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RECENT DEVELOPMENT

CHRISTIAN V. STATE: THE MITIGATION DEFENSES OF HOT-BLOODED RESPONSE TO ADEQUATE PROVOCATION AND IMPERFECT SELF-DEFENSE CAN APPLY TO MITIGATE FIRST-DEGREE ASSAULT CHARGES.

By: Jason Heller

In a matter of first impression, the Court of Appeals of Maryland held that, under certain circumstances, the mitigation defenses of hot-blooded response to legally adequate provocation and imperfect self-defense may apply to reduce first-degree assault to second-degree assault. *Christian v. State*, 405 Md. 306, 951 A.2d 832 (2008). More specifically, the court stated that these mitigation defenses are applicable to first-degree assault charges where such assaults would supply the underlying malice for a felony-murder charge in the event the victim dies. *Christian*, 405 Md. at 332-33, 951 A.2d at 847-48.

In the first of two consolidated cases, a dispute arose between Daniel Christian (“Christian”) and Raynard Moulden (“Moulden”) in a mall parking lot. Following a verbal altercation between Christian and Moulden, a physical struggle ensued, and Christian stabbed Moulden, allegedly in self-defense.

Before the Circuit Court for Baltimore County, Christian requested a jury instruction on imperfect self-defense to mitigate the first-degree assault charge. The court denied the request, and the jury convicted Christian of first-degree assault and related charges. Christian appealed to the Court of Special Appeals of Maryland, which held that the circuit court did not commit reversible error in refusing the instruction because an imperfect self-defense instruction is only applicable in homicide cases. The Court of Appeals of Maryland granted certiorari to consider this case.

In the second consolidated case, Kalilah Romika Stevenson (“Stevenson”) drove to her estranged husband’s home to retrieve her daughter’s book bag. While in the home, Stevenson and her mother-in-law began arguing. Her husband, Antonio Corbin (“Corbin”), intervened in an attempt to break up the dispute and sought to forcibly

remove Stevenson from his home. Stevenson stabbed Corbin twice in the forearm with a butcher knife, allegedly in response to Corbin's use of force.

Stevenson, on trial before the Circuit Court for Wicomico County, requested a jury instruction on the mitigation defense of hot-blooded response to adequate provocation, which the court denied. The jury found Stevenson guilty of first-degree assault and related charges. Stevenson appealed to the Court of Special Appeals of Maryland, which affirmed, holding that the mitigation defense of hot-blooded response to adequate provocation was inapplicable in Stevenson's case because first-degree assault was not a shadow offense of murder. The Court of Appeals of Maryland granted certiorari to consider this case.

In front of the Court of Appeals of Maryland, Christian and Stevenson argued that the intent to cause serious physical harm supplies the requisite malice to consider first-degree assault a shadow form of murder because it shares the malice associated with other shadow offenses such as attempted murder, felony-murder, and the inchoate forms of those crimes. *Id.* at 313, 951 A.2d at 836. Further, Christian and Stevenson contended that first-degree assault is an underlying crime for felony-murder, and thus mitigation defenses should apply. *Id.* at 314, 951 A.2d at 836. Conversely, the State asserted that mitigation defenses to negate malice are unavailable because the intent and malice requirements for first-degree assault are disparate from murder and its shadow forms. *Id.* at 314-15, 951 A.2d at 837. The court rejected the State's argument, effectively altering Maryland's traditional common law. *Id.* at 332-33, 951 A.2d at 848.

Historically, the Court of Appeals of Maryland has held that mitigation defenses of hot-blooded response to adequate provocation and imperfect self-defense only apply to charges of criminal homicide and its shadow forms. *Id.* at 322, 951 A.2d at 841. Before the General Assembly enacted the current assault statutes in 1996, the court expanded the availability of the mitigation defenses to charges of assault with the intent to murder. *Id.* at 325, 951 A.2d at 843. The difference between the mitigation defense for murder and an assault with intent to murder charge is that murder would be reduced to manslaughter, whereas an assault with intent to murder would be reduced to simple assault. *Id.* at 326, 951 A.2d at 844.

To determine the applicability of the mitigation defenses to first-degree assault, the Court of Appeals of Maryland examined the relationship between mitigation and malice. *Id.* at 329, 951 A.2d at 846. The court explained that the requisite malice for a murder charge is different than the malice required for other crimes. *Id.* (citing *Richmond v. State*, 330 Md. 223, 231, 623 A.2d 630, 634 (1993)). The malice element of murder encompasses the requisite state of mind, as well as an absence of mitigation. *Christian*, 405 Md. at 329, 951 A.2d at 846 (citing *Richmond*,

330 Md. at 231, 623 A.2d at 634). However, criminal charges other than murder do not require an absence of mitigating circumstances to satisfy the malice element. *Christian*, 405 Md. at 329, 951 A.2d at 846 (citing *Richmond*, 330 Md. at 231, 623 A.2d at 634). The court noted that the use of mitigation defenses is specific only to murder charges and its shadow forms. *Christian*, 405 Md. at 329-30, 951 A.2d at 846 (citing *Richmond*, 330 Md. at 231, 623 A.2d at 634).

The Court of Appeals of Maryland further stated that the purpose of the felony-murder doctrine is to deter dangerous acts by charging any homicide resulting from the acts as murder, regardless of the offender's intent to kill. *Christian*, 405 Md. at 330, 951 A.2d at 846 (citing *Roary v. State*, 385 Md. 217, 226-27, 867 A.2d 1095, 1100 (2005)). The court explained that first-degree assault is within the doctrine's purpose, therefore sufficiently serving as an underlying crime to felony-murder. *Christian*, 405 Md. at 330, 951 A.2d at 846 (citing *Roary*, 385 Md. at 226-27, 867 A.2d at 1100).

In the present case, the Court of Appeals of Maryland stated that a felony-murder charge is dependent on the malice of the underlying crime being applied to the resulting homicide. *Christian*, 405 Md. at 332, 951 A.2d at 847. In light of its prior holdings, the court reasoned that first-degree assault can possess the requisite malice to charge an offender with felony-murder if the victim dies. *Christian*, 405 Md. at 332, 951 A.2d at 847. Therefore, the court found that under certain circumstances, first-degree assault constitutes a shadow offense of homicide. *Id.* The court thus held that the mitigation defenses of hot-blooded response to adequate provocation and imperfect self-defense are applicable to mitigate first-degree assault charges where the assault would create the requisite malice for felony-murder. *Id.* at 332-33, 951 A.2d at 847-48. The court noted that the availability of mitigation defenses still does not extend to crimes other than murder and its shadow forms; but now, under certain circumstances, first-degree assault is a shadow form of murder. *Id.*

By holding that mitigation defenses can be applicable to reduce first-degree assault charges, the Court of Appeals of Maryland strives to amend the incongruity that enables a perpetrator whose victim dies to be incarcerated for less time than an offender whose victim lives. The court's decision may encourage offenders, who are unaware that mitigation defenses are still limited to murder and its shadow forms, to invoke mitigation defenses for lesser crimes, resulting in delayed proceedings. However, this potential consequence is incomparable to the benefit of mending an unjust sentencing incongruity. The decision in *Christian* will encourage courts to be more liberal with the availability of mitigation defenses for assault charges. Further, as this is an issue of first impression in Maryland, it is plausible to predict that the availability of mitigation defenses for assault related charges, under certain circumstances, will evolve to include additional variations of assault.