IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2015

NO. 1884

FREDERICK VAUGHN,

Appellant

v.

STATE OF MARYLAND,

Appellee

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY
(THE HONORABLE MICHAEL A. DIPIETRO PRESIDING)

APPELLANT'S BRIEF AND APPENDIX

PAUL B. DEWOLFE
Public Defender

ETHAN FRENCHMAN
Assistant Public Defender

Office of the Public Defender
Appellate Division
6 Saint Paul Street, Suite 1302
Baltimore, Maryland 21202-1608
Phone: (410) 767-8525
Fax: (410) 333-8801
EFrenchman@opd.state.md.us
CPF # 1412160291

Counsel for Appellant

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STATEMENT OF THE CASE

Appellant Frederick Vaughn was arrested on September 22, 2015 and charged by statement of charges with possession of a handgun by a disqualified person, unlawful possession of cocaine, and associated offenses. On September 23, 2015, the District Court commissioner held Mr. Vaughn without bail pursuant to Md. Code Ann., Crim. Proc. § 5-202(f) (West 2015). At a bail review hearing the following day, Baltimore City District Court Judge Martin Dorsey denied Mr.

Vaughn's request to present eyewitness testimony and a video of the underlying incident, and set Mr. Vaughn's bail at $300,000. On October 1, 2015, Mr. Vaughn filed a petition for a writ of habeas corpus in the Circuit Court for Baltimore City. On October 20, 2015, an indictment was filed in the Circuit court. At a hearing on October 23, 2015, Judge Michael DiPietro granted Mr. Vaughn's habeas petition on the grounds that Judge Dorsey abused his discretion by failing to consider a proffer of Mr. Vaughn's evidence. Judge DiPietro thereupon conducted a *de novo* bail review hearing, denied Mr. Vaughn's renewed request to present eyewitness testimony and a video of the underlying incident, and left the bail at $300,000.

On November 2, 2015, Mr. Vaughn filed an application for leave to appeal from the trial court's imposition of an excessive bail and presented this Court with the question: "May defendants and their counsel present evidence at bail review?" This Court granted Mr. Vaughn's application on December 1, 2015, and the matter was transferred to the regular appellate docket.

During the pendency of this appeal, the Honorable Timothy Doory presided over a jury trial on the underlying charges on January 12 and 14, 2016. Following the state's case-in-chief, the court granted a motion for judgment of acquittal on all counts except a single count of possession of a handgun by a disqualified person. Mr. Vaughn then presented the same evidence he was not allowed to present at his bail review hearings: the eyewitness testimony of James Sarchiapone and a video recording of the incident. In the middle of the state's direct examination of its

rebuttal witness, the state *nolle prossed* the sole remaining charge. Mr. Vaughn was ordered released after spending three months and 24 days in jail.

QUESTION PRESENTED

May defendants present evidence at bail review hearings?

STATEMENT OF FACTS

Statement of probable cause

According to the statement of probable cause written by Officer Michael Yezzi, on September 22, 2015, Officer Yezzi and two other officers witnessed Mr. Vaughn "standing next to a pile of construction material that was covered in plastic." Officer Yezzi stated that "[a]s Mr. Vaughn noticed the presence of police he quickly pulled his arm away from the location where it appeared he had put something down. Mr. Vaughn then ran [to the rear porch of his home]." Officer Yezzi stated that he subsequently recovered "a small black handgun lying in the plastic" and three small bags of drugs from Mr. Vaughn during his arrest.

District Court bail review hearing

The day after Mr. Vaughn's arrest, a District Court commissioner ordered Mr. Vaughn held without bail pursuant to Md. Code Ann., Crim. Proc. § 5-202(f) (West 2015) because Mr. Vaughn had been previously convicted of using a handgun in a violent crime and faced new charges of possession of a handgun by a disqualified person. (T1. 5).[1]

[1] References are as follows: T1: District Court bail review hearing on September 24, 2015; T2: Circuit Court habeas/bail review hearing on October 23,

On September 24, 2015, Judge Martin Dorsey presided over Mr. Vaughn's bail review hearing. The pretrial services agent recommended that Judge Dorsey hold Mr. Vaughn without bail pursuant to the rebuttable presumption created by § 5-202 (f)[2] that Mr. Vaughn posed a threat to public safety. (T1. 5). The state concurred, and in support proffered the following facts: "Multiple officers responding to multiple people fighting with wooden boards, saw him placing what appears to have been a gun on top of a pile of construction material." (T1. 6). Defense counsel argued that the statement of probable cause "does not say that the police officer saw him place a handgun. It says that they saw him remove his hand as though he put something down." (T1. 7). Judge Dorsey set bail at $300,000 having considered, "arguments, and/or recommendations from both pretrial and from counsel." (T1. 7–8).

Later in the bail review docket, an eyewitness, James Sarchiapone, arrived with a video of the incident. (T1. 8). Judge Dorsey denied defense counsel's to present the newly available evidence, ruling:

> I don't think that there's a statute that specifically says that you're not to call a witness. But, for purposes of the bail review, the Court's not—not going [sic] to any factual components of the case. That's going to be a matter that's going to be set for trial or it may be a matter that you may be able to show that information

---

2015; T3: Circuit Court trial on January 12, 2016; T4: Circuit Court trial on January 14, 2016.

[2] Section 5-202(f) provides that where an arrestee is charged with one of several firearm-related crimes after having previously been convicted of such a crime, "[t]here is a rebuttable presumption" that the arrestee "will flee and pose a danger to another person or the community."

> to the State's Attorney's office and make a request for a revisiting of the bail.

(T1. 11; App. 1). When defense counsel protested that the evidence "completely contradicts what the State's proffered," Judge Dorsey replied, "If that's what the video shows, then either the State's attorney will agree or disagree with you." (T1. 12).

Circuit Court habeas/bail review hearing

Mr. Vaughn petitioned the Circuit court for a writ of habeas corpus, and a hearing took place on that petition on October 23, 2015 before Judge DiPietro. The court held, first, that evidence demonstrating that Mr. Vaughn did not possess a handgun is relevant to the bail determination, and second, that Judge Dorsey abused his discretion by not allowing defense counsel to present that evidence by way of proffer:

> So a Statement of Probable Cause, sworn to by a police officer, or a citizen, or whomever, is something that falls into the nature of the evidence against the defendant. The person, let's say it's a police officer, has sworn under oath that what he's placing in that is true and accurate.
>
> So it does receive, I guess, some degree of deference in that analysis. I don't think it means that there can not [sic] be presented any sort of counter-veiling evidence or view at that bail review hearing. But I know that there is – I've listened to a lot of these tapes. I know that at times that is brought up.
>
> My opinion is that while it may be incorrect to say, well I just have to take this, period, and there's no counter-veiling evidence.
>
> * * *

> And I think where District Court judges may run a foul [sic] is where they say, I take this to be true to the exclusion of all other evidence. That's, I think, where we have a problem.
>
> * * *
>
> While I'm not going to rule that the defense has a right to present a witness at the bail review hearing, nor necessarily present the tape at the bail review hearing, I do think the defense does have a right to, as an officer of the court, present that evidence by way of proffer. And I don't think [defense counsel] was allowed to do that in a meaningful way."

(T2. 10–13; App. 2–5). The court explicitly requested this Court's guidance, saying, "I think maybe our friends in Annapolis should decide what process is due at these hearings." (T2. 14). The court granted Mr. Vaughn's habeas petition and accordingly held a *de novo* bail review hearing. (T2. 13; App. 5).

At the hearing, defense counsel again attempted to introduce the video of the incident and the testimony of eyewitness James Sarchiapone, and the court again denied Mr. Vaughn's request, ruling "I'm not going to that. [sic] Okay. I think I've afforded Mr. Vaughn the process that is due him. I may be wrong on that and I employ [sic] you to appeal this to the Court of Special Appeals…." (T2. 27–28; App. 6–7).

Defense counsel proffered to the court how Mr. Sarchiapone would testify:

> [DEFENSE]: I did want to proffer that our witness who took the video, who was present during the entire time, would tell Your Honor that it was the white male in the alley who had possession of the gun, picked the gun up underneath the plastic. Said, see, I'm not touching it. Meaning that the plastic was covering the handgun and it wouldn't I presume leave any sort of evidence or prints on the gun.

* * *

> And that, you know, Mr. Vaughn never had possession of the handgun. Was never down by that pile on the side that the gun was recovered and that he clearly saw with his own eyes, the white male handling the gun. And then coincidentally or what not the white male intercepts the police immediately. You see the white man talking to the police on – in the alley. And the police, it's just interesting if they really see what they claim to have seen, two or three minutes would not have gone by for the arrest of my client.
>
> My client doesn't – if my client was actually pulling his hand away from the handgun at the time the police claim they rolled down the alley, they would have taken him into custody immediately. Instead, he was free to roam up and down the stairs while the police were talking with the white man. While they were messing up the crime scene.

(T2. 36–38).

Defense counsel attached as Exhibit 2 to the petition for writ of habeas corpus a letter written by Mr. Sarchiapone about the underlying incident, which stated in its entirety:

> My boyfriend Mr. Frederick Vaughn, [sic] was on my porch arguing with my next door neighbor, while my boyfriend was on my porch my neighbor walked over to the property next door to my house and raised the gun up to the air and showed me it was under the dry wall and wood in the back of the property, as the police pull up my neighbor is the only one who went right to the gun and while my boyfriend was on the porch, the police ask did I call the police, or we can leave I stated to my boyfriend to continue to stay on the porch he walked down when the officer ask to speak and walked back up on the porch to get his ID, to give to police, the neighbor walked over and apologize to the people renovating the house for touching that pile of wood and dry wall out back where the gun was located

> at, the police came up on my porch and arestted [sic] Frederick Vaughn and told me to get off my porch, and ten mins later an officer return back with the gun and took a picture of the gun and put it back where it was and took a pic and left again which that part I did not get on camera

In addition, defense counsel proffered the content of the video as follows: the video shows Mr. Vaughn on his rear porch, above the backyard and set off from the alley; while on the porch, several neighbors berated Mr. Vaughn for, among other things, his sexuality; in this heated exchange, Mr. Vaughn is very calm and the neighbors are the ones who are very excited; the video shows a white male in the alley during the entire incident; approximately six seconds pass as Mr. Vaughn leaves the porch, stepping out of view, and police arrive; Mr. Vaughn is next seen standing at the edge of his property with police; Mr. Vaughn is shown not running from the police, he is stopped; after approximately three minutes of video, the police find the handgun. (T2. 27, 29–32).

The state made a competing proffer as to the content of the video and the expected testimony of the state's witnesses:

> [STATE]: In addition to that, Your Honor, the allegations of this – in this instance case are essentially that the Defendant was in an argument with his neighbors next door at the address of 800 Unetta Avenue. I have not been able to determine who is the occupant and the proper resident of that place.
>
> But the video, which Defense I'm sure wishes to show the Court, shows the defendant in a heated exchange with those occupants of that next – the house over to the left. And when the defendant is absent from the video frame. Where he goes is not shown or demonstrated in the video. The state would proffer that he goes down the stairs, up the back deck of this

residence, towards a wood pile that's essentially at the end of the walkway right at the street of the alley. And at that point makes a furtive moment toward that wood pile.

THE COURT: And that's what the video –

[STATE]: The video doesn't show any of that.

THE COURT: Show any of this. Okay.

[STATE]: It essentially –

THE COURT: In other words, the video doesn't show, I guess like any video, it shows what it shows. What it doesn't reveal is subject to the – what the witnesses would say.

[STATE]: Exactly. And that's what the witnesses would say, that he makes this furtive movement. As officers are beginning to approach the alley, he quickly moves his hand from the wood pile and essentially within minutes, officers recover a handgun at that location.

* * *

[STATE]: And so given the nature of the charges and the State's theory of the case at trial would be that his going down to actually retrieve that handgun was in response to the argument that he was having with the neighbors next door.

THE COURT: Meaning to get rid of the handgun?

[STATE]: I don't know, Your Honor.

THE COURT: I don't know either.

[STATE]: Not necessarily to get rid of the handgun. I think my theory would be to potentially use the handgun as, you know, a defense mechanism or something more nefarious. But at any rate, the

> evidence is that the defendant was exercising dominion and control of the handgun. And what's important, Your Honor, is that the video is not inconsistent with that theory because of what the video fails to capture.

(T2. 24–26).

After hearing the proffers, Judge DiPietro left Mr. Vaughn's bail as set by Judge Dorsey:

> THE COURT: Okay. All right. Thank you. Well I have to consider the nature and circumstances of the offenses charged. These are very serious offenses. Particularly for someone who has been prosecuted and convicted of attempted second-degree murder using a firearm.
>
> The nature of the evidence against the Defendant, I guess, is at issue here. I understand the Defense's position; it was not his firearm. That officers are, I guess, would suggest otherwise. That there's a connection between him and this location.
>
> I don't know if there's a person that places him in possession of this, you know, sees him drops this gun or whatever the case may be. I don't know what these people across the deck would or would not have to say about what they observed or not but there is evidence that connect him to that location.
>
> * * *
>
> I've considered the recommendation of Pre-Trial as well as the State and I have listened to everything you have said. You understand that. But I do find that, one, if in fact it is true that he possessed this firearm, one, who is committed this sort of criminal conduct in the past does present a danger to the community.
>
> Sadly in our city we have hundreds of people murdered every year and hundreds more injured through firearms. So to suggest that he would not possess – present a danger is I think quite frankly just frantic. So considering all that, I believe that Judge Dorsey's bail was appropriate. I'm setting the bail at $300,000.

(T2. 38–40; App. 8–10).

Mr. Vaughn filed a timely application for leave to appeal challenging his pretrial incarceration on November 2, 2015, and took steps to expedite appellate review. On December 1, 2015, this Court granted his application and scheduled the appeal for its April 2016 session.

Circuit Court Trial[3]

Judge Doory presided over Mr. Vaughn's jury trial, conducted on January 12 and 14, 2016. The state called three witnesses: Officer Yezzi, Sgt. Charles Sullivan, and Sgt. Gregory Shuttleworth. The state's witnesses testified that they arrived at the alley behind the 800 block of Unetta Avenue on September 22, 2015, in response to a report of six people fighting with wooden boards. (T3. 92, 139–40). Officer Yezzi and Sgt. Shuttlesworth testified that, upon arriving, they observed Mr. Vaughn quickly jerk his hand away from a pile of construction materials. (T3. 97–99, 135, 145). Sgt. Sullivan testified that he witnessed Mr. Vaughn's stretch his arm underneath the pile of construction materials and then pull his hand back. (T3. 174–75). The police officers testified that as they arrived, Mr. Vaughn left the pile of construction materials and entered Mr. Sarchiapone's rear yard. (T3. 98–99, 101–02, 123–25, 145). At the same time, a white male who was in the alley stopped to speak with Sgt. Sullivan. (T3. 153–54). Officer Yezzi followed Mr. Vaughn into the yard and Sgt. Shuttlesworth discovered a handgun

[3] Appellant has filed an unopposed motion to supplement the record with the trial transcript.

among the pile of construction materials. (T3. 99–102, 147). Officer Yezzi then went to his car, got a pair of gloves, and recovered the gun. (T3. 103). Officer Yezzi placed the gun in the trunk of his car and, after arresting Mr. Vaughn, took the gun to evidence control. [4] (T3. 105–08, 148). The testimony was aided by a picture that Sgt. Shuttlesworth said "actually depict[ed]" the gun as he saw it. (T3. 148). After the state's case, defense counsel moved for a judgment of acquittal on all counts. (T4. 6–10). The Court acquitted Mr. Vaughn of all counts but one, possession of a firearm by a disqualified person. (T4. 20–24).

The defense called eyewitness James Sarchiapone, who testified that he took a video of the alleged incident. (T4. 31–32). The video was admitted into evidence and played for the jury. (T4. 36, 43–49, 69). With the assistance of the video, Mr. Sarchiapone testified as follows: that he and Mr. Vaughn were standing on Mr. Sarchiapone's porch while his neighbors called them homophobic slurs; Mr. Sarchiapone watched as his neighbor, Brian Pound, walked through the alley behind Mr. Sarchiapone's house and stand by the pile of construction materials; Mr. Pound then picked up the gun from the pile of construction materials and said "Hey yo" and "I'm not touching it"; as the police arrived, Mr. Pound's son then screamed, "Dad, put the gun down," and Mr. Pound put the gun down; Mr. Vaughn then walked from Mr. Sarchiapone's porch to the rear alley in order to tell

[4] The parties also stipulated that Mr. Vaughn is "prohibited from possession of a regulated firearm because of a previous conviction that prohibits his possession of a regulated firearm" and that the recovered gun was tested and found to meet the definition of a regulated firearm. (T3. 185).

the police what happened, but the police would only speak with Mr. Pound; Mr. Vaughn did not go near the pile of construction materials; Mr. Vaughn then walked back up Mr. Sarchiapone's rear steps and into his house as he said that the police did not see him drop the gun. (T4. 43–49). Mr. Sarchiopone explained that the video contained a lapse because "Something was biting me, so I bend down and itched my leg." (T4. 42). After Mr. Sarchiopone stopped recording, the police arrested Mr. Vaughn. (T4. 49). Mr. Sarchiopone testified that approximately 20 minutes after the police left, they returned to the scene, put the gun on the pile of construction materials, and took a picture. (T4. 50–51, 73–81). Mr. Sarchiapone testified that it looked as though the picture were being "staged." (T4. 81)

On rebuttal, the state re-called Officer Yezzi, and the following exchange occurred:

> [STATE]: Officer Yezzi, since you recovered that gun on September 22, 2015 and put it in that envelope and signed that envelope, did you ever return to the rear of the 800 block of Unetta Avenue?
>
> A: Yes, sir.
>
> [STATE]: And, when did you return there?
>
> A: After we recovered the gun and the situation was de-escalated.
>
> [STATE]: Okay; and what did you do once you returned to the 800 block of Unetta Avenue?
>
> A: We went back to take the pictures and the gun was removed from the gun bag to take the pictures of where the gun was located and placed right back in the evidence bag.
>
> [STATE]: All right.

> [STATE]: Your Honor, the State will enter a nolle prosequi as to all counts at this point.

(T4. 98). Mr. Vaughn was then ordered released after spending three months and 24 days in jail. (T4. 100).

ARGUMENT

DEFENDANTS MAY PRESENT EVIDENCE AT BAIL REVIEW HEARINGS

Mr. Vaughn tried to present eyewitness testimony and a three-minute video of the events that led to his criminal charges at his bail review hearings. The evidence demonstrated that Mr. Vaughn was innocent of the charges against him and that Mr. Sarchiapone's neighbor, Brian Pound, possessed the gun. The evidence was highly relevant to the pretrial release determination, as the circuit court expressly relied on the state's allegation that Mr. Vaughn possessed the gun to justify an unaffordable bail of $300,000. (T2. 38–40; App. 8–10). By refusing Mr. Vaughn's request to present actual evidence, the courts denied Mr. Vaughn the meaningful opportunity to be heard and the full benefit of counsel at his bail review hearings. As a result, the courts' uninformed bail determinations needlessly incarcerated Mr. Vaughn for nearly four months.

In accordance with the plain language of Md. Rule 4-216, the practice of no fewer than forty states, the ABA Criminal Justice Standards, and this Court's reasoning in *In re Damien F.*, 182 Md. App. 546 (2008), this Court should hold that, unless the testimony or evidence to be presented at a bail review hearing is probatively inconsequential to the determination of whether a defendant should be

released and the conditions of release, the court must receive testimony or evidence as to the material, disputed allegations. *See Damien F*. at 584.

A. Although moot, this case presents a recurring issue of paramount public importance that this Court has not previously addressed.

Because Mr. Vaughn is no longer incarcerated, his case is now moot. *Wheeler v*. *State*, 160 Md. App. 566, 573 (2005). Although this Court will not generally decide moot questions, this Court may choose to do so "if the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct, or the issue presented is capable of repetition, yet evading review." *Id*. at 573 (quotations omitted); *see also In re Damien F*., 182 Md. App. at 562. This Court should address the issue presented in this case because it is of paramount public important and, like the issues in *Wheeler* and *Damien F*., would otherwise evade review.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v*. *Louisiana*, 504 U.S. 71, 80 (1992). At bail review hearings, judges determine whether arrestees go free or remain in jail for months, or longer, awaiting their trial. Pretrial detention therefore implicates "the individual's strong interest in liberty." *U.S*. *v*. *Salerno*, 481 U.S. 739, 750 (1987).

Every defendant in Maryland who is not released by a court commissioner is entitled to be represented by counsel in a bail review hearing before a judge. Md. Rule 4-216; Md. Code Ann., Crim. Proc. § 16-204 (West 2015). The failure

of the court "to consider all of the facts relevant to a bail determination can have devastating effects on the arrested individuals." *DeWolfe v. Richmond*, 434 Md. 444, 451 (2013). "Pretrial confinement may imperil the suspect's job, interrupt his source of income, ... impair his family relationships" and affect his "ability to assist in preparation of his defense." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Parents lose the temporary custody of their children, and young adults are taken out of school. Moreover, the "traditional right to freedom before conviction permits the unhampered preparation of a defense*." Stack v. Boyle*, 342 U.S. 1, 4 (1951). "[R]eleased defendants consistently far[e] better than defendants in detention." ABA Standards for Criminal Justice: Pretrial Release, intro. at 29 (3d. ed. 2007). Pretrial detention exposes arrestees to the risk of physical harm. More than 50% of deaths in local jails occur within 30 days of admission and more than 70% of people who die in jail have not been convicted of any crime.[5] In light of the fundamental interests at stake, pretrial detention determinations must be fair and informed. *See Richmond*, 434 Md. at 451; *Salerno*, 481 U.S. at 750–51.

Although lower courts hold bail review hearings nearly every day, issues presented at these hearings evade judicial review. The denial of pretrial release and excessive bail are not appealable interlocutory orders. Mr. Vaughn's path is the only way to reach the appellate courts: file a petition for writ of habeas corpus, and then, if it is denied or bail is excessive, file an application for leave to appeal.

[5] Margaret E. Noonan & Scott Ginder, U.S. Dept. of. Justice, Bureau of Justice Statistics, Mortality in Local Jails and State Prisons, 2000-2012 - Statistical Tables 9 (2014), *available at* http://www.bjs.gov/content/pub/pdf/ mljsp0012st.pdf.

Md. Rule 8-204; Md. Code Ann., Cts. & Jud. Proc. § 3-707 (West 2015); *Long v. State*, 16 Md. App. 371 (1972); *see also Wheeler*, 160 Md. App. at 571–72. Assuming that the application is granted, issues arising out of pretrial detention are more often than not made moot by the resolution of the underlying criminal matter. It is no surprise that this Court has not issued a published decision concerning bail review hearings since *Wheeler*, more than ten years ago. It is worth noting that even in *Wheeler*, the appeal similarly became moot (as a result of Mr. Wheeler pleading guilty) after this Court granted the defendant's application for leave to appeal but before the appellant's opening brief was filed. *Id*. at 572–73. This Court nonetheless opted to address the merits of the issue presented to provide guidance to lower courts. *Id*. at 573.

The record in this case demonstrates that lower courts require guidance on the issue of whether defendants may present evidence relevant to the bail determination at bail review hearings. After ruling that Mr. Vaughn could not present evidence, Judge DiPietro stated, "I think maybe our friends in Annapolis should decide what process is due at these hearings." (T2. 14; App. 31). When the court denied counsel's renewed request to present a video and eyewitness testimony, the court stated, "I may be wrong on that and I employ [sic] you to appeal this to the Court of Special Appeals…." (T2. 27–28; App. 6–7).

Given the rights involved as well as the high stakes of unnecessary pretrial incarceration, this Court should clarify whether defendants may present evidence,

such as eyewitness testimony and a video of the underlying incident, at bail review hearings.

B. Standard of review

The issue in this case depends on an interpretation of Md. Rule 4-216 and the rights of defendants at bail review. This question of law must be reviewed *de novo*. *See, e.g., Pitts v. State*, 205 Md. App. 477, 486 (2012).

C. The plain language of Md. Rule 4-216 requires courts to consider evidence at bail review hearings.

In determining whether an arrestee should be released, and what if any conditions to place on release, Md. Rule 4-216 requires the trial court to consider information, "to the extent available," pertaining to several enumerated factors:

> (e) **Duties of Judicial Officer.**
>
> (1) *Consideration of Factors*. In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:
>
> (A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;
>
> (B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
>
> (C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;
>
> (D) any recommendation of an agency that conducts pretrial release investigations;

> (E) any recommendation of the State's Attorney;
>
> (F) any information presented by the defendant or defendant's attorney;
>
> (G) the danger of the defendant to the alleged victim, another person, or the community;
>
> (H) the danger of the defendant to himself or herself; and
>
> (I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

The plain language of Rule 4-216 grants defendants the right to present evidence relevant to the determination. The courts below erred in denying Mr. Vaughn's request to present eyewitness testimony and a video that are relevant to the determination pursuant to several of the statutory factors.[6]

The statute provides that "the judicial officer **shall** take into account the following information, **to the extent available.**" Webster's Dictionary defines "available" as "present or ready for immediate use." Merriam-Webster, Oct. 29, 2015, *available at* http://www.merriam-webster.com/dictionary/available. Rule 4-

[6] Judge DiPietro ruled correctly below that Mr. Vaughn's core claim that he was not guilty of the offenses charged, including the possession of a handgun, was relevant to the bail determination. As the court said, "If there's no evidence showing that the Defendant possessed a handgun, well then that should be a factor considered in the bail review." (T2. 6). The court reasoned that the evidence was relevant under Rule 4-216(e)(1)(a)'s requirement that courts consider "the nature and circumstances of the offenses charged and the nature of the evidence against the defendant." (T2. 10–12; App. 2–4). Mr. Vaughn's evidence is also relevant under factors (F) through (I) because, if he did not possess a handgun, then he is less of a danger to himself and others, and he is more likely to appear in court.

216 does not require the state or defendants to present evidence or witnesses at bail review, but courts must consider any information, including eyewitness testimony and video, that is offered and material to the bail determination and present for use at the bail review hearing. Any other reading of the statute would render the phrase "to the extent available" meaningless. *Evans v*. *State*, 420 Md. 391, 400 (2011) (statutes should be construed so that "no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory."). In addition, the word shall indicates a mandate to consider all factors. *Wheeler* at 578 ("the judicial officer is **required** to consider (among other factors)... [i]nformation provided by defendant's counsel.") (emphasis added)).

Here, Judge Dorsey refused to consider the eyewitness testimony and video of the incident and set a $300,000 bail. Judge DiPietro considered a proffer of the evidence and left bail the same. In all likelihood the proffer was unpersuasive because it is difficult for courts to make factual determinations based upon competing proffers. *See Damien F*., 182 Md. App. at 574. Without actual evidence, Judge DiPietro was left to speculate as to the reliability of the proffers: "I don't know if there's a person that places him in possession of this, you know, sees him drops this gun or whatever the case may be. I don't know what these people across the deck would or would not have to say about what they observed or not." (T2. 38–39). Had the court heard the evidence, the court would have had no need to resort to such speculation.

The question presented here is similar to the issue in *Damien F*. In that case, the Montgomery County Department of Social Services petitioned for two children to be placed under an emergency shelter care order, and the courts refused the parents' request to present witnesses and forced the parents to proceed by proffer. 182 Md. App. at 551–57. As is true in bail review hearings, "the rules of evidence set forth in Title 5 are not applicable in shelter hearings." *Id*. at 576. Nevertheless, "that does not mean that the court may accept any evidence proffered without regard to its reliability." *Id*. In light of the difficulty of discerning facts from proffers, this Court announced the following standard for emergency shelter care hearings: "We hold that, unless the disputed allegation is probatively inconsequential…the court must receive testimony as to the material, disputed allegations." *Damien F*. at 584. This Court should apply the same standard here.

In support of this standard, the *Damien F*. Court analogized to other interim hearings:

> Other sections of the Maryland Code make clear the preference for evidentiary hearings. For example, Md.Code (2006 Repl.Vol., 2007 Supp.), Fam. Law (F.L.), § 4-504.1(b) permits a commissioner to issue an interim protective order to protect an individual from domestic violence. F.L., § 4-504.1(d)(1)(i) provides that the order "shall state the date, time, and location for the temporary protective order hearing and a tentative date, time, and location for a final protective order hearing." F.L., § 4-504.1(d)(1)(ii) provides that "[a] temporary protective order hearing shall be held on the first or second day on which a District Court judge is sitting after issuance of the interim protective order, unless the judge continues the hearing for

> good cause." F.L., § 4-505, dealing with temporary protective orders, allows a trial court to enter a temporary protective order "after a hearing on a petition, whether ex parte or otherwise." By contrast, nothing in the Courts Article indicates that the legislature expects a shelter hearing to be *ex parte*. In addition, F.L., §§ 4-505(a)(1) and (2) subsection (c) provides that the temporary protective order "shall be effective for not more than 7 days after service of the order."
>
> The Rule regarding temporary restraining orders is also illustrative. Md. Rule 15-504(a) permits a court to grant a temporary restraining order "only if it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction." Section (f) of the rule provides: "A party or person affected by the order may apply for modification or dissolution of the order on two days' notice to the party who obtained the temporary restraining order, or on such shorter notice as the court may prescribe. The court shall proceed to hear and determine the application at the earliest possible time. The party who obtained the temporary restraining order has the burden of showing that it should be continued." Notwithstanding the "interim" character of an emergency shelter care hearing and the Department's assertion that the issue is moot, it is inconceivable that removal of a child from his or her parent can be viewed as less important than criminal and domestic procedures. Clearly, the legislature intended that a person deprived of his or her rights be afforded an evidentiary hearing at the earliest possible time. In view of the legislature's recognition of the importance of the parent-child relationship, it clearly did not intend that a parent or child would be required to wait thirty days before being afforded an opportunity to challenge the deprivation.

Damien F., 182 Md. App. at 578–79. This reasoning applies with equal force to bail review hearings. A person who may be incarcerated for months or longer should be afforded the same right to present evidence and call witnesses to testify as to "material, disputed allegations." *See id*. at 584.

In addition, several factors under Rule 4-216 make clear that courts must consider available evidence. Rule 4-216(e)(1) provides that "the judicial officer shall take into account the following information, to the extent available: (A) **the nature and circumstances of the offense charged, the nature of the evidence against the defendant**…" Eyewitness testimony and a video of the underlying incident obviously fall within this factor. Indeed, Judge DiPietro agreed when he said, "If there's no evidence showing that the Defendant possessed a handgun, well then that should be a factor considered in the bail review." (T2. 6). The court elaborated later in the hearing, saying, "I think where District Court judges may run a foul [sic] is where they say, I take this [the statement of probable cause] to be true to the exclusion of all other evidence." (T2. 11; App. 3).

Rule 4-216's requirement that courts consider "the nature and circumstances of the offense charged" and "the nature of the evidence" reflects nearly 60 years of Maryland precedent that implicitly recognizes defendants' right to contradict material, disputed allegations with evidence at bail review hearings. In *Fischer v. Ball*, 212 Md. 517 (1957), the Court of Appeals considered whether an indictment charging first-degree murder constituted a sufficient basis for the denial of bail under the common law. The Court held that, in the face of an indictment, the burden would effectively shift to the detainee to show "that the grand jury acted upon insufficient evidence." *Id*. at 524. Therefore, where the "defendant sought to remain at liberty on bail, *the burden was upon him to rebut the presumption by evidence*." *Id*. (emphasis added). Far from denying Fischer the

opportunity to present evidence at the bail review hearing, the Court faulted him for not presenting evidence to offset the indictment:

> The only evidence on his behalf was presented through a stipulation that a witness would give testimony indicating that the defendant was a good bail risk, because he had behaved as such during the period when he was free on bail in this case. *There was no effort on his part to present any evidence bearing upon the facts out of which the indictment grew*.

Fischer at 524–25 (emphasis added). Although *Fischer*'s holding shifting the burden of persuasion to the defendant is incompatible with the procedural rights since recognized in *Salerno* and *Wheeler* and codified in Rule 4-216, its recognition that a defendant can present evidence material to the pretrial release determination remains sound.

Similarly, in *Hurley v*. *State*, 59 Md. App. 323, 329 (1984), this Court held that a habeas court does not err in refusing to conduct a *de novo* "full evidentiary hearing" *after* "the trial judge has held a full hearing on the bail issue." *Id*. at 329. This Court reasoned that "[i]f Hurley has new evidence to present on this question, it should initially be presented to" the trial court. *Id*. Like *Fischer*, *Hurley* implicitly recognizes a defendant's right to present evidence at bail review by assuming the availability of a full evidentiary hearing before a habeas proceeding. *See also Wheeler*, 160 Md. App. at 580 (at bail review hearing, defendant "had a full and fair opportunity to challenge" the state's proffer, but failed to do so).

Rule 4-216 also provides that courts must consider "(F) **any information** presented by the defendant or defendant's attorney" when making bail

determinations. Md. Rule 4-216 (emphasis added). The phrase "any information" includes actual evidence. *Dove v. State*, 415 Md. 727, 732 (2010). In *Dove*, the Court of Appeals had occasion to interpret the phrase "any information," as used in Md. Rule 4-342, after the state failed to disclose a fingerprint card to the defendant in advance of sentencing. *Id*. The issue required the Court to apply Md. Rule 4-342(d), which provides:

> (d) **Presentence Disclosures by the State's Attorney.** Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel **any information** that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(emphasis added). Holding that the fingerprint card should have been disclosed because it was comprehended within the phrase "any information," the *Dove* Court used the terms "any information" and "evidence" interchangeably:

> The defendant's remedy when the State fails to timely disclose evidence it intends to present at a sentencing hearing is clear and unambiguous. Md. Rule 4-342(d) states that if the evidence is not timely disclosed, the sentencing judge shall postpone sentencing' This remedy comports with the Rule's purpose, which is to allow the defendant a reasonable opportunity to investigate the State's information. As discussed *infra*, the use of the word 'shall' indicates that the sentencing judge must postpone the hearing to allow the defendant the opportunity to investigate the evidence and prepare accordingly.

Id. at 741. (Citations omitted). A rule means what it says. *See Evans*, 420 Md. at 400. "Any" means "any." If the rule were intended to limit the type of information that could be presented and considered at bail review hearings, the rule would not

say "any information." The meaning of "any information" in Rule 4-216 is the same as the meaning of "any information" in Rule 4-342.

In accordance with the plain language of Rule 4-216 and Maryland precedent, this Court should hold that, unless the testimony or evidence to be presented at a bail review hearing is probatively inconsequential to the determination of whether a defendant should be released and the conditions of release, the court must receive testimony or evidence as to the material, disputed allegations. *See Damien F*. at 584.

D. The constitutional and statutory right to counsel at bail review hearings includes the right to the full benefits of counsel.

Defendants are entitled to counsel at bail review, and to representation by the Office of the Public Defender if they cannot afford a private attorney. U.S. Const., Amend. VI; Md. Decl. of Rights, Art. 21 and Art. 24; Rule 4-216; Crim. Proc. § 16-204; *Rothgery v*. *Gillespie*, 554 U.S. 191, 194 (2008); *Richmond*, 434 Md at 464. "The right to counsel is the right to the effective assistance of counsel." *State v*. *Peterson*, 158 Md. App. 558, 582–83 (2004) (quotation omitted).

The standard is no different at bail review hearings, where "the defendant is entitled to the full benefits of counsel." *Richmond*, 434 Md. at 469 (Barbera, J., dissenting). The right to counsel is not satisfied by a mere proffer. *Damien F*., 182 Md. App. at 571–72. The right to counsel requires that counsel be able to participate meaningfully in the proceeding through the presentation of available, relevant evidence. This Court's reasoning in *In re Damien F*. is exactly on point:

> The fact that the legislature has seen fit to provide that a parent is entitled to counsel at every stage of the proceeding also indicates that a parent may do more than simply proffer. It is unlikely that the legislature provided the right to counsel if it did not intend that counsel participate in the proceedings. Although counsel in this case was permitted to proffer and to sum up the evidence, it was clear that the juvenile court considered the proffer to be insignificant because counsel adopted the conclusions of the Department as set forth in its petition.

182 Md. App. at 571–72.

Just as the right to counsel at emergency shelter care hearings includes the right to present evidence, the right to counsel at bail review hearings includes the right to present evidence. Here, counsel's proffer was apparently deemed "insignificant," *Damien F*. at 572, by Judge DiPietro because the court ultimately kept the bail the same as set by Judge Dorsey. The court's refusal to allow Mr. Vaughn to present eyewitness testimony and a video of the incident deprived Mr. Vaughn of the "full benefits of counsel" to which he is entitled.

E. Due process guarantees the right to present evidence at bail review hearings.

Due process guarantees the right to present evidence, including witnesses, at bail review hearings. *Salerno*, 481 U.S. at 751–52. Such a right avoids the imposition of excessive bail. U.S. Const., Amend. VIII; Md. Decl. of Rights, Art. 25. By denying Mr. Vaughn's attempt to present an eyewitness and video of the underlying incident, the courts below violated his right to due process. U.S. Const., Amend. XIV; Md. Decl. of Rights, Art. 24; *Salerno*, 481 U.S. at 751–52.

In *Salerno*, the Supreme Court considered a due process challenge to the Bail Reform Act of 1984. *Id*. at 746. The Act allows courts to incarcerate arrestees pending trial if the government demonstrates by clear and convincing evidence after a "full-blown adversary hearing" that no conditions of release will reasonably assure public safety. 481 U.S. at 750.[7] The two arrestees in *Salerno* were accused of controlling wide-ranging conspiracies as the leaders of the Genovese crime family of La Cosa Nostra. *Id*. at 743. The state presented two witnesses to support its motion for pre-trial detention. *Id*. The Court faulted the defendant for failing to put forward their own evidence regarding the nature and circumstances of the charged offenses, noting that one arrestee,

> challeng[ed] the credibility of the Government's witnesses. He offered the testimony of several character witnesses as well as a letter from his doctor stating that he was suffering from a serious medical condition. [The other defendant] presented no evidence at the hearing, but instead characterized the wiretap conversations as merely "tough talk."

Id. The trial court granted the state's motion and held the defendant's without bail. *Id*. at 743–44.

The *Salerno* Court began by reiterating that liberty is a fundamental right. 481 U.S. at 750. Because incarceration deprives arrestees of their liberty, the *Salerno* Court assessed whether pretrial detention was narrowly tailored to serve a

[7] The law at issue in *Salerno* expressly forbids the pretrial detention of people who are unable to pay money bail. 18 U.S.C. § 3142(c)(2) ("The judicial officer may not impose a financial condition that results in the pretrial detention of the person."). Unlike Mr. Vaughn, federal arrestees are not jailed because they are too poor to pay their bail.

compelling government interest. *Salerno* at 746; *see also Flores*, 507 U.S. at 302. The Supreme Court highlighted the many "procedural safeguards" afforded the arrestees, including: (1) the right to present witnesses (2) the right to testify (3) the right to counsel (4) and the cabining of judicial discretion to a set of enumerated factors that include the nature and the circumstances of the offense charged, and the weight of the evidence. *Salerno* at 750–52. The Court found that these procedures are "specifically designed to further the accuracy" of detention determinations, *Id*. at 751, and ensure that detention is "narrowly focuse[d]," *Id*. at 750, and "carefully limited." *Id*. at 756. Consequently the Court held that "these extensive safeguards suffice to repel a facial challenge." *Id*.

In the wake of *Salerno*, at least five states have concluded that due process requires the safeguards provided by the Bail Reform Act, including the right to present evidence, by testimony and otherwise.[8] Without incorporating *Salerno*, no fewer than 15 additional states, and the District of Columbia, explicitly recognize that defendants have the right at a detention hearing to present evidence that rebuts the underlying charges.[9] And at least 20 more states recognize, either explicitly or

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[8] *See Simpson v. Owens*, 85 P.3d 478, 492–93 (Ariz. Ct. App. 2004); *Aime v. Commonwealth*, 611 N.E.2d 204, 214 (Mass. 1993); *Witt v. Moran,* 572 A.2d 261, 267 (R.I. 1990); *Brill v. Gurich,* 965 P.2d 404, 407–08 (Okla. Crim. App. 1998); *State v. Butler*, Slip Op. 2011-0879 (La. Ct. App. July 28, 2011).

[9] *Ex parte Hall*, 844 So. 2d 571, 573 (Ala. 2002); *Carman v. State*, 564 P.2d 361, 365 (Alaska 1977); *State v. Menillo*, 268 A.2d 667, 675 (Conn. 1970); *Quillen v. Betts*, 98 A.2d 770, 773 (Del. 1953); D.C. Code Ann. § 23-1322(d)(4) (West 2015); *State v. Arthur*, 390 So. 2d 717, 720 (Fla. 1980); *Bates v. Hawkins*, 478 P.2d 840, 844 (Haw. 1970); 725 Ill. Comp. Stat. Ann. 5/110-6.1(c)(1)(a) (West 2015); *Phillips v. State*, 550 N.E.2d 1290, 1295 (Ind. 1990) *abrogated on*

implicitly, that defendants have the right to present evidence at detention hearings without specifying the type of evidence.[10] The ABA Standards for Criminal Justice: Pretrial Release 10-5.10 (3d. ed. 2007) agree: "At any pretrial detention hearing, defendants should have the right to…present witnesses on his or her own behalf." *See also* 8 C.J.S. Bail § 76 (2015); 8A Am. Jur. 2d Bail and Recognizance § 64; Nat'l. Assoc'n. of Pretrial Services Agencies Standards on Pretrial Release 2.10(a) (3d ed. 2004).

In a case like the present one where there existed a rebuttable presumption that Mr. Vaughn posed a flight risk and a threat to public safety—in essence a

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other grounds by Fry v. State, 990 N.E.2d 429 (Ind. 2013); *Kuhnle v. Kassulke*, 489 S.W.2d 833, 835 (Ky. 1973); *Application of Kennedy*, 100 N.W.2d 550, 553 (Neb. 1960); *State v. Konigsberg*, 164 A.2d 740, 746 (N.J. 1960); *Chari v. Vore*, 744 N.E.2d 763, 767 (Ohio 2001); *State v. Hill*, 444 S.E.2d 255, 257 (S.C. 1994); *Shaw v. State*, 47 S.W.2d 92, 93–94 (Tenn. 1932); *State v. Kastanis*, 848 P.2d 673, 676 (Utah 1993).

[10] *Fikes v. State*, 251 S.W.2d 1014, 1014 (Ark. 1952); *Van Atta v. Scott*, 613 P.2d 210, 218 (Cal. 1980) *superseded on other grounds as stated in In re York*, 892 P.2d 804, 809 n. 7 (Cal. 1995)); *Goodwin v. Dist. Ct. In & For Tenth J. Dist.*, 586 P.2d 2, 4 (Colo. 1978); *State v. Menillo*, 268 A.2d 667, 675 (Conn. 1970); *Constantino v. Warren*, 684 S.E.2d 601, 604 (Ga. 2009); Iowa Code Ann. § 811.1A.2.c. (West 2015); Mich. Ct. R. 6.106(g)(2)(a); *State v. LeDoux*, 770 N.W.2d 504, 514 (Minn. 2009); *Smith v. Banks*, 134 So. 3d 715, 719 (Miss. 2014); *State v. Dodson*, 556 S.W.2d 938, 944 (Mo. Ct. App. 1977); *Miller v. Eleventh J. Dist. Ct.*, 154 P.3d 1186, 1188 (Mont. 2007); *Application of Wheeler*, 406 P.2d 713, 715 (Nev. 1965); *State v. Poulicakos*, 559 A.2d 1341, 1344 (N.H. 1989); *State v. Brown*, 338 P.3d 1276, 1280 (N.M. 2014); N.Y. Crim. Proc. Law § 510.20 (McKinney 2015) (Practice Commentary by Peter Preiser); N.C. Gen. Stat. Ann. § 15A-534(c) (West 2015); *Lock v. Moore*, 541 N.W.2d 84, 87 (N.D. 1995); *Rico-Villalobos v. Giusto*, 118 P.3d 246, 248 (Or. 2005); *Ex parte Willman*, 695 S.W.2d 752, 754 (Tex. App. 1985); *State v. Passino*, 577 A.2d 281, 285 (Vt. 1990); W. Va. R. Crim. Proc. 46(h)(2) (West 2015); Wis. Stat. Ann. § 969.035(6) (West 2015).

presumption against pretrial release—the right to present evidence to rebut the presumption is especially important. Federal appellate courts have construed a similar "rebuttable presumption" in the Bail Reform Act of 1984 as imposing a burden of production on the defendant to come forward with some evidence that he will not flee or endanger the public if released. *See, e.g., U.S. v. Portes*, 786 F.2d 758, 764 (7th Cir. 1985). While a defendant could challenge this presumption with a proffer, actual evidence will usually be more persuasive and effective. Indeed, in upholding the Bail Reform Act's rebuttable presumption, courts have cited the fact that the Act gives defendants "a right to counsel, a right to testify, a right to call witnesses" at the detention hearing. *Id.* The federal rule is identical to the Court of Appeal's holding in *Fischer* that defendants facing a rebuttable presumption for the denial of bail have "the burden…to rebut the presumption by evidence." 212 Md. at 524. The right to present material evidence is crucial to procedural due process at bail reviews and consistent with Maryland law.

Procedural due process requires that defendants have the opportunity to dispute the state's allegations with evidence before they are incarcerated for months, or even longer.

CONCLUSION

In accordance with the plain language of Md. Rule 4-216, the practice of no fewer than forty states, the ABA Standards for Pretrial Release, and Maryland precedent, this Court should hold that, unless the testimony or evidence to be presented at a bail review hearing is probatively inconsequential to the

determination of whether a defendant should be released and the conditions of release, the court must receive testimony or evidence as to the material, disputed allegations. *See Damien F*. at 584. This Court implicitly recognized the significance of the issue presented in this case when this Court first granted Mr. Vaughn's application for leave to appeal. Although this appeal is now moot, this Court should exercise its discretion to decide this issue of paramount public importance.

Respectfully submitted,

Paul B. DeWolfe
Public Defender

Ethan Frenchman
Assistant Public Defender

Counsel for Appellant

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CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112

1. This brief contains 8,954 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

_____
Ethan Frenchman

PERTINENT AUTHORITY

Maryland Constitution, Declaration of Rights

Article 21. Right of accused; indictment; counsel; witnesses; speedy trial; jury
That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Article 24. Due process
That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Article 25. Excessive bail and fines; cruel or unusual punishment
That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law.

U.S. Constitution, Bill of Rights

Amendment VI
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VIII
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Maryland Code, Courts and Judicial Proceedings (West 2015)

§ 3-707. Leave to appeal for right to bail

In general

(a) If a judge refuses to issue a writ of habeas corpus sought for the purpose of determining the right to bail, or if a judge sets bail claimed to be excessive prior to trial or after conviction, but prior to final judgment, a petitioner may apply to the Court of Special Appeals for leave to appeal from the refusal.

Applications for leave to appeal

(b) (1) A petitioner shall file the application for leave to appeal within ten days after the denial or grant of habeas corpus relief stating briefly why the order of the lower court should be reversed or modified.

(2) The record on the application for leave to appeal shall contain a copy of the petition for habeas corpus, the State's answer, if any, the order of the court, and the memorandum of reasons issued by the judge.

(3) If the Court grants the application, it may order the preparation of a transcript of any proceedings related to the habeas corpus petition.

Grant or denial of applications for leave to appeal

(c) (1) The Court of Special Appeals may grant or deny the application for leave to appeal. If the Court grants the application, it may affirm, reverse, or modify the order of the lower court granting or denying the relief sought by the writ.

(2) If the Court determines that the lower court was wrong in refusing to admit to bail or that the bail set is not appropriate, it may determine the proper amount of bail. This determination is binding on the lower court, unless a change of circumstances warrants a different decision.

Maryland Code, Criminal Procedure (West 2015)

§ 5-202. Restrictions on pretrial release

Release of defendants charged with escaping from correctional facility prohibited

(a) A District Court commissioner may not authorize pretrial release for a defendant charged with escaping from a correctional facility or any other place of confinement in the State.

Release of defendants charged as a drug kingpin prohibited

(b) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged as a drug kingpin under § 5-613 of the Criminal Law Article.

(2) A judge may authorize the pretrial release of a defendant charged as a drug kingpin on suitable bail and on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community.

(3) There is a rebuttable presumption that, if released, a defendant charged as a drug kingpin will flee and pose a danger to another person or the community.

Release of defendants charged with crime of violence prohibited

(c) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged with a crime of violence if the defendant has been previously convicted:

(i) in this State of a crime of violence; or

(ii) in any other jurisdiction of a crime that would be a crime of violence if committed in this State.

(2)(i) A judge may authorize the pretrial release of a defendant described in paragraph (1) of this subsection on:

1. suitable bail;

2. any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community; or

3. both bail and other conditions described under item 2 of this subparagraph.

(ii) When a defendant described in paragraph (1) of this subsection is presented to the court under Maryland Rule 4-216(f), the judge shall order the continued detention of the defendant if the judge determines that neither suitable bail nor any condition or combination of conditions will reasonably ensure that the defendant will not flee or pose a danger to another person or the community before the trial.

(3) There is a rebuttable presumption that a defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community.

Release of defendants who committed crimes while released on bail or personal recognizance prohibited

(d) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged with committing one of the following crimes while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:

(i) aiding, counseling, or procuring arson in the first degree under § 6-102 of the Criminal Law Article;

(ii) arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree under § 6-103 of the Criminal Law Article;

(iii) burglary in the first degree under § 6-202 of the Criminal Law Article;

(iv) burglary in the second degree under § 6-203 of the Criminal Law Article;

(v) burglary in the third degree under § 6-204 of the Criminal Law Article;

(vi) causing abuse to a child under § 3-601 or § 3-602 of the Criminal Law Article;

(vii) a crime that relates to a destructive device under § 4-503 of the Criminal Law Article;

(viii) a crime that relates to a controlled dangerous substance under §§ 5-602 through 5-609 or § 5-612 or § 5-613 of the Criminal Law Article;

(ix) manslaughter by vehicle or vessel under § 2-209 of the Criminal Law Article; and

(x) a crime of violence.

(2) A defendant under this subsection remains ineligible to give bail or be released on recognizance on the subsequent charge until all prior charges have finally been determined by the courts.

(3) A judge may authorize the pretrial release of a defendant described in paragraph (1) of this subsection on suitable bail and on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community.

(4) There is a rebuttable presumption that a defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community if released before final determination of the prior charge.

Release for defendants charged with protective orders or orders of protection prohibited

(e) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged with violating:

(i) the provisions of a temporary protective order described in § 4-505(a)(2)(i) of the Family Law Article or the provisions of a protective order described in § 4-506(d)(1) of the Family Law Article that order the defendant to refrain from abusing or threatening to abuse a person eligible for relief; or

(ii) the provisions of an order for protection, as defined in § 4-508.1 of the Family Law Article, issued by a court of another state or of a Native American tribe that order the defendant to refrain from abusing or threatening to abuse a person eligible for relief, if the order is enforceable under § 4-508.1 of the Family Law Article.

(2) A judge may allow the pretrial release of a defendant described in paragraph (1) of this subsection on:

(i) suitable bail;

(ii) any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community; or

(iii) both bail and other conditions described under item (ii) of this paragraph.

(3) When a defendant described in paragraph (1) of this subsection is presented to the court under Maryland Rule 4-216(f), the judge shall order the continued detention of the defendant if the judge determines that neither suitable bail nor any condition or combination of conditions will reasonably ensure that the defendant will not flee or pose a danger to another person or the community before the trial.

Release of defendants previously convicted of certain crimes prohibited

(f) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes if the defendant has previously been convicted of one of the following crimes:

(i) wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article;

(ii) use of a handgun or an antique firearm in commission of a crime under § 4-204 of the Criminal Law Article;

(iii) violating prohibitions relating to assault weapons under § 4-303 of the Criminal Law Article;

(iv) use of a machine gun in a crime of violence under § 4-404 of the Criminal Law Article;

(v) use of a machine gun for an aggressive purpose under § 4-405 of the Criminal Law Article;

(vi) use of a weapon as a separate crime under § 5-621 of the Criminal Law Article;

(vii) possession of a regulated firearm under § 5-133 of the Public Safety Article;

(viii) transporting a regulated firearm for unlawful sale or trafficking under § 5-140 of the Public Safety Article; or

(ix) possession of a rifle or shotgun by a person with a mental disorder under § 5-205 of the Public Safety Article.

(2)(i) A judge may authorize the pretrial release of a defendant described in paragraph (1) of this subsection on:

1. suitable bail;

2. any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community; or

3. both bail and other conditions described under item 2 of this subparagraph.

(ii) When a defendant described in paragraph (1) of this subsection is presented to the court under Maryland Rule 4-216(f), the judge shall order the continued detention of the defendant if the judge determines that neither suitable bail nor any condition or combination of conditions will reasonably ensure that the defendant will not flee or pose a danger to another person or the community before the trial.

(3) There is a rebuttable presumption that a defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community.

Defendants registered under Title 11, Subtitle 7 of this article

(g)(1) A District Court commissioner may not authorize the pretrial release of a defendant who is registered under Title 11, Subtitle 7 of this article.

(2)(i) A judge may authorize the pretrial release of a defendant described in paragraph (1) of this subsection on:

1. suitable bail;

2. any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community; or

3. both bail and other conditions described under item 2 of this subparagraph.

(ii) When a defendant described in paragraph (1) of this subsection is presented to the court under Maryland Rule 4-216(f), the judge shall order the continued detention of the defendant if the judge determines that neither suitable bail nor any condition or combination of conditions will reasonably ensure that the defendant will not flee or pose a danger to another person or the community before the trial.

(3) There is a rebuttable presumption that a defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community.

§ 16-204. Representation of indigent individual

Representation provided by Public Defender

(a) Representation of an indigent individual may be provided in accordance with this title by the Public Defender or, subject to the supervision of the Public Defender, by the deputy public defender, district public defenders, assistant public defenders, or panel attorneys.

Proceedings eligible for representation

(b)(1) Indigent defendants or parties shall be provided representation under this title in:

(i) a criminal or juvenile proceeding in which a defendant or party is alleged to have committed a serious offense;

(ii) a criminal or juvenile proceeding in which an attorney is constitutionally required to be present prior to presentment being made before a commissioner or judge;

(iii) a postconviction proceeding for which the defendant has a right to an attorney under Title 7 of this article;

(iv) any other proceeding in which confinement under a judicial commitment of an individual in a public or private institution may result;

(v) a proceeding involving children in need of assistance under § 3-813 of the Courts Article; or

(vi) a family law proceeding under Title 5, Subtitle 3, Part II or Part III of the Family Law Article, including:

1. for a parent, a hearing in connection with guardianship or adoption;

2. a hearing under § 5-326 of the Family Law Article for which the parent has not waived the right to notice; and

3. an appeal.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, representation shall be provided to an indigent individual in all stages of a proceeding listed in paragraph (1) of this subsection, including, in criminal proceedings, custody, interrogation, bail hearing before a District Court or circuit court judge, preliminary hearing, arraignment, trial, and appeal.

(ii) Representation is not required to be provided to an indigent individual at an initial appearance before a District Court commissioner.

Maryland Rules (West 2015)

Rule 4-216. Pretrial release.

(a) **Arrest Without Warrant.** If a defendant was arrested without a warrant, upon the completion of the requirements of Rules 4-213(a) and 4-213.1, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

(b) **Communications With Judicial Officer.** Except as permitted by Rule 2.9(a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9(a)(1) and (2) of the Maryland Code of Judicial Conduct, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

(c) **Defendants Eligible for Release by Commissioner or Judge.** In accordance with this Rule and Code, Criminal Procedure Article, §§ 5-101 and 5-201 and except as otherwise provided in section (d) of this Rule or by Code, Criminal Procedure Article, §§ 5-201 and 5-202, a defendant is entitled to be released before verdict on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of

release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(d) **Defendants Eligible for Release Only by a Judge.** A defendant charged with an offense for which the maximum penalty is life imprisonment or with an offense listed under Code, Criminal Procedure Article, § 5-202(a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(e) **Duties of Judicial Officer.** (1) Consideration of Factors. In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any recommendation of an agency that conducts pretrial release investigations;

(E) any recommendation of the State's Attorney;

(F) any information presented by the defendant or defendant's attorney;

(G) the danger of the defendant to the alleged victim, another person, or the community;

(H) the danger of the defendant to himself or herself; and

(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(2) Statement of Reasons--When Required. Upon determining to release a defendant to whom section (c) of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(3) Imposition of Conditions of Release. If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section (f) of this Rule that will reasonably:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and

(C) ensure that the defendant will not pose a danger to another person or to the community.

(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail. The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

(f) **Conditions of Release.** The conditions of release imposed by a judicial officer under this Rule may include:

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

(2) placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217(e)(1)(A) equal in value to the greater of $25.00 or 10% of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

C) with collateral security of the kind specified in Rule 4-217(e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;

(D) with collateral security of the kind specified in Rule 4-217(e)(1) equal in value to the full penalty amount; or

(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) subjecting the defendant to any other condition reasonably necessary to:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim, and

(C) ensure that the defendant will not pose a danger to another person or to the community; and

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, § 9-304 reasonably

necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, § 9-302, 9-303, or 9-305.

(g) **Temporary Commitment Order.** If an initial appearance before a commissioner cannot proceed or be completed as scheduled, the commissioner may enter a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule 4-216.1.

(h) Record. The judicial officer shall make a brief written record of the proceeding, including:

(1) whether notice of the time and place of the proceeding was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and method of notification;

(2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;

(3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or appeared remotely;

(4) if the defendant waived an attorney, a confirmation that the advice required by Rule 4-213.1(e) was given and that the defendant's waiver was knowing and voluntary;

(5) confirmation that the judicial officer complied with each applicable requirement specified in section (e) of this Rule and in Rule 4-213(a);

(6) whether the defendant was ordered held without bail;

(7) whether the defendant was released on personal recognizance; and

(8) if the defendant was ordered released on conditions pursuant to section (f) of this Rule, the conditions of the release.

(i) **Title 5 Not Applicable.** Title 5 of these rules does not apply to proceedings conducted under this Rule.

Rule 4-342. Sentencing—Procedure in non-capital cases.

(a) **Applicability**. This Rule applies to all cases except those governed by Rule 4-343.

(b) **Statutory Sentencing Procedure.** When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, but has not given notice of intention to seek the death penalty, the court shall conduct a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

(c) **Judge.** If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

(d) **Presentence Disclosures by the State's Attorney.** Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(e) **Notice and Right of Victim to Address the Court.** (1) Notice and Determination. Notice to a victim or a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, § 11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court. The right of a victim or a victim's representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, § 11-403.

(f) **Allocution and Information in Mitigation.** Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

(g) **Reasons.** The court ordinarily shall state on the record its reasons for the sentence imposed.

(h) **Credit for Time Spent in Custody.** Time spent in custody shall be credited against a sentence pursuant to Code, Criminal Procedure Article, § 6-218.

(i) **Advice to the Defendant.** (1) At the time of imposing sentence, the court shall cause the defendant to be advised of: (A) any right of appeal, (B) any right of review of the sentence under the Review of Criminal Sentences Act, (C) any right to move for modification or reduction of the sentence, (D) any right to be represented by counsel, and (E) the time allowed for the exercise of these rights.

(2) At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, § 7-101 and for which a defendant will be eligible for parole as provided in § 7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole or for conditional release under mandatory supervision pursuant to Code, Correctional Services Article, § 7-501.

(3) The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court reporter.

(j) **Terms for Release.** On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.
(k) Restitution From a Parent. If restitution from a parent of the defendant is sought pursuant to Code, Criminal Procedure Article, § 11-604, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.
(l) **Recordation of Restitution.** (1) Circuit Court. Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §§ 11-608 and 11-609 and Rule 2-601.

(2) District Court. Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure Article, § 11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§ 11-610 and 11-612 and Rule 3-621.

Rule 8-204. Application for leave to appeal to Court of Special Appeals.
(a) **Scope.** This Rule applies to applications for leave to appeal to the Court of Special Appeals.
(b) **Application.** (1) How Made. An application for leave to appeal to the Court of Special Appeals shall be filed in duplicate with the clerk of the lower court.

(2) Time for Filing. (A) Generally. Except as otherwise provided in subsection (b)(2)(B) of this Rule, the application shall be filed within 30 days after entry of the judgment or order from which the appeal is sought.

(B) Interlocutory Appeal by Victim. An application with regard to an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, § 11-103 alleging that the criminal or juvenile court denied or failed to consider a victim's right may be filed at the time the victim's right is actually being denied or within 10 days after the request is made on behalf of the victim, whether or not the court has ruled on the request.

(C) Bail. An application for leave to appeal with regard to bail pursuant to Code, Courts Article, § 3-707 shall be filed within ten days after entry of the order from which the appeal is sought.

(3) Content. The application shall contain a concise statement of the reasons why the judgment should be reversed or modified and shall specify the errors allegedly committed by the lower court.

(4) Service. If the applicant is the State of Maryland, it shall serve a copy of the application on the adverse party in compliance with Rule 1-321. Any other applicant shall serve a copy of the application on the Attorney General in compliance with Rule 1-321. If the applicant is not represented by an attorney, the

clerk of the lower court shall promptly mail a copy of the application to the Attorney General.

(c) **Record on Application.** (1) Time for Transmittal. The clerk of the lower court shall transmit the record, together with the application, to the Court of Special Appeals within (A) five days after the filing of an application by a victim for leave to file an interlocutory appeal pursuant to Code, Criminal Procedure Article, § 11-103, (B) 30 days after the filing of an application for leave to appeal in any other case, or (C) such shorter time as the appellate court may direct. The clerk shall notify each party of the transmittal.

(2) Post Conviction Proceedings. On application for leave to appeal from a post conviction proceeding, the record shall contain the petition, the State's Attorney's response, any subsequent papers filed in the proceeding, and the statement and order required by Rule 4-407.

(3) Habeas Corpus Proceedings. On application for leave to appeal from a habeas corpus proceeding in regard to bail, the record shall contain the petition, any response filed by the State's Attorney, the order of the court, and the judge's memorandum of reasons.

(4) Victims. On application by a victim for leave to appeal pursuant to Code, Criminal Procedure Article, § 11-103, the record shall contain (A) the application; (B) any response to the application filed by the defendant, a child or liable parent under Code, Criminal Procedure Article, § 11-601, the State's Attorney, or the Attorney General; (C) any pleading regarding the victim's request including, if applicable, a statement that the court has failed to consider a right of the victim; and (D), if applicable, any order or decision of the court.

(5) Other Applications for Leave to Appeal. On any other application for leave to appeal, the record shall contain all of the original papers and exhibits filed in the proceeding.

(d) **Response.** Within 15 days after the clerk of the lower court sends the notice that the record and application have been transmitted to the Court of Special Appeals, any other party may file a response in the Court of Special Appeals stating why leave to appeal should be denied or granted, except that any response to an application for leave to appeal with regard to bail pursuant to Code, Courts Article, § 3-707 or with regard to an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, § 11-103 shall be filed within five days after service of the application.

(e) **Additional Information.** Before final disposition of the application, the Court of Special Appeals may require the clerk of the lower court to submit any portion of the stenographic transcript of the proceedings below and any additional information that the Court may wish to consider.

(f) **Disposition.** On review of the application, any response, the record, and any additional information obtained pursuant to section (e) of this Rule, without the submission of briefs or the hearing of argument, the Court shall:

(1) deny the application;

(2) grant the application and affirm the judgment of the lower court;

(3) grant the application and reverse the judgment of the lower court;

(4) grant the application and remand the judgment to the lower court with directions to that court; or

(5) grant the application and order further proceedings in the Court of Special Appeals in accordance with section (g) of this Rule.

The Clerk of the Court of Special Appeals shall send a copy of the order disposing of the application to the clerk of the lower court.

(g) **Further Proceedings in Court of Special Appeals.** (1) Generally. Further proceedings directed under subsection (f)(5) of this Rule shall be conducted pursuant to this Title and as if the order granting leave to appeal were a notice of appeal filed pursuant to Rule 8-202. If the record on application for leave to appeal is to constitute the entire record to be considered on the appeal, the time for the filing of the appellant's brief shall be within 40 days after the date of the order granting leave to appeal.

(2) Further Proceedings in Interlocutory Appeals of Denial of Victims' Rights. If the order granting leave to appeal involves an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, § 11-103, the Court may schedule oral argument without the submission of briefs and shall consider the application and any responses in lieu of briefs.

APPENDIX