

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

STATE OF MARYLAND

*

vs.

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Case No: K-12-415

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JOHN R. LEOPOLD

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Memorandum

I. Introduction

Pursuant to Rule 4-328 of the Maryland Rules of Procedure, this constitutes the Court's grounds for its decision in support of the verdicts that will be entered today in the case of State of Maryland v. John R. Leopold which is No. K-12-415 on the criminal docket of the Circuit Court for Anne Arundel County.

II. The Indictment

On March 2, 2012, the Office of the State Prosecutor filed a five count indictment that had been returned by the Grand Jurors of Anne Arundel County against John R. Leopold (hereinafter "Leopold" or "Defendant"). Four of the counts charged the offense of Misconduct in Office, a violation of the common law. The fifth count charged Fraudulent Misappropriation by Fiduciary, a violation of Section 7-113 (1) of the Criminal Law Article of the Annotated Code of Maryland.

On January 25, 2013, one of the Misconduct in Office counts, Count Two, was adjudicated Not Guilty by the Court on the Defendant's Motion for Judgment of Acquittal at the conclusion of the State's case.

The remaining counts are broken down as follows:

Count One-Misconduct in Office

This count is based on the theory of misfeasance and charges that the Defendant misused "Executive Protection Officers for Political and Campaign Activities." This offense is alleged to have occurred between June 25, 2010 and November 16, 2010.

Count Three-Misconduct in Office

Count Three also relies on the theory of misfeasance and charges that the Defendant misused county employees for personal purposes between the dates of February 17, 2010 and May 15, 2011.

Count Four-Misconduct in Office

Count Four is grounded on a claim of malfeasance and asserts that between February 26, 2010 until July 18, 2010 the Defendant misused county monies for his personal benefit by causing county monies to be utilized to pay executive protection officers over \$10,000.00 in overtime pay for the Defendant's own use and benefit in an attempt to conceal a personal relationship.

Count Five-Fraudulent Misappropriation by Fiduciary

Count Five is based on an alleged statutory violation of Section 7-113 (1) of the Criminal Law Article and charges the Defendant with causing county monies to be utilized to pay executive protection officers over \$5,000.00 in overtime pay for the Defendant's own use and benefit in an attempt to conceal a personal relationship. It is alleged that this was done between February 26, 2010 and July 18, 2010

III. Background

Following the filing of the indictment in March, 2012, a trial date was set for September 4, 2012 and in the spring of 2012, a lengthy jury selection process was agreed to by the parties which included the completion of written jury questionnaires by prospective jurors. This process proceeded forward in the summer of 2012 with an agreed upon questionnaire prepared and several hundred prospective jurors being summonsed to complete the written questionnaires in August, 2012. However shortly prior to the date the prospective jurors were to report, Defendant requested a postponement of the trial date which was granted on August 2, 2012 by the Honorable Paul Hackner after the Defendant waived his right to a speedy trial.

A new trial date of January 16, 2013 was agreed to by the parties and the same jury selection process that had begun in the summer was repeated with a new group of 336 prospective jurors who came to the court house in December, 2012 and completed written questionnaires which were reviewed by counsel and the Court. On January 16th and 17th, the Court and counsel conducted interviews of prospective jurors and agreed on a pool of qualified jurors.

On January 17, 2013, just prior to final selection of the jury, the Defendant after extensive voir dire by counsel and the court, waived his right to a jury trial and elected to be tried by the Court without a jury. Trial commenced on January 18, 2013 and testimony concluded on January 28.

IV. Witnesses and Exhibits

The following persons testified during the course of the trial.

Those persons called by the State:

Patricia Medlin

Patrick Thomas Shanahan

Katherine Goodwin

Janet Sunderland Owens

Joseph Pazulski

Howard Brown

Erik Robey

Mark Walker,

Michael Stavlas

Tracie Reynolds

Loretta Drew

Karen Marcus

Gregory Speed

Joanna Conti

Timothy Phelan

Jared DeMarinis

Stephen Clark Regle

Rodney Gettman

Andrea Fulton

Amie Shreves

Those persons called by the Defendant:

Dr. Roy Edwin Bands

Dr. Timothy G. Burke

Andrea Fulton

Both the State and the Defendant submitted into evidence numerous exhibits which the Court has reviewed in reaching its conclusions.

V. The Applicable Legal Standards

Three of the remaining four counts in the indictment are charges based on the common law offense of Misconduct in Office. In Maryland, misconduct in office is a common law misdemeanor. It is corrupt behavior by a public officer¹ in the exercise of the duties of his office or while acting under the color of his office. *Duncan v. State*, 282 Md. 385, 387 (1978). The Maryland cases have recognized that the "corrupt behavior" can be categorized in various ways such as "(1) the doing of an act which is wrongful in itself (malfeasance), or, (2) the doing of an act otherwise lawful in a wrongful manner (misfeasance); or, (3) the omitting to do an act which is required by the duties of the

¹ There is no dispute that by virtue of Defendant being the County Executive of Anne Arundel County, Maryland during the periods covered by the indictment that he is as a matter of fact and law a "public officer".

office (nonfeasance).” *Id. State v. Carter*, 200 Md. 255, 262-267 (1952); *Francis v. State*, 56 A.3d 286 (2012); *Chester v. State*, 32 Md.App. 593, 601-610, cert denied, 278 Md. 718 (1976).

Within each of the misconduct counts, the State acknowledges that it must show that the Defendant acted “corruptly and in violation and perversion of his duties” as County Executive and it also acknowledges that it must show that the Defendant committed each count “knowingly, willfully and intentionally”.

What “corruptly” means in this context has not been well defined. Some guidance is supplied by the commentary to the Maryland Pattern Jury Instructions in support of its instruction on Misconduct in Office MPJI-Cr 4:23 which states:

“The word ‘corruption,’ as an element of misconduct in office is used in the sense of depravity, perversion or taint.” R. Perkins & R.Boyce, *Criminal Law*, 542 (3d ed. 1982). Thus, the conduct must be a willful abuse of authority and not merely an error in judgment. H. Ginsberg & I. Ginsburg, *Criminal Law and Procedure in Maryland* 152 (1940); see *State v. Schultz*, 71 N.J. 590, 367 A.2d 423,429 (1976) (“ ‘corrupt’ does not necessarily...mean financial dishonesty [but] rather connotes that the wrongful act is done with ‘evil motive or in bad faith and not honestly’ “).

Defendant has challenged the very essence of the Maryland crime of Misconduct in Office claiming that the offense can not survive because under today’s constitutional standards the offense is too vague and opens up the possibility of their being a lack of fair notice to those potentially targeted and that it does not provide for freedom from arbitrary and discriminatory prosecutions based on the mere whim of the prosecuting authority. Defendant cites cases such as *Skilling v. United States*, 130 S.Ct. 2896 (2010) and cases from other jurisdictions that have dealt with the laws of other states on “official misconduct”. See, e.g., *State v. Jenkins*, 469 So.2d 733 (Fla. 1985); *State v.*

DeLeo, 356 So.2d 306 (Fla. 1978); *State v. Adams*, 254 Kan. 436, 866 P.2d 1017 (1994).

This court has reviewed those authorities as well as those cited by the State and concludes that the common law Maryland crime of Misconduct in Office is not unconstitutionally vague as a violation of due process.

As the *Skilling* majority opinion notes a statute should not be declared unconstitutionally vague if there are constructions that can be applied to the law that would save it from constitutional invalidity. Given its pedigree of being part of Maryland law for several centuries a non-statutory common law offense should in this court's view be accorded at least the same deference as a statute so it is not unnecessarily relegated to the trash bin of Maryland legal history. The *Skilling* majority construed the "honest services" statute to pare it back to its core which included a definite group of defined crimes thus avoiding the constitutional problem.

Unlike in *Skilling* where a statute enacted by a legislature was in issue, this court is dealing with a common law crime that is shaped and adapted by the Court over time to meet the needs of society. *Rogers v. Tennessee*, 532 U.S. 451, 464 (2001). There is thus all the more reason why this Court should search out a construction of the traditional common law offense that fits within current constitutional standards. It is not for this Court, a trial court, to make law. That task is for the Court of Appeals should they choose to do so. It is however the duty of this court to see if within established Maryland law, or what can fairly be implied from the case law, there is a construction that meets constitutional standards.

Misconduct in Office is defined as "corrupt behavior by a public officer in the exercise of the duties of his office or while acting under color of his office." *Duncan v. State*, 282 Md. 385, 387 (1978). An act or conduct unrelated to the public official's duties even if it is a violation of the criminal law will not amount to Misconduct in Office. Office of the Attorney General, State of Maryland, Opinion No. 97-014, June 9, 1997, 82 Md. Op. Atty.Gen. 117. The Court of Appeals has recognized that misfeasance is defined as the doing wrongfully and injuriously an act which a person might do in a lawful manner; the doing of a lawful act in an unlawful manner, or the wrongful and injurious exercise of legal authority. *State v. Carter*, 200 Md. 255, 262-263 (1952). The *Carter* court also noted that the offense carries with it "some measure of wilfulness and bad intent and may be induced by corrupt motive..." *Id* at 263. See also, *Resetar v State Board of Education*, 284 Md. 537, 561 (1979) (misconduct in office is "[a]ny unlawful behavior by a public officer in relation to the duties of his office, willful in character.") As the Maryland Pattern Jury Instruction Committee notes in its comment cited above, the conduct must be a willful abuse of authority and not a mere error of judgment. This appears to be how the Court of Special Appeals views the standard since it quoted favorably from a treatise which defined the offense as "oppressive and wilful abuse of authority (to be distinguished from mere error of judgment)". *Chester v. State*, 32 Md. App. 593, 606 (1976). As noted above, the State has acknowledged that it must show as to the misconduct counts still at issue that the Defendant acted "corruptly". They have also accepted that they must show that the Defendant acted "knowingly, willfully and intentionally". Of course, as with all criminal offenses, the State must prove the

crime with proof that convinces the trier of fact of the Defendant's guilt beyond a reasonable doubt.

A leading treatise on the law regarding public officers neatly captures what this Court believes the direction that the Maryland Court of Appeals has taken and will take on construing the contours of the offense of Misconduct in Office:

It should be noted that criminal intent is an essential element of the offense of misconduct at common law. Furthermore, the laws providing for the removal of unfaithful public officers are not designed,... as a pitfall into which an honest and sincere public official might be plunged if he unintentionally erred in the discharge of his duties; the law presumes that a public official conducts himself in good faith, the burden resting upon a complainant to show the contrary to be true. Accordingly, the courts have prevented the common law crime of misconduct in office from becoming a means for oppressive prosecutions premised upon vague moral principles by making wilfulness an element of the crime. Wilfulness, a term which may have different meanings in different contexts, means, in the context of malfeasance arising out of the breach of a duty of public concern, an evil purpose or mental culpability, a concept which is often labeled criminal intent, guilty knowledge, mens rea, bad purpose, or corruption. Accordingly, it seems that, in order to sustain a charge of wilful maladministration in office, the acts relied upon must have been committed with bad or evil intent or for a bad or evil purpose. Mere error, mistake, negligence or ignorance does not meet this concept.

McQuillan, Municipal Corporations, Sec. 12.237 (3rd Edition 2012) (footnotes omitted)

In this Court's view with these safeguards in mind, the construction applied above to the offense of Misconduct in Office saves it from any claim that the offense is too vague to be constitutionally sustained.

Defendant has also placed great emphasis on the characterization in the indictment of Counts 1 and 3 as being "misfeasance" and the Defendant contends that the theory has now been switched to "malfeasance" and that such switch is fatal to both counts being able to be sustained. The Court has considered these arguments and the cases cited

today on this point and concludes that the use of the terms in the indictment is not critical in the context of this case. It is certainly not fatal to the sustainability of the counts.

The fifth and final count charges the Defendant with Fraudulent Misappropriation by a Fiduciary a violation of Sec. 7-113 of the Criminal Law Article. Under Sec. 7-113 (1), a fiduciary may not fraudulently and willfully appropriate money or a thing of value that the fiduciary holds in a fiduciary capacity contrary to the requirements of the fiduciary's trust responsibility.

VI. Factual Findings and Application to Legal Standards

The Defendant, John R. Leopold, ran for and was elected to the office of County Executive of Anne Arundel County, Maryland. He was sworn into office and assumed the Office on December 4, 2006. The Defendant was re-elected to a second term as County Executive on November 2, 2010 and was sworn in on December 6, 2010.

As County Executive and pursuant to the Anne Arundel County Charter, the Defendant is the chief executive and administrative officer of the county and official head of the county government.

Prior to his election to the office of County Executive, the Defendant had an extensive history of holding elective offices in both the State of Maryland and in Hawaii. In Maryland before being elected County Executive he served 18 years in the Maryland

House of Delegates. The Defendant also served in the Hawaii State House of Representative for four years and as a Hawaii State Senator for four years.

Upon assuming the office of County Executive, the Defendant had available to him a unit² of Executive Protection Officers. At the time he assumed the office the unit had two full time officers assigned to it as well as several officers who worked on a part time basis to cover weekend assignments or to fill in when the regularly assigned officers were not available.

The unit was not one of long standing. It had been first created in 1998 at the dawn of the administration of the Defendant's predecessor, Janet Owens. Upon her election, Ms. Owens sought to create a unit similar to those in other counties such as Baltimore County. She requested that the then Chief of Police Patrick Thomas Shanahan form such a unit. A unit was established composed of two officers. The officers assigned to the unit were sworn Anne Arundel County Police Officers who remained as personnel in the Police Department and were subject to the chain of command within the Police Department. The two officers regularly reported to their superiors in the Department. One of the officers, Katherine Goodwin, met with personnel from other police departments to determine how such units operated.

The only written directive governing the unit is an Anne Arundel County Police Department Standard Operating Procedure (SOP). The SOP seems to have been first

² In some of the testimony, the entity is called a "unit" at others it is referred to as a "detail". For purposes of this opinion, the Court will refer to the entity as a unit of the Anne Arundel County Police Department.

issued in June of 1999³ and underwent various revisions over the years but never went beyond the most basic outline of what the purpose and limits of the unit were. The unit according to the SOP was “to provide protection and security for the County Executive during the course of the Executive’s work schedule.” The SOP provided for the County Executive to be picked up by an officer in the morning and returned to the residence upon completion of the workday. The SOP also indicated that the County Executive or his office could direct a different schedule if necessary and it also provided for weekend coverage when needed. The SOP also provided that the County Executive’s vehicle would be the primary one used for transportation and the SOP also indicated that the officers in the unit would do “advance” work to prepare for upcoming events that the Executive would attend. The unit was also to conduct “threat assessments as to the safety and security of the County Executive”. The SOP also provided that when not needed in the Unit, the officers were to report to the Police Department’s offices for other work assignments. This sparse recitation was apparently never fleshed out by other writings over the years except for minor revisions to the SOP.

The record shows that the officers in the unit at first did not as a routine matter drive the County Executive to and from work. She would instead drive into work and after that be driven by the officers assigned to the unit. At the end of the day, she would drive herself home. As to events, during the day, there seems to have been no distinction made between governmental, political or personal meetings that the County Executive

³ Defendant has pointed out that there were many variants of the original SOP and that it is difficult to determine which version was in effect at any point in time. The Court has reviewed the versions submitted by the parties and finds there to be only minor changes made throughout the years that are not of material consequence to deciding the relevant issues before this Court.

might have. This makes sense since if the purpose is to provide security and protection to the County Executive, such security and protection would seem to be needed regardless of what the primary purpose of the event or appointment was. It should also be noted that an obvious advantage of a County Executive being driven to an event or appointment is that it frees up the County Executive to do work including review of governmental records and making calls. To the extent that the County Executive's time is perceived as a valuable commodity there can be a public purpose in allowing the Executive to be freed up from the task of driving a vehicle so that the Executive can devote her time while in transit to county business.

As a matter of practice, it appears that the officers did drive the County Executive to whatever events she directed whether they were governmental, political or personal. At times during the day they would do occasional errands for the County Executive such as getting lunch or buying cigarettes. When County Executive Owens launched a campaign for State Comptroller in 2006, the officers would drive her to whatever event was on her schedule including purely political events outside of the County. On occasion, they would also drive her and her spouse to certain events of a personal nature such as a concert by the Baltimore Symphony Orchestra.

When the Defendant became County Executive in 2006, the Unit was operating in this fashion with two officers assigned full time. Other officers would work on weekends. It appears that all the officers who have worked in the unit were veteran officers with at least 10 years of police experience prior to being selected for the Unit.

There is no indication from this record that the Defendant was ever advised of any specific written rules, regulations, guidelines or SOPs that governed the unit. Nor does

it appear from this record that any guidance relating to the unit was given to the Defendant during the transition period from the Owens Administration prior to his taking Office in 2006. There is also no indication that the Defendant ever sought to find out whether there was any rules, regulations , procedures or guidelines governing the Unit.

Several veteran Anne Arundel County police officers served in the Executive Protection Unit and the ones that are most relevant to the charges here are: Corporal Joseph Pazulski, Corporal Howard Brown, Mark Walker, Timothy Phelan and Sgt. Gregory Speed.

The time frame of the indictment encompasses the period from February 17, 2010 to May 15, 2011. During that time various events transpired that are of significance to the evaluation of the four counts of the indictment that are before the court. The most significant are the following:

- >The Defendant experienced disabling back pain and was admitted to the Arundel Medical Center for back surgery on February 23, 2010 and the surgery was completed.
- > Upon discharge from the hospital on February 28, 2010, the Defendant required a urinary catheter which had a collection bag that needed periodic emptying.
- > On March 23, 2010, Joanna Conti announced her candidacy for the Office of County Executive seeking to succeed the Defendant in that Office.
- > On June 25, 2010, the Defendant filed his candidacy for a second term and a fundraiser was held the next day, June 26, 2010, at the home of a political supporter.
- > In July, 2010, the Defendant had a second back surgery in a further effort to provide relief from the pain and discomfort he continued to experience in his back. Defendant was in the hospital from July 16, 2010 until July 18, 2010.

- > In September, 2010, the primary election took place.
- > On November 2, 2010, Defendant was re-elected to a second term as County Executive defeating Joanna Conti.
- > On December 6, 2010, Defendant was sworn in to begin his second term.

The Defendant's personal relationships during this period are also relevant to the charges before the court. Mr. Leopold owns a residence in the Pasadena area of Anne Arundel County. However, during the period in question, he resided frequently with a Jane Miller in the Stoney Beach section of Anne Arundel County. During this same period, the Defendant also engaged in an intimate relationship with a Constance Casalena who was a former employee of the County Executive's Office who subsequently was transferred to the county's Recreation and Parks Department and was working at that agency during the period covered by the indictment.

In the beginning of his first term, Defendant made certain appointments to his staff. Among these were the appointment of Erik Robey, who was the Assistant to the Chief Administrative Officer of the County. Mr. Robey was a close political confidant of the Defendant and greatly assisted him in his re-election campaign in 2010. While not having the title, he appears to have been the "de facto" deputy campaign manager for the Defendant. As Mr. Robey testified the Defendant acted as his own campaign manager. The Defendant appears during the 2010 election season to have been micro managing his campaign down to the level of knowing where virtually every campaign sign was located and personally handling many campaign contributions.

At the beginning of his tenure as County Executive, the Defendant also brought on to the County Executive's staff, Patricia Medlin. Ms. Medlin had worked as an Anne Arundel County merit system employee for 16 years for Anne Arundel County in various sections of the County Executive's Office and was persuaded by the Defendant to leave the merit system and take on the position of being his assistant and scheduler. By assuming this position, Ms. Medlin lost many protections and became an "at will" employee subject to discharge by Defendant without the need to establish any cause for the discharge. Ms. Medlin remained in this position until May, 2011.

The Court will now consider each count still at issue reviewing first what is alleged in the indictment and then analyzing whether the State has proven the Defendant's guilt with proof beyond a reasonable doubt.

Count One--Misconduct in Office

Misfeasance- Misuse of Executive Protection Officers for Political and Campaign Activities

Relies on allegations in ¶¶ 1 to 24 of the Indictment.

Dates: June 25, 2010 until November 16, 2010

Core allegation:

"that John R. Leopold knowingly, willfully and intentionally requir[ed] Anne Arundel County employees, specifically, executive protection detail officers assigned to protect him, [to] perform political and campaign activities and tasks while on duty and being paid by county monies, in violation of the common law and against the peace, government and dignity of the State."

The indictment describes four major areas of alleged political and campaign activities. The Court will discuss below the evidence pertaining to each of the four areas mentioned and discuss the evidence presented and the Court's evaluation of that evidence.

UNLOADING CAMPAIGN SIGNS

The indictment alleges that:

7. On or about July 9, 2010, Erik Robey, Leopold's Assistant Chief Administrative Officer (hereinafter "Robey"), picked up approximately 1,000 campaign signs, ordered by the John Leopold Campaign Committee, from an Annapolis area printing company and delivered them to Leopold's Pasadena home.

8. Leopold directed on-duty executive protection officers (hereinafter "EPOs") to go to his home to unload the campaign signs into his basement and subsequently to distribute campaign signs to County Executive staff, for placement throughout the county. Leopold was not present for these tasks, instead provided his house key to the EPOs to facilitate these tasks.

Discussion:

The credible evidence shows that Mr. Robey in July, 2010 working for the Defendant's campaign did deliver 1,000 campaign signs⁴ for Defendant's re-election campaign to Defendant's private residence in a pick up truck and that two officers (Brown and Walker) were directed by the Defendant to report to the house and help with the unloading of the signs and the placement of the signs in the basement of Defendant's residence. At the time, the officers were on duty and being paid by the County with public funds. The officers were not doing this work as volunteers but because they had

⁴ The signs were laminated cardboard with dimensions of nine inches by 36 inches. The word "Leopold" was on the sign in large white letters against a red background. The only other writing on the signs is found on the lower right hand corner which says "Auth., E. Stevens, Treas." Each sign came with a metal stake for easy mounting and placement in the ground.

been directed to do so by Mr. Leopold as a requirement of their employment. The credible evidence also shows that Mr. Leopold was not present at the house at the time the work was being performed.

A few days later, Officer Brown while on duty was directed by the Defendant to go to the residence and distribute signs to county employees recruited by the Defendant who were picking them up to place them around the county. Brown retrieved the signs from the cellar and handed them out to those who came to the house. This occurred on two occasions.

SIGN PLACEMENT AND RETRIEVAL

The indictment alleges that:

9. During the 2010 campaign season, Leopold required the EPOs assigned to him during the week, to place, replace and check on his campaign signs at various locations throughout the county, while on duty. The EPOs would perform this task regularly on weekdays for approximately two to three hours each morning, when not escorting Leopold to events.

10. Leopold generally was not present with the EPOs during the performance of these tasks.

11. The EPOs' regular hourly pay rate from County monies is approximately \$40.00 per hour.

12. EPOs, working overtime on weekends, were also tasked with placing campaign signs, on occasion, up to six to eight hours a day.

13. EPOs working on weekends earned overtime pay of approximately \$60.00 per hour from County monies.

19. After the 2010 election was over, Leopold further directed the on-duty EPOs to retrieve all Leopold campaign signs and return undamaged ones to his home. On duty EPOs did so regularly on weekdays for approximately two to three hours per morning after the election, for approximately two weeks.

Discussion:

The credible evidence shows that during the 2010 election campaign, the Defendant did require the EPOs in the unit during the week to place, replace and check on campaign signs at various locations throughout the county. This occurred when the Defendant knew that the officers were on duty and being paid by the County for police work. Usually this work was done after the officers dropped the Defendant off at the office around 7:00 am and continued until 10:15 a.m. This pattern continued from August to November, 2010. Even after the signs available had all been distributed, the officers were sent out by Defendant to make certain the signs had not been tampered with or disappeared. Officer Brown testified that when the Defendant first told him to put signs out he told the Defendant that he did not think it was a good idea and that he was "afraid it might hit into the media." After this discussion, the Defendant continued to require the officers to put out his signs. When asked why he didn't refuse to do this work the officer said that "you don't say "no" to Mr. Leopold. He said he was fearful about what the "retributions" would be if he refused the request from the Defendant.

One officer testified that the Defendant would give him addresses to place signs throughout the county. He was instructed to go to the door of the residence, knock on it and, if answered, identify himself and ask the person where the sign should be placed. If the person was not at home, he was to place the sign on the lawn and then leave a card with a personal handwritten "thank you" message written by the Defendant. At times, officers working overtime were also required to place or replace campaign signs

at the direction of the Defendant. Officer Joseph Pazulski who worked weekends told him several times that during the administration of the former County Executive that the officers assigned to her never touched signs. Despite this Defendant had Pazulski put in signs on weekends. At one time, they put in 40 to 50 signs in one day. Defendant told Pazulski that it was OK for him to put in the signs as long as Defendant was with him since Defendant was still recuperating from surgery.

When the general election was concluded the Defendant required the officers while on duty to retrieve the signs from the locations where they had been placed and return them to his house for potential re-use. This went on for several weeks after the 2010 general election.

Officer Brown also testified that on occasion the Defendant would direct him to call persons and ask why the signs that they had been given were not up and at times Officer Brown drove to a house to personally make such an inquiry of a homeowner. This was also done at the specific direction of the Defendant.

COLLECTION OF CAMPAIGN CHECKS

The indictment alleges that:

¶ 20. On or about Saturday, June 26, 2010, Leopold held a small fundraiser at a private residence, where he announced his candidacy for re-election.

21. Leopold directed that a second, additional EPO be present at this event in order to collect campaign donation checks. This second, additional EPO was paid approximately \$385.00 in overtime pay from County monies, for working at the fundraising event that day.

Discussion:

At this fundraiser, two officers were present. The evidence does not support the conclusion that the EPO's were directed to be there in order to collect campaign donation checks or that they did so. There was some testimony that one of the officers was told by Defendant to watch a "cash box" but the record is not clear about what this meant. The credible evidence does not indicate that given the way the unit operated with the Defendant being able to direct the staffing levels that having two officers present at this event instead of one supports a finding of Official Misconduct.

The indictment further alleges that:

22. Between on or about June 21, 2010, and on or about October 22, 2010, Leopold directed on-duty EPOs to respond to locations both in- and out-of-county to pick up campaign contribution checks for him, during the course of their regular work day.

23. At Leopold's direction, EPOs were regularly required to take campaign contribution checks to the bank to deposit. Leopold was not present for these banking transactions.

Discussion :

The credible evidence does demonstrate that the Defendant during the 2010 campaign season did direct on duty officers to drive to locations both in and out of the county to pick up campaign contribution checks for him. This was done during the course of the regular work day for the officers while they were on duty and being paid by the County. The officers brought the checks to Defendant and on occasion he instructed the officers to deposit the checks into his campaign's bank account.

CREATION OF DOSSIERS

The indictment further alleges that:

24. Leopold directed on-duty executive protection officers to create dossiers on persons he viewed as political challengers, including but not limited to, Joanna Conti and Carl Snowden. The EPOs did not consider these people to be security risks.

Discussion:

The credible evidence shows that Defendant did direct Officer Brown while on duty to create files on Joanna Conti, Carl Snowden and Carl Redman based on information he could discover by research or investigation. Officer Brown conducted a computer search and prepared a file of records about Ms. Conti, her background, her properties, and the business of her husband. The file was given to the Defendant and Erik Robey for their use in the re-election campaign. Officer Brown testified that he spent 10 to 15 hours preparing the file. This was time spent while he was on duty and being paid by the County. There was also testimony that similar files were prepared on Mr. Snowden and Mr. Redman.

The Defendant's efforts to involve his executive protection officers in political and campaign activities as described above were extensive and pervasive to the extent that at times the officers were working primarily on Leopold campaign activities while on duty. Defendant was not only aware of this work, he directed that it be done giving detailed and specific commands to the officers on such matters as addresses to place lawn signs and areas to be patrolled to insure that signs continued to be in place.

Defendant was his own campaign manager and Defendant was alerted on several occasions by his staff and by the officers themselves that having the officers conduct such activity while on duty was questionable, not wise or potentially illegal. At one point around August, 2010, Ms. Medlin told him that he shouldn't have officers putting up the signs "because it is not legal". According to Ms. Medlin, he did not dispute that assertion or respond at all. Mr. Robey also told the Defendant that he did not think having the officers put in signs was appropriate and suggested that the campaign hire a college student to do it instead of having the officers do it. The Defendant rejected the suggestion.

After such warnings it appears that Defendant not only ignored the warnings of those close to him, but continued the wrongful activity and accelerated it. The record indicates that at least on one occasion, the Defendant acknowledged that he understood that having an on duty officer place signs along a highway was not allowed. Despite this awareness, Defendant proceeded to demand more campaign activity of the officers on behalf of his candidacy as the election neared. Even after the election was over in early November, the Defendant demanded that the on duty officers retrieve the campaign signs from around the county for several weeks after the election and return the ones that could be reused to his house.

It should have come as no surprise to Defendant that employing on duty sworn police officers to work on his campaign was wrongful and illegal. Section 13-103 of Article 24 of the Maryland Code provides that an employee of a local entity "may not be required to provide any political service." Section 13-105 of Article 24 further provides that an

employee of a local entity may not “engage in political activity while on the job during working hours.” See State’s Exhibits 3 and 4. Such restrictions are common throughout Maryland government⁵ and the governments of other states.

Defendant as an individual with decades of governmental and election experience was beyond a doubt aware that requiring on duty police officers to perform substantial services for his re-election campaign was wrongful and illegal.

Defendant seems to argue that it was incumbent on the police officers to tell him unequivocally that the conduct was wrong and then refuse to perform the services before he could have any culpability and that he had no obligation to desist in his demands until they did so.⁶ Defendant believes that absent the officers taking such a stand he was free to demand their services for his campaign and places the entire responsibility on their shoulders and the command staff at the Police Department. The court does not find that argument persuasive.

It is true that the police officers involved could and should have been more aggressive in resisting the demands of the Defendant for them to do this clearly inappropriate work. It is also apparent from the evidence presented in this case that the leadership of the Police Department was derelict in protecting their officers from the pressures exerted by

⁵ A similar provision barring “political activity” on the job by State employees such as those working for the Defendant while he was in the Maryland General Assembly has been part of Maryland law for decades. See, State Personnel & Pension Article, Sec. 2-304.

⁶ Defendant has argued that the police officers who testified were motivated by an animus against him resulting from a dispute over collective bargaining that the County had with the police union and because Defendant had ordered an investigation of overtime charged by the Unit. The Court has factored in these possible motivations in evaluating the officers’ testimony as well as the grants of immunity that several received in connection with their testimony.

the County Executive⁷. However, this failure of command leadership at the Police Department does not excuse the Defendant from an obligation to perform his duties as County Executive.

The Defendant was the County Executive and responsible for the administration of the County. He was invested with the responsibility to not place county employees in positions where they were being required to do wrongful or illegal acts. It is particularly wrongful for Defendant to have used on duty sworn police officers to perform his campaign activity. The citizens of Anne Arundel County should be able to rely on the fact that on duty police officers will be enforcing the laws without partiality and regardless of a citizen political affiliation or lack thereof. Placing the officers in such an untenable position of being conscripted campaign workers for months in 2010 without apparent concern was an egregious failure on Defendant's part contrary to his core duty as a County Executive and had the potential to undermine the public's confidence in its police force.

The use of police officers in his campaign is also a direct affront to the County's political system. Often it is a daunting task to run against an incumbent seeking re-election given the natural (and fully legal and appropriate) advantages that incumbents such as Defendant enjoy. It is however often very valuable to society to have candidates contest

⁷ This whole sad chapter might have been avoided or greatly ameliorated if the then Police Chief had sat down early on with the Defendant and laid out what his officers should and should not do and then insist on adherence to those standards. Instead it appears from this record, that the chain of command repeatedly chose not to protect their officers or the integrity of the Anne Arundel County Police Department but merely gave directions to the officers that indicated that they should keep the Defendant satisfied.

re-election bids so that the voters have a full airing of issues, the opportunity for a robust debate and a viable choice come election time.

By wrongfully taking substantial advantage of free public employee help for his campaign, an asset unavailable to his opponent, Defendant was placing his thumb on the scales of our political system to heavily tilt it in his favor. These actions robbed Anne Arundel County citizens of the fair political and electoral process they were entitled to receive.

Defendant's actions were done systemically during the election season of 2010.

Defendant committed these acts knowingly, willfully and intentionally and under the color of his office as County Executive. He did so corruptly and is guilty of this offense.

Count Three--Misconduct in Office

Misfeasance--Misuse of County Employees for Personal Purposes

Relies on allegations in ¶¶ 1-4 and 38-62 of the indictment

Dates: February 17, 2010 until May 15, 2011

Core allegation:

Defendant is charged with "requiring, under the color of office and for his personal purposes, Anne Arundel County employees [to] perform tasks and activities for his personal purposes and not for County purposes during their regular work day"

In theory, one could abstractly divide the activities of a County Executive into three categories: governmental, political and personal. Making judgments about what

category a matter falls into is not so easy in real life. The three categories often overlap and blend into one another. For example, if a County Executive takes his family to a county park for an afternoon to attend a community picnic, he and his family are enjoying the afternoon and the food which seems to be "personal". However, the County Executive is no doubt also looking over the park, its facilities and staff and how it is being operated. This would be "governmental". Finally, being seen in the community by citizens of the county at this family friendly event may also be of political benefit to him.

In this case, the calculus is made even more difficult because of the decisions made by the County about its Executive Protection Unit and also because of the decisions it neglected to make in operating the Unit.

As is described above, the officer assigned to the County Executive would drive the executive to the events either on the written schedule or as directed by the County Executive. The officer was to ensure the Defendant's safety and security regardless of the nature of the event or the appointment. There is no evidence that the officers were to make any distinction about whether an event was governmental, political or personal. There was virtually no guidance given in the SOP about activities that were *not* to be performed by the officers.

Similarly, the personal staff of the County Executive such as Ms Medlin who were not merit system employees were aides to the County Executive and the record does not demonstrate any particular constraints that applied to them except that it appears that the restrictions on political activity during the work day contained in Article 24 of the Maryland Code would apply.

There are five major categories described in the indictment relating to this count which are analyzed below

MANAGEMENT OF MILLER/CASALENA CONFLICTS

The indictment alleges:

43. Leopold has repeatedly directed both the appointments coordinator and the EPOs to aid in his attempt to prevent Miller from learning about his relationship with Casalena.

44. The appointments coordinator was often directed to ascertain whether Casalena would be attending county Recreation and Parks events Leopold was attending. If Casalena was expected to attend, Leopold often directed that a second EPO be on duty for the purpose of concealing his relationship with Casalena from Miller.

45. Leopold required the EPOs to allow him (Leopold) to use their personal cell phones to communicate with Casalena, again, for the purpose of concealing the relationship.

46. Leopold required the appointments coordinator to call Casalena to instruct her not to call him at Miller's residence, for the purpose of concealing their relationship.

Discussion:

The evidence supports the conclusion that Leopold at various times instructed officers and Ms. Medlin to take actions to manage events he was attending so that he would be insulated from Ms. Casalena and also that he used his staff to communicate with Ms. Casalena when he personally did not want to do so. Ms. Medlin was instructed to

convey messages to Ms. Casalena and to find out whether she was planning to attend events that the Defendant would also be at.

The court does not believe that these actions constitute criminal misconduct in office given the lack of any specific bar on Medlin or the officers performing such tasks. A personal assistant to a high governmental official could certainly convey messages from that official to a spouse, girlfriend or anyone else. Ms. Casalena was an Anne Arundel County employee and there does not appear to be any restriction on the Defendant using his staff to find out whether a county employee or other person would be attending an event that the Defendant was going to be at and then either discouraging that attendance or taking action to avoid a disruption of the event because of that person's attendance. There does not appear to be anything wrong under the customs and usages of the unit with the officers assisting the executive with avoiding any situation that might create what the executive believes will be a disturbance, disruption or embarrassing scene at a public event that would be detrimental to the executive even if the origin of the problem was a messy domestic situation created by the Defendant.

The State has also cited the Defendant's occasional requests to use the officers' cell phones to make certain private calls. There was no testimony that the officers incurred any expense for these calls or were deprived of their phones for more than a minute or two. Under the testimony presented to the court, this appears to be trivial and hardly amounts to Official Misconduct.

The Defendants actions of involving his staff in conveying messages to his girlfriend were arguably unbecoming and graceless, but the Court can not conclude that these actions constitute criminal Misconduct in Office.

PARKING LOT ASSIGNATIONS

The indictment alleges that:

47. Leopold often required the on-duty EPOs to drive him to meet Casalena in parking lots of Annapolis area businesses, during the course of the regular work day.

48. Upon Casalena's arrival, Leopold entered her vehicle and directed the EPO to remain in the same parking lot, but at some distance away, while he and Casalena engaged in sexual activity.

49. Such meetings lasted 45 minutes or longer. Upon returning to the EPO's car, Leopold, at times commented to them in graphic language about his sexual encounter.

50. Such parking lot meetings occurred as much as two to three times each week during the second half of 2010.

Discussion:

The evidence is clear that, after the election, regularly during the work day Defendant instructed his on duty officer to drive him to the parking lot of a bowling alley near the Annapolis Mall and after the officer parked the executive's car in a place Defendant directed, he would leave the car and enter the car of Ms. Casalena who arrived at the location separately. The officer would then, as directed by the Defendant, drive across the lot to be at a distance from Ms. Casalena's car and wait. The Defendant would return to the vehicle the officer was in after a period of time which could be up to 45 minutes. At times, the Defendant would comment to the officer about the sexual encounter he had just experienced. The officers testified that this occurred two to three times per week during the latter part of 2010 and until at least March, 2011.

At a bare minimum, this conduct by the Defendant was tawdry, degrading and highly offensive. However that is not the question before the Court. The question is whether given the standards then in effect for the Executive Protection Unit, Defendant committed criminal Misconduct in Office.

The evidence shows that the officers duties required them to drive the Defendant to what ever events he had during the day. It was not for the officers to determine whether the events were personal, political or governmental. Under the procedures of the Unit, it was their job to drive him where he directed and keep him safe and secure. Under the standards then prevailing, the Court can not conclude that this conduct amounts to criminal Misconduct in Office.

MEANIAL PERSONAL ERRANDS

¶ 51 of the Indictment

Leopold frequently required on-duty EPOs to do menial personal errands for him, including but not limited to doing his personal banking, picking up and delivering newspapers to his home on weekends, picking up and delivering take-out dinners to his home, and purchasing and delivering personal gifts from Leopold to others.

Discussion:

Given the lack of any detailed guidelines for what the officers should and should not do, it is hard to ascribe criminal liability to activities performed by the officers that aided the Defendant. There was some evidence that from the beginning of the unit, the officers would on occasion do some personal errands for the county executive even prior to the Defendant assuming the office. There was no evidence presented by the

State that established any delivery of personal gifts from Leopold to others as charged in the indictment. Additionally, there was little evidence presented that the officers took take-out dinners to Defendant's home. There was evidence that the officers did have to take newspapers to his home on weekend days after his surgeries and that they may have on occasion done some personal banking. These actions by themselves do not suffice to establish Misconduct in Office by the Defendant.

HOSPITAL EPO STAFFING

¶¶ 52 to 58 of the Indictment

52. Leopold had back surgery in February and July of 2010. He was hospitalized for several days both times.

53. Leopold instructed the appointments coordinator and the EPOs that Casalena was not to be allowed to visit him in the hospital, in order to conceal his relationship with her from Miller. Leopold also directed the EPOs to instruct hospital staff that Casalena was not to be permitted to see him.

54. Casalena attempted to visit on or about February 26, 2010. Hospital staff refused her visitation, as directed.

55. Immediately thereafter, Leopold directed that a second, additional EPO be on duty at the hospital during visiting hours, to further attempt to conceal his relationship with Casalena from Miller, for the remainder of his February 2010 hospitalization, as well as his entire July 2010 hospitalization.

56. The EPOs did not consider Casalena to be a security risk to Leopold.

57. Anne Arundel Medical Center had its own security force to escort unwanted persons from the hospital when necessary.

58. The EPOs that Leopold required to be on duty, for the purpose of concealing his relationship with Casalena from Miller, worked over 170 hours of overtime during his two hospitalizations, costing the County more than \$10,000.00 in overtime pay.

Discussion:

The State contends that it was criminal Misconduct in Office for Leopold to demand that while he was in the hospital in February and July of 2010 that he have on duty two officers instead of one to insure that his stay not be disrupted. This request for an extra officer apparently resulted from an attempt by Ms. Casalena to visit him during the February admission which resulted in her creating a disturbance when she was refused entry to see the Defendant. After learning of that, the Defendant directed that an extra officer be brought on and that both officers be present during the time the hospital was open to visitors.

The State contends that the hospital's own security personnel was adequate for Defendant's purpose and that it was not necessary for the Defendant to have two officers on duty and further that it was not necessary for them to be there for the entire visiting hours period. The Court does not believe it can find criminal Misconduct in Office because the Defendant had one more officer on duty than the State Prosecutor thinks is appropriate or that the Defendant should have been satisfied with the private security personnel at the hospital to protect his interests. These are matters of judgment and while Defendant's motives for wanting extra security may not seem worthy, the request while arguably an error in judgment does not rise to the level of being criminal Misconduct in Office.

URINARY CATHETER COLLECTION BAG DUTIES

¶¶ 59 to 62 of the Indictment

59. For months after being discharged from the hospital after his February 2010 surgery, Leopold required a urinary catheter.

60. The urinary catheter had a collection bag, secured to his ankle, which periodically required emptying.

61. When being shown by hospital staff how the urinary catheter and collection bag worked, Leopold required the EPOs to be present so to be instructed as to how to empty his urine.

62. Upon discharge from the hospital, Leopold required the EPOs to empty his urinary catheter bag as needed. When in the County Executive's office, during the course of the regular business day, Leopold required the appointments coordinator to empty his urinary catheter bag as needed.

Discussion:

In February, 2010 Defendant had back surgery in an effort to provide him relief from very significant back pain he had been experiencing. He was admitted to the Anne Arundel Medical Center and after surgery the Defendant was unable to void on his own. The surgeon who performed the operation ordered a catheter which the Defendant utilized for the balance of his February stay. At the time of his release from the hospital, the Defendant still was unable to void on his own and the decision was made to send him home with a catheter that drained in a tube to a collection bag at his ankle which required frequent emptying as it filled up with urine.

At his discharge, when medical personnel were explaining how the catheter was to be cared for and emptied, the Defendant instructed the two officers present with him not to leave the room as they were attempting to do to avoid what they saw as a private medical discussion, but to stay so that they would know how to assist him with the catheter process. He told them that they "need to learn how to do it."

Following the discharge from the hospital, the Defendant required the officers to participate in emptying the bag as needed. The Defendant decided that a certain type of plastic coffee can was useful for this procedure and he required that they obtain that type of can and keep it in the vehicle to be used when they drained the bag. One officer (Walker) testified that he drained the bag over 40 times at the direction of the Defendant.

Upon his return to work following the operation, the Defendant called his scheduler, Ms. Medlin, into his office and after explaining that he had a catheter, he told her that he would "require" her assistance with draining it⁸. When she didn't respond, he said to her "you don't have a problem with that Patty?" Ms. Medlin says that she was afraid to say no. From that point forward, Ms. Medlin would know when it was time to empty the catheter bag, because the Defendant would come to the door of his office and say "I need you now." Ms. Medlin would go into the office, put gloves on and then get down on her hands and knees to be at the level of the Defendant's ankle. She would empty the bag into a special coffee can the Defendant had set aside for this purpose. She would then empty the urine into the toilet, remove her gloves and wash her hands before returning to work. This would be repeated two to three times each day during the work week and this went on for at least nine to ten months. When Ms. Medlin was not available, the police officer on duty would be called upon to perform the task.

⁸ The testimony demonstrated that Ms. Medlin's job duties were to be a scheduler for Defendant and perform clerical or secretarial duties. There was nothing in the record that indicates that her job duties included providing medical or personal body care of such an intimate nature for the Defendant.

When asked during her testimony as to why she didn't say "no" to the Defendant, she testified that she was "afraid" of the Defendant. It was her experience that employees "didn't tell him no." She was afraid he would consider her "unloyal" and she feared that she would lose her job which she needed to keep.

Ms. Medlin finally did confront the Defendant when she realized that he was capable of emptying the bag without assistance, but had apparently chosen to have her continue to do it rather than undertake the task himself. The Court found Ms. Medlin's testimony fully credible and compelling.

Defendant's demands on the officers and Ms. Medlin to care for his catheter bag are simply: outrageous, egregious and wildly beyond any authority he possessed or could reasonably thought he had obtained by virtue of his office. The task is one that anyone would have extreme difficulty asking someone else-even a spouse or close relative- to do. That Defendant expected the police officers and Ms. Medlin to perform this task for him without comment or complaint demonstrates an overbearing arrogance and sense of entitlement that is unworthy of someone who is suppose to be a public servant.

Defendant's conduct in regards to Ms. Medlin is particularly egregious. She had told the Defendant when she took the job in 2006 that she was very concerned about doing so since she was moving from a merit system job to one that was "at will". He was aware of her age and the potential difficulties that she might have if she lost her job including the affect on her retirement. Given this knowledge and the power imbalance between the Defendant and Ms. Medlin, his conduct appears predatory and cruel.

Had Defendant made these demands on an emergency basis or for a few days perhaps the exigencies of the situation would provide some excuse or basis for mitigation that should be added to the balance. However, the credible testimony presented shows that Defendant demanded the continuation of these services by Ms. Medlin and the officers for months. This continuing abusive and outrageous conduct exceeded any right that any employer either private or public would have to demand of employees who were hired to perform office or security work. The fact that Ms. Medlin was labeled a "confidential assistant" did not provide license to Defendant to misuse Ms. Medlin as he did.

The fact that Defendant did this in such cavalier and arrogant fashion, especially as it pertains to Ms. Medlin, shows Defendant's utter contempt for the public employees who worked under him.

In this Court's view the State has shown by proof beyond a reasonable doubt that the Defendant's conduct constituted criminal Misconduct in Office. Defendant committed these acts knowingly, willfully and intentionally and under the color of his office as County Executive. He did so corruptly and is guilty of this offense.

Count Four-- Misconduct in Office

Malfeasance--Misuse of County Monies for Personal Benefit

Relies on allegations in ¶¶ 1-4, 4-42, 52-58

Dates: February 26, 2010 to July 18, 2010

Core allegation:

Defendant was "causing county monies to be utilized to pay executive protection officers over \$10,000 in overtime pay for his own use and benefit, in an attempt to conceal a personal relationship in violation of the common law and against the peace, government and dignity of the State."

Discussion:

This count can be disposed of with little discussion. Since the Court has found that there was no criminal misconduct in office in deciding what the staffing levels at the hospital should be in either February or July 2010, it follows that the monies expended on this coverage should not be considered a violation of law.⁹ The judgment about the staffing was one committed under the system in play at the time to the judgment of the County Executive and while one could certainly argue with his staffing decisions as excessive and not warranted by the circumstances, it was in the end a matter of judgment. There may be remedies for such excesses in the governmental system, but the conduct of possibly overstaffing the security detail beyond what is customary even for questionable reasons does not in the Court's view rise to the level of a crime. The State has failed to prove to this Court by proof beyond a reasonable doubt that Defendant is guilty of this offense.

⁹ On January 25, 2010, The Deputy State Prosecutor in argument regarding the Defense Motion for Judgment of Acquittal conceded that if the court did not find that the staffing of the hospital was official misconduct that Counts Four and Five could not be sustained.

Count Five--Fraudulent Misappropriation by Fiduciary

Misuse of County Monies for Personal Benefit

Relies on allegations in ¶¶ 1-4, 41-42, 52-58

Dates: February 26, 2010 to July 18, 2010

Core allegation:

Defendant was causing county monies to be utilized to pay executive protection officers over \$5,000 in overtime pay for his own use and benefit in an attempt to conceal a personal relationship

Discussion:

This count covers virtually the same territory as Count Four and seeks a conviction of the Defendant for the use of excessive overtime during the hospital visits. As noted above, it was permissible under the system in place for the County Executive to decide the staffing levels he believed were necessary for his protection. Allowing an excessive staffing level for his own security, is not criminal under the circumstances presented here. The Defendant did not act fraudulently as a matter of law. This being the case, criminal liability does not lie simply because others may see the staffing levels as excessive or unwarranted. The State has failed to prove this count by proof beyond a reasonable doubt.

VII. Verdicts

After a review of all of the testimony and the exhibits admitted into evidence and for the reasons stated in this Memorandum, it is the verdict of this court that:

As to Count One-Misconduct in Office, the Defendant is Guilty.

As to Count Three-Misconduct in Office, the Defendant is Guilty.

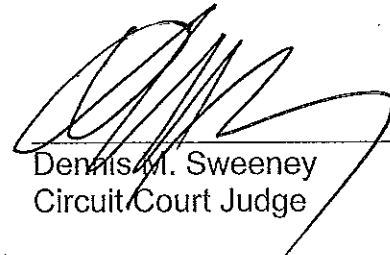
As to Count Four-Misconduct in Office, the Defendant is Not Guilty.

As to Count Five-Fraudulent Misappropriation by Fiduciary, the Defendant is Not Guilty.

The Clerk shall enter these verdicts.

Date:

January 29, 2013


Dennis M. Sweeney
Circuit Court Judge