MARYLAND CRIMINAL LAW UPDATE 2020

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PRE-TRIAL ISSUES:

SPEEDY TRIAL

1. TUNNELL v. STATE, 466 Md. 565 (2020): The Hicks date in Tunnell's murder trial was August 1, 2017. The state was awaiting DNA analysis of certain evidence in the case. At a pre-trial status conference, the state argued that the Hicks date was tolled during the period awaiting the DNA results. As a result, Tunnell's trial occurred 40 days after the Hicks date.

HOLDING: The Hicks rule does not incorporate a mechanism for "tolling" or extending the Hicks date. However, here, the Court of Appeals found that the administrative judge did not abuse his discretion in finding good cause for the continuance of the trial beyond Hicks.

2. PHILLIPS v. STATE, 246 Md. App. 40 (2020): Phillips was arrested in 2014. He immediately filed a motion for speedy trial. He also filed a motion in limine to preclude introduction of evidence regarding cell phone mapping. The trial court granted the motion. The state sought an en banc review. The en banc panel reversed the trial court's ruling. Phillips then appealed to the Court of Special Appeals arguing that the state has no authority to obtain en banc review. The Court of Special Appeals agreed with Phillips and found no authority for the state to seek en banc review. The Court of Appeals granted cert and affirmed the decision of the Court of Special Appeals. All tolled, it took four years for trial to take place.

HOLDING: Delays caused by an interlocutory appeal initiated by the State should be weighed in a speedy trial analysis by examining whether the appeal is clearly tangential or frivolous or is the appeal reasonable? The interlocutory appeal here was not a dilatory tactic made in bad faith or a "deliberate attempt to delay the trial in order to hamper the defense." The most important factor in the analysis is whether the defendant has suffered actual prejudice." The only asserted prejudice here was the presumed prejudice associated with extended pretrial incarceration which resulted from the in banc review and the subsequent appeals that followed. This is insufficient to establish actual prejudice. No speedy trial violation.

3. VAISE v. STATE, 246 Md.App. 188 (2020) : In this complex murder trial, there was a 34-month delay between the date Vaise was arrested and when trial began. During the

trial, Vaise changed his plea to not criminally responsible sixteen months into the parties' trial preparation.

HOLDING: No speedy trial violation. Vaise was diagnosed as NCR by psychiatrists at Clifton T. Perkins Hospital. A dispute arose as to this diagnosis and the state requested and was granted a postponement to have Vaise evaluated by one of their experts. The NCR-related postponements were neutral because they afforded both parties a reasonable period to evaluate Vaise's criminal responsibility. Moreover, defense counsel waited two years after his boilerplate motion for speedy trial to object and another four months to seek a dismissal.

4. SINGH v. STATE, 247 Md. App. 322 (2020): Singh was charged with manslaughter and various drug offenses on March 29, 2018. The state issued a "superseding" indictment adding additional drug charges on December 20, 2018. On January 3, 2019, the state nolle prossed the original indictment. The issue on Singh's motion for a speedy trial became what is the starting point in measuring the delay, the date of the original indictment or the date of the superseding indictment?

HOLDING: Measuring the delay from the date of a superseding indictment would "ignore the fact that a defendant's liberty interests [have] been compromised since the original indictment was filed." The original indictment of March 29, 2018, triggered Singh's right to a speedy trial on the charges of murder, manslaughter, distribution of heroin, and conspiracy to distribute heroin. As to those charges, the delay includes the period from that date until May 13, 2019, the date scheduled for trial on the superseding indictment. This delay was 410 days (about one year, one month, and 14 days), a duration that is presumptively prejudicial.

SEVERANCE

5. STATE v. ZADEH, 468 Md. 124 (2020): Zadeh and Ms. Brown, the wife of the victim, were having an affair. Investigation into the murder of the victimrevealed that the motive for the killing was to collect life insurance. Zadeh and Brown were tried together after the court denied Zadeh's motion for severance. During the course of the trial, numerous testimony implicating Brown came into evidence over objection by Zadeh. ..All tolled, the court had to give nine limiting instructions

HOLDING: The cumulative effect of introduction of non-mutually admissible evidence unfairly prejudiced Zadeh and the trial court abused its discretion in denying the motion for severance as the limiting instructions were insufficient to cure the prejudice.

FOURTH AMENDMENT

6. EUSEBIO v. STATE, 245 Md. App. 1 (2020): After keeping Reginald McClure under surveillance for several months, including using GPS tracking devices attached to his car, police developed probable cause to believe McClure was involved in drug distribution. McClure was tracked driving to New York and back to Cecil County on one-day trips on several occasions. Based on their investigation police applied for and received two search warrants: one to search the "residence, chattels, and out buildings on the curtilage" of McClure and "other persons found in or upon said premises who may be participating in violations" of the drug laws; and one to search McClure's vehicle. Police set up outside of McClure's residence waiting for him to return from another trip to New York. When McClure pulled up, he was immediately surrounded by police cars and pinned against the curb. Eusebio was a front street passenger who was unknown to police. An officer testified that he saw Eusebio "fidgeting with his hands inside his waistband and in his groin area." Both men were ordered out of the car and each refused to get out. Police then dragged both men out of the car. Two bags of marijuana fell from Eusebio's pants. A search of Eusebio revealed 50.2 grams of heroin secreted in his groin area. Eusebio made numerous arguments on his motion to suppress.

HOLDING: Eusebio was seized within the meaning of the Fourth Amendment when police pinned in McClure's car. A warrantless seizure of a car to facilitate the warranted search of the same is reasonable. Because they had a warrant to search McClure's vehicle, the police could, without violating the Fourth Amendment, order the occupants out of that vehicle—or remove them, if necessary—to perform their search. The search of Eusebio's person was a permissible search incident to arrest. His presence alone in the car for which police had probable cause to search, does not permit police to automatically search Eusebio. Police armed with an all-present participants warrant therefore must identify some other grounds for upholding the search of someone not named in the warrant. If an all-present-participants provision could authorize the search of someone's person, that would be a general warrant that the Fourth Amendment is meant to protect against. The search of Eusebio's person was supported by probable cause of criminal activity and fit within one of the exceptions to the warrant rule: searches incident to a lawful arrest. But this did not happen in isolation. At the time police pulled Eusebio out of McClure's car and searched him, they knew McClure was returning from one of McClure's many short trips to New York City—from an area Detective Travis described as "a hot bed for drug distributors." As he approached the car, Detective Travis saw Eusebio "fidgeting in his groin area." Detective Travis also testified in the suppression hearing that over the course of his previous drug-crimes investigations, he had seen "multiple people in a car holding or possessing controlled dangerous substances at the same time." From all of this the officers who searched Eusebio could reasonably conclude there was a fair probability Eusebio was involved in the drug crimes the police were investigating. With this probable cause, they could arrest him and perform a search incident thereto.

7. LEWIS v. STATE, 247 Md. 1 (2020) : Police received a tip from a known informant that Lewis was armed with a handgun. Checking with CitiWatch, which monitors police surveillance cameras in Baltimore, police learned that Lewis was at a store called Bag Mart. Several officers went to the store, entered, and saw Lewis, carrying a red bag, heading for the exit. One of the officers stopped Lewis by grabbing his right arm. As Lewis passed directly in front of a second officer, the officer testified that he could smell the clear odor of marijuana emanating from Lewis's person. Based on that smell alone, Lewis was placed under arrest and searched. A gun was found inside the red bag and a small amount of marijuana was found in one of Lewis's pockets. Both the circuit court and the CSA held that, under *Robinson v. State*, holding that the smell of marijuana emanating from a lawfully stopped car, gives police probable cause to search the car, applied in this situation.

HOLDING: The odor of marijuana, without more, does not provide law enforcement officers with the requisite probable cause to arrest and perform a warrantless search of that person incident to the arrest. More than the odor of marijuana is required for probable cause to arrest a person and conduct a search incident thereto. Lewis was entitled to suppression of the handgun and other items seized during the search because Officer Burch, at the time he undertook the search of Lewis, did not have probable cause to believe that he had committed a felony or was committing a felony or misdemeanor. In Robinson the court held that the odor of marijuana provides police officers with probable cause to search a vehicle because marijuana in any quantity remains contraband. However, police officers must have probable cause to believe a person possesses a criminal amount of marijuana in order to arrest that person and conduct a search incident thereto.

8. LOCKARD v. STATE, 247 Md. App. 90 (2020): Officer stopped a car driven by a woman who police knew had been arrested previously for possession of heroin. The car was stopped for driving too closely to another car. Lockhard was the front seat passenger. The officer immediately called for a K-9 unit and ordered both occupants out. As Lockhard got out of the car, an officer saw what he knew to be a knife in Lockhard's pocket of his shorts. The officer asked Lockhard if he could remove the knife and Lockhard said he could. When defense counsel asked the officer if he felt he "needed" to conduct a frisk, the officer responded "I didn't say I needed to. I asked him if I could. I didn't, you know, I didn't need to. If I needed to, if I had to, I would have. If I had reasonable, articulable suspicion, I would have just searched or frisked him." During the frisk the officer felt what was immediately apparent to him to be a baggie with capsules which he removed from Lockhard's waistband (plain feel was not asserted in this case).

HOLDING: An officer's subjective belief whether the suspect is armed and dangerous is a relevant consideration in the "totality of circumstances" calculus. Here, the officer never expressed any concern that Lockard was armed and dangerous and he apparently did not subjectively believe that he possessed reasonable articulable suspicion to conduct a Terry frisk given his testimony. Except for the knife that was confiscated,

there was no other indicia that Lockard was armed and dangerous. The officers confirmed that during the encounter, Lockard was not threatening or aggressive and was, in fact, "polite and cooperative." Even though the officer testified that "[i]f there's one weapon, there could be more," the court held that to be nothing more than a bald assertion, that fails to establish reasonable suspicion sufficient to support a Terry frisk.

9. WILLIAMS v. STATE, 246 Md. 308 (2020) (Judge Oglesby): Williams was pulled over by Sergeant Brown for talking on his cell phone while driving. When Williams stopped his car, both he and Sergeant Brown got out of their cars. As Sergeant Brown got out of his car, he noticed Williams "quickly [getting] out of his vehicle" without being instructed to do so. Sergeant Brown stated that he "approached [Williams] quickly as he got out" and observed that Williams had his back to him and that he "held something in his hands" that were "clenched" together. Brown stated that he "didn't see anything in [Williams's] hands" and that "normal people don't jump out of their car" during routine traffic stops. He "grabbed" Williams because he "didn't know what he had in his hands." Brown then wrestled Williams to the ground, "told him to put his hands behind his back" and to "stop resisting," and pepper sprayed him. After being pepper sprayed, Williams complied and quit struggling. He then threw "two bags of marijuana underneath the car" and Brown "eventually" placed him in handcuffs. Brown then searched the car and found a criminal volume of marijuana.

HOLDING: A Terry "frisk" is limited "to a pat-down of [an individual's] outer clothing," and is meant to protect the officer and others, not to discover evidence. Terry allows a police officer to frisk someone they believe to be "armed and dangerous" for the safety of themselves and others. The evidence is insufficient to justify the warrantless frisk. At the time Brown took down Williams, he knew that: (1) Williams had been talking on his cell phone while driving; (2) Williams stopped his car after emergency equipment was activated (although he contradicts himself on how long it took Mr. Williams to stop); (3) as he got out of his police car, Williams got out of his car quickly as well; (4) Williams was facing forward; and (5) Williams had his hands clenched together. Sergeant Brown never expressed any belief that Williams posed a risk to his safety or the safety of others around them. Similarly, his testimony included no expressions of fear, and no sense that he was afraid, felt he was in danger, or that Williams appeared to be engaged in criminal conduct. Moreover, when tackled to the ground, Williams was under arrest. The arrest was not supported by probable cause. The record doesn't support the conclusion that Sergeant Brown had probable cause to arrest Williams based on the belief that he was committing, had committed, or was about to commit a crime in his presence.

10. *SCOTT v. STATE, 247 Md. App. 114 (2020)* **:** Scott was a passenger in a car that was stopped for speeding. All occupants were ordered from the car. Scott told police he did not feel well. He was bent over. One of the officers asked Scott to sit on the curb and noticed a bulge in his pocket. The officer asked Scott if he could reach into his pocket and Scott agreed. The officer reached in the pocket and took out some over the counter

medicine, a pack of cigarettes, and some money. As he looked through those items, the defendant leaned slightly to his left, and the officer saw the butt of a handgun in his waistband and the gun's outline. The handgun was seized and the defendant was arrested. In a search incident, an Adderall pill was found in another pocket.

HOLDING: The stop proceeded as a traffic violation with a canine sniff. The police did not act as if they were suspicious of any of the occupants of the minivan. The first sign of something suspicious – and potentially dangerous – was the bulge around Scott's pocket and his grabbing for it. If Officer Weider had believed he had more than a hunch that Scott was carrying a handgun – i.e., that he had reasonable suspicion – he would have patted Scott down. Apparently, he did not believe he had reasonable suspicion, so he took the next logical, safety-driven action: asking Scott for permission to search the pocket he was grabbing. A complete overview of the circumstances reveals a "legitimate need" for a consent to search with "the equally important requirement" that the consent to search was given willingly, not by coercion that overbore Scott's freedom to decide for himself whether to allow Officer Weider to search his pocket.

11. WHITE v. STATE, 2020 WL 5834924 (CSA; Decided October 1, 2020): An officer testified that he was detailed with locating and arresting White pursuant to an open arrest warrant on charges of armed carjacking, unlawful taking of a motor vehicle, and other related handgun offenses. The officer began surveillance in the area of 412 Summer Wind Way in Glen Burnie, Maryland, when, at around 1:33 p.m., he saw an individual matching White's physical description walk out of the apartment building and approach a silver Hyundai Elantra. The officer checked the license on the Elantra and learned that it was a leased vehicle. White, wearing a black jacket, returned to the vehicle and drove to the Glen Burnie Car Wash. The officer continued his covert surveillance and saw White initially back the Elantra into a vacuum cleaning station. The officer then radioed police dispatch, and informed them that he followed an armed carjacking suspect to the car wash and needed back up units to respond. Meanwhile, White moved the Elantra into the third bay of the car wash. At around that same time, two other officers arrived on the scene and positioned themselves at either side of the bay. White was then apprehended without incident. After White was handcuffed, an officer asked him about the Elantra, and White replied that it belonged to his girlfriend. However, the officer testified that he knew otherwise because he had run the tag and found that it was a leased vehicle leased by Roxanne Douglas. The officer also discovered that the car lease had expired one day prior to the stop. A search of the car revealed a handgun. During the search, White stood about ten feet behind the vehicle, within the car wash bay. The officer explained to White that the car would need to be towed.

HOLDING: First, under *Byrd v. U.S.*, 138 S.Ct. 1518 (2018), even though the car was leased and White was not listed as a permitted driver, and even though the lease had expired, White still has standing to challenge the search of the car because he had a legitimate expectation of privacy in the car. Under *Arizona v. Gant*, 556 U.S. 332 (2009),

police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When the Elantra was searched, White was standing "at least ten feet away" and was standing behind a small wall surrounding the carwash bay. Thus, he was not in reaching distance. Moreover, White "was arrested as a suspect in an armed carjacking that had occurred 18 days prior to the arrest and at least twenty miles away from the original incident." Thus there was no indication in this record to suggest that White was still in possession of the handgun used in the prior carjacking or that it was located within the leased vehicle. Finally, the Inevitable Discovery exception does not apply here. The key issue is the inevitability factor and the burden of proof is on the State to establish inevitability. The state failed to prove that it was inevitable that the car would have to be towed. The Court of Special Appeals suggested that the car could have been parked on the nearby street or could have called the leasing company.

12. WHITTINGTON v. STATE, 246 Md.App. 451 (2020) : Police investigation revealed that Whittington was associating with a suspected narcotics distributor named David Hall. The detectives wiretapped Hall's phone and discovered that Whittington was the most frequent caller. Then they observed the two men engaged in activity that was consistent with the distribution of controlled dangerous substances. The detectives applied for and obtained an "Electronic Device Location Information Order" under Maryland Code (2018 Repl. Vol., 2019 Supp.), Criminal Procedure Article ("CP"), § 1-203.1.1 The GPS Order authorized the detectives to install a GPS mobile tracking device on Whittington's car for a 30-day period. They then applied for and received a warrant to search Whittington's person, car, and apartment relying on information learned from the GPS tracking. The police found four baggies of cocaine totaling about eight grams in Whittington's car; and they found two bags of cocaine weighing approximately 145.9 grams, ten Alprazolam pills, and $1,222 in his apartment. Whittington challenged the GPS Order under the Fourth Amendment arguing it did not meet the requisites of a warrant.

HOLDING: First, the Court of Special Appeals held that the GPS Order issued under CP § 1-203.1 met the requisites of a warrant under Fourth Amendment law. The GPS Order was signed by a neutral and detached magistrate; upon an application signed under oath by someone with personal knowledge of the facts; which set forth the basis for probable cause to believe that a crime had been, or was going to be committed; and identified with particularity the person about whom location information was being sought and the vehicle on which the GPS device would be installed. In this age of rapidly advancing surveillance technology, CP § 1-203.1 adds the requirements that an application for an order, such as the GPS Order in this case, be limited to 30 days and describe with reasonable particularity the type of electronic device to be employed by law enforcement. Second, the Court held that the detectives relied in good faith on the search warrant and, therefore, it did not need to reach the question of whether the warrant application failed to establish a nexus between Whittington's alleged drug dealings and his apartment.

***13. THOMPSON v. STATE, 245 Md.App. 450 (2020)*:** Thompson was charged with numerous child sexual abuse counts. The FBI received a call from a confidential informant saying that Thompson had shown the informant video of his sexual assault of Thompson's four-year-old daughter. Sgt. Tompkins, who was notified by the FBI completed an affidavit for a warrant to search Thompson's home. In her affidavit, Tompkins swore that "the writer interviewed" the confidential informant when she was not actually present for the main phone interview. Thompson sought a *Franks* hearing which was denied.

HOLDING: A *Franks* hearing must be requested within 30 days after the entry of appearance of counsel or it is waived. The request here was not made within that time as Thompson had discharged his initial counsel and retained another attorney. Notwithstanding the waiver, both the circuit court and the Court of Special Appeals addressed the merits of the argument seeking a Franks hearing. Under *Franks,* when a defendant makes a substantial preliminary showing that the affiant intentionally or recklessly included false statements in the supporting affidavit for a search warrant, and that the affidavit is insufficient to support a finding of probable cause, the defendant is entitled to a hearing on the matter. The burden is on the defendant to establish knowing or reckless falsity by a preponderance of the evidence before the evidence is suppressed. Negligence or innocent mistake resulting in false statements in the affidavit is not sufficient to establish the defendant's burden. Here, the Court of Special Appeals found that Thompson had not met his burden because, even excising the challenged statements, probable cause existed as there was a sufficient nexus between the information from the informant and Thompson's house. While Tompkins did not, herself, speak with the informant as the affidavit suggested, she was present with detectives who spoke to the informant.

14. STATE v. ZADEH, 468 Md. 124 (2020): Zadeh was having an affair with the wife of the victim who was found dead from blunt force trauma in his yard. After accumulating sufficient probable cause to believe Zadeh and the victim's wife committed the murder, police obtained a search warrant for Zadeh's car. The warrant permitted police to search for " for evidence of the crime of murder, including any object which may have been used to cause the victim's injuries[,]" and "photos, notes, documents, electronic equipment which stores data[.]" Police located Mr. Zadeh driving the car and stopped him to execute the warrant. Zadeh was ordered out of the car and frisked. The officer felt a cell phone in Zadeh's pocket and seized it.

HOLDING: The vehicle warrant and the probable cause sufficient fotr the search of the car did not authorize the seizure of the cell phone found in Mr. Zadeh's pocket. Moreover, in seizing the cell phone from Zadeh's pocket, the officer exceeded the parameters of the plain feel doctrine because it was not immediately apparent that the cell phone was incriminating or evidence of a crime.

15. STATE v. CARTER, 243 Md. App. 212 (2019) (cert granted): Six Maryland Transit Authority officers gathered at the Mount Royal light rail and stood on the platform waiting for a train to arrive. Once the train arrived, the officers conducted a "fare sweep" inside the train to check whether passengers had committed the crime of not paying their fare for which a $50 citation could be issued. During a "fare sweep" the officers are supposed to broadcast that they will be conducting the fare inspections; however, there were no signs warning passengers of this. Passengers are not allowed to leave the train during these sweeps and if a passengers refuses or is unable to produce a ticket, they are ordered off the train to an officer waiting on the platform to issue a citation. An officer testified that during these sweeps, they collect identifying information and run warrant checks on every passenger who receives a citation. An officer confirmed that the sweeps are "an apparatus to be able to check people for warrants." When the team of four officers boarded the train broadcasting the fare inspection, each passenger was asked to present his ticket. Carter approached one officer and said that he did not have a ticket. He was ordered off the train to another officer. That officer collected Carter's name, date of birth, and social security number. Dispatch informed the officer that Carter had a possible arrest warrant. As Carter got up to leave, three officers tackled him to the ground. One of the officers yelled that Carter had a gun which prompted another officer to tase Carter and then handcuff him. A search of his person revealed ten bags of suspected cocaine.

HOLDING: The Court of Special Appeals held that Carter would not have felt free to leave even before being physically restrained with multiple officers on the platform and the show of authority within the train including preventing anyone from exiting without first encountering the officer. Patrons were effective trapped inside the train. The court refused to apply the implied consent doctrine because reasonable patrons might not understand that by simply boarding the light rail, they may be subject to suspicionless seizures resulting in warrant checks.

CONFESSION LAW

16. SOARES v. STATE, 2020 WL 5084299 (CSA; decided August 28, 2020): Soares was arrested after police executed a search warrant in his home that he shared with his wife and discovered heroin. Soares' native language is Portuguese. During the interrogation of Soares, Officer Street read the Miranda rights which were then interpreted for Soares by Officer Bonturi. All of the Miranda rights, including informing Soares of his right to be taken immediately to a Commissioner, were stated at once. Soares responded that he would like to be taken to the Commissioner. Questioning nevertheless continued. It was Bonturi who told Street that Soares understood his rights. Most of the conversation was between Bonturi and Street without any effort to speak directly to Soares to see if he understood his rights. At one point, when asked about his wife's potential involvement in drug possession, Soares wanted to know if "he had to answer" or "could keep his mouth shut." In response, Street said, "I've advised you of your rights already. But I'm asking

you these questions because we're trying to move past you in our investigation." To protect his wife, Soares then confessed.

HOLDING: The interpreter is not supposed to be a third-party participant in a three-party exchange. The two parties to the exchange are the questioner and the respondent. The interpreter's proper role is to be an essentially invisible and mechanical device effectively behind the scenes. At no time in the interpretive process is the interpreter expected to explain to the respondent what the question means or to explain to the questioner what the respondent means. The interpreter, moreover, is required to be scrupulously neutral. The use of a police officer as an interpreter is less than ideal.

Not a single question was directly asked of Soares and not a single answer was directly rendered by him on the subject of his understanding of his rights. It indicates that Street knew that the interrogation should have terminated. If that were not the case, there would have been no necessity to "move past" Soares. This deliberate "move past you" sleight-of-hand did not honor Miranda's right to silence. It played games with it. If anything, when the subject matter of the conversation shifted from Soares's guilt to his wife's guilt, that amped up rather than toned down the factor of compulsion. The detective found the right button to push. This we will not countenance. There is first the obligation on the State to inform the suspect of the right to silence. That means more than reciting to a defendant the words on a written form. That also means imparting to a suspect at least a rudimentary understanding of what that right means and what the suspect can do with it. There were no follow-up questions or inquiries by anyone. Presuming that a mechanical simple reading of such a mass of material imparted the required understanding of the right to silence is highly questionable.

17. FUNES v. STATE 469 Md. 438 (2020): Portillo, who speaks Spanish but has some proficiency in English, was found asleep behind the wheel of his running truck. The officer read Portillo the DR-15 advice of rights in English despite the fact that Portillo had a heavy Spanish accent and, when asked where he was coming from, Portillo said "El Salvador." Before reading the DR-15, the officer contacted dispatch for a Spanish interpreter but was told the interpreter was some distance away. The officer also admitted that he had access to Language Line, a telephonic interpreting system available to police. The officer proceeded ahead in English anyway. Portillo signed the waiver and went on to fail the field sobriety tests and the breath test. At trial, Portillo sought to exclude the test results arguing that he does not comprehend English.

HOLDING: When providing advice of rights prior to administering a chemical breath test, police officers must use methods that reasonably convey the warnings and rights in the implied consent statute, § 16-205.1 of the Transportation Article of the Maryland Code. Here, the police officer read in English a DR-15 Advice of Rights form to Portillo, a native Spanish speaker. The officer failed to read the DR-15 form in Spanish and/or utilize several Spanish language translation resources available to him, even after it

became abundantly clear that Portillo had limited English proficiency. A driver's inability to understand English and consequent inability to comprehend the advice of rights is a factual issue when presented in a motion to suppress. Whether the actions of the officer reasonably conveyed the warnings and rights in the implied consent statute is an issue of fact to be determined by the suppression court. In giving advice of rights, officers must use methods that reasonably convey the warnings and rights in the implied consent statute. The officer in this case did not use reasonable methods.

18. MADRID v. STATE, 2020 WL 5835175 (CSA; Decided October 1, 2020) : Madrid was 14 years old when he came to the U.S. from El Salvador to live with his mother and stepfather. After several years, Madrid became involved with a gang that answered to its leader who remained in El Salvador. Pursuant to orders from the leader, Madrid and another gang member opened fire on two rival gang members, killing one and almost killing the other. Ultimately, Madrid, at age 16, was arrested and questioned by police after being given his Miranda warnings. Madrid confessed to his involvement. His motion to suppress his confession was denied. At trial, Madrid requested an instruction on duress given his age and fear of being killed himself by his own gang if he did not obey orders.

HOLDING: There was no violation of Madrid's rights during questioning. He was given his rights in Spanish and the discussion and ultimate confession were also in Spanish. There were no inducements given to Madrid in exchange for his confession. Here, there was neither a coercive delay in questioning, nor a lengthy interrogation, nor an expression of any desire on Madrid's part to speak with anyone outside the interview room.

Regarding the voluntariness of Madrid's confession, the court held that even though the detective told Madrid he knew Madrid was in the country illegally, and, when Madrid claimed he did not know why he was being questioned, the detective told him "I can play this game with you all night," and the detective told Madrid that his life was in danger from his own gang as well as from the shooting victims' gang, the court found no improper inducement as the detective's statements were simply descriptive of the serious position in which Madrid had placed himself.

PRE-TRIAL IDENTIFICATION

19. GREENE v. STATE: 469 Md. 156 (2020): Greene was charged with the murder of his ex-girlfriend's current boyfriend. Police obtained video footage from a nearby home of someone entering the apartment where the victim was discovered. Police showed the video to the victim's girlfriend who stated that the person in the video "looks like" Greene. The detectives showed her the video several times, slowed down the speed of the video, and produced some still images of the footage. She stated, early on, that the person in the video "looks like [Greene]" based upon the depicted person's "build" and "beard." She did not speak with certainty. She vacillated throughout the interview, stating that the person in the surveillance video "kind of looks like [Greene]," "looks like him." Police pressured

her to make an identification telling her they were not in the "I think" business but needed certainty. The motion to suppress was granted by the trial court finding the identification procedure to have been impermissibly suggestive.

HOLDING: Development of constitutional identification law reflects the Supreme Court's "concern with the problems of eyewitness identification." The nature of the identification itself, coupled with the issues surrounding the identification procedure, has the potential to lead to misidentification. The Court summarized why that can happen: "Usually the witness must testify about an encounter with a total stranger under circumstances of emergency or emotional stress. The witness' recollection of a stranger can be distorted easily by the circumstances or by later actions of the police." The identification procedure at issue here sought information of an altogether different sort than what is sought in a selective identification procedure. The witness was not an eyewitness to the murder and therefore was not asked to identify Greene as the murderer. The police-initiated procedure at issue here is properly described as a "confirmatory identification" that does not implicate due process concerns.

20. SAYLES v. STATE,245 Md. App. 128 (2020): Sayles filed a motion to suppress a pre-trial identification made from a photographic array.

HOLDING: Court did not err in denying the motion to suppress when digital alterations to photographs in the array which were made to make all of the faces in the array appear to have a similar facial tattoo since the alterations were not obvious and did nothing to draw attention to Sayles's photograph.

CONFRONTATION CLAUSE

21. RAINEY v. STATE, 246 Md.App. 160 (2020): Rainey and his wife had a domestic dispute after which his wife, her daughter and the son they shared left the home and went to a hotel. The following day, Rainey texted his wife saying he had left their home. Rainey's wife, daughter and son returned to the home after a friend of the daughter's informed her that Rainey's car was not in front of the house. The friend found Rainey's car in the back of the house and, as he ran to stop Rainey's wife, daughter and son from going into the house, Rainey emerged from inside the house holding a gun. Rainey ordered the family to come inside the house, which they did. Ultimately, Rainey shot and killed his wife and her daughter and tried to shoot the son but missed him. His son then ran from the house. At trial, counsel requested that Rainey be examined to determine whether he was competent to stand trial. Rainey was examined by an experts for the defense and state and was found not competent. The court ordered he be committed to Perkins. Rainey was found competent several years later. While he entered a plea to the actus reus of the offenses he sought a jury determination of his criminal responsibility.

HOLDING: Results of tests indicating that Rainey was malingering while after initially being found not competent to stand trial were introduced for their truth and were therefore hearsay; and the report of malingering was testimonial; however, while it was a violation of the Confrontation Clause to admit this evidence, the error was harmless.

JURY SELECTION ISSUES:

22. PIETRUSZEWSKI v. STATE, 245 Md. App. 292 (2020): cert denied: During jury selection, the court denied the defense and state the right to "strike from the box" once twelve jurors were selected.

HOLDING: The trial court erred in failing to apply Maryland Rule 4-313(b)(3)—which provides that a party "may exercise any remaining peremptory challenges to which the party is entitled at any time before the jury is sworn[,]" up to the time "the first alternate is called" however, Pietruszewski was not prejudiced by the ruling because he utilized and fully exhausted his allotted peremptory challenges before the twelfth juror was seated in the box, and he failed to proffer how he might have used his challenges in a different manner if the trial judge had not prohibited him from striking jurors after they had been seated in the jury box. In the absence of any facts that support a claim that Pietruszewski's exercise of peremptory challenges would have been any different if the court had not erred by precluding striking from the box.

23. KAZADI v. STATE, 467 Md. 1 (2020)(4-3 decision as to Holding 1): Kazadi was charged with murder. S.L., an undocumented immigrant, and M.L., mother and son, lived near Kazadi. One evening as M.L. was taking out the trash, he witnessed Kazadi shoot the victim. Hearing the gunshots, S.L. ran into the yard and saw Kazadi put a gun in his pocket and go into his home. At trial, defense counsel requested the following *voir dire* questions:

> Are there any of you who would be unable to follow and apply the Court's instructions on reasonable doubt in this case?
>
> Is there any member of the jury panel who would be unable to give the Defendant the benefit of the presumption of innocence?
>
> Does any prospective juror believe that the Defendant has duty or responsibility to testify or that the Defendant must be guilty merely because the Defendant may refuse to testify?

Noting that these principles are covered in the instructions, the court refused to give the *voir dire* questions requested.

HOLDING 1: Overruling *Twining v. State*, 234 Md. 97 (1968), the Court of Appeals held that, upon request, these questions must be asked on *voir dire*. There is no

duty on the trial judge to give these questions sua sponte; only if requested. The Court found that giving, upon request, *voir dire* questions concerning long-standing fundamental rights—i.e., the rights to be presumed innocent, not to testify, and not to be convicted except upon proof of guilt beyond a reasonable doubt—undoubtedly helps to safeguard a defendant's right to be tried by a fair and impartial jury.

Prior to trial, Kazadi filed a motion to compel the state to disclose the Alien Registration Number, immigration number and immigration paperwork related to S.L. arguing that S.L. may be testifying in order to gain relief from possible deportation.

HOLDING 2: The Court of Appeals held that, absent additional circumstances, such as evidence of a *quid pro quo* arrangement or allegations of leniency in an immigration case, a state's witness's status as an undocumented immigrant, or the existence of a deportation order, do not show the character of the witness for untruthfulness or demonstrate a motive to testify falsely. Without more, a state's witness's status as an undocumented immigrant or any deportation order to which the witness is subject, are not required to be disclosed by the state during discovery and are not proper subjects of cross-examination.

BRADY ISSUES

24. CANALES-YANEZ v. STATE, 244 Md. App. 285 (2020), pending in the Court of Appeals; argued October 29, 2020: Canales-Yanez requested a judge-trial in the brutal murder of two high school students presumably as revenge for a theft of marijuana committed by one of the young men from Canales-Yanez's wife several months earlier. One of the main witnesses against Canales-Yanez was a young woman, Kuria, who was the girlfriend of one of his co-defendants who testified that she was present in her boyfriend's home on the night of the murders when Canales-Yanez and others were huddled over a cell phone displaying a map of the area where the young men were ambushed. She also heard one of the men talk about "East Montgomery Village Avenue" which is where the killing took place.

In her original statement to police, however, Kuria denied any knowledge of the plot to kill the victim. Police told Kuria they did not believe she was telling the truth, emphasizing multiple times that it was a crime to lie to police. Four months later, police went to the home of Kuria's parents and told them that they thought Kuria lied to them and that she could get into trouble for lying to the police. They explained they were investigating the murders. Kuria's father told police that Kuria told him that she knew who committed the murders but, her mother told police that Kuria had told her she did not know who committed the murders. Police again emphasized the need for Kuria to tell them the truth because they now had proof she was lying in her first statement. The following day, Kuria went to the police and told them what she knew. The state withheld the taped statement of Kuria's parents and the transcript thereof, a clear *Brady* violation.

The defense did not learn of the taped interview with the parents until after trial and filed a Motion for New Trial based on the *Brady* violation. The court denied the motion noting that, even knowing of the withheld evidence, it would not have changed the judge's mind in convicting Canales-Yanez. On appeal, Canales-Yanez challenged the denial of his motion arguing that if he had had the improperly withheld evidence, he could have impeached Kuria's credibility.

HOLDING: The Court of Special Appeals held that the interview was improperly withheld from the defense; however, given the strength of the state's case and given the ruling by the trial judge, finder of fact, that his verdict would not have changed, it cannot be said that the evidence was material under the *Brady* analysis. The Court concluded that, in a bench trial, the trial judge who then rules on a motion for new trial based on newly discovered evidence is in a unique position to determine the materiality of the new evidence. In a court trial, if the trial judge adequately evaluates the significance of the undisclosed evidence, a reviewing court need not speculate about the importance of the undisclosed evidence to the trier of fact. Thus, it was clear from comments made by the trial judge that there was no "reasonable probability of a different result." The trial judge's finding of no prejudice should only be set aside if it is patently unreasonable.

25. BYRD v. STATE, 243 Md. App. 616 (2019) (pending in Court of Appeals): Byrd pleaded guilty. Two of the police officers involved in Byrd's case were members of the Gun Trace Task Force who, after Byrd pled guilty, were themselves convicted in federal court for crimes relevant to credibility. The prosecutor did not turn over in discovery valuable impeachment evidence regarding the officers. Byrd argued that his guilty plea was invalid under these circumstances.

HOLDING: The state's failure to disclose the impeachment evidence prior to Byrd pleading guilty did not warrant invalidating his guilty plea. *Brady* only requires disclosure of impeachment evidence *for use at trial* and does not apply to guilty pleas.

EVIDENTIARY ISSUES:

26. STATE v. SAMPLE, 468 Md. 560 (2020): The day after Sample and his accomplice attempted to rob the liquor store, Sample unfriended Mayo on Facebook. Police investigating the crime searched Facebook for a profile in the name of Claude Mayo. Facebook provided police with two profiles in the name "claude.mayo.5" and "SoLo Haze." The Facebook Business Records regarding the SoLo Haze Facebook profile indicated that the e-mail address "mrsample2015@gmail.com" was registered to that profile.The Facebook Business Records regarding the SoLo Haze profile indicate that, the day after Sample and Mayo allegedly attempted to rob the liquor store and Mayo was fatally shot, the claude.mayo.5 profile was unfriended from the SoLo Haze profile. During the seventeen-day period to which the Facebook Business Records pertained, the

claude.mayo.5 profile was the only one, of 175 profiles with which the SoLo Haze profile was friends, to have been unfriended. Sample argued that despite there being evidence that he created the SoLo Haze Facebook profile, there was insufficient evidence that he was the person who used the profile to unfriend the claude.mayo.5 profile

HOLDING: The circuit court did not abuse its discretion in admitting the Facebook related evidence, as there was sufficient circumstantial evidence under Maryland Rule 5-901(b)(4) for a reasonable juror to find that the SoLo Haze Facebook profile belonged to Sample, that the claude.mayo.5 Facebook profile belonged to Mayo, and that Sample used the SoLo Haze profile to unfriend the claude.mayo.5 profile the day after the shooting. The standard of proof for authenticating social media evidence is the preponderance of evidence standard, i.e., there must be sufficient circumstantial evidence for a reasonable juror to find that it is more likely than not that the social media evidence is what it is purported to be. Here, the circumstantial evidence supporting the conclusion that the profiles belonged to Sample and Mayo consists of evidence that the SoLo Haze and claude.mayo.5 Facebook profiles listed Baltimore City as their current cities and the connections listed in the profiles included schools in Baltimore City and the Towson area. The profiles' lists of friends included people who were either a friend or relative of Sample and Mayo. Moreover, the SoLo Haze Facebook profile name consists of a homophone of Sample's first name "Hayes," the "mrsample2015@gmail.com" e-mail address registered for the SoLo Haze Facebook profile contains Sample's last name, and the SoLo Haze profile had been identified as a friend on the claude.mayo.5 profile. Without more, the evidence indicating that the SoLo Haze profile belonged to Sample and the claude.mayo.5 profile belonged to Mayo indicates that Sample used the SoLo Haze profile to unfriend the claude.mayo.5 profile. There are, moreover, additional circumstances surrounding the unfriending that establish that a reasonable juror could find more likely than not that Sample was the person who unfriended the claude.mayo.5 profile: the temporal proximity of the attempted armed robbery to the unfriending, and that Sample had a motive to distance himself from Mayo.

27. MONTAGUE v. STATE, 244 Md. App. 24 (2019) (cert. granted): The victim and his cousin drove to an apartment complex in Annapolis so that the victim could meet with Montague and purchase drugs. The cousin had given the victim a counterfeit $100 to make the purchase. Shortly after making the purchase, as the victim walked to his truck, Montague shot and killed him. While in pre-trial detention, Montague was taped on a phone call reprising rap lyrics he had written which, of course, talk about shooting people. At the conclusion of the call, Montague's friend told him he shouldn't say these things on a taped phone call. Montague responded, "I'm gucci. It's a rap. F--k they can do for—about a rap?" "I'm gucci. It's a rap. F--k they can do for—about a rap?" Finding the lyrics more probative than prejudicial, the court allowed their introduction.

HOLDING: The lyrics admitted here alluded to details of the crime and explained Montague's possible motive for the murder. They tended to make it more probable that Montague was the victim's killer. Therefore, the trial court did not err in concluding that

the rap lyrics were relevant. Nor did the trial court abuse its discretion in concluding that the probative value of the lyrics was not substantially outweighed by any unfair prejudice. This is because, despite their "incendiary nature," the rap lyrics were strong evidence as to "why the defendant was the person who committed the particular crime charged." Because of their patent factual connection to the charged murder, these lyrics were far more than evidence of a bad character. Instead, they were properly viewed by the trial court as direct proof of Montague's criminal wrongdoing, whose probative value was not substantially outweighed by any danger of unfair prejudice that their admission would entail.

PRESERVATION ISSUES:

28. ARIAS-RIVERA v. STATE, 246 Md.App. 500, (2020) (cert. granted): Ordinarily, in a bench trial, in order to preserve an appellate challenge to the sufficiency of the evidence, counsel need not make a motion for judgment of acquittal. In a jury trial, in order to preserve a challenge to the sufficiency of the evidence, counsel must make a motion for judgment of acquittal and must state the grounds therefore. In this case, Rivera chose a bench trial on charges of possession of drugs. During his decision on the sufficiency of the evidence, the trial judge relied on evidence that was not in the record. However, trial counsel did not object to that reliance. On appeal, Rivera challenged the court's reliance on facts not in evidence.

HOLDING: The Court held that the contemporaneous objection rule applies to a claim that a trial court relied upon matters not in evidence in rendering a verdict in a bench trial. Because no such objection was made, Rivera's claim was not preserved for review.

29. FOSTER v. STATE, 2020 WL 5819608 (CSA; Decided September 30, 2020): The defense requested that the court ask *voir dire* questions that, while Foster's case was pending appeal, were ruled in *Kazadi v. State*, must be given upon request. On appeal, Foster argued that *Kazadi* required a new trial. The state argued that, even though properly requested, because at the time the jury was empaneled, defense counsel made no exception and, indeed, accepted the empaneled jury, the issue was not preserved for appeal.

HOLDING: A criminal defendant's objection to a trial court's refusal to ask a requested *voir dire* question is sufficient to preserve the issue for appellate review even when the defendant subsequently accepts the empaneled jury without qualification upon the conclusion of jury selection. In this case, the defendant objected to the court's refusal to ask whether any venireperson could not follow an instruction not to consider a defendant's exercise of the Fifth Amendment right not to testify as evidence of guilt, as required by *Kazadi v. State*, 467 Md. 1 (2020). Nothing more was required to preserve the issue for review. The defendant did not waive that objection through his unqualified acceptance of the empaneled jury.

30. WRIGHT v. STATE, 247 Md. App. 216 (2020): Wright was engaged in a dice game when a dispute arose between him and another player. Shortly after the game ended, someone approached the victim from behind and shot him and ran from the scene. The shooting was caught on the video camera from a nearby store. A BOLO (Be On the Look Out) flier was distributed among the police. One officer who knew Wright identified the person running from the scene as Wright. At trial, the state introduced the video, a still photograph taken from the video and the testimony of the identifying officer. Defense counsel filed a motion in limine to preclude introduction of the video and photograph which was denied. Over objection, the court also gave a flight instruction.

HOLDING: The objections to the video and still photos were not preserved because, at the time of admission, defense counsel failed to object even though his motion in limine had been denied. As to the flight instruction, the court held that it is within the judge's discretion to give a flight instruction even if the identity of the person fleeing is the sole issue in the case.

INSTRUCTION ISSUES:

31. STATE v. WALLACE, 247 Md. App. 349 (2020): Wallace was convicted of attempted second-degree murder and other counts. He appealed and the Court of Special Appeals affirmed his convictions. Wallace then sought post-conviction relief which was granted when the court found trial counsel was ineffective for failing to object to an erroneous instruction on attempted second-degree murder and in failing to correct a stipulation that informed the jury that Wallace had been previously convicted of a crime of violence. The post conviction court also found that the cumulative nature of the errors warranted a new trial. The state filed an Application for Leave to Appeal arguing that a new trial was not the proper remedy and that only vacatur of the attempted second-degree murder conviction was warranted.

HOLDING: The improper instruction had no effect on Wallace's convictions for first- and second-degree assault, use of a handgun in the commission of a crime of violence, or possession of a regulated firearm after previously having been convicted of a disqualifying Thus, the appropriate remedy is vacatur of the conviction of attempted murder in the second degree, the only conviction affected by trial counsel's failure to object to the erroneous jury instruction.

32. SAYLES v. STATE, 245 Md. App. 128 (2020) (cert. granted): Sayles and his co-defendants were convicted of home invasion and related charges. During jury deliberations, the jury sent out three separate notes, all inquiring into "jury nullification." Each time and over objection, the court instructed the jury that jury nullification was "contrary to the law."

HOLDING: A party may not argue jury nullification to a jury and the court may not instruct a jury that it has the power to disregard the law. Jury nullification should not be encouraged by a judge if it is within the judge's authority to prevent it. No law prohibits jurors from engaging in jury nullification or proscribes a consequence for jurors who engage in jury nullification. The power of the jury to nullify a verdict is well-established. As such, nullification cannot be said to be "contrary to law." Furthermore, the trial court's instruction that a juror who engaged in nullification would be violating a court order is not an accurate statement of law. Juries have the power to nullify absent any legal consequences. When faced with a question about jury nullification, trial judges may remind jurors of their oath or repeat instructions on reasonable doubt and burden of proof, while avoiding informing jurors that they are prohibited from engaging in jury nullification.

33. MADRID v. STATE, 2020 WL 5835175 (CSA; Decided October 1, 2020): Madrid was 14 years old when he came to the U.S. from El Salvador to live with his mother and stepfather. After several years, Madrid became involved with a gang that answered to its leader who remained in El Salvador. Pursuant to orders from the leader, Madrid and another gang member opened fire on two rival gang members, killing one and almost killing the other. Ultimately, Madrid, at age 16, was arrested and questioned by police after being given his Miranda warnings. Madrid confessed to his involvement. His motion to suppress his confession was denied. At trial, Madrid requested an instruction on duress given his age and fear of being killed himself by his own gang if he did not obey orders.

HOLDING: The trial court did not err in refusing to give an instruction on duress as the evidence did not support giving such an instruction. To constitute a defense, the duress by another person on the defendant must be present, imminent, and impending, and of such a nature as to induce well grounded apprehension of death or serious bodily injury if the act is not done. It must be of such a character as to leave no opportunity to the accused for escape. Madrid was not under a "present, imminent, and impending" threat at the time he fired a gun. He testified to no such present, imminent, and impending threat. He did, however, testify that he was concerned that if he did not carry out the order, he could be killed by his own gang as soon as the following day. Madrid's fear that he could face some punishment the following day was not enough to satisfy the requirement of an "imminent" threat. As a matter of law, that did not generate the duress instruction. The defense cannot be raised if the apprehended harm is only that of . . . future but not present personal injury.'"

Also, a claim of duress is not available to a "defendant who intentionally or recklessly placed himself in a situation in which it was reasonably foreseeable that he would be subjected to coercion. Madrid bears responsibility for being a regular participant in the activities of MS-13, and was therefore precluded from arguing to the jury that the known consequences of that participation provided a duress defense when he was told to execute another gang member.

34. HARRISTON v. STATE, 246 Md.App. 367 (2020): Harriston, an African American requested that the court give a cross-racial identification instruction and the court denied the request.

HOLDING: A court does not abuse its discretion in declining to give a cross-racial identification instruction where, as here, the defense argues that an eyewitness's identification of the defendant "was not corroborated by other evidence giving it independent reliability." Here, the witness, though a different race from Harriston, had known Harriston and interacted with him at different times for over a decade. The witness said that Harriston's appearance had not changed much, and the witness's identification of Harriston as the suspect in video footage was corroborated by Harriston's sister's and girlfriend's identification of him in different still shots taken from the video.

35. ELZEY V. STATE, 243Md. App. 425 (2020) (cert. granted): Elzey and her husband, whiole staying with friends, got into an altercation. The friend testified that he heard Elzey warning her husband to stay away from her and "I'm tired of you putting your fucking hands on me." Elzey retrieved a knife from the kitchen, held it loosely in front of her body and warned the victim to stay back. Instead, her husband came at her and was stabbed, resulting in his death. The defense sought a battered spouse instruction. The court gave an instruction that told the jury it had to determine first, whether or not Elzey was, in fact, a battered spouse.

HOLDING: The jury instruction on Battered Spouse Syndrome was erroneous and unclear, constituting reversible error. Primarily, the instruction reflected an erroneous interpretation of the statute and instructed the jury, before it could consider the defense of self-defense and Battered Spouse Syndrome, to *first* find that the defendant was the subject of repeated physical and psychological abuse by the victim. Whether the defendant has adequately raised the issue of Battered Spouse Syndrome is a question of law to be decided by the trial court. Once a trial court determines that the defendant has adequately raised the issue, it has the discretion to admit, for the jury's consideration, the evidence of repeated abuse of the defendant by the victim and expert testimony on Battered Spouse Syndrome. CJP § 10-916(b). In the case at hand, the trial court determined that appellant had adequately raised the issue and admitted the expert testimony.

SUFFICIENCY OF THE EVIDENCE:

36. STATE v. SMITH, 244 Md. App. 354 (2020): Smith appeared in court to plead guilty to illegal possession of a firearm in his car. The state presented the facts supporting the plea. The court then asked the state for proof of the handgun's operability. The prosecutor failed to respond. Defense counsel then stated, "make a motion", to which the court responded, "case dismissed." The state appealed. On appeal, Smith argued that the state had no right to appeal because the court's ruling was an acquittal. The state, on the other hand, argued it was a dismissal of charges.

HOLDING: The Court of Special Appeals held that the court had no authority, under these circumstances to acquit Smith or to dismiss the charges. Trial courts lack authority to consider motions for judgment of acquittal during pre-trial hearings on whether or not to approve a plea agreement. Once a guilty plea is accepted, it is the equivalent of a conviction. Under Maryland Rule 4-242, the court may accept a plea of guilty after finding the plea is being entered voluntarily and knowingly.

37. JOHNSON v. STATE, 245 Md. App. 46 (2020): Johnson was convicted of involuntary manslaughter and possession with intent to distribute heroin after selling a friend $40 worth of heroin that contained fentanyl and caused his friend's death by overdose. On appeal, Johnson challenged the sufficiency of the evidence to convict him of involuntary manslaughter.

HOLDING: Relying on and comparing Johnson's case to *State v. Thomas*, 464 Md. 133 (2019), the Court of special Appeals held that the evidence against Johnson was insufficient to convict him of involuntary manslaughter. "The State must demonstrate wanton and reckless disregard for human life" and the risk must fall "somewhere between the unreasonable risk ordinary negligence and the very high degree of risk necessary for depraved-heart murder." *Thomas* held that to support a conviction for a gross negligence involuntary manslaughter from the sale of heroin, (1) the defendant must have known, or should have known under the reasonably prudent person standard, that the underlying act of selling 11 heroin carried a severe risk of harm, and (2) the sale of heroin must be the actual and legal cause of the victim's death.

The primary risk factors identified in *Thomas* fell in two main groups: (1) the vulnerability of the buyer, or in the Court's language, his "desperation," and (2) the dealer's experience and knowledge. Mr. Johnson's conduct lacks the risk factors that elevated the dealer's conduct in *Thomas*: The victim and Mr. Johnson were very close in age. The victim and Mr. Johnson were friends. The victim texted Mr. Johnson twenty-six times between 11:58 a.m. and 9:22 p.m., nearly a nine-and-a-half-hour period. Mr. Johnson was engaging the victim in conversation during that period and the attempt at communication was not one-sided. Mr. Johnson was not a "systematic and sustained heroin distributor." Nothing in the record suggests Mr. Johnson sold drugs at any other time. Mr. Johnson used heroin less than the victim. Mr. Johnson was not in a position of power over the victim. There was no reason for Mr. Johnson to suspect that the victim was at a heightened risk of harm, beyond the risk inherent in the act of buying and using heroin. Nothing in the record suggests their meeting was unusual or contains any signs that the victim was desperate. Instead, two friends split drugs after talking throughout the day about how they were going to acquire them. Put another way, if this drug sale qualifies as grossly negligent, we struggle to imagine a transaction that wouldn't.

38. PINHEIRO v. STATE, 244 Md. App. 703 (2020): Pinheiro was convicted of fabricating evidence and misconduct in office. Pinheiro was a member of the Baltimore City Police Department working in a drug unit conducting surveillance. A covert officer saw several narcotics transactions in an alley under surveillance. Based on the observation, Pinheiro and another officer stopped a suspected buyer. Based on information provided by the buyer, police found drugs in the center console of the buyer's car. The officers were then directed to search for additional drugs in the alley where the covert officer initially saw the transactions. The officers, with their body-worn cameras turned on, found a knotted bag containing capsules of white powder. The officers then left the alley and deactivated their cameras. Pinheiro, by himself and with his camera still off, returned to the alley to continue searching. He found an additional plastic bag of capsules, left the alley to show the bag to the other officers. After realizing his body camera was off, he reentered the alley, placed the drugs in a red can, put the can under trash near where he initially discovered the bag. He then left the alley, turned his camera on and could be heard saying "I'm going to check here." He then reentered seconds later to "reenact" his search and discovery. He picked up the can and pulled out the bag of heroin and said "yo," displaying the bag in front of the camera. Pinheiro was unaware however, that when the camera's power is on, even if not activated, the camera captures video but not audio. Once the camera is activated, the camera permanently stores video captured 30 seconds before the camera was activated and all audio and video captured until deactivation.

Pinheiro submitted the video to evidence.com at the end of his work shift, but he did not document his failure to record the initial search and seizure or make it clear how he had reenacted the seizure. A man was ultimately charged with possession of the evidence found in the alley during the reenactment. The Assistant State's Attorney assigned to prosecute the case retrieved the footage and saw the reenactment. When the prosecutor confronted Pinheiro, he said that "they ding us for holidays if we forget to turn our [cameras] on." On appeal, Pinheiro challenged the sufficiency of the evidence to prove both fabricating evidence and misconduct in office.

HOLDING: "A person may not fabricate physical evidence in order to impair the verity of the physical evidence with the intent to deceive and that the fabricated physical evidence be introduced in a pending or future official proceeding." Md. Code Ann., Crim. Law § 9-307(b). The overall statutory scheme suggests that physical evidence encompasses evidence not testimonial in nature. Hence, the BWC footage qualifies as physical evidence under § 9-307(b). The evidence at trial was sufficient to conclude that Pinheiro specifically intended to stage the contents of the BWC footage in order to deceive any subsequent viewer of the video's authenticity. Once the heroin is in place and he is properly positioned, Pinherio activated the BWC and is heard saying, "I'm going to check here," creating the impression that he had entered the alley for the first time. Making matters more conspicuous, another officer can be heard laughing in the background of the video as Pinheiro pretended to search through the trash for the first time. Seconds later, he picked up the can and pulled out the bag of heroin. He is heard to say, "yo," then displayed

the narcotics in front of the camera, to mislead any subsequent viewer into believing that he had seized the drugs for the first time. His statements and actions taken together support the reasonable conclusion that Pinherio had the specific intent to impair the verity of the BWC footage. Furthermore, any inference drawn from his actions is made more compelling considering his trial testimony that he created the video to avoid "any kind of repercussions" or "actions from the agency for failure to turn on the camera."

39. MCCAULEY v. STATE, 245 Md. App. 562 (2020): Wrightson and his friend Mary Miller purchased heroin with fentanyl from Wrightson's dealer/friend, Ms. McCauley. The two then went to Wrightson's apartment and, immediately after he snorted the heroin, Wrightson fell to the floor, hitting his head on a bureau, and passed out. Wrightson was unconscious for five hours. When he came to, Wrightson found Miller on the floor in the bathroom. After much effort attempting to revive her, Miller was declared dead. McCauley was charged with and convicted of involuntary manslaughter. On appeal, McCauley challenged the sufficiency of the evidence to prove she acted recklessly.

HOLDING: In finding the evidence to be sufficient, the Court of Special Appeals pointed out that McCauley and Wrightson had used fentanyl and overdosed together in 2017. Wrightson testified that he had overdosed from fentanyl that he had bought from Ms. McCauley four times. When he told Ms. McCauley about his overdoses, she told him "that's horrible," "be careful," "don't do too much," and "it's strong." A neighbor of Wrightson's testified that he had bought heroin from McCauley before Miller died and that McCauley "said that it was not Fentanyl." He stated that he overdosed from those drugs "for about 12 hours." Five days before Miller's death, McCauley sold fentanyl to another woman who shared it with friends who immediately began seizing. No one died on this occasion, however, the drug was tested and found to contain carfentanil McCauley also sold fentanyl to an undercover officer after Miller's death and told him to "be careful" and not to use too much. Before leaving, McCauley said to the officer, "don't die." All of these facts support a finding that McCauley acted recklessly and thus guilty of involuntary manslaughter.

40. STATE v. WILSON, 2020 WL 6266905 (COA; Decided October 26, 2020): Wilson's girlfriend informed police that Wilson and a co-defendant were involved in a murder that was under investigation. Before trial, Wilson called his girlfriend from jail and discussed marrying her so that she could invoke the marital privilege. They ultimately were married over the phone by a pastor. Wilson was charged with witness tampering and obstruction of justice. . At trial, she attempted to invoke the marital privilege

HOLDING: Where a person marries a potential witness for the State with the intent to enable the witness to invoke the spousal testimonial privilege at a criminal proceeding, the evidence is sufficient to support convictions for witness tampering and obstruction of justice.

41. STATE v. MORRISON, 470 Md. 86 (2020) (4-3) : Morrison participated in a virtual happy hour with friends where she drank several beers. At the conclusion of the happy hour, Morrison went to bed where she always "co-slept" with her four-month old infant and four-year old daughter. When she awoke the following morning, Morrison discovered that the infant was unresponsive. Morrison was convicted of involuntary manslaughter and reckless endangerment after doctors concluded that the child died from "asphyxiation from probable overlay," after Morrison fell asleep and rolled over onto the infant. Morrison's four-year-old daughter told her that she tried to get Morrison off the baby by "throwing things" at Morrison but to no avail. When police arrived to Morrison's home, she was found sitting on the edge of the bed, staring blankly and saying "I killed my baby," "I got drunk and killed my baby." Morrison testified that mothers sleeping with their children was prevalent in her family and community.

HOLDING: To sustain a conviction for involuntary manslaughter, the prosecution must prove that the killing was committed in one of three ways: "(1) by doing some unlawful act endangering life but which does not amount to a felony[;] or (2) in negligently doing some act lawful in itself[;] or (3) by the negligent omission to perform a legal duty." Where a charge of involuntary manslaughter is predicated on negligently doing some act lawful in itself, the negligence necessary to support a conviction must be gross or criminal, viz., such as manifests a wanton or reckless disregard of human life. The conduct at issue did not amount to a "wanton and reckless disregard for human life," because the conduct did not exhibit a gross departure from that of an ordinary person. The conduct was not a gross departure because it was not a substantial deviation from that of an objectively reasonable person. Additionally, there was no evidence of inherent dangerousness combined with attendant environmental risk factors that would justify the conviction. There are no facts supporting the idea that Ms. Morrison—or a reasonable person under similar circumstances—should have appreciated risks associated with cosleeping after consuming beer. she was an infrequent drinker and had consumed four cups of beer over a period of two and a half to four hours. After consuming her last cup of beer, she waited outside for a while. Then, she took the trash out, locked the doors, changed I.M.'s diaper, "pumped," turned off the movie her four-year-old had fallen asleep watching, changed the channel to PBS, and went to sleep.

42. LIPP v. STATE, 246 Md. App. 105 (2020): Lipp and several friends went to Glenelg High School and spray-apinted graffiti on the school building, sidewalks, and trash cans. The graffiti included swastikas, anti-LGBTQ phrases, and other offensive writings, including "KKK," "n****rs," and "fuck jews." In addition, there was graffiti on a sidewalk that stated: "Burton is a n****r," referring to the school principal, who is African-American. The students involved, including Lipp, ultimately confessed to the incident. Lipp was convicted of violating section 10-305 of the Criminal Law Article that prohibits defacing real or personal property exhibiting animosity against groups because of race, color, religious beliefs, or sexual orientation. Lipp challenged the constitutionality of the statute in light of the First Amendment.

HOLDING: The First Amendment permits restrictions upon the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. "[T]he First Amendment also permits a State to ban a 'true threat,'" i.e., a statement meant to "communicate a serious expression of an intent to commit an act of unlawful violence to a particular" person. The plain language of the statute makes clear that a conviction may not be based solely on speech. Rather, the statute regulates harmful conduct, not the content of the speech. And the harmful conduct is proscribed in other criminal statutes. Lipp may have had a First Amendment right to spray paint on his own property the offensive words and symbols used here. Once he combined that action with a criminal act, however, in this case defacing property of another, his criminal activity was not protected by the First Amendment.

SENTENCING ISSUES:

43. CLARK v. STATE, 246 Md. App. 123 (2020) (cert. granted): Clark was convicted of possession of a firearm by a person previously convicted of a felony involving a controlled dangerous substance and possession of an assault weapon. Clark argued that the sentences for each should merge.

HOLDING: Each crime required proof that the other did not, and each offense can exist without the other, the conviction for possession of an assault weapon does not merge with possession of a firearm by a person previously convicted of a felony involving a controlled dangerous substance under the required evidence test. Thus, no merger is required under the required evidence test. Nor do they merge under the rule of lenity or as a matter of fundamental fairness.

44. SCHMIDT v. STATE, 245 Md.App. 400 (2020): Schmidt, with the state's agreement, was found not criminally responsible and civilly committed for five years. Upon his release, Schmidt filed a motion under Rule 4-345(e) to have his NCR plea converted to a PBJ so that he could have it expunged.

HOLDING: PBJ statute allows the court to "stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions." When a defendant pleads (or is found) guilty, in the ordinary course, he proceeds to sentencing. In fact, until he is sentenced, he is not technically "convicted" of a crime, and there is no final judgment. Although Schmidt is correct that the NCR finding was a "final judgment," it is for that same reason that the PBJ statute does not apply to him. When a defendant pleads NCR, he is affirmatively requesting a final judgment, albeit of a different nature than the one that exists upon sentencing. In contrast, when a defendant asks for a PBJ, he is seeking to stop the proceedings and prevent a final judgment—the final judgment of conviction that is entered upon sentencing. The entry of judgment on an NCR

finding is, therefore, legally and logically incompatible with staying the entry of a judgment as contemplated by CP § 6-220. A "sentence," is "the sanction that is being imposed on [a] defendant." As a matter of law, a finding of NCR does not result in a sentence or criminal sanction. Therefore, under Rule 4-345's plain language, its reach does not extend to NCR findings. Rule 4-345 "concerns the revisions of sentences solely." Accordingly, because a finding of NCR is not a sentence, Rule 4-345 did not give the circuit court the authority to vacate the NCR finding and permit the entry of a PBJ.

***45. BRATT v. STATE, 468 Md. 481 (2020): HOLDING**:* The failure to award credit for time served against a sentence was not an illegality to which Md. Rule 4-345 applies. Rather, that rule applies to substantive illegalities that exist in the sentence itself. Failure to award credit is a procedural defect that is not appropriately addressed by a motion to correct an illegal sentence because it has no impact on whether the sentence is one permitted by law. Instead, Rule 4-351 is the appropriate vehicle to address the failure to award credit for time served. This rule governs the commitment record of the inmate and notes that the commitment record shall reflect any credit "allowed to the defendant by law."

PROBATION ISSUES:

46. STATE v. ALEXANDER, 467 Md. 600 (2020): Defendant was charged with violating probation for failing to pay restitution. He remained in jail awaiting a hearing for 26 days. The presumptive sentence that he could have received for violating probation under the Justice Reinvestment Act was 15 days. When Alexander was brought to court, without conducting a hearing on the actual violation, the court simply dismissed the probation and ordered Alexander's release. The state challenged the court's authority to dismiss probation without a hearing on the violation.

HOLDING: The rule requires a hearing only when the court needs to engage in the two-step evaluation of whether the defendant has committed a violation of probation and whether probation should be modified or revoked. There may be cases in which it is particularly important for the court to hear from victims or others in reaching an appropriate disposition. But the purpose of the rule does not require that a court hold an adjudicatory hearing on the merits of a probation violation petition in every case. A court may also decide that the interests of justice do not require it to reach the merits of an alleged violation in a particular case and dispense with holding a hearing for that purpose.

PROCEDURAL ISSUES:

47. HEMMING v. STATE, 469 Md. 219 (2020): Police had an outstanding arrest warrant for Hemming and conducted surveillance at his home. Police watched Hemming and his wife leave their home, get into a car driven by Hemming and drive to a doctor's office. Police decided to conduct a "soft arrest" of Hemming upon his return to his car. When Hemming got into his car with his wife, police approached him and explained that there

was an outstanding arrest warrant for him. Ultimately, a struggle ensued between four officers and Hemming trying to remove him from his car. Hemming pointed a makeshift handgun, known as a zipgun, at several of the officers but was unable to fire the weapon. Once subdued and arrested, Hemming was charged with several counts of attempted murder and of possession of a firearm by one previously convicted of a crime of violence. At trial, Hemming requested that the handgun count be bifurcated from all other counts and that the trial judge decide guilt or innocence on that count while the jury decide all other counts. The trial judge refused the request. On appeal, Hemming argued that the court erred in refusing to bifurcate his charges.

HOLDING: The Court of Appeals held that a trial court has the discretionary authority under Rule 4-253(c) to bifurcate possession of a regulated firearm counts, from other counts, into a singular two-phased trial in which the jury first hears evidence relating to the other charges, deliberates as to the defendant's guilt, and then hears evidence pertaining to the possession of a regulated firearm by a prohibited person counts and determines a defendant's guilt as to those charges. The Court of Appeals held, as a matter of law, that the trial court did not have discretion under Maryland Rule 4-253(c) to bifurcate the possession of a regulated firearm by a prohibited person counts from the remaining counts of the indictment—with the counts being decided by different factfinders within a single trial. Finally, any request for a bifurcated proceeding must be made in writing, 30 days prior to trial.

48. ALEMAN v. STATE,469 Md. 397 (2020) (Watts and Getty dissenting):

HOLDING: When a detainer based on pending criminal charges in one state is lodged against a person serving a prison sentence in another state, the Interstate Agreement on Detainers provides for the transfer of the prisoner from the jurisdiction of incarceration to the "temporary custody" of the jurisdiction where charges are pending. That temporary custody is for the purpose of resolving those charges, after which the prisoner is returned to the place of incarceration. Temporary custody under the IAD does not encompass a commitment of the prisoner to the Department of Health under Maryland Code, Criminal Procedure Article, §3-112 (if the charges are resolved by a verdict of "not criminally responsible") before the prisoner is returned to the state of incarceration. Article VI(b) of the IAD states that the IAD and its remedies do not apply to "any person who is adjudged to be mentally ill." A verdict of "not criminally responsible," which is a finding that the defendant was mentally ill at the time of the crime, does not by itself trigger Article VI(b), as it does not necessarily relate to the defendant's current mental status.

POST-TRIAL ISSUES:

44. BODEAU v. STATE, 2020 WL 5835171 (CSA; Decided October 1, 2020): Fifty years after his conviction for daytime housebreaking, Bodeau filed a Petition for Writ of Error Coram Nobis. He alleged that the trial judge at the time gave an unconstitutional

instruction that jurors were the judge of the law and facts. The collateral consequence he urged was that in 1989, the prior offense was used to enhance his sentence to life without parole. The trial court denied relief on grounds that laches barred relief.

HOLDING: The equitable doctrine of laches precludes unreasonably delayed challenges to a conviction in part, because it is unfair to the state as witnesses may have died, etc. The laches defense applies where (1) an "unreasonable delay in the assertion of one party's rights" (2) "results in prejudice to the opposing party." For the purposes of determining whether the doctrine of laches bars coram nobis relief, delay begins when the petitioner knew or should have known of the facts underlying the alleged error. Here, in fact, a witness had died, another witness was 94 years old and had no memory of the trial, the investigating detective could not be reached and the trial file had been destroyed. Bodeau argued that the delay here had to begin with issuance of the Unger v. State decision in 2012 which, once and for all, declared such instructions to be unconstitutional. In Bodeau's case, the facts underlying the error alleged in his coram nobis petition would have been known when the advisory-only instructions were given at his 1971 daytime-burglary trial. But, Bodeau's allegation of error—that the court's advisory-only instructions violated his due-process rights—was based on a case that had not yet been decided at the time the daytime-burglary jury was instructed.

The case before us is different from Jones. By the time the error in the advisory-only instructions from Bodeau's daytime-burglary trial became clear in 1981, Bodeau had fully served his sentence for that conviction. Free from confinement, parole, and probation, Bodeau had no incentive to raise the error. And even if an incentive had existed, Bodeau had no apparent means by which to make his challenge. The deadlines for Bodeau to move for a new trial, to move to set aside the verdict, and to appeal his conviction had long passed. And Bodeau could not petition for post-conviction relief either. Coram nobis relief was also unavailable to Bodeau at the time—and would remain unavailable for more than two decades, until a series of changes in Bodeau's circumstances and the applicable case law made a coram nobis petition a viable mechanism for raising the issue. Bodeau's first obstacle to obtaining coram nobis relief was the fact that he was not suffering any significant collateral consequences from his 1971 conviction until at least 1989, when he was convicted of armed robbery and received a mandatory life-without parole sentence. This sentence was predicated, in part, on the 1971 daytime-burglary conviction.

45. PETERSON v. STATE, 467 Md. 713 (2020): Peterson pled not guilty and proceeded on an agreed statement of facts. He was convicted of two counts of first-degree assault but found to be not criminally responsible. He was never asked if he was pleading guilty or not guilty and was never asked if he wished to have a jury trial. The not guilty plea was entered by his counsel. Peterson was committed to a mental health facility and, over the course of five years, was conditionally released several times on the condition that he not own a firearm, that he reside on hospital grounds and other conditions imposed by his mental health advisor. During his conditional release, Peterson filed a petition for post-

conviction arguing that his plea was a de facto guilty plea and the court failed to explain the nature of the charges. He also argued ineffective assistance of counsel for failing to inform Peterson of the consequences of entering an NCR plea. After a hearing on the petition, the court denied relief finding that Peterson was neither on probation or parole and thus, did not have the right to file for post conviction relief.

Peterson, while still committed, then filed a Petition for Writ of error Coram Nobis. This was denied as well because, as the court held, Peterson was not "convicted" and that commitment to a mental health facility was a direct result of his NCR plea and not a collateral consequence.

HOLDING: The UPPA specifically grants relief to those on "parole or probation." Crim. Proc. § 7-101. The General Assembly did not extend the UPPA to the "functional equivalents" of parole and probation, as Mr. Peterson urges us to do. Even if conditional release were the equivalent of parole or probation, it still would not come within the post conviction statute because it is not a criminal sanction. The UPPA also grants relief to people "confined under sentence of imprisonment," but it does not provide relief for those civilly committed. Thus, Peterson is not entitled to coram nobis relief. A direct consequence of a conviction is one where the result has "a definite, immediate[,] and largely automatic effect on the range of the defendant's punishment." Civil commitment is a direct consequence of a finding of guilty and subsequent finding of NCR. Although Peterson did not seek habeas corpus relief a circuit court could determine that such relief may be available to defendants who are not "physically restrained," but are found NCR. A defendant only needs to be "committed, detained, confined, or restrained from lawful liberty within the State" to be eligible. Civil commitment is a significant deprivation of liberty and deserves constitutional protection.

46. HILL v. STATE, 247 Md. App. 377 (2020) (cert. denied): In 2011, appellant Edward Effion Hill was convicted of first-degree assault and related firearm crimes. At the time of Hill's conviction, he had an essentially unrestricted right to file petitions requesting commitment to the Department of Health for substance abuse treatment pursuant to section 8-507 of the Health General Article as it existed prior to October 1, 2018. Effective October 1, 2018, however, the General Assembly amended that statute to preclude a court from ordering a commitment for substance abuse treatment for a defendant convicted of a crime of violence "until the defendant is eligible for parole." Md. Code (2019 Repl. Vol.), § 8-507 of the Health General Article ("HG"). Because Hill was convicted of first-degree assault—a crime of violence—he contends that the legislature's amendments violate the Ex Post Facto Clause found in Article I of the United States Constitution and Article 17 of the Maryland Declaration of Rights. In 2017, Hill filed for 8-507 relief. It was denied. He applied again in 2019. The court granted relief. Department of Health informed the court that the law changed in October 1, 2018. Court determined it had no authority to grant relief and Hill appealed. Court distinguished Fuller v. State, which held that there is no right to appeal from the denial of 8-507 relief because it is not a final judgment as the

defendant can file as many times as he wants. However, for Hill, this was a final judgment because the law changed and the trial court believed it was precluded from granting relief. The Supreme Court and Court of Appeals jurisprudence compels us to conclude that the 2018 amendments to HG § 8-507, as applied to Hill, violate the Ex Post Facto Clause. The parties agree that when Hill received his 25-year sentence for first-degree assault in 2011, he was eligible for commitment pursuant to HG §§ 8-505 and 8-507. Because of Hill's conviction of a violent crime, his eligibility for commitment ended with the passage of the 2018 amendments. Resolution of this case requires us to consider whether the 2018 amendments created a "significant risk" of increasing the punishment attached to the crimes or, as articulated by the Demby Court, "whether the amendments impose a punishment on [Hill] that is 'more severe than the punishment assigned by law when the act to be punished occurred.'" Hill's circumstances present the quintessential ex post facto violation—his prison term has actually been prolonged by the 2018 change in law that prohibits violent offenders from being committed pursuant to HG § 8-507 until they reach parole eligibility.

47. FRANKLIN v. STATE, 470 Md. 154 (2020): Franklin was convicted of reckless endangerment. At sentencing the judge informed Franklin that the judge might be willing to give him a PBJ on a modification motion at the conclusion of the three-year period of probation. Franklin's attorney filed a timely motion for modification and asked that the motion be held sub curia until the end of Franklin's three year probationary term. After successfully completing his probationary term, no request was made for a hearing on the motion. The five-year limit that a judge has to rule on a modification motion elapsed. Franklin attempted to have his charge expunged and learned it could not be expunged. After losing his job as a result of his conviction, Franklin sought coram nobis relief arguing that counsel was ineffective for failing to request a timely hearing.

HOLDINGS: It is the attorney's responsibility to ensure that a defendant knows the sentencing court has five years from the imposition of the sentence to consider the motion. However, it is the defendant's decision whether and when to request that the sentencing judge set the motion in for a hearing. There is no per se rule that an attorney provides constitutionally deficient assistance, where the attorney fails to request (or to renew a request for) a hearing on the motion on the attorney's own initiative within the five-year period for the court to consider the motion. Rather, each such case must be analyzed based on its particular facts.

--A "no action" notation on a motion to be held in abeyance does not constitute a denial of the request for a hearing.

--To the extent *Moultrie* creates a bright line rule that an attorney must, on his or her own initiative, make or renew a request for a hearing on a motion for modification of sentence being held under advisement, it is overruled.

--The court recommended that sentencing courts add the five-year consideration period regarding a motion for sentence modification to the post-sentencing rights that they (and/or defense counsel) advise defendants about on the record

--If the attorney is privately retained and the defendant signed an engagement letter clearly stating that the attorney will have no obligation to represent or advise the defendant with respect to any post-sentencing matters after filing a motion for modification of sentence, then it may not be constitutionally deficient performance for an attorney to take no further action of any kind with respect to a Rule 4-345(e) motion that has been held in abeyance.

MISCELLANEOUS:

48. WOMACK v. STATE, 244 Md. App. 443 (2020): This case involves the failure of the trial court to strictly comply with Maryland Rule 4-215 regarding the discharge of counsel.

HOLDING: The Court of Special Appeals found that the circuit court did not strictly comply with Rule 4-215 prior to appellant's discharge of counsel, and despite the court's attempt to fix the initial failure to comply with the Rule, subsequent advisements did not "cure" the initial error. Although advisements under Rule 4-215(a) may be given in a piecemeal fashion, compliance with the Rule must be established before a valid waiver. This does not mean that, if a trial court fails to strictly comply with Rule 4-215, the error can never be cured. Rule 4-215 permits a court to "cure" an initial failure to comply with Rule 4-215 with subsequent advice to the defendant after the defendant has discharged counsel, but only if the court gives the defendant a chance to reconsider the discharge of counsel after the full advice is given.

CASES PENDING IN THE COURT OF APPEALS

State of Maryland v. Anthony George Ablonczy - Case No. 28, September Term, 2020
Issue – Criminal Procedure – Should accepting a jury as ultimately empaneled waive any prior objection to the trial court's refusal to propound voir dire questions?

State of Maryland v. Roberto Carlos Arias-Rivera - Case No. 31, September Term, 2020
Issues – Criminal Procedure – 1) Is a 2009 sentence for sexual crimes against an eleven-year-old child that was imposed without a term of extended parole supervision legal? 2) If it is illegal, on resentencing, may the circuit court impose a mandatory term of extended parole supervision up to the remainder of Respondent's life without it resulting in an illegal increase in Respondent's sentence?

State of Maryland v. Valerie Rovin - Case No. 29, September Term, 2020
Issues – Courts & Judicial Proceedings – 1) Do common law absolute judicial and prosecutorial immunity and statutory immunity under the Maryland Tort Claims Act bar tort claims against prosecutors and law enforcement officers arising from an arrest based on the State's Attorney's and District Court Commissioner's legal determination of probable cause? 2) Can law enforcement officers be civilly liable in tort when they sought an arrest warrant on the advice of the State's Attorney and made an arrest with a warrant based on a judicial officer's determination that the arrestee's alleged conduct amounted to a crime, when that determination was later held to be legally erroneous?

Effrem Antoine Conner v. State of Maryland - Case No. 26, September Term, 2020
Issue – Code of Judicial Conduct – Given that Drug Court is a non-adversarial, team-based treatment program in which participants are expected to openly discuss relapses and other setbacks in their recovery, should a judge who supervised a defendant in Drug Court generally recuse from the defendant's subsequent violation of probation proceeding when the conduct that allegedly violated the conditions of probation was the subject of Drug Court hearings, meetings, and correspondence?

Jamel Clark v. State of Maryland - Case No. 23, September Term, 2020
Issue – Criminal Law – When a defendant, who was found in possession of a single firearm, is convicted of both possession of an assault weapon, in violation of Md. Code §4-303(a)(2) of the Criminal Law Article ("Crim. Law"), and possession of a firearm by a person previously convicted of a felony involving a controlled dangerous substance, in violation of Crim. Law §5-622(b), must the convictions and sentences be merged?

Ronnie Hunt v. State of Maryland - Case No. 21, September Term, 2020
Issues – Criminal Procedure – 1) Did CSA err in holding that the fact that Joseph Kopera's false credentials were discovered over a decade later by another attorney in a different case was enough for the trial court to find that Petitioner's trial counsel failed to act with due

diligence, as is required to prevail under Md. Code §8-301(a) of the Criminal Procedure Article? 2) Does CSA's holding in this case conflict with this Court's "considered dicta" in State v. Hunt, 443 Md. 238 (2015)?

James Matthew Leidig v. State of Maryland - Case No. 19, September Term, 2020
Issues – Constitutional Law – Did the trial court violate Petitioner's right to confrontation under the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights when it admitted DNA and serological evidence through a witness who did not perform the analysis of the crime scene evidence?

State of Maryland v. Bobby Jamar Johnson - Case No. 16, September Term, 2020
Issues – Criminal Law – 1) Did CSA wrongly conclude that a jury has the power to nullify the verdict and, therefore, the trial court abused its discretion when, in response to a jury note, it told the jury that it could not resort to jury nullification? 2) If the trial court abused its discretion when it responded to the jury's inquiries concerning jury nullification, did CSA wrongly conclude that this error prejudiced Respondent?

State of Maryland v. Dalik Daniel Oxely - Case No. 17, September Term, 2020
Issues – Criminal Law – 1) Did CSA wrongly conclude that a jury has the power to nullify the verdict and, therefore, the trial court abused its discretion when, in response to a jury note, it told the jury that it could not resort to jury nullification? 2) If the trial court abused its discretion when it responded to the jury's inquiries concerning jury nullification, did CSA wrongly conclude that this error prejudiced Respondent?

State of Maryland v. Karon Sayles - Case No. 15, September Term, 2020
Issues – Criminal Law – 1) Did CSA wrongly conclude that a jury has the power to nullify the verdict and, therefore, the trial court abused its discretion when, in response to a jury note, it told the jury that it could not resort to jury nullification? 2) If the trial court abused its discretion when it responded to the jury's inquiries concerning jury nullification, did CSA wrongly conclude that this error prejudiced Respondent?

State of Maryland v. Karen Cambpell McGagh - Case No. 12, September Term, 2020
Issues – Criminal Law – 1) Did CSA err when, citing First Amendment and policy-based concerns, it applied a non-deferential, de novo standard of review to the legal sufficiency of the evidence to sustain Respondent's convictions for perjury and false statement? 2) Did CSA err in finding the evidence insufficient to show willful and knowing falsity, and in finding that one witness' testimony corroborated by surveillance video was insufficient to satisfy the "two-witness rule" for perjury? 3) Was the evidence legally insufficient to support Respondent's convictions for perjury and/or false statement because the evidence failed to show that the statements were material?

State of Maryland v. Nathan Joseph Johnson - Case No. 13, September Term, 2020
Issue – Criminal Law – Did CSA err in denying Petitioner's motion to reconsider because the trial court is entitled to reconfigure the sentencing package to account for the reversal of Respondent's involuntary manslaughter conviction regardless of the reason for reversal?

Dale K. Byrd v. State of Maryland - Case No. 4, September Term, 2020
Issues – Criminal Law – 1) Did CSA err in holding that Petitioner's guilty pleas were valid even though the State did not disclose material impeachment evidence about key police witnesses (including evidence of lying in federal court and falsifying a warrant)? 2) Did the non-disclosure of the evidence violate the State's constitutional discovery obligation under *Brady v. Maryland*, 343 U.S. 83 (1963), and its progeny? 3) Did the non-disclosure of the evidence constitute a misrepresentation by the State rendering the pleas invalid under *Brady v. United States*, 397 U.S. 742 (1972), and its progeny?

Lawrence Ervin Montague v. State of Maryland - Case No. 75, September Term, 2019
Issue – Criminal Law – Is artistic expression, in the form of rap lyrics, that does not have a nexus to the alleged crime relevant as substantive evidence of guilt?

State of Maryland v. Kennard Carter - Case No. 74, September Term, 2019
Issues – Criminal Law – 1) Does the Maryland Transit Administration's ("MTA") practice of fare inspection on the Light Rail comply with the Fourth Amendment? 2) If fare inspection does not comply with the Fourth Amendment, did the discovery of an open warrant for Respondent's arrest nevertheless attenuate the violation under *Utah v. Strieff*, 136 S.Ct. 2056 (2016), where any unconstitutionality of the MTA's fare inspection practice was not previously established?

State of Maryland v. Latoya Bonte Elzey - Case No. 3, September Term, 2020
Issue – Criminal Law – Was CSA wrong in holding that a jury may not be instructed to find that the victim abused the defendant and the defendant suffers from Battered Spouse Syndrome before considering expert testimony on the syndrome?

Devon Jordan Taylor v. State of Maryland - Case No. 2, September Term, 2020
Issues – Criminal Law – 1) Where the only disputed issue at trial was identity, and the only evidence of identity was the victim's identification of Petitioner, did CSA misapply the harmless error test in holding that an erroneously-given "anti-CSI effect" jury instruction was harmless beyond a reasonable doubt because the testimony of the victim is legally sufficient to sustain the convictions? 2) If preserved, should review of the trial court's scientific evidence instruction be based on law existing at the time of the trial in 2008 and not based on this Court's decisions in Atkins v. State, 421 Md. 434 (2011), and Stabb v. State, 423 Md. 454 (2011)? If so, did the trial court act within its discretion when it gave the scientific evidence instruction when the instruction was proper under then existing law,

i.e., Evans v. State, 174 Md.App. 549 (2007)? 3) When Petitioner took exception to the scientific evidence instruction but did not state any particular grounds for the objection, did Petitioner fail to preserve for appellate review the question of the claimed error of the trial court's instruction?

Eric Wise v. State of Maryland - Case No. 73, September Term, 2019
Issues – Criminal Law – 1) Did CSA err in affirming the admission of a statement by a witness with memory loss as a prior inconsistent statement, in conflict with *Corbett v. State*, 130 Md.App. 408, cert. denied, 359 Md. 31 (2000)? 2) Did CSA err in expanding the circumstances under which hearsay is admissible under Rule 5-802.1(a) to include statements containing a "material" inconsistency with the witness's testimony?

BROWN, BOTTINI & WILSON v. STATE, Pending in the COA, No. 30, Sept. Term 2018. Certified Questions from CSA:

Does the authority granted to the courts by CR 5-609.1 to modify mandatory minimum sentences for certain drug-related offenses extend to cases in which the sentences were imposed pursuant to a binding plea agreement and the state does not consent to a modification?

Does the authority under this statute extend to cases in which the sentences were imposed pursuant to a binding plea agreement where the defendant waived his right to seek a modification of sentence?

When does the CSA have jurisdiction to consider an appeal from an order denying a CR 5-609.1 motion to modify sentence?

SELECT UNITED STATES SUPREME COURT CASES FROM 2020

1. ***KANSAS v. GLOVER***, ***140 S.Ct. 1183 (2020) (Opinion by Thomas; Kagan and Ginsburg concur):*** A police officer ran a license plate check on a pickup truck driven by Glover and discovered that the truck belonged to Glover and that Glover's driver's license had been revoked. The officer pulled the truck over, assuming the driver was Glover. Glover moved to suppress the evidence from the stop arguing that the officer lacked reasonable suspicion to believe he was the driver.

HOLDING: When a police officer lacks information negating an inference that a person driving is the car's owner, an investigative traffic stop made after running the license plate and learning that the registered owner's driver's license has been revoked provides reasonable suspicion to conduct a stop. Here, the commonsense inference that Glover, the registered owner, was driving the car is reasonable. That inference is not made unreasonable merely because a car's driver is not always its registered owner. The scope of this holding is narrow: the presence of additional facts might dispel reasonable suspicion, buy here, the officer possessed no information sufficient to rebut the reasonable inference that Glover was driving his own truck.

2. ***RAMOS v. LOUISIANA, 140 S.Ct. 1390 (2020) (Opinion by Gorsuch):*** In all states except Louisiana and Oregon, a conviction requires a unanimous verdict. Ramos was convicted in a Louisiana court by a 10 to 2 verdict and was sentenced to life without parole.

HOLDING: The Sixth Amendment right to a jury trial, as incorporated to the States through the Fourteenth Amendment, requires a unanimous verdict in order to convict a defendant of a serious crime.

PENDING ARGUMENT

3. JONES v. MISSISSIPPI: Docket No. 18-1259: Whether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.

4. LANGE v. CALIFORNIA: Docket No.20-18 ; Absent "consent" or "exigent circumstances," a police officer's "entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant." Steagald v. United States, 451 U.S. 204, 211 (1981). The question presented is: Does pursuit of a person who a police officer has probable cause to believe has committed a misdemeanor categorically qualify as an exigent circumstance sufficient to allow the officer to enter a home without a warrant?