

**BALTIMORE & HARFORD COUNTY BAR ASSOCIATIONS**  
**Criminal Law Committee**  
***Judge Murphy on Evidence***  
**November 21, 2017**

***I. Hot Off The Press***

***Statutory Changes***

During its 2017 Session, the General Assembly amended Section 11-304 of the Criminal Procedure Article, effective October 1, 2017. The new version is contained in Section 801[E] of the 2017 Cumulative Supplement to the Maryland Evidence Handbook (Fourth Edition).

**U.S. Supreme Court**

*Pena Rodriguez v. Colorado*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 855 (2017)

Holding: “[W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror’s statement and any resulting denial of the jury trial guarantee.” 137 S. Ct. at 869.

**Court of Appeals**

**Disclosure of Pretrial Identification of Co-defendant**

*Green v. State*, \_\_\_ Md. \_\_\_, \_\_\_ A.3d \_\_\_ (10/10/17)

**Relevancy; Sufficiency**

*Fuentes v. State*, 454 Md. 296, 164 A.3d 265 (2017)

**Sentencing**

*Cruz-Quintanilla v. State*, 455 Md. 35, 165 A.3d 517 (2017)

**Expert Testimony (*Frye-Reed* & Md. Rule 5-702(3))**

*Savage v. State*, 455 Md. 138, 166 A.3d 183 (2017)

**“Imperfect Self Defense” Instruction; “Battered Spouse Syndrome”**

*Porter v. State*, 455 Md. 220, 166 A.3d 1044 (2017)

**Rule of “Corroboration”**

*Grimm v. State*, 447 Md. 482, 135 A.3d 844 (2016)

**Court of Special Appeals**

**Non-Hearsay Declarations by Alleged Victim; Expert Testimony**

*Wallace-Bey v. State*, \_\_\_ Md. App. \_\_\_, \_\_\_ A.3d \_\_\_ (2017)

**Impeachment: Character for Veracity; Motive to Testify Falsely**

*Hall, Cummings and Lubin v. State*, 233 Md. App. 118, 163 A.3d 191 (2017)

**Competency; Impeachment**

*Cruz v. State*, 232 Md. App. 108, 155 A.3d 964 (2017)

**“Other Bad Acts” Evidence**

*Johnson v. State*, 228 Md. App. 27, 137 A.3d 253 (2016)

**Impeachment; Sequestration**

*Anderson v. State*, 227 Md.App. 329, 133 A.3d 1266 (2016)

**II. On the Horizon**

**Court of Appeals**

*Williams v. State* (Argument date: 11/2/2017)

Issues – Criminal Law – 1) Is a conviction that is more than fifteen years old irrelevant as a matter of law to a character witness’s opinion about a defendant? 2) Were questions revealing Petitioner’s prior conviction, which occurred at least a decade before any of his character witnesses had met him, irrelevant to their opinions as to his reputation for peacefulness? 3) Were questions revealing Petitioner’s prior conviction substantially more prejudicial than they were probative of the witnesses’ opinions as to his reputation for peacefulness?

CSA opinion 232 Md. App. 342, 157 A.3d 398 (2017)

*In re: J. J. and T. S.* (Argument date: 9/7/2017)

Issues – Family Law – 1) Under Criminal Procedure § 11-304, Maryland’s tender years statute, in a CINA case, where a child victim does not testify and the court declines to examine the child in chambers, must the court find that the child is competent before admitting her audiotaped ex parte statement into evidence at an adjudication hearing for the truth of the matter asserted therein? 2) Did the facts in this case establish that the child victim was competent, where the child did not testify in court and the court did not examine the child because it found that the audio recording of the child’s statement made an examination of the child unnecessary, although the audio recording contained no indication that the child was aware of the difference between the truth and a lie, and the child previously had fabricated an allegation of sexual abuse? 3) Did J.J.’s hearsay statement have particularized guarantees of trustworthiness to be allowed into evidence?

CSA opinion 231 Md. App. 304, 150 A.3d 898 (2016)

*Martaz Johnson v. State* (Argument date: 9/11/2017)

Issues – Criminal Law – 1) Does CSA’s opinion in *Gross v. State*, 229 Md.App. 24 (2016), holding that expert testimony is not necessary for the admission of GPS-derived location evidence, conflict with this Court’s opinion in *State v. Payne*, 440 Md. 680 (2014)? 2) As applied in this case, did the trial court err under *Payne* in permitting a State’s witness to read a cell phone’s GPS location record to the jury and permitting that witness to interpret those records, when the witness admitted that he did not understand how the technology worked or how it produced the record at issue? 3) Was this question properly preserved for appellate review?

CSA opinion unreported (2016 WL 7367378)

*Santiago v. State* (Argument date: 10/5/17)

Issues- Criminal Law – 1) Did CSA err in holding that the trial court properly admitted testimony from the State’s cellular communication expert when the expert admitted his opinion was based on a critical assumption the factual underpinning of which was not established and a report that was destroyed before trial? 2) Did CSA err in holding that the trial court properly admitted evidence of Petitioner’s silence during an investigation by his automobile insurer that was related to and concurrent with the police investigation in this case?

CSA opinion unreported (2017 WL 347604)

*Manchame-Guerra v. State* (Argument date: 10/10/17)

Issues – Criminal Procedure – 1) Did this Court’s decision in *Peterson v. State*, 444 Md. 105 (2015), alter the threshold a factual proffer must satisfy to permit questioning of a witness’s subjective expectation of a benefit under Md. Rule 5-616(a)(4)? 2) Did the trial court err in prohibiting defense counsel from questioning the State’s main witness about whether he subjectively expected a benefit in exchange for his statements and testimony in this case?

CSA opinion unreported (2017 WL 193159)

*Harris v. State* (Argument date: 10/11/17)

Issues – Criminal Law – 1) Did the trial court abuse its discretion by issuing a missing witness instruction concerning Petitioner’s mother, without conducting any inquiry or making any findings as to whether they had a relationship that would have rendered her peculiarly available to the defense? 2) Is a mother/son relationship, without more, sufficient to establish that the mother is peculiarly available to the son for purposes of the missing witness rule? 3) Did CSA err in finding that the trial court committed harmless error when it allowed a detective to testify that Petitioner had invoked his right to an attorney during a police interview?

CSA opinion unreported (2017 WL 168446)

*Wheeler v. State* (cert. granted 10/10/17)

Issues – Criminal Law – 1) Where the defendant in a criminal case makes a timely and proper demand under Courts & Jud. Proc., §§ 10-1002 and 1003, for the presence of all persons in the chain of custody, is it legal error for the trial court to admit drug evidence where the State fails to call the “packaging” officer as a witness; or as CSA held in this case, is the admission of drug evidence under such circumstances subject to review for abuse of discretion? 2) Did the trial court err or abuse its discretion in allowing the admission of the drug evidence in view of the lack of a proper chain of custody?

CSA opinion, 233 Md.App. 265, 163 A.3d 843 (2017)

**Prepared by:**  
**Judge Joseph F. Murphy, Jr. (Ret’d)**  
**Silverman/Thompson/Slutkin/White/LLC**  
**201 N. Charles Street, 26<sup>th</sup> floor**  
**Baltimore, MD 21201**  
**410.385.2225**  
**[josephmurphy@mdattorney.com](mailto:josephmurphy@mdattorney.com)**