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Recent Developments: *Matoumba v. State*: A Police Officer Is Not Required to Be Qualified as an Expert Witness to Testify in a Suppression Hearing Regarding Facts That Gave Rise to a Reasonable Suspicion Justifying a Stop and Frisk of a Suspect

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RECENT DEVELOPMENT

MATOUMBA v. STATE: A POLICE OFFICER IS NOT REQUIRED TO BE QUALIFIED AS AN EXPERT WITNESS TO TESTIFY IN A SUPPRESSION HEARING REGARDING FACTS THAT GAVE RISE TO A REASONABLE SUSPICION JUSTIFYING A STOP AND FRISK OF A SUSPECT

By: Nancy Chung

The Court of Appeals of Maryland held that a police officer is not required to be qualified as an expert witness in a suppression hearing regarding facts that gave rise to a reasonable suspicion justifying a stop and frisk of a suspect. *Matoumba v. State*, 390 Md. 544, 890 A.2d 288 (2006). In so holding, the Court of Appeals of Maryland held that a trial court has broad discretion in declining to use the Maryland Rules of Evidence when determining preliminary questions dealing with the admissibility of evidence.

Lieutenant Palmero (“Palmero”) of the Baltimore City Firearms Apprehension Strike Team and Officer Moynihan (“Moynihan”) of the Tactical Quick Response Team stopped a vehicle for speeding, in which Kobie Matoumba (“Matoumba”) was a passenger. Based on his observations of Matoumba, Moynihan ordered Matoumba out of the car and frisked him. Moynihan found a handgun in Matoumba’s back pocket.

Matoumba was charged with possession of a handgun by a person previously convicted of a crime of violence. At Matoumba’s hearing on his motion to suppress, both Moynihan and Palmero were questioned about their belief that Matoumba was armed, but neither was qualified as an expert. The Circuit Court for Baltimore City held that the officers had a reasonable articulable suspicion to frisk Matoumba and accepted the testimony of both officers. Matoumba waived his right to a jury, pled not guilty and proceeded on an agreed statement of facts. He was convicted and sentenced to a mandatory term of five years in prison without parole.

Matoumba appealed to the Court of Special Appeals of Maryland, which affirmed the ruling. The Court of Appeals of Maryland granted *certiorari* to consider “whether a police officer is required to be

qualified as an expert when testifying at a suppression hearing as to his or her basis for conducting a frisk.”

In affirming the Court of Special Appeals’ decision, the Court of Appeals of Maryland rejected Matoumba’s argument that Maryland Rule 5-701 or *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968), mandated that a police officer be qualified as an expert in order to render an opinion on his or her basis for reasonable articulable suspicion to conduct a frisk. *Id.* at *2.

Matoumba relied on the holding in *Ragland v. State*, stating Maryland Rules 5-701 and 5-702 “prohibit the admission as ‘lay opinion’ of testimony based upon specialized knowledge, skill, experience, training or education.” *Id.* (quoting *Ragland v. State*, 385 Md. 706, 725, 870 A.2d 609, 620 (2005)). The Court of Appeals of Maryland distinguished *Ragland* from the case at bar by reasoning that *Ragland* was directed to trial proceedings, and not pretrial proceedings such as suppression hearings. *Id.* at *2. The Court refused to extend *Ragland* to include suppression hearings. *Id.*

Rule 5-101(b)(12) states that the Maryland Rules of Evidence do not apply to “[a]ny other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.” *Id.* at *3 (quoting MD. R. EVID. 5-101(b)(12)). In interpreting this rule, the Court determined that the rules are inapplicable to suppression proceedings because the common-law rules of evidence were not applied to such proceedings before the adoption of the Maryland Rules of Evidence. *Id.* at *4.

Furthermore, the Court relied on Rule 5-101(c)(1) which grants the court discretion to decline to strictly apply the Rules of Evidence pursuant to Rule 5-104(a). *Id.* at *5. Rule 5-105(a) of the Maryland Rules of Evidence provides that “[p]reliminary questions concerning the qualification of a person to be a witness ... shall be determined by the court.” *Id.* at *3 (quoting MD. R. EVID. 5-105(a)). Therefore, the Court concluded that because suppression hearings involve determining preliminary questions concerning the admissibility of evidence, the trial court has broad discretion to decline to strictly apply the Rules of Evidence. *Id.* at *4.

The Court rejected Matoumba’s argument that the issue here dealt with the competency of a witness, which would mandate the application of the Rules of Evidence in suppression hearings. *Id.* at *5. The Court determined that Matoumba was mistaken as to the meaning of “competency” as used in Rules 5-101 and 5-104. *Id.* The Court

reasoned that the Rules refer to the traditional notion of competency, meaning “that the witness has sufficient mental capacity to understand the nature and obligation of an oath and is possessed of sufficient mind and memory to observe, recollect, and narrate the things he or she has seen or heard.” *Id.* The “competency” of an expert witness to testify and the witness’ possession of knowledge sufficient to allow him or her to testify on a specific matter were not contemplated in the Rules. *Id.*

The Court of Appeals of Maryland held that based on this analysis, the police officers were not required to be qualified as expert witnesses before testifying at a suppression hearing as to the reasons for Matoumba’s frisk. *Id.* In addition, the Court held that the trial court did not abuse its discretion in refusing to strictly apply the Rules of Evidence. *Id.*

In so holding, the Court of Appeals of Maryland granted trial courts broad discretion to decline to strictly apply the Rules of Evidence in determining preliminary questions concerning the admissibility of evidence in a suppression hearing. This ruling may create a problem to judicial efficiency, for the same issues regarding admissibility of evidence may reoccur at the actual trial in which the Rules of Evidence will have to be strictly applied. Nonetheless, the Court was adhering to the Rules of Evidence in its ruling. The Rules of Evidence may have to be reexamined to require the application of the rules to preliminary questions regarding the admissibility of evidence to prevent the problem. Moreover, the rules should define “competency” so that lay persons like Matoumba will not be mistaken as to its meaning. Perhaps, the better word to describe what the rule meant by “competency” is “capacity.”