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Recent Developments: Simpler v. State: Police May Not Frisk a Suspect as a Matter of Routine Caution, There Must Be a Reasonable Suspicion That the Suspect Is Armed and Dangerous

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only after a verdict was returned that the trial court "exercising its perceived power to engage in judicial hindsight, stated that it should never have permitted the case to continue and *sua sponte* embarked on the sanctions phase of the trial." *Id.* at 478, 568 A.2d at 863.

Although the court conceded that justified sanctions could be imposed for conduct during the trial, such as dilatory tactics or abusive conduct, no such allegations were ever made. *Id.* at 479, 568 A.2d at 864. Accordingly, the court held that because the evidence was sufficiently debatable to deny motions throughout the trial, it was sufficient to justify Gerst in bringing and continuing her case. *Id.* Thus, the court of special appeals concluded that the trial court's decision was clearly erroneous. *Id.* at 479-80, 568 A.2d at 864.

In so ruling, the Court of Special Appeals of Maryland once again clearly discouraged the excessive use of Rule 1-341 sanctions. Such use can only impose a chilling effect on a plaintiff's right to court access, while providing an uncertain environment for attorneys to act. As the court opined, Rule 1-341 should only be used in the most extreme of instances when a claim is clearly meritless and intended to remedy only intentional misconduct.

—Vasiliki Papaioannou

Pavelic & LeFlore v. Marvel Entertainment Group: **SANCTIONS FOR VIOLATION OF FEDERAL RULE OF CIVIL PROCEDURE 11 ONLY APPLY TO THE INDIVIDUAL SIGNER**

In *Pavelic & LeFlore v. Marvel Entertainment Group*, 110 S. Ct. 456 (1989), the United States Supreme Court held that sanctions provided by Federal Rule of Civil Procedure 11 ("Rule 11") only applied to the attorney who signed a paper in violation of Rule 11, even if the attorney explicitly signed on behalf of his firm.

On behalf of Northern J. Calloway, attorney Ray L. LeFlore brought a willful copyright infringment claim in the United States District Court for the Southern District of New York against Marvel Entertainment Group ("Marvel"). In an amended complaint, Calloway alleged that Marvel forged his signature. After initiation of the claim, LeFlore formed the law partnership of Pavelic & LeFlore with Radovan Pavelic. Several papers relying on the allegation of forgery were signed:

"Pavelic & LeFlore
By /s/ Ray L. LeFlore
(A Member of the Firm)
Attorneys for Plaintiff."

Id. at 457. The district court found that these papers were in violation of Rule 11 and imposed a sanction in the amount of $100,000 against Pavelic & LeFlore. Upon a motion by Radovan Pavelic, the district court shifted half of the sanction from the firm to LeFlore, because the firm did not exist during the major part of the litigation. However, the district court rejected Pavelic's contention that Rule 11 only empowered the court to impose the sanction upon LeFlore and not upon the firm. The Court of Appeals for the Second Circuit affirmed the sanction. The Second Circuit's decision directly conflicted with a Fifth Circuit holding that authorized Rule 11 sanctions against only the individual signers. *Id.* at 458 citing *Robinson v. National Cash Register Co.*, 808 F.2d 1119, 1128-30 (1987)).

Pavelic appealed to the United States Supreme Court and was granted certiorari. In an opinion by Justice Scalia, the Court agreed with the Fifth Circuit and reversed the Second Circuit. In interpreting Rule 11, the Court relied on the plain meaning of the rule. *Pavelic & LeFlore,* 110 S. Ct. at 458 (citing *Walker v. Armco Steel Corp.*, 446 U.S. 740, 750 n.9 (1980)).

Where a pleading, motion, or other paper violates Rule 11, the rule requires the trial court to "impose upon the person who signed it . . . an appropriate sanction." *Id.* The Court noted that if viewed in isolation, the phrase "person who signed" is ambiguous. *Id.* However, upon reading the phrase in the entire context of Rule 11, the Court reasoned that since Rule 11 begins "with a requirement of individual signature, and then proceed[s] to discuss the import and consequences of signature, . . . references to the signature in the later portions must reasonably be thought to connote the individual signer mentioned at the outset." *Id.*

In rejecting Marvel's contention that the legal principles of partnership and agency should apply, the Court emphasized that Rule 11 established a duty that an attorney could not delegate. *Id.* at 459. The Court also held that although LeFlore explicitly signed on behalf of his firm, the sanction only applied to LeFlore individually. The Court reasoned that a signature on behalf of a firm could not comply with the first sentence of Rule 11, since it requires papers to be signed "by at least one attorney of record in the attorney's individual name." *Id.* The Court noted that in the past, the preferred practice for an attorney was to sign on his own behalf with the name of his firm beneath. *Id.* (citing Gavit, *The New Federal Rules and State Procedure,* 25 A.B.A.J. 367, 371 (1939)).

Although a law firm may have more funds than an individual signer, the Court noted that the purpose of the sanction was punishment rather than reimbursement. The Court also noted that the function "of Rule 11 as a whole is to bring home to the individual signer his personal, nondelegable responsibility." *Id.* at 460. Moreover, the Supreme Court determined that holding an individual signer personally liable provides a greater economic deterrent. *Id.*

In a lone dissent, Justice Marshall argued that Rule 11 sanctions can apply to a law firm. At first, the rule uses the term "signer," but later in its discussion of sanctions, the rule uses the phrase "the person who signed." *Id.* at 461 (Marshall, J., dissenting). The dissent noted that in the context of the Federal Rules of Civil Procedure, one could reasonably assume that the drafters meant the term "person" to include partnerships and professional corporations. *Id.* (Marshall, J., dissenting) (citing 5 U.S.C. § 551 (2); N.Y. Partnership Law § 2 (McKinney 1988)). Recognizing that the sanction should be tailored to each situation, Justice Marshall opined that Rule 11 allowed the trial judge to decide whether sanctions would more properly be applied to the attorney or his law firm. *Id.* at 462 (Marshall, J., dissenting). Justice Marshall reasoned that individual accountability may be heightened if an attorney's negligence also subjected his law firm to liability. *Id.* at 461-62 (Marshall, J., dissenting).

In holding that Rule 11 sanctions apply only to the attorney who signs a paper in violation of the rule, the United States Supreme Court precluded the application of Rule 11 sanctions to law firms. As a result, parties may find it more difficult to collect reimbursement for expenses caused by Rule 11 violations, but personal liability may provide a greater incentive for attorneys to comply with Rule 11.

—Richard E. Guida

***Simpler v. State*: POLICE MAY NOT FRISK A SUSPECT AS A MATTER OF ROUTINE CAUTION, THERE MUST BE A REASONABLE SUSPICION THAT THE SUSPECT IS ARMED AND DANGEROUS**

In *Simpler v. State,* 318 Md. 311, 568 A.2d 22 (1990) the Court of Appeals of Maryland held the seizure of paraphernalia with marijuana residue was unconstitutional where the suspect was frisked without reasonable suspicion that he was armed and dangerous.

On the evening of May 8, 1987, Sergeant Wassmer (Wassmer), of the Cecil County Sheriff's Department, and a young explorer scout were on routine

patrol. Wassmer observed black smoke coming from a wooded area behind the Winding Brook Housing Project and proceeded to investigate. Wassmer and his companion came upon a group of three males and a female standing around an open fire drinking beer. The individuals appeared to be underage, therefore Wassmer requested identification from each of them. In addition, Wassmer frisked the three males and with consent searched the female's purse. The identification of one of the male suspects, Simpler, disclosed he was twenty-one years of age. Wassmer's frisk of Simpler revealed a marijuana pipe in his rear pocket. Wassmer believed the pipe contained marijuana residue. The pipe was seized and Simpler was arrested. The three others, all juveniles, received a citation for possession of alcoholic beverages. See Md. Ann. Code art. 27, Section 400A (1957, 1989 Cum. Supp.).

Wassmer had contact with Simpler, on a prior unrelated occassion, where Wassmer was aware Simpler had a knife used for the cutting of carpet, in his possession.

Simpler's pretrial motion to suppress the evidence seized by the frisk was denied. Judge Rasin, Jr., presiding over the suppression hearing stated: "[Wassmer] made an investigation. He observed what appeared to be violation of the law . . . . And it's normal for the officer to pat down those who were there . . . ." *Simpler,* 318 Md. at 315, 568 A.2d at 23-24. At trial, Wassmer testified that the individuals were frisked "as a matter of routine caution" and Simpler was convicted of possession of marijuana. The court of special appeals affirmed Simpler's conviction. The court agreed with the State's position that Wassmer's knowledge of Simpler's having previously carried a carpenter's knife supplied the additional circumstances to justify the frisk. The court of appeals granted certiorari and reversed.

The court of appeals began its analysis by noting that the sequence of events in the record was unclear as to whether Simpler was frisked before or after Wassmer was aware of his age. However, if Simpler was frisked before Wassmer learned of his age, then Wassmer had reasonable suspicion to believe Simpler was under the age of twenty-one and thus his possession of alcohol was in violation of art. 27, section 400A. On the other hand, if Simpler was frisked after Wassmer was aware of his age, Wassmer had reasonable suspicion to believe Simpler had obtained the beer for the juveniles, in violation of art. 27, section 401. *Id.* at 315, 568 A.2d at 24.

A violation under either of these provisions authorizes the arresting officer to issue a citation. See Md. Ann. Code art. 27, section 403A. Both violations are merely civil offenses, which at the time of Simpler's violation, were subject to a maximum fine for first offenders of $100.00. *Id.* at 316, 568 A.2d at 24.

Although Wassmer had reasonable suspicion that Simpler violated either section 400A or section 401, the violations authorized Wassmer to stop Simpler, obtain indentification, and issue a citation. The court of appeals found Simpler's violation analogous to a minor traffic violation, in that it authorized the arresting officer to issue a citation. Moreover, like a minor traffic violation, neither violations were custodial arrests, and therefore the frisk was not justifiable as having been made incident to the arrest. *Id.* at 317, 568 A.2d at 25.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held:

> where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Simpler, 318 Md. at 317-18, 568 A.2d at 25, (quoting *Terry,* 392 U.S. at 30).

The court of special appeals had previously acknowledged that "[a]lthough a reasonable 'stop' is a necessary predecessor to a reasonable 'frisk' a reasonable 'frisk' does not inevitably follow in the wake of every reasonable 'stop.'" *Simpler,* 318 Md. at 319, 568 A.2d at 25-26, (quoting *Gibbs v. State,* 18 Md. App. 230, 238-39, 306 A.2d 587, 592 (1973)). In a similar situation, the Supreme Court of Colorado held a permissible stop for underage drinking did not in and of itself justify the subsequent frisk. *Simpler,* 318 Md. at 319-20, 568 A.2d at 26 (citing *People v. Sherman,* 197 Colo. 442, 593 P.2d 971 (1979)).

In *Simpler,* the court of appeals further stated that *Terry* has never been recognized to authorize a frisk on the occasion of every authorized stop. In minor traffic violations, where the stops were for the purpose of issuing citations, other circumstances must be present in order to constitutionally justify the frisk, such as an observation of an object which might be a weapon or a bulge in the suspect's clothing. *Simpler,* 318 Md. at 320, 568 A.2d at 26-27 (citing *Michigan v. Long,* 463 U.S. 1032 (1983); *Pennsylvania v. Mimms,* 434 U.S. 106 (1977)).

The court of appeals recognized there is likely some risk to a police officer in every confrontation, however, the risk must have risen to a higher level of dangerousness than was present in the case. Simpler and the other juveniles were standing in Wassmer's full view and the frisk was not conducted because Wassmer feared safety but as a "matter of routine caution." Simpler's offense, warranting only a citation, did not in and of itself justify the frisk.

Awareness on the part of the police officer that the suspect had previously been armed may, in certain instances, justify the frisk. *Simpler* 318 Md. at 318-19, 568 A.2d at 25 (citing La Fave, Search and Seizure: A Treatise of the Fourth Amendment § 9.4(a) at 505-06 (1987)). But in *Simpler,* the court of appeals stated: "Wassmer's description of the earlier occasion . . . is devoid of any aspect of dangerousness." The court of appeals explained that the carpet knife was a lawfully carried knife, similar to a pocket knife. Wassmer's knowledge that Simpler had carried a carpet knife on a prior occasion was not reasonable suspicion that Simpler was armed and dangerous at the time of the frisk. The State failed to sustain its burden of showing that Wassmer's knowledge of Simpler's prior possession of the carpet knife created sufficient additional circumstances to justify the frisk. *Simpler,* 318 Md. at 321, 568 A.2d at 27.

Thus, in *Simpler v. State,* the court of appeals held that when a policeman stops a suspect for a minor offense, the officer may not, as a "matter of routine caution," frisk the individual. The burden is on the State to demonstrate that the frisk was justified due to additional circumstances which created reasonable suspicion that the suspect was armed and dangerous at the time of the frisk.

—Angela Vallario