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Recent Development: Hailes v. State: The State May Appeal a Trial Court's Ruling Excluding a Dying Declaration; The Length of Time Between a Declarant's Statement and Death is Irrelevant in a Dying Declaration Analysis; The Confrontation Clause is Inapplicable to Dying Declarations

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RECENT DEVELOPMENT

HAILES V. STATE: THE STATE MAY APPEAL A TRIAL COURT’S RULING EXCLUDING A DYING DECLARATION; THE LENGTH OF TIME BETWEEN A DECLARANT’S STATEMENT AND DEATH IS IRRELEVANT IN A DYING DECLARATION ANALYSIS; THE CONFRONTATION CLAUSE IS INAPPLICABLE TO DYING DECLARATIONS.

By: Lauren A. Panfile

The Court of Appeals of Maryland held that the State may appeal a trial court’s suppression of a victim’s dying declaration based on the legislative intent of Section 12-302(c)(4)(i) of the Maryland Code, Courts and Judicial Procedure Article (“section 12-302(c)(4)(i)”). *Hailes v. State*, 442 Md. 488, 497-98, 113 A.3d 608, 613-14 (2015). The court further held that a victim’s statement, made while on life support, was a dying declaration regardless of the fact that the victim died two years after making the statement. *Id.* at 506, 113 A.3d at 618. Finally, the court held that the Confrontation Clause of the Sixth Amendment to the United States Constitution does not apply to dying declarations. *Id.* at 513, 113 A.3d at 622.

On November 22, 2010, Melvin Pate (“Pate”) became a quadriplegic and lost his ability to speak after being shot in the side of his face. On November 24, 2010, Pate was transferred to the Shock Trauma Center at the University of Maryland Medical Center, where doctors informed Pate that he only had twenty-four hours to live. When Pate heard this, his eyes welled up with tears.

On November 26, 2010, detectives showed Pate a photographic array of possible perpetrators of the shooting, which included a photo of Jermaine Hailes (“Hailes”). The detectives asked Pate to blink hard if he recognized the person who shot him. Using this method, Pate identified Hailes as his shooter.

At the time he identified Hailes, Pate was confined to a hospital bed on life support, a ventilator, and feeding tubes. Despite being told by his doctor that he wouldn’t make it, Pate was released from the hospital in 2011. Pate died in November 2012 of complications resulting from the gunshot wound.

Hailes was charged in the Circuit Court of Prince George’s County with first-degree murder and other related crimes. He subsequently filed a motion to suppress Pate’s pretrial identification, arguing that the identification violated the Confrontation Clause because Pate could not be cross-examined. The circuit court granted the motion, determining that the identification was a dying declaration, but was inadmissible under the Confrontation Clause. The State appealed, and the Court of Special Appeals of Maryland reversed the judgment and remanded for trial. Hailes petitioned for a writ of certiorari, which the Court of Appeals of Maryland granted.

The court of appeals began its analysis by addressing Hailes’ interpretation of section 12-302(c)(4)(i) regarding the State’s ability to appeal a trial court’s

judgment. *Hailes*, 442 Md. at 494-95, 113 A.3d at 611-12. First, Hailes argued that the statute's use of the word "seized" only allowed the State to appeal a trial court's exclusion of tangible evidence. *Id.* at 494-95, 113 A.3d at 612. Because Pate's statement could not be physically seized, Hailes asserted that this made the statement intangible evidence. *Id.* at 495, 113 A.3d at 612.

Second, Hailes contended that the statutory language "to have been seized in violation of the Constitution. . ." only allowed the State to appeal if the trial court excluded evidence because it was obtained in violation of a constitutional right, not because evidence was admitted in violation of a constitutional right. *Hailes*, 442 Md. at 495, 113 A.3d at 612. Hailes claimed that the detectives did not violate any constitutional rights when they obtained Pate's statement, and therefore the State could not appeal. *Id.*

The court of appeals was not persuaded by either of Hailes' arguments, and deemed the wording of the statute ambiguous. *Hailes*, 442 Md. at 496-98, 113 A.3d at 612-13. Relying on legislative intent, the court cited language in the legislative history of Senate Bills 39 and 196, which states that the statute applies in cases where the judge excluded "any evidence which is at the heart of the State's case" and applies to evidence including "identifications of the defendant." *Id.* at 496-97, 113 A.3d at 613 (internal citations omitted). Therefore, the statute applies to both tangible and intangible evidence. *Id.* at 497, 113 A.3d at 613.

The court of appeals also determined that the statute broadly applies to any type of constitutional violation that a trial court uses to exclude evidence. *Hailes*, 442 Md. at 497, 113 A.3d at 613. The court found that it makes no difference whether the constitutional violation occurs in the seizure or the admission of the evidence. *Id.* at 497-98, 113 A.3d at 613. If the trial court excludes the evidence on constitutional grounds, the State may appeal. *Id.* at 497-98, 113 A.3d at 613-14. In this case, the court of appeals held that the State could appeal the trial court's exclusion of Pate's identification. *Id.*

The Court of Appeals of Maryland next considered whether the trial court was correct in determining that Pate's identification of Hailes was a dying declaration. *Hailes*, 442 Md. at 498, 113 A.3d at 614. Specifically, the court addressed whether the trial court erred in finding that Pate believed his death was imminent. *Id.* The court noted that a dying declaration is a recognized exception to the rule against hearsay, and is defined as "a statement made by [the] declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death." *Id.* at 500, 113 A.3d at 615 (quoting MD Rule § 5-804(b)(2)).

The court of appeals highlighted Pate's condition, the doctor's statement to Pate that he only had twenty-four hours to live, and Pate's welled up eyes in response to his prognosis, as sufficient evidence to infer that Pate genuinely believed his death was imminent. *Hailes*, 442 Md. at 501-02, 113 A.3d at 615-16. The court also emphasized that the length of time between a declarant's statement and the declarant's actual death is given very little, if any, weight in

the court's analysis. *Id.* at 505-06, 113 A.3d at 618. The court need only decide whether the declarant's belief was "genuine, not whether it was, in hindsight, accurate." *Id.* at 504, 113 A.3d at 617 (citing *Worthington v. State*, 92 Md. 222, 242, 48 A. 355, 358 (1901)). Therefore, the court of appeals held that the trial court correctly determined that Pate's statement was a dying declaration. *Hailes*, 442 Md. at 506, 113 A.3d at 618.

Lastly, the Court of Appeals of Maryland addressed whether the Confrontation Clause applies to dying declarations. *Hailes*, 442 Md. at 506, 113 A.3d at 618. To make its decision, the court relied on the Supreme Court's consistent precedent that the Confrontation Clause does not apply to dying declarations. *Id.* at 507-09, 113 A.3d at 619-20 (citing *Giles v. California*, 554 U.S. 353, 358 (2008); *Crawford v. Washington*, 541 U.S. 36, 68 (2004); *Kirby v. United States*, 174 U.S. 47, 61 (1899)). The court stressed that this exception is necessary to prevent injustice because the declarant is often the only witness to the homicide. *Hailes*, 442 Md. at 512, 113 A.3d at 622 (citing *Carver v. United States*, 164 U.S. 694, 697 (1897)).

In *Hailes v. State*, the Court of Appeals of Maryland held that the length of time between a declarant's statement and death is inconsequential in a dying declaration analysis. The court further held that that the Confrontation Clause does not apply to dying declarations. This holding establishes that a declarant can live indefinitely and their statement may still be admitted as a dying declaration. The possibility of having both a dying declaration and a living declarant who is subject to cross-examination could cause evidentiary conflicts at trials when a defendant is charged with attempted murder or a related crime. Moreover, practitioners should be aware of the subjectivity of dying declarations and note that circumstantial evidence is enough to establish a declarant's belief of imminent death.