *	April 15, 2026
Armour, Stefan Rasaun v. State	1645 *	April 15, 2026
<u>B</u>		
Bailey, Kevin, Sr. v. State	0733 *	April 21, 2026
Baker, Callen E. v. State	1461 *	April 24, 2026
Beathe, Jamaine J. v. State	1457 *	April 14, 2026
Bell, Antonio v. Prince George's Cnty.	2453 *	April 24, 2026
Blanchard, Datuan v. State	1482 *	April 10, 2026
Brown, Ariel Renee v. Potomac of Prince George's	2272 *	April 24, 2026
Buckingham, David T. v. Virginia Commerce Bank	0177 **	April 14, 2026
Burton, Doretea v. Burton	0710 *	April 17, 2026
<u>C</u>		
Carroll Independent Fuel v. HFMP	0473	April 23, 2026
Chavis, Tyler v. Deford	2028 *	April 28, 2026
Ciccantelli, Zachary v. State	1555 *	April 28, 2026
Coleman, Kevin Curtis v. State	0406 **	April 21, 2026
<u>D</u>		
Dease, Candice v. Houser	1003	April 10, 2026
Dept. of Pub. Safety & Corr. Servs. v. Villafana	2177 *	April 6, 2026
Diggs, Timothy v. State	1057 *	April 23, 2026
Duncan, Joel v. State	1091 **	April 13, 2026
<u>E</u>		
Engle, Brianna v. Engle	2047	April 27, 2026

September Term 2025
* September Term 2024
** September Term 2023

G

Garlitz, Duane Anthony v. State	0368 *	April 24, 2026
Gbongo, Thomas David v. State	1643 *	April 30, 2026
Grebow, Marc . v. Bock	1682 *	April 29, 2026
Guzman, Jonathan Alexander v. State	0591	April 17, 2026

H

Hardy, Ameshia v. Philippe, Jeffrey	1756 *	April 9, 2026
Higginbotham, Shakeyta v. Brown	1545	April 23, 2026
Hines, Kvaughn B. v. State	2298 *	April 30, 2026
HKP Pro-Active Solutions v. Tseklenis	2140 *	April 29, 2026
Hoff, Allison v. Perez	1280	April 27, 2026
Holloman, William v. State	2161 *	April 13, 2026
Hood, Cheryl Stouffer v. Taylor	0737 *	April 28, 2026
Horne, Tony Maurice, Jr. v. State	1665 *	April 24, 2026

I

In re: A.W.	1647	April 23, 2026
In re: C.F. & L.F.	1639	April 9, 2026
In re: G.U. & J. U.	2087	April 15, 2026
In re: M.D.	1841	April 9, 2026
In the Matter of Brown, Wade	1455	April 1, 2026
In the Matter of Call, Sheila	1616 *	April 10, 2026
In the Matter of Consumer Protection Div.	1564 *	April 29, 2026
In the Matter of Johnson, Clarence	1902 *	April 14, 2026
In the Matter of McCann, Christopher	0260	April 15, 2026
In the Matter of Yu, San San	2070 *	April 30, 2026
Iwendi, Evelyn v. Glendale Apartments Props.	2248 *	April 23, 2026

J

Jang, Tae Young v. Clear Sky Financial	1698 *	April 23, 2026
Jordan, Marc L. v. Tillery	2102 *	April 14, 2026

K

Kargbo, Fatu K. v. Bangura	1634 *	April 21, 2026
Kinsey, Brandon v. Crouse	0521	April 28, 2026
Kirby, Carleana v. State	0343 *	April 21, 2026
Knox, Elliot Marcus v. State	0871 *	April 8, 2026
Knox, Elliot Marcus v. State	0987 *	April 8, 2026
Kornegay, Dashon Antonio v. State	0151 *	April 29, 2026
Kornegay, Dashon Antonio v. State	2096 **	April 29, 2026
Kourmadas, Alex v. Brinkwood Comm. Ass'n.	0358	April 29, 2026

September Term 2025

* September Term 2024

** September Term 2023

<u>L</u>		
Lee, Earl Leroy v. State	1493 *	April 21, 2026
Leone, Damien Michael v. State	0523 *	April 15, 2026
Lord, Theresa A. v. Lord	1532	April 28, 2026
<u>M</u>		
Makia, James v. Ogbonna	1975	April 9, 2026
Malinowski, Robert v. Brown	2447 *	April 29, 2026
Mansaray, Sorie Ibrahim v. State	1175 *	April 17, 2026
Megnigue, Amelie Christelle D. v. Daroogar-Kermani	2372 *	April 7, 2026
Meziane, Fatima v. Aitouche	1197	April 23, 2026
Mitchell, Donald Monroe, Jr. v. State	0458 *	April 6, 2026
Mobley, Kevin v. State	1164 *	April 17, 2026
Moffett, Damion D. v. State	0623 *	April 10, 2026
Moorman, Jennifer Lynn v. State	1089 *	April 1, 2026
<u>N</u>		
Neil, Joseph v. Watroba	1947 *	April 27, 2026
NPML Mortgage Acquisition v. Golden Butterfly LLC	1595 *	April 7, 2026
<u>O</u>		
Olatunde, Daniel v. Olatunde	1434	April 13, 2026
Ososanya, Kehinde Oluwatobi v. State	1996 *	April 7, 2026
Owens, Michael A., Jr. v. Murdock	0110	April 10, 2026
<u>P</u>		
Painter, Tiffany Ann v. Kalogritsas	1318	April 17, 2026
Penman, Aaron v. Harford Cnty.	2182 *	April 9, 2026
Penner, Eric R. v. Leslie	2363 *	April 10, 2026
Pierre, Scwelta James v. State	1848 *	April 14, 2026
Putney, Kory Bryant v. State	2211 *	April 30, 2026
<u>R</u>		
Ravenell, Ikem v. State	2089 *	April 14, 2026
Reed, Derod Lee v. State	0972 **	April 16, 2026
<u>S</u>		
Sarpalius, William v. Sarpalius	0130	April 28, 2026
Sarpalius, William v. Sarpalius	0666	April 28, 2026
Schaired, Jerome v. State	1930 *	April 6, 2026
Schifanelli, Gordana v. Tate	1725 *	April 9, 2026

Seyoum, Yoseph v. Crowley, Hoge & Fein, PC	1435 *	April 24, 2026
State v. Williams, Jamil James	0302 *	April 8, 2026
Stukes, Lawrence Brian v. Stukes	0014	April 15, 2026
<u>T</u>		
Taiwo, Peter O. v. Harford Cnty. Child Support Admin.	2362 *	April 23, 2026
Thompson, Keishon Javontae v. State	1077 **	April 16, 2026
Thorpe, Lando v. State	2152 **	April 27, 2026
Tippett, Debbie v. Davis	0803 *	April 17, 2026
Trejo, Amparo v. Hernandez	0741	April 29, 2026
Turner, AshLee Smith v. Abelle-Kiser	1783	April 28, 2026
Turner, AshLee Smith v. Abelle-Kiser	2052 *	April 28, 2026
<u>U</u>		
Upper Chesapeake Medical Center v. Lewis	0679 **	April 10, 2026
<u>V</u>		
Vadivelu, V. Kurmaran v. Selvakumaran, Renukha	0781	April 29, 2026
Vargas, Brandon v. Accupermit LLC	1447 *	April 16, 2026
Venson-Smith, Shelby v. Smith	1833	April 13, 2026
<u>W</u>		
W.T. v. M.A.	1766	April 15, 2026
Walker, Bruce Edward v. State	1147 **	April 17, 2026
Watkis, Errol v. Euro Motorcars Bethesda	1323 *	April 21, 2026
Webb, Daquawn v. State	1651 *	April 28, 2026
Witherspoon, Jaleel v. Lee	1396	April 9, 2026
Wright, Donald v. Wright	0073 *	April 28, 2026
<u>Y</u>		
Yang, Tian v. Yang	0068	April 13, 2026