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Facts: The Anne Arundel County Department of Social Services ("the Department") found Sherri Howard responsible for "indicated child abuse" of her minor son, Alexander. Howard appealed administratively that determination, receiving a hearing before an Administrative Law Judge ("ALJ") of the Maryland Office of Administrative Hearings. The ALJ issued a written decision affirming the Department's finding that Howard perpetrated the physical variety of "indicated child abuse" by striking her son in the region of his eye, exposing him to a substantial risk of serious eye injury. Howard sought judicial review of the ALJ's decision, the final administrative adjudication of the matter, by the Circuit Court for Anne Arundel County. The Circuit Court reversed the administrative decision, opining that no reasonable agency fact finder could have found Howard's act to have harmed or caused a substantial risk of harm to the well-being of her son. The court concluded that Howard did not intend actually to harm her child, thus removing her act from the scope of conduct considered to be abuse.

The Department noted a timely appeal to the Court of Special Appeals. The case was assigned routinely to a three-judge panel consisting of two incumbent judges of the court and specially assigned, retired Judge Charles E. Moylan, Jr. Before the panel decided the appeal, the intermediate appellate court invited the parties to submit additional briefs and argue the questions anew before the court in banc. Participating on the in banc court were the 13 incumbent members of the court and two retired judges who were specially assigned: Judge Moylan and Judge Raymond J. Thieme, Jr., who had no previous connection with the case. On 18 May 2006, the in banc court, by an eight-to-seven vote, affirmed the judgment of the Circuit Court, explaining itself in a multiplicity of opinions. Chief Judge Murphy authored the lead opinion for the eight-member majority, reasoning that Howard neither acted with an intent to, nor the knowledge that her act would, cause injury. Judge Davis penned a concurring opinion, in which four other judges in the majority joined, including Judge Thieme. There were two intertwined camps of dissenting judges: one opinion was authored by Judge Moylan, joined by six incumbent judges, and the other by

Judge Deborah Eyler on behalf of herself and three other incumbent judges.

In granting the Department's petition for writ of certiorari, the Court of Appeals added an issue questioning whether the composition of the in banc intermediate appellate court was properly constituted.

Held: Vacated and remanded. In deciding the case, the Court noted that the additional question of appellate procedure was the threshold question in this appeal because the proper constitution of the intermediate appellate court, sitting in banc, is a prerequisite for a valid decision capable of review. The Court concluded that there was no valid judgment by the in banc appellate court. The Court reasoned that the plain language of Md. Code (1974, 2006 Repl. Vol.), Courts and Judicial Proceedings Article, § 1-403(c) ("Cts. & Jud. Proc."), which states that "[t]he concurrence of a majority of the incumbent judges of the entire court is necessary for decision of a case heard or reheard by the court in banc," proscribes the participation of retired judges in hearing and deciding cases argued in banc because they are not incumbents. Common sense dictated that incumbents only may be current officeholders and the Maryland Constitution provides that appellate judges come to office only by appointment of the Governor and the advice and consent of the Senate, and once so appointed, remain subject to retention election every ten years. MD. CONST. art. IV, § 5A. Thus, a retired judge who vacates his or her office, by operation of law or otherwise, may no longer be considered an incumbent. Further, a judge who has been assigned specially, whether retired or active in another court, is just that: assigned and not appointed. This distinction clarifies that, although specially assigned judges assume "all the power and authority" of a judge of the court on which they temporarily sit, such a vestment does not accord the specially assigned judge the corresponding "office" such that he or she becomes an incumbent. Cts. & Jud. Proc., § 1-302(e); *cf.* MD. CONST. art. IV, § 18(b)(5). If this were not true, the special assignment of judges routinely would expand the size of the Court of Special Appeals beyond its statutorily-prescribed maximum complement of 13 judges when no vacancies exist on the court. Cts. & Jud. Proc, § 1-402(a).

The Court also reasoned that, § 1-403(c) of the Courts and Judicial Proceedings Article proscribes the participation of non-incumbents in banc. The policy rationale for the in banc hearing and decision of cases is that it allows the active, sitting members of a court to control the court's jurisprudence. The participation of retired judges and active judges of other courts in the in banc proceedings of the Court of Special Appeals runs counter to this

rationale. It also would defy logic to permit the participation of a judge whose vote is not counted in the resolution of a case. This is no commentary on the inherent wisdom or faculties of the court's specially assigned judicial brethren, but merely reflects the intent of the General Assembly, which chose not to provide for their participation in the Court of Special Appeals's hearings and decisions in banc. The Court also noted that its conclusion did not limit, in any way, the participation of specially assigned judges in normal three-judge panels, nor did it have implications for the Court of Appeals, the operations of which are governed by a distinct constitutional scheme.

Department of Human Resources, Anne Arundel County Department of Social Services v. Sherri Howard, No. 53, September Term 2006, filed March 12, 2007. Opinion by Harrell, J.

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ARBITRATION - FEDERAL ARBITRATION ACT – MAGNUSON-MOSS WARRANTY ACT – BINDING ARBITRATION – ACCORDING TO THE TEXT OF THE MAGNUSON-MOSS WARRANTY ACT, LEGISLATIVE HISTORY, AND FTC REGULATIONS PROMULGATED IN CONJUNCTION WITH THE ACT, CLAIMANTS CANNOT BE FORCED TO RESOLVE THEIR MMWA CLAIMS THROUGH BINDING ARBITRATION.

Facts: On October 20, 2001, William Lobach and his father, Raymond, went to the Koons Ford dealership on Security Boulevard in Baltimore, Maryland, to purchase a vehicle. William purchased a 2001 Ford Escort with Raymond as a co-signer on the purchase. A sales representative and finance department representative affirmatively stated that the car did not have any prior damage. Koons Ford also presented William and Raymond with a Used Vehicle Disclosure Form stating that the vehicle had never been used for commercial use. William and Raymond relied on these statements when they purchased the vehicle. William and Raymond signed several documents as part of the purchase. One of these documents was a buyer's order, which contained a clause on its reverse side stating that the parties agree to resolve any claims through binding arbitration and agree to waive their rights to a judge or

jury trial.

On April 20, 2005, Raymond, individually and as next of kin to William, filed a complaint in the Circuit Court for Baltimore County against Koons Ford because shortly after they took possession of the vehicle, water began leaking into the trunk and interior of the car. William and Raymond later learned that the vehicle had previously been in an accident and had other mechanical damage, had been used for commercial purposes, and that the odometer had been rolled back. The complaint alleged violation of the Magnuson-Moss Warranty Act ('MMWA") (Count I), violation of the Maryland Consumer Protection Act ("MCPA") § 13-301(1) (Count II), violation of the MCPA § 13-301(9) (Count III), breach of contract (Count IV), violation of the Maryland Commercial Law Code § 12-1005 (Count V), fraud (Count VI), and a derivative action against Suntrust Bank for all of the aforementioned claims (Count VII). Koons Ford filed a Petition for Order to Arbitrate and Dismissal of Complaint, requesting that the Circuit Court stay the case so that the claims could be submitted to arbitration pursuant to the provisions in the buyer's order.

The Circuit Court granted Koons Ford's Petition for Order to Arbitrate as to Counts II through VI, and denied it with respect to Count I. Koons Ford filed a notice of appeal to the Court of Special Appeals and, while the appeal was pending in that court, this Court issued a writ of certiorari on its own motion. Raymond argued that neither he nor William had notice or knowledge of the provisions in the buyer's order because it was a contract of adhesion. He also argued that the MMWA precludes binding arbitration and therefore supersedes the Federal Arbitration Act (FAA) as to this point. Koons Ford contended that the FAA supersedes the MMWA because the FAA strongly favors arbitration and the MMWA does not include language specifically precluding binding arbitration.

Held: Judgment of the Circuit Court for Baltimore County affirmed. This Court first explained that because both William and Raymond signed the buyer's order and the applicable language was written in capital letters and bold print, they could not evade their obligations simply because they chose not to read what they had signed. The Court then examined the purpose of the FAA and the evolution of the FAA since the time of its enactment in 1925. The Court explained that the FAA was enacted to make valid and enforceable agreements to arbitrate and that prior to the 1980's, the FAA was widely inapplicable to claims that were based upon the assertion of statutory, rather than contractual, claims. In addition, prior to 1984, the FAA was considered by many courts and commentators to be procedural in nature and applicable only in

federal courts. The Court explained that during the 1980's, the Supreme Court expanded the FAA and has since strongly favored binding arbitration in both federal and state courts. The Court next looked at the MMWA and explained that Congress enacted the MMWA in 1975 to give consumers a statutory private right of action, in state or federal court, if they are damaged by a supplier, warrantor or service contractor. The Court examined the other jurisdictions that have addressed whether the MMWA precludes binding arbitration and noted that the courts remain divided.

The Court then examined the text of the MMWA to discern the congressional intent at the time of its enactment. It determined that Congress made clear in § 2310 (a)(3)(C) of the MMWA that consumers may be required to participate in "informal dispute settlement mechanisms" *before* pursuing a civil action. Because Congress made clear that consumers must retain their rights to pursue a civil action, the Court concluded that Congress must have intended to preclude the resolution of MMWA claims through binding arbitration because binding arbitration constitutes a substitute for litigation, not a precursor to litigation. The legislative history of the MMWA also demonstrated that Congress intended to preclude the resolution of claims through binding arbitration or any other procedure that would interfere with the consumers' ability to subsequently pursue a civil action. The Court rejected Koons Ford's contention that the FAA supersedes the MMWA because the MMWA was enacted in 1975, and the Supreme Court did not expand the applicability of the FAA until nearly a decade later. Therefore, Congress could not have intended for binding arbitration to be applicable to contractual claims in state courts in 1975. Lastly, the Court noted that the FTC regulations, promulgated in response to the MMWA, represent a permissible construction of the MMWA and clearly demonstrate that the MMWA precludes the resolution of claims through binding arbitration.

Koons Ford v. Lobach, No. 66, September Term 2006, filed March 20, 2007. Opinion by Greene, J.

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CONTRACTS - FORMAL REQUISITES

Facts: Petitioners Rebecca Cochran, et al., executed a letter of intent with Eileen W. Norkunas for the purchase of Ms. Norkunas' property. The buyers stated in the letter of intent that they would deliver a standard form contract and also indicated how certain terms in that contract would be construed. Upon receipt of the contract and addenda, Ms. Norkunas signed the documents on the majority of the signature lines, but she crossed out the financing contingency provisions and did not return the documents to the buyers or their agent. Ms. Norkunas retained the signed documents and then communicated to the buyers that she was taking her property off the market.

The buyers filed suit in the Circuit Court for Baltimore City, asking the trial court to order that the letter of intent and contract of sale be specifically enforced. The Circuit Court granted summary judgment in favor of the buyers and ordered specific performance. The Circuit Court held that the letter of intent and contract together constituted an enforceable contract of sale.

The Court of Special Appeals, reviewing whether it was error to grant summary judgment for the buyers, reversed the Circuit Court, holding that the court erred in holding that an enforceable contract was formed between the parties. *Norkunas v. Cochran*, 168 Md. App. 192, 895 A.2d 1101 (2006). The Court of Special Appeals concluded that the language of the letter of intent did not indicate that the parties had reached final agreement at the time the letter of intent was signed. The court held also that Ms. Norkunas did not accept the offer, even though she signed the documents, because she did not mail the signed contract to the buyers so as to communicate her acceptance.

Held: Affirmed. The Court of Appeals held that the letter of intent was unenforceable because the parties did not demonstrate an intent to be bound. The Court noted that the letter of intent unambiguously indicated that a standard form contract would be delivered and specified how certain terms in that contract would be construed. The Court of Appeals held also that the contract was not enforceable, even though the contract was signed in private by the seller, because the seller did not manifest her acceptance of the offer by mailing or other act.

Rebecca Cochran, et al., v. Eileen W. Norkunas, No. 43, September Term, 2006, filed March 20, 2007. Opinion by Raker, J.

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CRIMINAL LAW - APPEAL

Facts: In 1978 and 1979, the Petitioner, Gerald Davis Fuller, was indicted for first-degree murder, first-degree rape, and robbery with a deadly weapon charges. On July 12, 1979, a jury found Fuller guilty of first-degree murder, and he was sentenced to imprisonment for the balance of his natural life, with credit for time served. Later that year, Fuller pled guilty to first-degree rape and robbery with a deadly weapon and was sentenced to imprisonment for the balance of his natural life, concurrent with the sentence he was then serving. Fuller remains incarcerated.

On February 28, 2005, Fuller filed a Petition for Commitment to the Alcohol and Drug Abuse Administration pursuant to Section 8-507 of the Health-General Article of the Maryland Code (1982, 2005 Repl. Vol., 2006 Supp.). In his petition, Fuller alleged that he had an untreated 38-year history of alcohol and drug abuse, and that he was both an alcoholic and a heroin user "in a system which is infested with alcohol and drugs." Fuller contended that throughout his 27-year incarceration, he had demonstrated a need for, and requested but received, only limited and inadequate care, supervision, and treatment for his substance abuse addictions and that this failure had impeded his complete rehabilitation.

On March 15, 2005, Judge Clifton J. Gordy of the Circuit Court for Baltimore City denied the petition. Fuller noted an appeal to the Court of Special Appeals; the Court of Special Appeals concluded that the denial of Fuller's petition was not appealable and dismissed the appeal.

Held: The Court of Appeals affirmed and held that the denial of a petition under Section 8-507 of the Health-General Article is not appealable. In reaching the conclusion that the denial of Fuller's petition was not appealable, the Court first considered whether the petition was analogous to a motion for modification. The Court rejected this comparison, noting that unlike a motion for modification, a Section 8-507 petition for commitment does not affect the length of a sentence, only where a portion of it is to be served, and initiates a statutory cause of action separate from the conviction that can be filed repeatedly "at any other time the defendant voluntarily agrees to participate in treatment." Therefore, the Court stated that because the General Assembly did not proactively and clearly confer the right of appeal to petitioners denied relief under Section 8-507, no right to appeal existed. Further, the Court found that the denial of a petition for commitment was not a final judgment and did not fall within the collateral order doctrine exception because the denial of a single petition does not preclude Fuller from filing another.

Gerald Davis Fuller v. State of Maryland, No. 62, September Term 2006, filed March 13, 2007. Opinion by Battaglia, J.

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CRIMINAL LAW - EVIDENCE-OPINION EVIDENCE-CREDIBILITY, VERACITY, OR COMPETENCY.

Facts: This case arises from the conviction of Maurice Galen Hunter, petitioner, for one count of first degree burglary under Maryland Code (2002), § 6-202 of the Criminal Law Article for which he was sentenced to 15 years in prison. In an unreported opinion, the Court of Special Appeals, relying on *Fisher v. State*, 128 Md. App. 79, 736 A.2d 1125 (1999), affirmed the judgment of the trial court. The Court of Appeals granted the petition for a writ of certiorari to consider whether it was error for the prosecutor to ask petitioner whether police witnesses were lying and to consider, if the allowance of such questions was error, whether the error was harmless.

Late in the afternoon of April 10, 2002, Dorothy Johnson returned to her Baltimore County home and found that it had been burglarized. On that same day, Maurice Galen Hunter, petitioner, pawned an item belonging to Ms. Johnson. On or about May 1, 2002, petitioner was arrested for the burglary of Ms. Johnson's home. He was tried in the Circuit Court for Baltimore County on October 1, 2003, on the charge of burglary in the first degree.

At trial, two Baltimore County Detectives testified that after petitioner was taken into custody, he confessed to the burglary of Ms. Johnson's home. Both detectives testified that petitioner directed the detectives to Ms. Johnson's home and pointed it out as the location of the burglary.

At trial, petitioner denied committing the burglary at Ms. Johnson's home. He also denied confessing to the burglary and pointing out the address. On cross-examination, the State's Attorney asked petitioner several "were-they-lying" questions,

e.g., "Mr. Hunter it is your testimony that Detective Knox[,] who just came in here and testified[,] lied, right?" In its closing argument, the State continued to emphasize the "lying" aspect of the conflicting testimony given by the detectives and petitioner.

In its three hours and twenty minutes of deliberations (following a trial that began and ended on the same afternoon), the jury sent four notes to the trial court tending to show that the jury was confused. Ultimately, the jury returned a verdict finding petitioner guilty of burglary in the first degree.

Held: Reversed. The Court of Appeals held that under the circumstances of the case, the trial judge erred, as a matter of law, by permitting the State to ask the petitioner if other witnesses were lying. The error was harmful to the defendant because the Court was unable to say, beyond a reasonable doubt, that the error did not affect the verdict.

Maurice Galen Hunter v. State of Maryland, No. 63, September Term, 2006, filed March 16, 2007. Opinion by Cathell, J.

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CRIMINAL LAW – FAILURE TO OBEY POLICE OFFICER

Facts: During the evening of April 19, 2004, between 6:00 and 8:00 p.m., the Federalsburg Police Department intervened in several disputes in progress, all resulting from an argument between Alexander Wilcox and Derrick Wilcox. Officer Pennell Jester observed the two squabbling near Academy Avenue in Federalsburg, and requested backup. When Officer Brian McNeill responded, both officers approached, and the Wilcoxes left the area. The quarrel migrated to a nearby street corner where a large crowd began to gather, and it appeared a fight could erupt. Both police officers interceded and ordered the crowd to disperse. Over the next ten minutes, the group gradually scattered, and the officers followed both Wilcoxes to a nearby store, where another confrontation began among the Wilcoxes and two other individuals. Both officers

separated the four men, but by that time, a larger crowd of eight to ten people had gathered; the officers again ordered the gathering to disperse. A larger throng, between twenty and thirty people, began to gather at a nearby street corner. The participants shouted at each other and were loud as they walked throughout traffic. Officers Jester and McNeill again approached and moved the participants out of traffic and away from the street corner. The conflagration continued to migrate to a nearby parking lot. Officer Jester testified he thought a riot was ensuing and both Officers Jester and McNeill intervened, interposed themselves within the crowd, and, to no avail, ordered the participants to disperse. Over the next ten minutes, the maelstrom died down, and the crowd dissipated.

The next altercation occurred at the Garden Court Apartments. Officers Jester and McNeill were dispatched to the scene after the Caroline County Sheriff's Department received a 911 call regarding a fight between forty and sixty people. When they arrived, Officer Jester determined that the argument was over, but that between forty to fifty people, including Spry, were loitering at the location, screaming and yelling. To calm the heated situation, Officer Jester ordered those present to immediately leave the scene, if they did not live in the Garden Court Apartments. Spry, who was not a resident of the Garden Court Apartments, refused to leave, and responded to Officer Jester's requests with profanity, and stood in front of the Officer, defiantly staring, refusing to move. Officer Jester ordered Spry to move along "at least four of five times" within the space of five to ten minutes, before Spry left the scene.

Officer Jester applied for an arrest warrant the following day, and Spry was arrested two days after the incident with several offenses, including failing to obey a lawful order that a law enforcement officer makes to prevent a disturbance to the public peace, in violation of Section 10-201 (c)(3) of the Criminal Law Article. Spry was convicted of failing to obey a lawful order that a law enforcement officer makes to prevent a disturbance to the public peace in violation of Section 10-201 (c)(3), and sentenced to sixty days' imprisonment with all but two consecutive weekends suspended, as well as one year of unsupervised probation.

Spry noted an appeal to the Court of Special Appeals, which affirmed in an unreported opinion. The Court of Appeals granted Spry's petition for writ of certiorari.

Held: The Court of Appeals affirmed the conviction and held that a police officer does not have to arrest an individual immediately after the first disobedience of a lawful order made to

prevent a disturbance to the public peace to initiate prosecution under Section 10-201 (c)(3). In affirming Spry's conviction, the Court determined an arrest is not an element of the offenses of disorderly conduct and breach of peace, and that given the discretionary nature of the decision to arrest, an arrest need not be made after the first disobedience of a police officer's lawful command. The Court held that because Spry was arrested with a warrant, and the accompanying protections thereof, he must prove actual prejudice resulting from the delay between the offense and the arrest, which Spry did not allege. In affirming Spry's conviction, the Court noted that even though he left after four or five additional police orders to move on, his noncompliance until that point was not negated by his eventual and untimely decision to leave.

George Junior Spry v. State of Maryland, No. 42, September Term, 2006, filed January 16, 2007. Opinion by Battaglia, J.

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CRIMINAL LAW – GUILTY PLEAS – REPRESENTATIONS, PROMISES, OR COERCION

Facts: Appellant, Fausto Ediburto Solorzano, was indicted by the Grand Jury for Prince George's County for attempted first degree murder and other related charges. He entered into a plea agreement with the State in which he agreed to plead guilty to attempted first degree murder. Appellant and the State represented to the trial court that they believed the sentencing guideline range to be 12 to 20 years incarceration. The State agreed to dismiss the remaining counts of the indictment and recommend a sentence no greater than the top of the range set out in the Maryland Sentencing Guidelines. At the plea proceeding, the judge informed appellant that if the recommended sentence in the sentencing guidelines "turns out to be twelve to twenty years, the State is free to ask for up to twenty years, and you could receive up to twenty years." The court accepted appellant's guilty plea and ordered a pre-sentence investigation. The PSI indicated that the sentencing guidelines for the offense was 12 to 20 years.

Nonetheless, the court sentenced appellant to life imprisonment, with all but fifty years suspended. Appellant's motions to correct an illegal sentence and in the alternative to vacate the guilty plea were denied. Appellant noted an appeal to the Court of Special Appeals. The Court of Appeals granted certiorari on its own initiative prior to decision by the intermediate appellate court. *Solorzano v. State*, 396 Md. 11, 912 A.2d 647 (2006).

Held: Sentence Vacated and case remanded for new sentencing. The Court of Appeals found that the trial court accepted the terms of the plea agreement, that appellant pled guilty in reliance of the court's acceptance, and that appellant was entitled to either withdraw his guilty plea or to specific performance of the terms of the plea agreement. The Court reasoned that the trial court made statements which, at a minimum, created an impression that it had accepted the sentencing range agreed upon by the State. It held that in light of the trial judge's statements, it would be reasonable for appellant to believe that he would receive no more than twenty years in jail, so long as that was the top of the sentencing guidelines for the crime to which he pled guilty. The Court noted that any ambiguity as to whether the trial court accepted the terms of the plea agreement was to be construed in favor of the defendant. Appellant, on appeal, made it clear that he wished to receive the benefit of his plea bargain, and did not wish to withdraw his guilty plea.

Fausto Ediburto Solorzano a/k/a Fausto Ediburto Solarzano v. State of Maryland, No. 93, September Term, 2006, filed March 19,2007. Opinion by Raker, J.

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CRIMINAL LAW – INCONSISTENT VERDICTS – WHEN A TRIAL JUDGE, SITTING WITHOUT A JURY IN A CRIMINAL CASE, RENDERS INCONSISTENT VERDICTS AND FAILS TO EXPLAIN THE REASON FOR THE INCONSISTENCY, THE APPROPRIATE REMEDY IS TO VACATE OR REVERSE THE INCONSISTENT VERDICTS OF GUILTY

Facts: On the morning of February 6, 2003, Respondent Charles Williams drove two friends, Henderson and Gaines, to a Citgo station. He did not park at the gas station – he instead parked behind the station, such that Henderson and Gaines had to climb through a fence to get to the Citgo station. Henderson and Gaines wore masks and went inside the Citgo station. Once inside, they pointed a gun at the owner of the station and ordered him to lay down on the ground. When the owner refused, Henderson fired the gun at the floor, missing the owner's feet by a few inches. After Henderson fired the gun, Henderson and Gaines left the Citgo and returned to Williams's car. A witness who lived nearby told the police that she saw all three individuals in the car and that Henderson and Gaines were trying to cover their faces. Williams was later arrested and charged with attempted robbery with a dangerous weapon, attempted robbery, assault in the first degree, attempted theft, use of a handgun in the commission of a felony, use of a handgun in the commission of a crime of violence, wearing, carrying, or transporting a handgun, and two counts of possession of a firearm.

Williams testified at trial that he did not know what Henderson and Gaines were going to do inside the Citgo station and that he did not learn of what they had done until they left the Citgo. Williams explained that he thought that they were going to the Citgo to buy cigarettes and that he parked his car covertly so that he could use heroin while he was waiting. The trial judge found that Williams's actions indicated knowledge and complicity in the events. He therefore convicted him, as an aider and abettor, of attempted robbery with a dangerous weapon, attempted robbery, assault in the first degree, attempted theft and use of a handgun in the commission of a crime of violence and a felony.
The judge found Williams not guilty of wearing, carrying, or transporting a handgun, and the two handgun possession charges. Williams appealed to the Court of Special Appeals, arguing that the verdicts were inconsistent. The Court of Special Appeals held that the verdicts were inconsistent and therefore vacated the convictions for attempted robbery with a dangerous weapon, assault in the first degree, and use of a handgun in the commission of a crime of violence and a felony because it determined that Williams could not have used the firearm if he did not first possess it. The State filed a petition for writ of certiorari, which this Court granted.

Held: Affirmed. This Court explained that [w]hen a person embraces a misdemeanor, that person is a principal as to that crime, no matter what the nature of the involvement. In the field of felony, however, the common law divides guilty parties into principals and accessories." *Hawkins v. State*, 326 Md. 270, 280,

604 A.2d 489, 494 (1992). Williams was convicted as a principal in the second degree for the crimes of attempted robbery with a dangerous weapon and first degree assault; to be convicted as a principal in the second degree for these crimes, he must have possessed the requisite criminal intent. The trial judge determined that Williams, Henderson, and Gaines traveled to and from the Citgo station together in Williams's car, and Williams spent substantial time with the others before and after the armed robbery. Because the trial judge held that Williams did not possess the handgun, and the trial judge failed to explain adequately how Williams was not in joint possession of the gun, the verdicts are inconsistent and the guilty verdicts for attempted robbery with a dangerous weapon and assault in the first degree must be reversed. Williams was also convicted of attempted robbery and attempted theft, two crimes that do not require that Williams possess a handgun or have knowledge that Henderson and Gaines were going to use a handgun These convictions are therefore consistent with the acquittal for wearing, carrying, or transporting a handgun; the verdicts can stand.

The Court also explained that when two or more individuals participate in a crime, each person is responsible for the commission of that crime and for any other criminal acts done in furtherance of that crime. The verdicts for use of a handgun in the commission of a crime of violence and felony were therefore inconsistent with the wearing, carrying, or transporting of a handgun acquittal; because Williams participated in the criminal enterprise, he is responsible for all criminal acts done in furtherance of that enterprise. In addition, under the case law of this State, an individual cannot use a handgun if he does not first possess that handgun. The trial judge failed to explain how Williams was not in possession of the handgun while traveling to the Citgo station with Henderson and Gaines, but, nonetheless, embraced all of the other crimes committed in furtherance of the attempted armed robbery. The handgun use convictions must be vacated.

State v. Williams, No. 103, September Term 2005, filed February 8, 2007. Opinion by Greene, J.

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CRIMINAL LAW - MERGER

Facts: In Case No. 114, petitioner was carrying a handgun during an arrest. He had previously been convicted of an offense that prohibited him from possessing a handgun in the State. He was charged, tried, convicted and sentenced to consecutive sentences, i.e., five years imprisonment without parole for possession of a firearm by a convicted person and three years for wearing, carrying, or transporting a handgun. He appealed his convictions to the Court of Special Appeals, which, in an unreported opinion, rejected his argument that the trial judge erred by failing to merge the convictions. That court affirmed his convictions based, in part, on the holding in Frazier v. State, 318 Md. 597, 569 A.2d 684 (1990), which articulated that these specific offenses do not merge. The Court of Appeals granted certiorari.

In Case No. 123, petitioner was convicted of transporting a handgun, transporting a handgun in a vehicle, and possession of a handgun after conviction of a misdemeanor carrying a sentence of two years or more. He was sentenced to six years (three years suspended, followed by two years probation) for transporting a handgun, three years to run concurrently for transporting a handgun in a vehicle, and three years to run concurrently for possession of a handgun after conviction of a misdemeanor carrying a sentence of two years or more. In an unreported opinion, the Court of Special Appeals, affirmed the sentences and convictions, but merged the sentences for transporting a handgun. The Court of Appeals granted petitioner's petition for writ of certiorari.

In Case No. 113, petitioner was arrested, tried, convicted, and sentenced to five years without the possibility of parole for possession of a firearm by a person with a prior criminal conviction and to three years to run concurrently for the conviction of wearing, carrying, or transporting a handgun in a vehicle. He appealed his convictions to the Court of Special Appeals which, in an unreported opinion, affirmed his convictions and sentences. The Court of Appeals granted certiorari.

Held: *In Case 123, Judgment Affirmed, Costs to be Paid by Teel. In Case 114, Judgment Affirmed, Costs to be Paid by Womack. In Case 113, Judgment Reversed as to the First Count and the Sentence on that Count is Vacated. Judgment, in Case 113, Otherwise Affirmed. Costs in Case 113, to be Paid by the Mayor and City Council of Baltimore.* Frazier is still valid. The offenses of carrying a handgun and possession of a firearm by a convicted person do not merge, despite the General Assembly's increase of the penalties associated with the crime of possession of a firearm by a convicted person.

Alvin G. Pye v. State of Maryland, No. 113, September Term 2004.
Darryl Womack v. State of Maryland, No. 114, September Term 2004.
Davon Teel v. State of Maryland, No. 123, September Term 2004.
Filed March 19, 2007. Opinion by Bell, C.J.

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CRIMINAL LAW – PRELIMINARY PROCEEDINGS – DISCOVERY VIOLATIONS – SANCTIONS

CRIMINAL LAW – EVIDENCE – CONSCIOUSNESS OF GUILT

Facts: In June 1999, petitioner, Garrison Thomas, was convicted of felony murder, second degree murder, and robbery. On appeal before the Court of Appeals, the Court reversed because the State failed to lay the proper evidentiary foundation to admit consciousness of guilt evidence regarding petitioner's refusal to submit to a blood test made pursuant to a search warrant. *Thomas v. State*, 372 Md. 342, 812 A.2d 1050 (2002). At his second trial, petitioner was again found guilty of felony murder, second degree murder, and robbery. Petitioner noted a timely appeal to the Court of Special Appeals, raising two issues: (1)that the trial court erred in not excluding evidence of appellant's statement made to an F.B.I. agent because the State committed a discovery violation under Maryland Rule 4-263 by not timely disclosing the statement to defense counsel, and (2) that the trial court committed reversible error in failing to exclude evidence of consciousness of guilt. The intermediate appellate court affirmed. *Thomas v. State*, 168 Md. App. 682, 899 A.2d 170 (2006). The Court of Appeals granted certiorari. *Thomas v. State*, 394 Md. 479, 906 A.2d 942 (2006).

Held: Affirmed. The Court of Appeals held that assuming *arguendo* that the State violated the rules of discovery, the trial court did not commit reversible error in admitting the testimony of the F.B.I. agent because petitioner was not prejudiced by the State's failure to disclose that evidence until a week before trial, and the State did not act in bad faith in producing that information. The only remedy sought by petitioner was the

exclusion of the statement. Petitioner did not seek a continuance to cure any potential prejudice due to the delayed discovery and failed to demonstrate any prejudice from the possible violation. The exclusion of prosecution evidence as a discovery violation sanction is an extreme remedy and should be imposed sparingly. A continuance, when practical, is the favored remedy. The Court of Appeals held also that the State provided a sufficient foundation to admit as consciousness of guilt evidence petitioner's refusal to submit to blood testing. The State provided testimony that petitioner was told the test was in reference to the victim's murder, thus satisfying the need to show that petitioner possessed a consciousness of guilt of the particular crime for which he was charged. The mere possibility that petitioner resisted the blood test for some innocent or alternative reason, was not sufficient to make the proffered evidence irrelevant and inadmissible. The State is not required to anticipate any conceivable explanation for the party's actions; rather, it is incumbent on the defendant to generate alternative theories explaining his resistance to the taking of a blood sample.

Garrison Thomas v. State of Maryland, No. 59, September Term, 2006, filed March 16, 2007. Opinion by Raker, J.

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CRIMINAL LAW - RESTITUTION - $10,000 LIMIT ON RESTITUTION IMPOSED BY MD. CODE (2001), CRIMINAL PROCEDURE ARTICLE, § 11-604(B) DOES NOT APPLY TO ADULT DEFENDANTS

Facts: Wallace Jerome Robey was convicted by the Circuit Court for Wicomico County of second-degree assault and reckless endangerment. The Circuit Court sentenced Robey to three years imprisonment, all of which was suspended, and ordered restitution in an amount to be determined in a subsequent hearing and on advice of the Maryland Division of Parole and Probation. The Division, from records, calculated the figure of $42,260.75. On 21 November 2003, during a separate restitution hearing, the Circuit Court

imposed on Robey an obligation to pay $42,342.74 in restitution to the victim. Robey appealed his conviction and sentence to the Court of Special Appeals, but did not prevail. He subsequently challenged the amount of his restitution order in the Circuit Court with a Motion to Correct Illegal Sentence. The theory of his motion was that Md. Code (2001), Crim. Proc. Article, § 11-604(b) ("Crim. Proc.") prohibits a restitution order in an amount exceeding $10,000. The Circuit Court denied Robey's motion and Robey noted a timely appeal to the Court of Special Appeals. Before that court could hear the case, the Court of Appeals granted a writ of certiorari, on its own initiative, to consider Robey's contention that the $10,000 statutory limit on restitution orders applies to adult defendants as well as child defendants and respondents and their parents.

Held: Affirmed. The Court of Appeals held that the plain language of Crim. Proc., § 11-604(b) precluded Robey's interpretation because the thrust of the relevant subsection and the surrounding subsections comprising § 11-604 deal exclusively with child defendants or respondents and their parents. The Court validated its conclusion as to legislative intent by examining the legislative history of § 11-604(b). This examination revealed that the predecessor statute from which § 11-604(b) was derived also focused exclusively on restitution as applied to child defendants or respondents and their parents. In addition, a subsequent revision of § 11-604(b) further ratified that the General Assembly did not intend to include adult defendants within the purview of the limit on restitution orders. The Court noted that its interpretation of the statute was consistent with the rehabilitative purpose of restitution as directed towards children in the juvenile justice system. The limit imposed on restitution ordered against children endeavors to prevent young offenders from being saddled with an insurmountable debt, which frustrates the goals of rehabilitation.

Wallace Jerome Robey v. State of Maryland, No. 90, September Term 2006, filed 14 March 2007. Opinion by Harrell, J.

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CRIMINAL LAW – SEARCH & SEIZURE – WARRANTS – INTERVENING CAUSE – ATTENUATION – IF POLICE STOP AN INDIVIDUAL ILLEGALLY AND THEN DISCOVER AN OUTSTANDING WARRANT, THE WARRANT AND SUBSEQUENT LEGAL ARREST ON THAT WARRANT CAN CONSTITUTE AN INTERVENING CIRCUMSTANCE THAT DISSIPATES ANY TAINT STEMMING FROM THE UNCONSTITUTIONAL STOP

Facts: Petitioner, Artavius Cox, and his friend were stopped by a uniformed police sergeant on the street while they were walking in a neighborhood in the early afternoon. Several other officers arrived at the scene shortly thereafter. The police sergeant asked the men for their identification and explained that they loosely fit the description of the perpetrators of a recent series of robberies. The Sergeant ran the information through the system and learned that one of the men had a warrant outstanding for his arrest. The Sergeant told both men to sit on the ground with their hands on their heads, while he awaited confirmation as to which man had the outstanding warrant. The Sergeant learned that Cox had the outstanding warrant for failure to appear in court on drug charges. He subsequently placed Cox in handcuffs. Another officer at the scene then noticed a baggie of marijuana lying on the ground, next to where Cox had been seated.

The State charged Cox with several drug-related offenses. Cox filed a motion to suppress the marijuana on the grounds that it was obtained as a result of an illegal stop. At the suppression hearing, the State argued that Cox was arrested pursuant to an outstanding warrant and argued that the marijuana should not be suppressed. The Circuit Court granted Cox's motion to suppress, finding that the Sergeant did not have any objective manifestation that Cox was engaged in illegal drug activity. The State appealed to the Court of Special Appeals arguing that Cox was not illegally detained, and that, even if he was, the evidence should not be suppressed because the discovery of the outstanding warrant attenuated the illegality of the stop. Cox argued that the State failed to preserve the latter argument for appeal. The intermediate appellate court reversed the Circuit Court, holding that the stop was consensual and the evidence was therefore admissible. It also concluded that the State failed to preserve for appeal the attenuation argument. Cox filed a petition for writ of certiorari in this Court, and the State filed a conditional cross-petition. The Court granted both.

Held: Judgment of the Court of Special Appeals affirmed. Although the State did not use the words "intervening circumstance or cause" at the Circuit Court, its basic premise was the same at the suppression hearing and on appeal. The State explained that Cox was arrested pursuant to an arrest warrant. The burden then shifted to Cox to show that the arrest warrant was invalid. The

issue was further preserved because the State relied on *Gibson*, 138 Md. App. 399, 771 A.2d 536, a case that involved an explanation of the fruit of the poisonous tree doctrine and the applicable process that is employed to attenuate the taint of the primary illegality.

The Court evaluated the factors outlined by the Supreme Court in *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L.Ed.2d 416 (1975), to determine whether the police discovery of the arrest warrant and arrest of Cox pursuant thereto constituted an intervening cause that dissipated the taint of the arguably illegal stop. The Court determined that the temporal proximity of the stop and discovery of the marijuana was not dispositive on the issue of attenuation. The Court next determined that the discovery of the arrest warrant and arrest pursuant thereto constituted an intervening circumstance that broke the causal connection between the unlawful conduct and the derivative evidence. Lastly, the Court concluded that the Sergeant's conduct did not appear flagrant. A balancing of the factors led the Court to conclude that, even if the stop was illegal, the discovery of the arrest warrant and arrest pursuant thereto sufficiently attenuated any taint caused by the arguably illegal stop. This holding is in accordance with this Court's recent decision in *Myers v. State*, 395 Md. 261, 909 A.2d 1048 (2006).

Cox v. State, No. 39, September Term 2006, filed February 8, 2007. Opinion by Greene, J.

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CRIMINAL LAW – SEARCH & SEIZURE – EVIDENCE SEIZED IN ILLEGAL STOP – ATTENTUATING TAINT OF ILLEGAL STOP

Facts: This case arises from Ernest Myers's, "Petitioner," detention and arrest in Pennsylvania, and the subsequent search of Petitioner in Pennsylvania and Maryland. A Pennsylvania police officer observed Petitioner on February 12, 2003 wearing dark clothing and a dark stocking cap walking to his vehicle which was in a no-parking zone. The officer was aware of multiple burglaries

that had recently taken place in the area, and Petitioner matched the eye-witness descriptions of the suspect. As the officer went to question him, Petitioner sped off in his car which led the officer to follow him and perform a traffic stop. In plain view of the officer in Petitioner's car was a large screwdriver which the officer concluded could have been used to make the pry marks found at the scene of some of the burglaries. After the officer identified the Petitioner he arrested him for outstanding warrants. A search was conducted pursuant to the arrest which produced several items, including rare United States Currency and a savings bond titled in another person's name. The screwdriver was seized, the vehicle was impounded, and a search warrant was obtained for a search of the vehicle. During the subsequent search, various pieces of jewelry were found in the front console and seized as evidence.

Eight days after the stop, but prior to Myers's conviction in Pennsylvania, Maryland law enforcement agents used information gained from the stop and search of Myers's vehicle in Pennsylvania to obtain a Maryland search warrant. A subsequent search of a Maryland residence yielded evidence that linked Myers to several burglaries in Maryland. A Pennsylvania court later determined that the initial stop was illegal and in violation of petitioner's Fourth Amendment rights. After Petitioner was charged in this case, he filed a motion to suppress all evidence. The Circuit Court denied Petitioner's motion to suppress, stating:

> Maryland law is clear that the issue of identity discovered during an illegal detention is not subject to exclusion by the "fruit of the poisonous tree" doctrine. *Modecki v. State*, 138 Md. App. 372, 771 A.2d 521 (2001). The subsequent search and seizure of [Myers] and his vehicle pursuant to the arrest warrant, and not because of the traffic stop itself was therefore lawful.

The jury subsequently found Petitioner guilty of felony theft.

Petitioner appealed and the Court of Special Appeals, on the basis of Maryland case law, interpreting federal constitutional law, agreed with Pennsylvania's Superior Court's holding that the stop was made without reasonable articulable suspicion of criminal activity and in violation of the Fourth Amendment. As to the availability of a remedy for violation of the Fourth Amendment, the intermediate appellate court held that because the officer did not make the stop for the purpose of enforcing the outstanding arrest warrant, "[t]he exclusionary rule [. . . did] not require suppression of the evidence obtained as a result of the search incident to a valid arrest on an outstanding warrant." *Myers*, 165

Md. App. at 528, 885 A.2d at 935.

Held: The Court held that the arrest of Petitioner pursuant to an outstanding arrest warrant sufficiently attenuated the taint of the traffic stop in Pennsylvania. The Court assumed *arguendo*, for purposes of Fourth Amendment probable cause analysis, that under Pennsylvania law the traffic stop was invalid because, pursuant to a Pennsylvania statute, the police officer did not have probable cause to justify the stop. The Court did not decide whether Maryland courts are bound to follow Pennsylvania's conclusion that probable cause was lacking to justify the stop, because any taint from that stop was sufficiently attenuated by the arrest warrant and the subsequent arrest of Petitioner pursuant to that warrant.

The Court agreed with the Superior Court and the Court of Special Appeals that the officer lacked reasonable articulable suspicion to believe that Petitioner had been involved in any burglaries in the area. The Court emphasized, however, that this determination is made independent of Pennsylvania's interpretation of reasonable suspicion, and is based instead on this Court's interpretation of federal constitutional requirements as applied to the instant case. Since the Court found that the Pennsylvania officer lacked probable cause for the initial traffic stop, it had to determine whether the evidence admitted at Petitioner's trial in Maryland came from the "exploitation of that illegality or instead by [a] means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. U.S.*, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441, 455 (1963).

While the Court acknowledged that the fruit of the poisonous tree doctrine is an aspect of the exclusionary rule, not all evidence obtained during or after an illegal search and seizure need be excluded from trial. In this case the Court was primarily concerned with whether the officer's discovery of the outstanding arrest warrant and subsequent lawful arrest, following the unconstitutional seizure, was sufficiently attenuated to be purged of the primary taint. The three factors of the attenuation doctrine are: (1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. In this case, the officer's discovery of the outstanding warrant was sufficient to remove the taint of the initial illegal stop from the subsequent search of Petitioner and his vehicle and is not subject to exclusion under the exclusionary rule as fruit of the poisonous tree. The arrest warrant provided the officer with adequate probable cause to arrest Myers, independent of the initial illegal stop. The time between the illegal stop and the acquisition of evidence is not dispositive on

the issue of taint. The intervening circumstance was the discovery of the outstanding warrant, and that is strong enough to break the chain between the illegal stop and the evidence seized pursuant to the search.

The third factor of the attenuation doctrine formed the lynchpin of the Court's analysis because if the purpose of the officer's stop was determined to be "blatantly egregious" and in violation of Petitioner's Fourth Amendment rights, or for the purpose of searching the vehicle, it can hardly be said that the arrest warrant intervened in those circumstances. Here, the officer had a suspicion that Petitioner may have been engaged in criminal activity, the purpose of the stop was not to effectuate the arrest of Petitioner on an outstanding warrant or to search his vehicle. Merely because the officer's stop of Myers was determined to be invalid does not mean that his conduct was flagrant. Once the officer learned Petitioner's identity and discovered an outstanding warrant for his arrest, he gained an independent and intervening reason to arrest and search Petitioner. Thus, the subsequent search of Petitioner and his vehicle was separate and apart from the initial stop.

The Court concluded that it is not merely time, but the judgment and objective reasonableness of the police officer's actions, which will be a decisive factor regarding whether evidence has been attenuated. The taint from the illegal seizure was dissipated by the subsequent discovery of an outstanding warrant for Myers's arrest and his lawful arrest pursuant to that warrant. Therefore, the evidence obtained during the search of Myers and his vehicle was admissible as a search incident to a lawful arrest. In addition, the subsequent search of the Hagerstown residence was also lawful. Accordingly, the Circuit Court for Washington County did not err in denying Myers's motion to suppress the evidence.

Myers v. Maryland, No. 132, September Term 2005, filed October 24, 2006. Opinion by Greene, J.

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EASEMENTS - BOUNDARIES - EXTENT OF RIGHT, USE, AND OBSTRUCTION - LOCATION - IN GENERAL - WHEN THE LANGUAGE OF AN EASEMENT IS UNAMBIGUOUS IN DEMARCATING THE BOUNDARIES OF THE EASEMENT, COURTS WILL NOT LOOK OUTSIDE THE FOUR CORNERS OF THE GRANTING DOCUMENT.

EMINENT DOMAIN - NATURE, EXTENT, AND DELEGATION OF POWER - WHAT CONSTITUTES A TAKING; POLICE AND OTHER POWERS DISTINGUISHED - IN GENERAL; INTERFERENCE WITH PROPERTY RIGHTS - GOVERNMENTAL ENTITIES MAY NOT LEGISLATIVELY TERMINATE, BY ENACTMENT OF A STATUTE, AN INDIVIDUAL'S "RIGHT TO EXCLUDE" OTHERS FROM THAT INDIVIDUAL'S PRIVATE PROPERTY. SUCH AN ACT CONSTITUTES A "TAKING" AND IS UNCONSTITUTIONAL UNLESS THE PROPERTY OWNER GIVES THE GOVERNMENT PERMISSION OR IS PROVIDED COMPENSATION FOR THE TAKING.

Facts: This case arises out of a dispute regarding the boundaries of a public easement in Calvert County, Maryland. Members of the Weems family ("Weems"), appellants, filed a declaratory judgment action in the Circuit Court for Calvert County against the County Commissioners of Calvert County, appellees. The Weems sought a declaration as to the westerly terminus of the public easement, a declaration as to the ownership of an area known as Leitch's Wharf, and a declaration that § 15-201 of the Calvert County Code – as it pertains to the property known as Leitch's Wharf – is unconstitutional in that the statute constitutes a taking of Weems' property rights without just compensation.

The Circuit Court ruled in favor of appellees. The Weems appealed that ruling to the Court of Special Appeals. There, in an unreported opinion, the intermediate appellate court found the language of the easement to be ambiguous. The intermediate appellate court further found that the testimony at the trial, by the nature in which it was given and the failure of trial counsel to clarify the issues by connecting the testimony to the exhibits in the record, did not contain a sufficient description of the easement, as presented in that record, to resolve the language it considered ambiguous. Accordingly, the intermediate appellate court did not reach any other issues, remanding the case for further proceedings.

After the remand hearing, the Weems again appealed. The Court of Appeals, on its own motion, issued a writ of certiorari on December 11, 2006, to the Court of Special Appeals prior to any further proceedings in that court. *Weems v. Calvert County*, 396 Md. 11, 912 A.2d 647 (2006).

Held: Reversed. The Court of Appeals held in favor of the

Weems. The Court held that the pertinent language of the easement – the phrase "having for its westerly terminal the lands of the grantor, Lydia Leitch" – is clear and unambiguous language that the particular easement ends where it first touches the property then owned by Lydia Leitch. That is the easement's westerly terminus. When the language of an easement is unambiguous in demarcating the boundaries of the easement, courts will not look outside the four corners of the granting document.

Furthermore, governmental entities may not legislatively terminate, by enactment of a statute, an individual's "right to exclude" others from their private property. Specifically, § 15-201 of the Calvert County Code, in relevant part, as applied here, is unconstitutional in that it gives the public the right to use the private property of Weems without providing the landowner compensation for that "taking" or without the landowner's permission. It improperly and seriously interferes with the landowner's right to exclude others from the property.

Thomas I. Weems, Jr. et al. v. County Commissioners of Calvert County, No. 97 September Term, 2006, filed March 16, 2007. Opinion by Cathell, J.

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MENTAL ILLNESS - FORCIBLE MEDICATION

Facts: Between 2002 and 2003, Appellee, Anthony Kelly, was charged in four indictments with numerous criminal offenses. Kelly was represented by the Office of the Public Defender with respect to three of the indictments, but represented himself with respect to the charges in the fourth indictment.

During a pre-trial hearing on July 18, 2003, Kelly moved to discharge his attorneys, contending that he would rather represent himself because he had lost confidence in them. As a result of this motion, the Circuit Court for Montgomery County held a competency hearing on September 16, 2003 and referred

Kelly to the Clifton T. Perkins Hospital, a maximum security psychiatric hospital operated by the Maryland Department of Health and Mental Hygiene, for evaluation. Kelly was evaluated, and the competency evaluation, which was memorialized in a Pretrial Psychiatric Evaluation Report, concluded that Kelly had a mental disorder that influenced his thinking and his behavior and that he was not competent to stand trial. The report found that although Kelly was competent enough to understand the nature of the proceedings against him, *i.e.*, the charges against him, the possible penalties he faced, the roles of the judge, jury, witnesses, and attorneys, and the potential plea options, he did not understand the adversarial nature of those proceedings and could not assist in his defense and thus was adjudged incompetent to stand trial in the Circuit Court for Montgomery County because his delusional disorder prevented him from understanding the adversarial nature of the proceedings against him, and precluded him from assisting in his criminal defense. The report also concluded that Kelly was "considered dangerous," because he "had a history of assaultive and violent behavior," and "was charged with serious crimes."

The Circuit Court determined that Kelly was not competent to stand trial on June 3, 2004, and subsequently issued a Memorandum Opinion Upon Competency of the Defendant which determined that Kelly's thinking on critical issues surrounding his case merited the "inescapable" conclusion that he was delusional, and that although his intentions to assist his case were meritorious, his actions had been "counter-productive to his own representation." With respect to Kelly's release on bail, the court presumed that he was dangerous to himself or others based upon the crimes charged. No explicit finding was made regarding the issue of dangerousness.

Kelly was committed to Perkins Hospital where the Department of Health and Mental Hygiene sought to forcibly medicate him under Section 10-708 of the Health-General Article of the Maryland Code (1982, 2005 Repl. Vol.). Kelly did not exhibit behavior that was dangerous to himself or others within Perkins Hospital. The Department convened a Clinical Review Panel, which approved forcible medication because without it, Kelly was at substantial risk of continued hospitalization because of remaining seriously mentally ill with no significant relief of the mental illness symptoms that caused him to be a danger to himself or to others, or remaining seriously mentally ill for a significantly longer period of time with mental illness symptoms that caused him to be a danger to himself or to others. The panel's decision was upheld by an Administrative Law Judge. The Circuit Court for Baltimore City reversed, and the Court of

Appeals issued, on its own initiative, a writ of certiorari prior to any proceedings in the intermediate appellate court.

Held: The Court of Appeals affirmed, and held that Section 10-708 (g) of the Health-General Article requires the State to prove that an individual, because of his mental illness, is dangerous to himself or others within a state institution before it may forcibly administer medication. In reaching the conclusion that forcible medication is only permitted if the individual is dangerous to himself or others within a state institution, the Court examined the legislative history of Section 10-708 (g) to interpret the ambiguous clause. The Court found that the dangerousness requirement contained within Section 10-708 (g) was codified in response to the decision in *Williams v. Wilzack*, 319 Md. 485, 573 A.2d 809 (1990), and *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990). The Court held that the General Assembly rejected the notion that an involuntarily committed patient could be forcibly medicated solely based upon his commitment and the possibility of his continued confinement. Instead, the General Assembly incorporated a dangerousness standard consistent with the procedural due process safeguards and substantive due process safeguards iterated in *Williams* and *Harper*, which considered a Washington state policy that permitted forcible medication only if the individual was currently dangerous within the context of the institution. Because there was nothing in the record indicating that Kelly was, because of his mental illness, dangerous to himself or others within the state institution wherein he was being held, the Court determined that he could not be forcibly medicated pursuant to Section 10-708 (b)(2) and (g).

Department of Health and Mental Hygiene v. Anthony Kelly, No. 47, September Term, 2006, filed March 14, 2007. Opinion by Battaglia, J.

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REAL PROPERTY - FORECLOSURE - DEFENSE - DEFAULTING MORTGAGOR MAY PURSUE INJUNCTION OF FORECLOSURE OF FHA-INSURED MORTGAGE ON THE GROUND THAT NO DEFAULT EXISTS WHEN MORTGAGEE FAILS TO COMPLY WITH HUD LOSS MITIGATION REGULATIONS

Facts: Alan Neal and his then wife executed a "Maryland FHA Deed of Trust" with Margaretten & Company, Inc., to secure a purchase money loan for a residential dwelling located in Frederick County, Maryland. The mortgage was insured by the Federal Housing Administration (FHA), pursuant to the National Housing Act (NHA). The deed of trust was assigned for servicing to Wells Fargo Home Mortgage, Inc. (Wells Fargo). Neal, estranged from his wife, fell behind in making the monthly mortgage payments when due. Wells Fargo initiated foreclosure proceedings in the Circuit Court for Frederick County, which proceedings were stayed when Neal filed a Complaint alleging that the loan servicer was liable to him in contract for breach of a term of the deed that generically alluded to certain U.S. Department of Housing and Urban Development (HUD) regulations limiting the circumstances in which mortgagees may accelerate and foreclose on an FHA-insured mortgage. Specifically, Neal alleged that Wells Fargo had not pursued satisfactorily the processes mandated in the regulations and designed to prevent foreclosure and mitigate losses. *See* 24 C.F.R. §§ 203.501, 203.604(b); *see generally* 12 U.S.C. § 1715u(a) (2000). Neal sought damages and, in effect, injunctive relief. Wells Fargo responded to Neal's Complaint with a motion for summary judgment. Neal opposed Wells Fargo's motion and filed his own motion for summary judgment. After a hearing, the Circuit Court entered summary judgment in favor of Wells Fargo based on the determination that the HUD regulations were intended for the benefit of HUD enforcement of the FHA mortgage insurance program and did not grant a private cause of action for borrowers such as Neal.

Neal appealed to the Court of Special Appeals, which vacated the summary judgment granted by the Circuit Court and remanded the matter for further proceedings on the contract claim asserted by Neal. *Neal v. Wells Fargo Home Mortgage, Inc.*, 168 Md. App. 747, 750-51, 899 A.2d 208, 210 (2006). Although the intermediate appellate court acquiesced in the notion that the HUD regulations did not afford a private right of action, it opined that private parties are bound by and may be liable, each to the other, under state and federal laws specifically incorporated into contracts executed between them. Therefore, the Court of Special Appeals remanded the case to the Circuit Court to determine whether Neal and Wells Fargo bargained for the provision alluding to the HUD loss mitigation regulations.

Held: Reversed. The Court of Appeals concluded that Wells Fargo and Neal could not have bargained for the term in the FHA form deed generically alluding to the HUD loss mitigation regulations. Neal relied on both the Court's decision in *Wells v. Chevy Chase Bank, F.S.B.*, 377 Md. 197, 832 A.2d 812 (2003), and the opinion of the U.S. Court of Appeals for the Fourth Circuit in *College Loan Corp. v. SLM Corp.*, 396 F.3d 588 (4th Cir. 2005), for the proposition that laws and regulations incorporated into contracts are binding as between the parties to the agreement and may be enforced in a state contract action. In *Wells*, however, the parties incorporated into their agreement certain notice requirements set forth by Maryland statutory law, a measure which the *Wells* Court held was an "undertaking[] voluntarily assumed" and "not imposed on [the drafter of the agreement] as a matter of law." *Wells*, 377 Md. at 221, 231, 832 A.2d at 826, 832. Thus, the parties in *Wells* were held to be liable to each other in contract. In *College Loan Corp.*, the Fourth Circuit concluded that, because the two parties in that case freely negotiated an agreement in which they specifically incorporated state law standards, one party could not then seek to avoid those standards in a state contract action. The substantive provisions of the form deed in the present case, however, were not negotiated by either party, but rather were imposed by the FHA. Authority presented by Neal even suggested that HUD did not contemplate its regulations to support affirmative state law claims by aggrieved mortgagors.

On the other hand, ample authority suggests that alleged violations of the regulations may be asserted defensively to halt a foreclosure action. *See, e.g.*, *Fleet Real Estate Funding Corp.*, 530 A.2d 919, 923 (Pa. Super. Ct. 1987); *Fed. Land Bank of St. Paul*, 404 N.W.2d 445, 449 (N.D. 1987); *Heritage Bank, N.A. v. Ruh*, 465 A.2d 547, 557-58 (N.J. Super. Ct. Ch. Div. 1983). The Court held that, because foreclosure is an equitable remedy, a mortgagee seeking foreclosure coming to the court with "unclean hands" is subject to being enjoined from foreclosing by a mortgagor alleging violations of the HUD regulations governing foreclosure. Thus, a mortgagor bears the burden of proving that a mortgagee failed to comply with applicable HUD regulations such that he or she is entitled to an injunction.

Wells Fargo Home Mortgage, Inc. v. Alan Neal, No. 58, September Term 2006, filed March 13, 2007 Opinion by Harrell, J.

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TORTS - NEGLIGENCE

Facts: Ronald and Melanie Bell filed an action sounding in negligence in the Circuit Court for Anne Arundel County against Rafael Flores, alleging that Flores negligently caused injury to Mr. Ronald Bell in an automobile accident on October 4, 2000. The parties stipulated before trial that Flores was liable for the accident. The jury returned a verdict in favor of the Bells and awarded $5,329 in damages.

The Bells appealed to the Court of Special Appeals. That court held that the trial court erred in submitting to the jury the question of whether Flores was the operator of the vehicle that struck Bell's van because the parties had stipulated to liability. The Court of Special Appeals vacated the judgment of the Circuit Court.

The Court of Appeals granted Flores' petition for writ of certiorari. *Flores v. Bell*, 394 Md. 478, 906 A.2d 942 (2006).

Held: Reversed. The question submitted to the jury was answered in accordance with the parties' stipulation and in favor of respondent, the complaining party. The Court of Appeals held that, assuming arguendo, that trial court erred in submitting the driver-identification issue to the jury, the issue was resolved in Bell's favor, there was no prejudice and therefore, any error was harmless.

Rafael Flores v. Ronald Bell, et al., No. 65, September Term, 2006, filed March 20, 2007. Opinion by Raker, J.

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TORTS – NEGLIGENCE – DEFENSES – ASSUMPTION OF RISK – AN INDIVIDUAL ASSUMES THE RISK OF HER BEHAVIOR, AS A MATTER OF LAW, WHEN UNCONTROVERTED EVIDENCE SHOWS THAT SHE VOLUNTARILY PROCEEDED IN THE FACE OF DANGER AND TRAVERSED BACK AND FORTH ON A PARKING LOT THAT SHE KNEW TO BE ICY

Facts: It snowed 22 inches in Baltimore, Maryland between February 16-18, 2003. On February 24, Pamela Walker drove one hour from her home in Upper Marlboro to visit her daughter who was a residential student at Morgan State University (MSU). The purpose of her visit was to bring her daughter money. Ms. Walker pulled into the parking lot in front of her daughter's dormitory and immediately noticed that she was driving on "crunchy ice and snow." She parked close to the front of the building and then exited her car. She observed ice and snow on the ground between her car and the entrance to her daughter's dormitory. Ms. Walker held onto the cars next to her as she walked to the building. Ms. Walker visited with her daughter for an hour and then left the dormitory to return to her car. She again walked slowly and tapped each car "to make sure that [she] didn't slip and fall." When she reached her car, she slipped and fell, fracturing her leg.

Ms. Walker instituted a personal injury action against MSU in the Circuit Court for Baltimore City alleging negligent failure to clear the parking lot of snow and ice and negligence hiring, training, and supervision because MSU's employees failed to clear the snow and ice. The Circuit Court granted summary judgment in favor of MSU on the basis that Ms. Walker voluntarily assumed the risk of her injuries, as a matter of law, when she walked on the snow and ice. Ms. Walker appealed to the Court of Special Appeals. That court reversed the Circuit Court, holding that the jury should have decided whether Ms. Walker's decision to park in the lot and walk across the snow and ice was voluntary. MSU filed a petition for writ of certiorari, which this Court granted.

Held: Judgment of the Court of Special Appeals reversed. This Court explained that the question of voluntariness, in an assumption of the risk analysis, is measured by an objective standard. The Court also reiterated that in Maryland, in order to establish the defense of assumption of risk, the defendant must show that the plaintiff (1) had knowledge of the risk of the danger, (2) appreciated that risk, and (3) voluntarily confronted the risk of danger. *ADM P'ship v. Martin*, 348 Md. 84, 90-91, 702 A.2d 730, 734 (1997). In this case, Ms. Walker's own testimony made clear that she was aware of the snow and ice in the parking lot, had knowledge of the danger of walking across the lot, and appreciated that risk. In addition, the Court noted that the danger of slipping on ice is one of the risks that adults must be taken to appreciate. *ADM P'ship*, 348 Md. at 92, 702 A.2d at 734; *Schroyer v. McNeal*, 323 Md. 275, 284, 592 A.2d 1119, 1123 (1991). Nothing in the record suggested that Ms. Walker was forced

against her will to walk across the ice. Instead, the record showed that, after acknowledging the existence of ice and snow in the parking lot, she voluntarily walked across the lot. The Court held that because uncontroverted evidence demonstrated that Ms. Walker knowingly and voluntarily walked across the snow and ice covered parking lot, she assumed the risk of her injuries as a matter of law.

Morgan State v. Walker, No. 74, September Term 2006, filed March 15, 2007. Opinion by Greene, J.

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WILLS - INHERITANCE TAXES

Facts: The testator left his residuary estate to four people, three of whom are relatives of the testator and, therefore, pursuant to Maryland Code (1988, 2004 Repl. Vol.), § 7-203(b)(2) of the Tax-General Article, each of whom is exempt from paying inheritance taxes on his or her share of the residuary estate. Pfeufer, the fourth residuary legatee, is not a relative of the testator and, thus, does not enjoy any such exemption. Nevertheless, he contended in the Orphans' Court for Montgomery County, that even though the statute does not contain an exemption from paying inheritance tax for him, Article III of the testator's will, in effect, does, because it requires that any inheritance tax be paid prior to apportionment or, "off-the-top." The Orphans' Court did not agree and, rather than apportion the tax, ordered the tax to be paid solely by Pfeufer. The appellant noted an appeal to the Court of Special Appeals.

The appellant asked that court to decide whether a testator may provide in his will that inheritance taxes be paid from the entire residuary estate prior to apportionment among the residuary legatees when a statute provides that some of the residuary legatees are not required to pay inheritance taxes. On our own motion and prior to proceedings in the Court of Special Appeals, we issued a writ of certiorari, Pfeufer v. Cyphers, 385

Md. 161, 867 A.2d 1062 (2005).

Held: *Judgment of the Orphans' Court for Montgomery County is Reversed. Case Remanded to that Court for Further Proceedings Consistent with This Opinion. Costs to be Paid by the Appellee.* A testator may direct inheritance taxes to be paid from the entire residuary estate prior to apportionment among residuary legatees even when a statute exempts some of the residuary legatees from the payment of inheritance taxes.

Pfeufer v. Cyphers, No. 141, September Term 2004. Filed March 19, 2007. Opinion by Bell, C.J.

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WITNESSES - CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS - ATTORNEY-CLIENT PRIVILEGE

Facts: Petitioner Haley was convicted of robbery, second-degree assault, theft of property valued at $500 or more, unauthorized use of a motor vehicle, and theft of a motor vehicle. He was sentenced to a term of fifteen years incarceration on the robbery charge, and the remaining convictions were merged.

Haley noted a timely appeal to the Court of Special Appeals. Haley asserted that the prosecutor breached the attorney-client privilege during cross-examination, and that the police officer lacked probable cause to arrest. The Court of Special Appeals held that the privilege was not breached because the information provided by Haley to his counsel was intended to be disclosed to third parties, and that the police officer had probable cause to make an arrest.

Held: Reversed. The Court of Appeals held that Haley did not waive the attorney-client privilege. That petitioner testified to his version of the events, and that he told those facts to his attorney, did not support the holding of the Court

of Special Appeals that the communication was not privileged because it was intended to be disclosed to a third party, in this case, the fact finder.

The Court of Appeals noted specifically that the prosecutor erred by inquiring as to *when* Haley disclosed certain information to his attorney. The prosecutor asked, "Isn't it true, Mr. Haley, that all this information about the house and everything like that, you never brought up any of that information with your attorney until 4:30 yesterday afternoon?" The Court of Appeals held that the prosecutor invaded the attorney-client privilege by questioning defendant on cross-examination regarding the timing and the subject matter of his communications with his attorney.

The Court of Appeals held also that the police officer had probable cause to arrest defendant based on the totality of the circumstances, particularly where the police officer personally observed the occurrence of the crime and executed the arrest.

Terry Haley a/k/a Antoine Haley v. State of Maryland, No. 36, September Term, 2006, filed March 21, 2007. Opinion by Raker, J.

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COURT OF SPECIAL APPEALS

CIVIL PROCEDURE - JURISDICTION - IMMUNITY - INDIAN TRIBES

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - CJP § 5-101

CIVIL PROCEDURE - EQUITABLE REMEDIES - LACHES

Facts: After appellant, LaSalle Bank, N.A., sought reformation of a deed of trust which inaccurately described the property that secured the deed, the Circuit Court for St. Mary's County granted appellee, Elizabeth A. Reeves', motion for summary judgment on the grounds that the claim was barred by the three-year statute of limitations.

On appeal, appellant sought a determination of whether the court erred in applying the statute of limitations for civil actions rather than the equitable doctrine of laches. Appellee raised the issue of jurisdiction and immunity because, prior to her default, she executed and recorded a quitclaim deed conveying any interest she held in the subject property to the Delaware Tribe.

Held: Reversed and remanded. Although certain Indian tribes are immune from state court jurisdiction, at the time of the circuit court's grant of summary judgment, the Delaware Tribe was not a federally recognized tribe and had been subsumed into the Cherokee Nation. Thus, the Cherokee Nation was a necessary party to the instant declaratory judgment action and remand was required. On remand the circuit court must determine whether jurisdiction lies in the circuit court or in federal court.

Should the circuit court decide to exercise jurisdiction, the Court noted that, because appellant's amended complaint contained allegations sufficient to sustain an action for reformation, their prayer for relief could properly be construed as a request for equitable relief. Since appellee was sufficiently on notice of the cause of action, appellant's complaint for declaratory relief did not limit the circuit court to the application of statutory limitations, to the exclusion of laches. On the facts of this case, appellant's claim was not barred by laches.

LaSalle Bank, N.A. v. Reeves, No. 0268, September Term, 2005, filed March 2, 2007. Opinion by Sharer, J.

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CORPORATIONS - SHAREHOLDER DERIVATIVE SUITS

Facts: Minority shareholders made a demand on board of directors to pursue claims that the minority shareholders alleged should be pursued by the corporation. The board appointed a disinterested demand committee to conduct an investigation and to make a decision. The committee determined that no action would be taken. The minority shareholders filed a "demand refused" action alleging that the board had improperly refused to take action on their claims.

Held: The Court of Special Appeals held that, by making demand, the minority shareholders waived any claim that the board was incapable of acting independently, but they could assert that the board in fact did not act independently or that the demand was wrongfully refused.

In determining whether the demand was wrongfully refused, the decision by the disinterested demand committee is judicially reviewed under the business judgment rule and is limited to determining whether the committee conducted a reasonable investigation and arrived at a decision within the realm of business judgment. The "entire fairness" standard is also a judicial review standard but is not applied to a decision by a disinterested demand committee. It is only applied to interested transactions, i.e., when the board/committee members are on both sides of a transaction.

Because the demand committees' investigations and conclusions here were independent, reasonable, and within the realm of business judgment, the Court of Special Appeals affirmed the judgment of the circuit court granting appellees' motion to dismiss the derivative suit with prejudice.

Bender v. Schwartz, No. 505, September Term 2006. Opinion filed March 1, 2007 by Eyler, James.

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CRIMINAL LAW

Facts: Lamondes Williams, appellant, was convicted by the Circuit Court for Prince George's County, sitting non-jury, on three counts of failure to return a rental vehicle, in violation of Maryland Code (2002 Repl. Vol.), § 7-205 of the Criminal Law Article ("C.L."). On several occasions prior to August, 2004, appellant had rented vehicles from Darcars Ford and had returned them without incident.

On August 5, 2004, appellant rented a 2004 Ford Taurus from Darcars Ford for the use of two of appellant's employees. Pursuant to the rental agreement, the vehicle was to be returned a week later. The vehicle was not returned until October 13. Between August 12 and October 13, the assistant manager of Darcars Ford called appellant more than ten times. In those calls, appellant advised the assistant manager that he would come to the dealership the day following the call and pay for the vehicle. The assistant manager testified that the vehicle was ultimately returned by appellant, and on cross-examination, he testified that he reported the vehicle stolen and it was found in the possession of one of appellant's employees.

On August 16, 2004, appellant rented a 2004 Ford Excursion from Darcars Ford, for the use of another of appellant's employees. The vehicle was to be returned on August 30, but appellant did not return it to the dealership until September 20. Between August 16 and September 20, the assistant manager of the dealership called appellant every day and, on one occasion, sent a letter, requesting that the vehicle be returned.

On August 1, 2004, appellant rented a 2004 Lincoln Navigator from Darcars Ford, for the use of one of appellant's employees. The vehicle was to be returned on August 20, but was not returned until October 21. In the interim, the assistant manager called appellant, and appellant stated that he would come to the dealership to renew the rental agreement. The assistant manager's assistant also sent appellant a letter asking him to return the vehicle.

The assistant manager testified that appellant paid some monies to Darcars Ford but owed $5,040.71 for the Taurus, $7,521.76 for the Excursion, and $8,030.02 for the Navigator.

At the conclusion of trial, the court found appellant guilty of all three offenses, finding that pursuant to the statute, if a rental contract ends on a certain date and the vehicle is not returned on that date, the offense is proven beyond a reasonable

doubt.

Held: The failure to return a rental vehicle in violation of Maryland Code(2002 Repl. Vol.), § 7-205 of the Criminal Law Article is not a strict liability offense. It requires general criminal intent, but not a specific intent.

Williams v. State of Maryland, No. 1963, September Term, 2005, filed , opinion by Eyler, James R., J.

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CRIMINAL LAW - JURY TRIAL - REQUIREMENT THAT JURY BE SWORN

CRIMINAL LAW - JURY TRIAL - CLOSING ARGUMENT

EVIDENCE - RELEVANCE - ADMISSION OF PHOTOGRAPHIC EVIDENCE

Facts: Appellant, Chester Harris, was convicted, following a jury trial in the Circuit Court for Baltimore City, of automobile manslaughter, failure to return or remain at the scene of a fatal accident, and failure to stop at the scene of a fatal accident.

On appeal, appellant sought review of (1) the trial court's denial of his motion for a new trial on the ground that the jury was not sworn; (2) the court's restrictions on defense counsel's closing argument; and (3) the admission of photographic evidence.

Held: Affirmed. While the record may not have been sufficient to establish conclusively that the jury was sworn, the trial court's references to its recollection of the swearing of the jury, and appellant's failure to offer any evidence to the contrary, resulted in appellant having failed to carry his burden of persuasion at the hearing on his motion for a new trial. Had appellant carried his burden of persuading the trial judge that the jury had not been sworn, the court would have been obliged to consider whether the error was fundamental and structural and thus, whether to grant a new trial as a matter of law.

The trial court acted within its broad discretion in precluding defense counsel from mentioning that faulty eyewitness testimony had been utilized in other cases to obtain conviction of innocent persons.

There was no abuse of discretion where the record demonstrated that the trial judge weighed the probative value of the photographs against their prejudicial effect and the photos were illustrative of the graphic testimony presented.

Harris v. State, No. 0536, September Term, 2005, filed March 7, 2007. Opinion by Sharer, J.

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CRIMINAL LAW - SEARCH AND SEIZURE - PROBABLE CAUSE TO ARREST

CRIMINAL LAW - EVIDENCE - CONSIDERATION OF EVIDENCE OUTSIDE RECORD

CRIMINAL PROCEDURE - DISCOVERY - DEFENSE ENTITLEMENT TO REPORT PREPARED BY TESTIFYING/INVESTIGATING OFFICER

CRIMINAL PROCEDURE - JURY TRIAL WAIVER

Facts: Appellant, Richard Jay Massey, Jr., was convicted of possession with intent to distribute a controlled dangerous substance (cocaine) and possession of cocaine, following a bench trial in the Circuit Court for Wicomico County.

On appeal, appellant challenged (1) the suppression court's denial of his motion to suppress; (2) the trial court's failure to direct the State to provide defense with a witness's report; (3) the trial court's consideration of evidence outside of the record; and (4) the trial court's acceptance of his jury trial waiver.

Held: Reversed. The suppression court did not err in denying appellant's motion to suppress the results of the search of

appellant's vehicle incident to his arrest. Police had probable cause to arrest where co-conspirator was apprehended and searched pursuant to a search warrant; was found to possess contraband; and, in a post-arrest interview, informed police that appellant was prepared to meet him for a drug transaction. Where information gathered from co-conspirator, and from other reliable sources, was corroborated by investigators, there was no lack of probable cause for the arrest.

When asked on cross-examination if he prepared a report, the search and seizing officer equivocated. Appellant preserved the issue by seeking disclosure of the report which the trial court denied. Under *Carr v. State* and *Leonard v. State*, appellant was entitled to the report to aid in cross-examination. The error was not harmless beyond a reasonable doubt.

The trial judge, sitting without a jury, erred in considering appellant's possession of contraband, the evidence of which had been excluded as a discovery sanction against the State, in rendering a guilty verdict of possession with intent to distribute.

The record demonstrates that the trial court implicitly determined the existence of elements of a knowing and voluntary jury trial waiver.

Massey v. State, No. 0546, September Term, 2005, filed March 7, 2007. Opinion by Sharer, J.

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CRIMINAL LAW - SENTENCING

Facts: Lawrence Price, Jr., appellant, was convicted by a jury in the Circuit Court for Baltimore City of possession of heroin, possession of cocaine, possession of marijuana, and possession of a firearm under sufficient circumstances to constitute a nexus to a drug trafficking crime. The jury

acquitted appellant of fourteen other related counts. Subsequently, the court sentenced appellant to eight years imprisonment on the possession of heroin conviction, with a consecutive eight years imprisonment on the possession of cocaine conviction, two years imprisonment concurrent on the possession of marijuana conviction, and another twelve years imprisonment consecutive on the possession of a firearm conviction. On appeal, appellant raised the question whether the court erred by doubling his sentences for all three drug possession convictions pursuant to Maryland Code (2002 Repl. Vol.), § 5-905 of the Criminal Law ("C.L.") Article. Criminal Law 5-905, an enhanced penalty provision, provides that the maximum term of imprisonment to which a defendant may be sentenced for second or subsequent offenses is twice that otherwise authorized. Section 5-905(d) provides that a sentence "on a single count under this section may be imposed in conjunction with other sentences under this title."

Held: Sentences Vacated. Section 5-905(d) is ambiguous in that it is unclear whether it was intended to enhance a defendant's sentence on each of multiple counts arising from a single course of conduct or whether it was intended to enhance a defendant's sentence on only one count arising out of a single course of conduct. Thus, the rule of lenity applies, and the enhancement on each of multiple counts arising from a single course of conduct is prohibited.

Price v. State, No. 983, September Term, 2005. Opinion filed January 25, 2007, by Eyler, James R., J.

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REAL PROPERTY - RIPARIAN RIGHTS - DEED - PLAT - SUBDIVISION - REAL PROPERTY SECTION 2-101.

Facts: The parties disputed ownership of riparian rights along the Severn River. In 1991, Mr. and Mrs. Gunby acquired fee simple ownership of a waterfront parcel in a subdivision known

as the Olde Severna Park Community. The Olde Severna Park Improvement Association, Inc. ("OSPIA") claimed ownership of the riparian rights abutting the Gunbys' property. It relied, in part, on the subdivision plat issued in 1931, which had a note on it that said: "It is the intention of the said The Severna Company not to dedicate to the public, the streets, alleys, roads, drives, and other passage ways and parks shown on this plat, except that the same may be used in common by lot owners and residents of Severna Park Plat 2. *All riparian rights being retained by the said the Severna Company*." (Emphasis added.)

The Gunbys sought to construct a 410 foot walkway across a tidal pond, as well as a 200 foot pier, from their property into the Severn River. The Maryland Department of the Environment issued a Tidal Wetlands License to the Gunbys, authorizing them to do so. The circuit court for Anne Arundel County concluded that the OSIPA owned the riparian rights, and reversed the issuance of the license.

Held: Reversed. The Court reasoned that a lot owner who acquires fee simple ownership of a waterfront lot by deed presumptively acquires the riparian rights, unless the deed expressly excludes such rights. The mere reference in the deed to the 1931 Plat did not rebut the presumption in favor of the transfer of riparian rights. Moreover, the Court concluded that the note on the 1931 Plat was insufficient to constitute a reservation to the developer of the riparian rights in issue. The reservation applied to the roads and streets delineated on the plat leading to the water, and expressed the proposition that a right-of-way to the shore of a river does not create riparian rights.

Paul Gunby, Jr., et al. v. Olde Severna Park Improvement Association, Inc., et al., No. 1180 and 1248, September Term, 2005. Opinion filed March 1, 2007 by Hollander, J.

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REAL PROPERTY - RIPARIAN RIGHTS AND EASEMENTS - *DROLSUM V. HORNE*, 114 MD. APP. 704, 709, *CERT. DENIED*, 346 MD. 239 (1997); *GREGG NECK YACHT CLUB, INC.*, 137 MD. APP. AT 760; UNAMBIGUOUS DEED BETWEEN ORIGINAL GRANTOR AND THE SEVERN RIVER CO. DEVISED COMMUNITY LAND AND COMMUNITY LOT BETWEEN LOT OWNERS AND WATERFRONT, VESTING OWNERSHIP OF THE PIERS IN THE RIPARIAN OWNER AT THE TIME OF EACH PIER'S CONSTRUCTION AND PASSED THROUGH TITLE; APPELLEE BECAME OWNER OF THE RIPARIAN LANDS AND, THUS, THE PIERS IN 1966 AND, CONSEQUENTLY, NONE OF THE APPELLANTS ACQUIRED OWNERSHIP OF THE PIERS THROUGH CONVEYANCE OF DEEDS OR BY THE SCHEME FILED BY ORIGINAL GRANTOR; NOTWITHSTANDING PRESCRIPTIVE EASEMENT CLAIMS OF APPELLANTS, THAT THERE CAN BE NO RIPENING OF A PRESCRIPTIVE EASEMENT IN THE CASE SUB JUDICE WHERE THERE WAS SUBSTANTIAL EVIDENCE BEFORE THE TRIAL COURT TO SUPPORT ITS FINDING THAT EXPRESS PERMISSION TO ACCESS THE COMMUNITY LAND AND COMMUNITY LOT WAS GRANTED ALONG WITH PERMISSION TO BUILD PIERS AS PART OF THE SHARING OF RIPARIAN RIGHTS WITH OTHER TITLE OWNERS TO THE LAND; BECAUSE THE ORIGINAL PLATS ESTABLISHED 250 DOMINANT LOTS WITH EXPRESSLY GRANTED EASEMENTS OVER THE SERVIENT COMMUNITY LAND AND COMMUNITY LOT, THE CIRCUIT COURT WAS WITHOUT AUTHORITY TO CHANGE THE COVENANT IN THE ORIGINAL DEED, FINDING THAT "THE CHAOS THAT MAY WELL ENSUE IF THE PCIA DOES NOT HAVE SOME METHOD BY WHICH TO MAINTAIN THE PIERS PROPERLY AND DISTRIBUTE THEIR USE FAIRLY AMONG PINES RESIDENTS, 'PERPETUATION OF THE ['USE IN COMMON'] RESTRICTION [WILL BE] OF NO SUBSTANTIAL BENEFIT . . . AND [WILL] DEFEAT THE OBJECT OR PURPOSE OF THE RESTRICTION; THE COURT ERRED IN GRANTING APPELLEE THE RIGHT TO CHARGE THE WET STORAGE FEES BASED ON "THE RADICAL CHANGE IN THE PINES NEIGHBORHOOD, AND THE CHAOS THAT MAY WELL ENSUE IF THE PCIA DOES NOT HAVE SOME METHOD BY WHICH TO MAINTAIN THE PIERS PROPERLY AND DISTRIBUTE THEIR USE FAIRLY AMONG PINES RESIDENTS."

Facts: Appellants own lots in the Pines on the Severn waterfront community developed in the 1920's consisting of approximately 250 lots. Deeds from the original developer granted express easements to lot owners to a ring of riparian land between the waterfront lots and Chase Creek on the Severn River. The easements included riparian rights. Many lot owners built and maintained piers and bulkheads in front of their respective lots.

The Pines Community Improvement Association (PCIA) was established in 1926 as a voluntary community organization and is both a lot owner and, by deed since 1966, the owner of the riparian lands surrounding the community. The conveyance to PCIA of all riparian land was made pursuant to an easement granted to residents of Hidden Hills granting them the same easements as in the Pines' deeds.

Beginning in 1941, several suits were instituted to determine ownership and the right to the use of the piers and, in some lot owners' cases, whether adverse possession of the ring of riparian land precluded community usage. The PCIA, in an effort to preclude adverse possession, has been conducting "community walks" along the riparian lands including piers adjacent thereto since the mid-1960's.

The PCIA adopted a pier management plan in 2003 that required boat owners to apply for slips and either join the PCIA and be assigned a slip or pay wet storage fees for boats not assigned to piers in the community. The instant case arose from the PCIA's assignment of fees to lot owners who maintained boats without an assignment or claimed adverse possession of community land.
Opinions from several circuit court decisions discussed cotenancy and adverse possession but did not decide the matters until appellees were declared the owners of the piers and community land and allowed to assess fees against lot owners who used slips outside of the 2003 management plan.

Held: Use in common language present in deeds to lot owners did not create a covenant but, instead, an express easement. A subsequent mortgage could not alter the easements granted by original deeds and the clear and unambiguous language of the deeds granted non-exclusive riparian easements to all lot owners in kind.
The easements granted permission for lot owners to exercise riparian rights to wharf out and the piers became the property of the riparian owners that subsequently passed through title. Thus, there could be no adverse possession or prescriptive easement in the permissive use of the community land and the piers owned by the riparian owners. The easements did create any ownership interest in the piers for lot owners and riparian owner could not restrict usage by the dominant tenant. Dominant tenements could not restrict the use of similarly situated lot owners including the PCIA.

As no easement granted the right to build upon community land, remand to determine the ripening of the statutory period as to the Rice Triangle was ordered. Community land was not erased by virtue of backfilling, adverse possession could not be tacked and evidence in the record supported the trial judge's findings as to interruption of the statutory period.

Access to original deeds and the original plats overcame silence as to ownership of piers and confirmatory deeds.

Maintenance fees for shared easements must be proportionate to usage thereof and not punitive measures to ensure compliance with the management plan. The PCIA is not a statutory community association and could not be granted executory rights to control usage of the express easements as an equitable solution to ongoing disagreement as to use and ownership.

Stuart P. White et al. v. The Pines Community Improvement Association, Inc. et al., No. 2652, September Term, 2005, decided March 6, 2007. Opinion by Davis, J.

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TORTS-NEGLIGENCE-ASSUMPTION OF THE RISK

Facts: Appellant was injured while attempting to bench press 530 pounds in a powerlifting competition. The injury occurred when appellant's attempted lift failed, and the bar fell on him. Appellant alleged that the bar fell because the persons located at opposite ends of the bar (spotters), who were there for the purpose of intervening in the event of danger, failed to intervene because they were instructed not to do so unless signaled. Appellant brought negligence claims, and appellees asserted assumption of the risk. The circuit court entered summary judgment in favor of appellees on that ground.

Held: A sports participant assumes all risks normally incident to the sport. The Court of Special Appeals held that the inappropriate instructions to the spotters created an enhanced risk not normally incident to the sport, and thus, appellant did not assume the risk as a matter of law.

Cotillo v. Duncan, et al., No. 2859, September Term, 2005, filed December 6, 2006. Opinion by Eyler, James R., J.

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ATTORNEY DISCIPLINE

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective March 13, 2007:

DORSEY EVANS, JR.

*

By an Opinion and Order of the Court of Appeals of Maryland dated March 19, 2007, the following attorney has been indefinitely suspended from the further practice of law in this State:

CAROL LONG McCULLOCH

*

By an Opinion and Order of the Court of Appeals of Maryland dated March 20, 2007, the following attorney has been indefinitely suspended from the further practice of law in this State:

VICTOR MBA-JONAS

*

By an Order of the Court of Appeals of Maryland dated March 2, 2007, the following attorney has been disbarred by consent from the further practice of law in this State:

JAMES MICHAEL LEMIEUX

*

By an Opinion and Order of the Court of Appeals of Maryland dated March 21, 2007, the following attorney has been suspended for thirty (30) days from the further practice of law in this State:

JOHN LYSTER HILL

*

By an Order of the Court of Appeals of Maryland dated March 22, 2007, the following attorney has been placed on inactive status by consent, effective immediately, from the further practice of law in this State:

RICHARD GIBSON WOHLTMAN

*