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Recent Developments

MARYLAND DECISIONS AND STATUTES

Holtman v. State¹

A Church Is Not A Dwelling House

The defendant broke into churches in the daytime, ransacked one of them looking for money, left, and was soon apprehended. He was charged and convicted, *inter alia*, of daytime housebreaking (Statutory Burglary).

The court of special appeals reversed the conviction citing *Sizemore v. State*, 10 Md. App. 682, 689, 272 A. 2d 824, 827 (1971):

One who breaks a church in the day or night with intent to commit murder or felony therein, or with intent to steal goods of the value of \$100.00 or more is guilty of the storehouse breaking proscribed by Code, Art. 27, § 32 But a person who breaks a church is not guilty of the statutory burglary proscribed by Art. 27, § 30(a) or the crime proscribed by § 30(b), because a necessary element of those offenses is that it be a dwelling house that be broken and a church is not a dwelling house.

At common law it was burglary to break and enter a church with felonious intent.² As recently as 1964, the Court of Appeals of Maryland held that breaking and entering a church at night to remove a safe therefrom constituted common-law burglary.³

Brooks v. Ford Motor Credit Co.⁴

Appeal While Third Party Action Pending

The defendant purchased an automobile from a dealer who assigned the contract to a credit company. When the defendant stopped making payments, the credit company sued on the contract and the defendant impleaded the dealer. The plaintiff credit company obtained a

¹ 12 Md. App. 168, 278 A. 2d 82 (1971).

² CLARK AND MARSHALL, CRIMES, §13.01 (7th ed.).

³ McGraw v. State, 234 Md. 273, 199 A. 2d 229 (1964).

⁴ 261 Md 278, 274 A. 2d 345 (1971).

summary judgment from which defendant appealed.

In this case, the court of appeals noted the interesting question:

May a defendant in an action in which he is also a third-party plaintiff, appeal from a judgment entered against him while the third-party claim is still pending?⁵

The court stated:

We have consistently held that appeals will lie only from final judgments which settle the rights of the parties or conclude the cause.⁶

When the defendant impleaded the dealer, he could not separate the original claim from the third-party claim for purposes of appeal without complying with the provisions of Maryland Rules or Procedure 605a:

Where more than one claim for relief is presented in an action, whether as an original claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.⁷

The court concluded:

In the case before us, the trial court made no express determination that there was no just reason for delay and left open the third-party claim. The appeal must be dismissed as prematurely taken, since without a certification under Rule 605a, the judgment remained interlocutory.⁸

*Jeter v. State*⁹

Principal In Second-Degree Convicted When Principal In First-Degree Acquitted

The trial judge found the defendant, a principal in the second-degree, guilty of murder in the first degree. From this conviction and an

⁵ 261 Md. at 280, 274 A. 2d at 346.

⁶ *Id.*

⁷ 261 Md. at 281, 274 A. 2d at 346-47.

⁸ 261 Md. at 282, 274 A. 2d at 347.

⁹ 261 Md. 221, 274 A. 2d 337 (1971).

accompanying sentence of life imprisonment, the defendant appealed to the court of special appeals, which affirmed the judgment. While the appeal was pending, the defendant's co-defendant, the alleged triggerman and principal in the first degree, was acquitted of any unlawful homicide in a separate jury trial. The court of special appeals was made aware of this development but concluded it had no effect on the defendant's conviction. The court of appeals granted certiorari and concluded:

. . . the Court of Special Appeals was correct in holding that the subsequent acquittal of a principal in the first degree does not affect the trial or conviction of a principal in the second degree. We believe the Court's analysis of the applicable law, set both in *Jeter v. State*, *supra* at 582, is sound and in accordance with the almost unanimous opinion of the authorities as enunciated by the courts of other jurisdictions and the criminal law treatises.¹⁰

Melvin Jones v. State of Maryland¹¹

Due Process v. Gags and Shackles

Just before the commencement of appellant's trial, the trial judge was passing the entrance of the court-room and observed therein the appellant involved in some sort of altercation with four deputy sheriffs. The judge then ordered the deputies to shackle and gag the appellant. The appellant remained in this condition during much of the trial and was subsequently convicted of rape and assault and sentenced to fifty years imprisonment. On appeal, he contends, *inter alia*, that his appearances before the jury, shackled and gagged, denied him a fair and impartial trial.

The Maryland Court of Special Appeals reversed the conviction and remanded it back to the trial court, 11 Md. App. 686, 276 A. 2d 666 (1971), citing the holding of the Supreme Court in *Illinois v. Allen*.¹²

[W]e explicitly hold today that a defendant can lose his right to be present at trial (or, presumably, to remain unshackled and ungagged) if, after he has been warned by the judge that he will be removed (or shackled or gagged) if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom (or, presumably, unshackled and ungagged).

¹⁰ 261 Md. at 223-24, 274 A. 2d at 338.

¹¹ 11 Md. App. 686, 276 A. 2d 666 (1971).

¹² 397 U.S. 337 (1970).

Once lost, the right to be present (or be unshackled and ungagged) can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.¹³

The Maryland Court of Special Appeals went on to say:

... we think the proper procedure requires that the trial court not act overtly in mere anticipation of trouble If, after full and explicit warnings have been given, a defendant nevertheless, persists in disruptive conduct, it would then be appropriate for the trial judge, in the exercise of his discretion, to employ such *Allen* type sanctions deemed by him to be absolutely necessary for the trial to proceed in an orderly fashion.¹⁴

Under the circumstances of this case, we hold that appellant was unconstitutionally denied the "due process of law" guaranteed him by the Fourteenth Amendment.¹⁵

¹³ 11 Md. App. at 692, 276 A. 2d at 669-70.

¹⁴ 11 Md. App. at 693-94, 276 A. 2d at 670.

¹⁵ 11 Md. App. at 693, 276 A. 2d at 670.

SENATE BILL 454-PUBLIC DEFENDER¹

The Maryland Legislature created a Public Defender System and authorized its operation to begin January 1, 1972. The head of the office will be called the Public Defender, who will be appointed by the Board of Trustees, who are in turn appointed by the Governor. The Public Defender, with the approval of the Board of Trustees, will appoint a Deputy Public Defender, and one (1) District Public Defender for each court district. The Public Defender, with advice of the District Public Defenders, will also appoint Assistant District Public Defenders as authorized by the budget. All of the Defenders will be salaried and except for the Public Defender, may engage in private practice, not involving criminal law. Each District Public Defender will maintain a confidential list of private attorneys-at-law, called "Panel Attorneys," who will be available to serve as counsel to indigent persons eligible for legal representation by the Public Defender System. Maximum use of panel attorneys is emphasized and they will be compensated by the Office of the Public Defender.

Legal representation is to be provided indigent defendants in any criminal or juvenile proceeding constitutionally requiring the presence of counsel prior to presentment before a commissioner or judge, or any state criminal or juvenile proceedings involving an offense, the penalty for which involves the possibility of confinement for more than three (3) months or a fine of more than five-hundred (\$500.00) dollars. In addition, representation will be provided in proceedings under the Defective Delinquent laws, post-conviction proceedings, and any criminal offense, where in the opinion of the court, the accused may require representation by counsel. The Public Defenders Officer may also represent an indigent person in a federal court of the United States at federal expense, if the matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction in Maryland.

HOUSE BILL 298-RENT ESCROW²

Baltimore City's Rent Escrow Law underwent needed substantive changes this past legislative session. This new law gives the tenant a

¹ MD. ANN. CODE art. 27A; ch. 209, [1971] Md. Laws 485.

² Ch. 687, [1971] Md. Laws, 1467. *Repeals* § § 9-9 and 9-10 of CODE OF PUBLIC LOCAL LAWS OF BALTIMORE CITY.

little more protection and gives the court additional authority in the disposition and control of escrow funds. A tenant may now initiate action when serious defects exist. The old law could only be used by the tenant as a defense to a landlord's action in a summons in ejectment. The court can now award all moneys accumulated in escrow to the tenant if the landlord does not remedy the conditions in violation within six months. The court also has explicit authority to order payment of funds in escrow for the purpose of making repairs. The retaliatory eviction protectives have been extended to those who do not initiate rent escrow procedures but merely complain to any governmental agency.³

SENATE BILL 653-IMPLIED WARRANTY OF HABITABILITY FOR BALTIMORE CITY⁴

The new section 9-14.1 of the Code of Public Local Laws of Baltimore City, creates a warranty by landlords to rent property that is habitable, that is, free from health, safety and fire hazards. This warranty is implied in any written or oral lease agreement for rental of a dwelling intended for human habitation and cannot be waived.

Conditions in violation of the warranty include, but are not limited to vermin or rodent infestation, lack of heat, lack of running water, or lack of electricity.

The legislative intent is to protect the tenant who does not want to invoke the provisions of the Rent Escrow Law, but wants to move immediately and be assured of the return of the rental payments and deposit, as well as moving costs.

A notice to the landlord of a violation existing on the premises is a condition precedent to any action or proceeding for breach of the warranty. This notice requirement can be fulfilled either by a violation notice from the Department of Housing and Community Development or other municipal agency or by certified letter from the tenant. Damages for breach of this warranty are ordinary contract damages.

Although generally favorable to the tenant, this Bill leaves the landlord adequately protected. The warranty is effective for only Thirty (30) days after the beginning of the lease agreement. Where the tenant has in bad faith refused entry to the landlord for the purpose of correcting the conditions, the court may impose upon the tenant, the cost of the landlord's defense. Where the tenant has himself caused the conditions to exist, the court shall impose upon the tenant the cost of repair.

³ Art. 4 of the CODE OF PUBLIC LOCAL LAWS OF MD. (1969 Ed.).

⁴ Ch. 481, [1971] Md. Laws 1052.

SENATE BILL 421⁵

The Maryland Civil Commitment Law, in need of a major overhaul, received only a minor tune-up by the past legislative session. The most controversial portion of the existing law was left substantively unchanged; i.e., indefinite involuntary commitment with the certification of two physicians. However, there are significant improvements in the area of "emergency admission" and "patients' rights" as a result of repeal, amendment and re-enactment of various sections of Article 59 of the Annotated Code of Maryland. A petition for emergency admission must first be examined and the petitioner questioned by a judge to determine if probable cause exists to take the individual into custody and transfer him to a medical facility. If the petitioner is a physician or peace officer, they must do the same within twenty-four (24) hours after a person is taken into custody and so transported. The petition must be filed under oath, certifying that the petitioner has reason to believe that the potential admittee is suffering from a mental disorder and is in clear and imminent danger of causing grave and immediate personal injury to himself and others. Detention under this law is for a period of no longer than ninety-six (96) hours and the admittee must be examined within six hours after his admission to a medical facility.

To aid patients admitted pursuant to Article 59, a Mental Health Review and Information Service has been created. In addition to providing information to patients and their relatives with regard to the legal rights and status of the patient, it is an investigative arm of the court regarding a person's continued detention or release.

**HOUSE BILL 129, CONSUMER PROTECTION
IN THE UNIFORM COMMERCIAL CODE⁶**

A new Section 2-316A, added to Article 95 B of the Annotated Code of Maryland (Uniform Commercial Code), provides that language used by the seller or manufacturer of consumer goods and services to attempt to modify or include implied or expresses warranties shall be unenforceable except in the case of express warranties by a manufacturer who provides reasonable and expeditious means of performing the warranty obligations. Pursuant to this legislation, sellers of

⁵ MD. ANN. CODE art. 59, § 22, 53, 54, 54A, 55, 56 and 57; ch. 761, §1 [1971] Md. Laws 1635.

⁶ MD. ANN. CODE art. 95B §2-316A; ch. 505, [1971] Md. Laws 1131.

consumer goods can no longer disclaim, in any sales contract, the implied warranties of merchantability and fitness for purpose. Such disclaimers have previously been permitted by statute and enforced by the courts.

HOUSE BILL 790-UNSOLICITED MERCHANDISE—A GIFT⁷

The newly enacted Section 21A of Article 83 of the Annotated Code of Maryland provides that where an offer for the sale of goods or merchandise includes the unsolicited sending of any goods or merchandise, the receipt of such shall be deemed an unconditional gift thereto to the recipient. Also provided in this consumer oriented bill is a remedy for the recipient of such goods if the sender continues to bill for them.

BLOCKBUSTING AND THE SENATE

An effort was made in the Senate to cure the unethical real estate practice of blockbusting, a problem existing throughout Maryland. The most important bills failed, including Senate Bill 318, which made it unlawful to knowingly provide financial assistance to one engaged in blockbusting and Senate Bill 322, which was a model blockbusting statute that created a private cause of action for blockbusting. However, positive gains were reflected with the passage of Senate Bill 312⁸, requiring in land installment contracts, disclosure of all transfers of title and sale prices of property for six months prior to date of purchase and Senate Bill 321⁹, providing that solicitation is unlawful if a purpose of the solicitation is to change the racial composition of a neighborhood.

⁷ MD. ANN. CODE, art 83, §21A; ch. 721, [1971] Md. Laws 1550.

⁸ MD. ANN. CODE, art 21, §112(1); ch. 445, [1971], Md. Laws 985.

⁹ MD. ANN. CODE, art.56, §230B; ch. 71, [1971] Md. Laws 322.