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Brief of Appellant, James Goss v. State of Maryland, No. 669

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In the Court of Special Appeals of Maryland

September Term, 2016

No. 669

JAMES GOSS,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

Appeal from the Circuit Court for Baltimore City
(The Honorable Melissa Phinn, presiding)

BRIEF OF APPELLANT JAMES GOSS

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STATEMENT OF THE CASE

On April 18–19, 2016, James Goss was tried in the Circuit Court for Baltimore City for attempted first degree murder (Count I), attempted second degree murder (Count II), first degree assault (Count III), assault against a police officer (Count IV), three counts of second degree assault (Counts V, VIII, and X), reckless endangerment (Count VI), and three counts of carrying a deadly weapon openly with intent to injure (Count VII, IX, and XI). Case No. 115215011. On the second day of trial, prior to jury deliberation, the State issued a *nolle prosequi* on Counts IV, VI, IX, and XI. (Tr[2]. 8–9). The jury acquitted Mr. Goss of Counts I and II, but found him guilty of Counts III, VII, VIII, and X. (Tr[2]. 191–92). No verdict was rendered for Count V (second degree assault against Officer Parris) as the jury had found Mr. Goss guilty of the first degree assault charge. (Tr.[2], 184). On May 25, 2016, the court sentenced Mr. Goss to twenty-five years on Count III, three years concurrent for Count VII, five years consecutive for Count VIII, and three years consecutive for Count X, for a total of thirty-three years. (Tr[3]. 16). Mr. Goss filed a timely notice of appeal to the Court of Special Appeals on May 31, 2015.[1] This appeal follows.

[1] Citations to the transcript are as follows:

- Tr[1] = first day of trial, April 18, 2016.
- Tr[2] = second day of trial, April 19, 2016.
- Tr[3] = sentencing, May 25, 2016.

QUESTIONS PRESENTED

I. Did the trial court err during voir dire when, despite requests from both the defense and the State, the court refused to ask if any potential jurors had strong feelings about the crime of assault against a police officer?

II. Did the trial court err in refusing to provide jury instructions on the issues of voluntary intoxication and involuntary intoxication when testimony supported the defense claim that Mr. Goss was substantially intoxicated at the time of the incident?

STATEMENT OF FACTS

James Goss graduated from Suitland High School in 2013. (Tr[2]. 76). He joined the Army in 2014, but was discharged following basic training so that he could be with his newborn son. (Tr [2]. 81). James Goss enrolled in Saint Augustine University in the Spring of 2015. At the end of the semester, he returned to Baltimore because he did not have summer housing at school, and he wanted to be near his young son, who was having surgery. (Tr[2]. 76). James Goss had trouble finding a place to live. His only family in the area was his father, who would not let James live with him because he believed children over the age of eighteen should support themselves. (Tr[2]. 77). With nowhere else to go, Goss stayed with a friend from high school, Chardonnay Hall. (Tr[2]. 80). Ms. Hall was a student at the University of Baltimore and lived near campus at the Varsity Apartments on 30 West Biddle Street. (Tr[1]. 173).

On July 16, 2016, about a month after he moved in with Ms. Hall, James Goss was leaving the Varsity when he saw a group of young men coming into the building with a box of liquor. (Tr[2]. 85). Although Goss did not know them, he struck up a conversation, joking to the group, "dang[,] nobody invited me to the party." (Tr[2]. 85). They invited Goss to come, and gave him the apartment number and time of the party, which was the next evening. (Tr[2]. 85).

The following day, James Goss spent the afternoon by himself, wandering around the Art Scape festival. (Tr[2]. 84). Around 7:30 p.m., he returned to the Varsity and went to the party alone. (Tr[2]. 85). There were about twelve or so people there when Goss arrived. (Tr[2]. 85). He didn't know any of them. (Tr[2]. 85). Shortly after he arrived, one

of the hosts offered Goss a drink and food. Goss grabbed two slices of pizza while the man poured him a drink in a red "Solo" cup. (Tr[2]. 86). Goss thought it was about six ounces of vodka. (Tr[2]. 86).

Around 10 p.m.., James Goss and two men from the party left to go walk around Art Scape to find people to bring back to the party. (Tr[2]. 87). While he was gone, Goss left his unfinished drink in the unmarked cup on the counter. (Tr[2]. 105). When he returned an hour or so later, he picked up his cup and finished his drink. (Tr[2]. 107). He quickly began feeling "dizzy" and "woozy" in a way that he had never felt before. (Tr[2]. 87–89). He was also getting "tired," so he left the party to go back to Ms. Hall's apartment. (Tr[2]. 87).

Ms. Hall had also been at Art Scape that day. (Tr[1]. 193). She returned to her apartment with a friend after dark. (Tr[1]. 193). At some point after she got home, James Goss returned to the apartment. (Tr[1]. 194). He told Ms. Hall he was drunk and wanted to have a threesome. (Tr[1]. 194). He then took her keys and left. (Tr[1]. 194). Later, Ms. Hall walked her friend out of the building, forgetting that Goss had her keys. (Tr[1]. 176). She sat in the lobby talking to the security guard while she waited for James Goss to return to let her in. (Tr[1]. 176). Around 11 p.m., Goss returned, walked past Ms. Hall and the security guard, and got on the elevator. (Tr[2]. 17).

Ms. Hall decided to go up to see if her door was unlocked. (Tr[1]. 176). It was, but James Goss was not there. (Tr[1]. 176). In the kitchen, Ms. Hall found two full cups of alcohol on the counter and a large puddle of alcohol on the floor. (Tr[2]. 193–194). The

alcohol had not been there when she left, and she did not keep any alcohol in the apartment at the time. (Tr[1]. 176).

Around 11:45 p.m., another resident complained to the security guard, saying James Goss was at the party and acting up after getting turned down by a female guest. (Tr[2]. 18). When the security guard went upstairs, an individual standing outside the apartment told the guard that everything was under control. (Tr[2]. 18).

Later that night, Ms. Hall heard banging on her apartment door. (Tr[1]. 176). It was James Goss and he was "completely intoxicated." (Tr[1]. 176). Ms. Hall let him in and asked him to return her keys. (Tr[1]. 177). At first, Mr. Goss was "fine" and began to check his pockets for the keys. (Tr[1]. 195). However, when he couldn't find them, he began to insist he had given the keys back to her earlier in the day when he returned from the computer lab. (Tr[1]. 177). Ms. Hall tried to explain to Mr. Goss that he was confused—the events he was describing had occurred on a different day. (Tr[1]. 177). Mr. Goss suddenly became angry and began to yell at Ms. Hall. (Tr[1]. 195). He accused her of "setting him up" and being "out to get him." (Tr[1]. 178). Ms. Hall had always known Mr. Goss to be "nice" and "gentle." (Tr[1]. 195). She had never seen him act like this before. (Tr[1]. 195). His behavior was "all over the place" and he was saying things that "really didn't make sense." (Tr[1]. 195).

When Mr. Goss began to yell at Ms. Hall, she pushed him away. (Tr[1]. 178). Mr. Goss then punched her in the face and attempted to put her in a choke hold. (Tr[1]. 178). Ms. Hall pried Mr. Goss' arm off and screamed for help. (Tr[1]. 178). The security guard heard the yelling and went to Ms. Hall's apartment. (Tr[1]. 206). He knocked on the door,

at which point James Goss grabbed two knives and said that he would "cut [them] both" if anyone came in." (Tr[1]. 178). The security guard left to call 911. (Tr[1]. 207).

Ms. Hall tried to calm James Goss down by talking about his son. (Tr[1]. 179). She was eventually able to take the knives from him, and he began crying and apologizing. (Tr[1]. 179; Tr[1]. 204). Ms. Hall put those knives in her pocket, and ran out of the apartment to take the elevator downstairs. (Tr[1]. 179). James Goss grabbed a butter knife and another kitchen knife, and followed her out of the apartment. (Tr[1]. 179). When the elevator arrived, Mr. Goss got on but Ms. Hall did not. (Tr[1]. 182).

Officer Anthony Callow, one of the police officers who responded to the 911 call, was in the lobby with the security guard when James Goss got off the elevator. (Tr[2]. 24). Goss walked past them and towards the door. (Tr[2]. 24). Callow's partner, Officer Teddy Parris, was just walking into the building. (Tr[2]. 55). When Goss attempted to exit the building, Officer Parris put up his arm and instructed Goss to step back inside. (Tr[2]. 55). Before Officer Parris could finish his statement, Goss stabbed Officer Parris above his left eye. (Tr[2]. 55). The officer lifted Goss up and pinned him against the wall of the building. (Tr[2]. 55–56). Goss then began to stab the officer several times in the head and upper back area. (Tr[2]. 56). The injuries caused arterial bleeding from Officer Parris' eye and ear, and left him with permanent nerve damage to his ear. (Tr[2]. 59–60).

James Goss was eventually restrained by Officer Callow and the security guard who by that time had run outside. (Tr[2]. 214). Ms. Hall came downstairs after Goss was restrained. (Tr[1]. 202). She tried to speak to him, but he would not respond. (Tr[1]. 200). He was screaming and saying things that did not make any sense, such as accusing Ms.

Hall of sleeping with the security guard. (Tr[1]. 202). Mr. Goss also repeatedly threatened to "cut somebody else" if he broke free. (Tr[1]. 214). As Officer Callow and the security guard carried Goss to the police car, Goss bit the security guard on his calf. (Tr[1]. 216).

James Goss was taken to Johns Hopkins Hospital. (Tr[2]. 113). At the hospital, he continued to scream and act combative, and needed to be handcuffed to the bed. (Tr[2]. 113). The medical records reflect that Goss was "highly intoxicated," but the hospital staff did not complete a toxicology report to screen what might be in Goss' system. (Tr[2]. 113).

During jury selection, both the State and the defense asked the trial court to screen for jurors who might have strong feelings about the crime of assault against a police officer. (Tr[1]. 3–4). Specifically, defense counsel asked the judge to inquire "Does anyone have such strong feelings about assaults against law enforcement that you would be unable to render a fair and impartial decision based on the evidence." (Tr[1]. 3). Urging the trial court to ask some version of defense counsel's requested question, the prosecutor agreed that jurors may have opinions about individual police officers and the police department that might impact their ability to be fair and impartial. (Tr[1]. 4). The trial judge denied these requests and following jury selection proceeded to trial. (Tr[1]. 4).

Prior to jury deliberation, the trial judge reviewed proposed jury instructions with counsel. (Tr[2]. 112). The trial judge denied the defense request for instructions on voluntary intoxication and involuntary intoxication, stating there was not enough evidence to determine the extent to which James Goss had been impaired. (Tr[2]. 122; Tr[2]. 131).

After the prosecution issued a nolle prosequi on several charges, the jury found James Goss not guilty of attempted first degree murder or attempted second degree murder in connection with the attack on Officer Parris. (Tr[2]. 192). The jury convicted James Goss on the remaining assault and weapons counts. (Tr[2]. 192).

Despite James Goss' relative youth and the fact that this was his first offense, the trial judge exceeded the recommended sentencing guidelines based on her belief that Goss "has a problem with authority figures" and is an "extreme danger to society." (Tr[3]. 15–16). James Goss was sentenced to the maximum sentence, twenty-five years, on the top count and eight consecutive years on two remaining counts for a total period of incarceration of thirty-three years. (Tr[3]. 16).

ARGUMENT

I. DURING VOIR DIRE, THE COURT ABUSED ITS DISCRETION IN REFUSING TO ASK THE REQUESTED, AND THEREFORE NECESSARY QUESTION: "DO ANY MEMBERS OF THE PANEL HAVE STRONG FEELINGS ABOUT THE CRIME OF ASSAULT AGAINST A POLICE OFFICER?"

During *voir dire*, both the State and the defense requested that potential jurors be screened to see if they had strong feelings about assaults against law enforcement officers. (Tr[1]. 3–4). The trial judge declined to ask this question based on the court's view that a question about the weight of witness testimony adequately covered the same territory. (Tr[1]. 5). Contrary to the judge's view, the strong feelings question was required under *Pearson v. State*, 437 Md. 350 (2014). The lower court's failure to screen jurors for bias related to the crime charged constitutes reversible error.

A defendant's right to a fair and impartial trial is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Curtin v. State*, 393 Md. 593, 600 (2006). The right to a fair trial is protected in part by the process of *voir dire*—a process during which questions proposed by the court or parties are used to screen prospective jurors for bias or prejudice. *Id*. The court's questions during *voir dire* should "focus on issues particular to the defendant's case so that biases directly related to the crime, the witnesses, or the defendant may be uncovered." *Dingle v. State*, 361 Md. 1, 10 (2000) (emphasis added).

Regarding crime-related biases, the Court of Appeals has acknowledged that "the potential for bias exists in most crimes." *Shim v. State*, 418 Md. 37, 54 (2011), *abrogated on other grounds by Pearson v. State*, 437 Md. 350, 363 (2014). Therefore, trial courts

are required to ask "*voir dire* questions which are targeted at uncovering these biases." *Shim*, 418 Md. at 54. The Court of Appeals suggested in *Shim* that such biases might be uncovered by asking "Does any member of the jury panel have such strong feelings about [the charges in this case] that it would be difficult for you to fairly and impartially weigh the facts[?]" *Id*.

In *Pearson*, the Court of Appeals affirmed *Shim*'s essential holding that the trial judge, when requested, must ask prospective jurors about crime-related biases. 437 Md. at 363. However, *Pearson* rejected the precise phrasing of the *Shim* question because it clashed with precedent. *Id*. at 361. Slightly tweaking the *Shim* language, the *Pearson* court instructed that "on request, a trial court must ask during *voir dire*: 'Do any of you have strong feelings about [the crime with which the defendant is charged]?'" *Id*. at 363 (emphasis added).

On review, an appellate court must determine whether the trial judge abused his discretion by conducting questioning that was "not reasonably sufficient to test the jury for bias, partiality, or prejudice." *Washington v. State*, 425 Md. 306, 314 (2012). If a trial court is required to ask a specific *voir dire* question, the failure to do so "is an abuse of discretion constituting reversible error." *Moore v. State*, 412 Md. 635, 666-667 (2010). There cannot be "harmless error" if there is an abuse of discretion. *Id*. at 667. For example, the failure to ask requested "strong feelings" questions about violations of narcotics laws, child molestation, and possession of a firearm all have been found to constitute reversible error. *See Curtin*, 393 Md. at 610; *Thompson v. State*, 229 Md. App.

385 (2016). However, the mandatory nature of a requested "strong feelings" question is not limited to these types cases. *See Pearson*, 437 Md. at 363.

In the instant case, both the state and the defense requested that the court ask potential jurors about whether they had strong feelings regarding the crime of assault against a police officer. (Tr[1]. 3). The court refused to make this inquiry. (Tr[1]. 4). The trial judge's failure to ask jurors if they had strong feelings about the incendiary crime they were being asked to judge—a brutal and seemingly senseless assault on a police officer—deprived Mr. Goss of his constitutional right to a fair trial. *See Curtin*, 393 Md. at 600.

In denying the requested inquiry, the trial judge assumed that any potential bias concerning the crime charged would be properly uncovered by asking jurors if they would give more or less weight to the testimony of a police officer because several police officers were testifying. (Tr.[1]. 4). This assumption was wrong. The "more or less weight question" is to determine whether potential jurors might "simply believe police officers by virtue of the position without regard to testimony from anyone else [or] would believe the police officers in comparison to civilian witnesses." *Moore*, 412 Md. at 653. A juror may be capable of assessing the credibility of all witnesses equally, and could thus rationally answer the court's testimonial weight question, "no." But, this same juror may have such strong feelings about an attack on a police officer that she would be unwilling to accept any proposed defense to the crime.

The potential prejudice engendered by strong feelings about violence targeted against police officers was also not captured by the trial judge's broader question of

whether potential jurors had "strong feelings about attempted murder in the first degree, attempted murder in the second degree, assault in the first degree, assault in the second degree, reckless endangerment, [or] carrying a deadly weapon openly with intent to injure." (Tr[1]. 22-23). Here again, a potential juror may not feel particularly strongly about violent crime as a general matter, but may feel quite strongly that police officer's should not needlessly be placed in harm's way. The generic variation of the "strong feelings" question failed to identify such biases directly related to assaultive crimes against a police officer.

In 2002, in an era where the "War on Drugs" was a household phrase, the Court of Special Appeals reasoned, and the Court of Appeals affirmed, that jurors should be asked about the crime charged in narcotics cases due to the strong passions that crime might engender:

> "[l]aws regulating and prohibiting the use of controlled dangerous substances harbor an unusual position within our criminal code, such that jurors may be biased because of strong emotions relating to the dangers of narcotics and their negative effects upon our cities and neighborhoods, or, on the contrary, biases may exist because of passionate positions that advocate the decriminalization of narcotics."

Thomas v. State, 139 Md. App. 188, 207 (2001), *aff'd in State v. Thomas*, 369 Md. 202, 213 (2002), *abrogated on other grounds by Pearson v. State*, 437 Md. 350, 363–64 (2014).[2] In the instant case, the current political and cultural climate surrounding

[2] The court in *Thomas v. State* noted that, at the time, there was much literature in the field of drug policy focusing on legalization, decriminalization, and medicalization. 139 Md. App. 188, 204 (2001). The court also noted that "[a]t the same time, the 'drug war' label transformed those who used drugs . . . into the enemy and then into a subhuman category of 'druggies' or 'druggers.' They ceased to be people with drug problems,

violence and policing raises similar concerns about the need to ask about juror's "strong emotions" and "passionate positions" related to police-involved violence.

In the past several years, we have seen increasing national focus on conflicts between police officers and community members.[3] In Baltimore, after the death of Freddie Gray, protests erupted in the city that left over fifteen police officers hurt, 235 people arrested, and sixty structures burned. Melanie Eversley, *One Year Later, Baltimore Still Reeling from Freddie Gray Death, Riots*, USA TODAY, April 18, 2016, http://www.usatoday.com/story/news/2016/04/18/one-year-later-baltimore-still-reeling-freddie-gray-death-riots/83181808/.

Mr. Goss' trial occurred less than a year after the protests in Baltimore impacted citizens throughout the city (and thus James Goss' prospective jury pool). His trial occurred a mere three months after tensions were reignited following the mistrial of the first officer tried in connection with Freddie Gray's death. Justin Fenton, *Mistrial Declared in Trial of Officer William Porter in Death of Freddie Gray*, BALTIMORE SUN, Dec. 16, 2015, http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-porter-trial-jury-wednesday-20151216-story.html.

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chemical disorders, or brain disease, and became the 'bad guys,' as the public's hatred of drugs grew into a hatred of druggies. For the Drug Enforcement Agency (DEA), and DEA personnel who train State and local police, this hatred translated into a variety of practices: druggies and their families could be rousted, humiliated, terrorized, jailed, hurt, threatened with being shot, or even, if necessary, shot." *Id*.

[3] *See*, *e.g.*, Amanda Sakuna and Tracy Jarrett, *Protests Continue in NYC and Nationwide Over Garner Grand Jury*, MSNBC, Dec. 4, 2015, http://www.msnbc.com/msnbc/protests-continue-nyc-and-nationwide-eric-garner-grand-jury; *Ferguson Unrest: From Shooting to Nationwide Protests*, BBC NEWS, Aug. 10, 2015, http://www.bbc.com/news/world-us-canada-30193354.

In the months surrounding James Goss' trial, there was also significant attention being paid to an increase in perceived retaliatory violence against police officers. In December of 2014, two NYPD officers were ambushed and shot while in their patrol car. The perpetrator was a young black man, whose last social media post before the shooting "suggested he planned to kill police officers as revenge for the deaths of Michael Brown and Eric Garner." Rebecca Davis O'Brien, *Ismaaiyl Brinsley Led Life of Trouble Before Attack*, THE WALL STREET JOURNAL, Dec. 21, 2014, http://www.wsj.com/articles/ismaaiyl-brinsley-suspected-of-shooting-new-york-police-had-criminal-history-ties-to-brooklyn-1419188892. News outlets have reported that the number of ambush-style killings of police officers increased "dramatically" in the first half of 2016. Emily Shapiro, *Deadly Ambush Attacks Against Cops Have Increased Dramatically This Year: Inside the 'Troubling' Report*, ABC NEWS, Jul. 27, 2016, http://abcnews.go.com/US/deadly-ambush-attacks-cops-increased-dramatically-year-inside/story?id=40919862. Likewise, fatal shootings of civilians by police officers also increased in the first half of 2016. Kimberly Kindy, *Fatal Shootings of Police are Up in the First Six Months of 2016, Post Analysis Finds*, WASHINGTON POST, July 7, 2016, https://www.washingtonpost.com/national/fatal-shootings-by-police-surpass-2015s-rate/2016/07/07/81b708f2-3d42-11e6-84e8-1580c7db5275_story.html.

As with narcotics in *Thomas*, citizens are likely to have passionate feelings, either positive or negative, about issues at the forefront of our national consciousness like violence by and towards police officers. The risk of juror bias was high in Mr. Goss' case, and the failure to make an inquiry into this particular prejudice deprived Mr. Goss

of his constitutional right to a fair and impartial jury. The trial judge's failure to ask the "strong feelings" question, as mandated by *Pearson*, clearly warrants reversal. 437 Md. at 363.

II. BECAUSE SUFFICIENT EVIDENCE WAS PRESENTED AT TRIAL TO DEMONSTRATE THE APPELLANT WAS INTOXICATED AT THE TIME OF THE INCIDENT, THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO PROVIDE JURY INSTRUCTIONS ON VOLUNTARY INTOXICATION AND INVOLUNTARY INTOXICATION

At the close of evidence, while reviewing jury instructions, the trial judge informed the defense that she would not provide the requested instructions regarding voluntary intoxication and involuntary intoxication. In the trial judge's view, there was not sufficient evidence presented at trial to warrant either instruction. (Tr.[2]. 119). However, because some evidence was presented at trial that Mr. Goss was intoxicated, including some evidence that the intoxication may have been involuntary, the trial judge's abused her discretion in failing to provide these jury instruction. Because the defense case proceeded on a theory of intoxication, this abuse of discretion clearly prejudiced Mr. Goss and therefore requires reversal.

In Maryland, the main purposes of jury instructions are "to aid the jury in understanding the case, to guide the jury's deliberations, and to help the jury arrive at a correct verdict." *State v. Allen*, 387 Md. 389, 396 (2005). A judge is generally obligated to give an instruction requested by a party if "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Atkins v. State*, 421 Md. 434, 444 (2011). This duty to instruct the jury includes an obligation to present the law that governs any defenses supported by "some evidence" adduced at trial. *Dykes v. State*, 319 Md. 206, 216 (1990).

As the Court of Appeals has recognized, the "some evidence" standard imposes a rather low threshold:

> Some evidence is not structured by the test of a specific standard. It calls for no more than what it says-"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial; it may emanate solely from the defendant. It is of no matter that the . . . claim is overwhelmed by evidence to the contrary.

Dykes, 319 Md. at 359.

In determining whether "some evidence" exists, the court must view the evidence "in the light most favorable to the accused." *General v. State*, 367 Md. 475, 487 (2002). The trial judge is not permitted to weigh or disregard evidence that has been presented:

> When the trial judge resolves conflicts in the evidence, in the face of the "some" evidence requirement, and refuses to instruct because he believes that the evidence supporting the request is incredible or too weak or overwhelmed by other evidence, he improperly assumes the jury's role as fact-finder.

Dykes, 319 Md. at 224. Even if there is substantial evidence contradicting the defendant's claim, the defendant is still entitled to an instruction "if there is <u>any</u> evidence relied on by the defendant which, if believed, would support his claim." *Id*. at 359. If the defendant was prejudiced by the trial court's error in failing to give an instruction, this constitutes reversible error. *Harris v. Harris*, 310 Md. 310, 319 (1987).

In the instant case, prior to jury deliberations, the court reviewed the proposed jury instructions. The court denied defense counsel's requested instructions on voluntary and involuntary intoxication. (Tr[2]. 122, 133). In rejecting the requested instructions, the trial court looked to *Bazzle v. State*, a case in which the court similarly refused to give a

voluntary intoxication instruction. 426 Md. 541, 556 (2012). The trial judge in the instance case suggested that, under *Bazzle*, intoxication instructions are only required if a toxicology report or other expert testimony has been presented. (Tr[2], 120, 121). *Bazzle* in fact contains no such requirement. The lower court's reliance on *Bazzle* to deny the instruction in the instance case was, thus, misplaced.

Bazzle was an appeal from the trial court's refusal to give an instruction on voluntary intoxication. 426 Md. at 547. In *Bazzle*, there was evidence the defendant had consumed a significant quantity of alcohol. 426 Md. at 546. However, there was no evidence introduced as to the impact of that alcohol on the defendant's functioning or state of mind. *Id*. at 555. Although the appellant in *Bazzle* suffered memory loss, the memory loss began after he was stabbed. Similarly, the court found that testimony Bazzle was "about to pass out," *id*. at 556, was related to blood loss and not intoxication. *Id*. at 558. Bazzle was also "speaking intelligibly" and his actions "demonstrate[d] a significant amount of design in planning the crime," which was inconsistent with his theory of intoxication. *Id*. at 557. Upon this record, the *Bazzle* court emphasized that "it is not the amount [of alcohol] consumed but the effect [of that alcohol] on the consumer that is important." *Id*. at 553. Where there was no testimony offered in the case about the effect on Bazzle of his heavy drinking, the court found no need for a jury instruction on intoxication.

In contrast with *Bazzle*, there was a great deal of evidence presented in the instant case to show how profoundly impaired James Goss became after consuming a drink at the party on the night he attacked Officer Parris. Prosecution witness Chardonnay Hall

testified that James Goss was "completely intoxicated," when she saw him after his return from the party. (Tr[1]. 195). In the several years she had known Mr. Goss, she had never seen him act in a similar manner before. (Tr[1]. 201). Instead, she had always known him to be a "gentle" and "nice" person. (Tr[1]. 201). Ms. Hall testified that when James Goss returned from the party his mood was "all over the place," vacillating from calm, to violently angry, to crying. (Tr[1]. 195). James Goss was also out of touch with reality: he was confused about what day events had occurred; he was also paranoid—accusing Ms. Hall of being "out to get him," and irrational—suggesting that Ms. Hall was sleeping with the security guard, who had worked in the building for only two days. (Tr[1]. 184, 205).

The medical records following the incident confirmed Chardonnay Hall's description of James Goss' impairment. These records described Goss as intoxicated and "out of control," and he needed to be handcuffed to the bed for an hour before calming down. (Tr[2]. 116). James Goss testified that on the evening of the incident, he drank only about "half a cup" in total of vodka at a party. (Tr[2]. 86). He testified that he left the party with two other individuals to visit Art Scape, and they were gone for about an hour to an hour and a half. (Tr[2]. 86). During this time, Mr. Goss' unfinished drink sat unattended in a "Solo" cup on a counter at the party. When he returned, he picked up the cup and drank what was in it. (Tr[2]. 104). Mr. Goss testified that he stayed at the party for about an hour after he returned from Art Scape, and then left when he began to feel "dizzy" and "woozy." (Tr[2]. 87, 107). He testified that he no longer felt in control of himself. (Tr[2]. 94), and that he had no memory of substantial portions of the night after finishing the

drink. (Tr[2]. 88). Mr. Goss believed he was drugged because he "never acted this way before" and he was unable to "remember anything that happened that night." (Tr[2]. 93). Thus, unlike in *Bazzle*, there was substantial evidence in the instant case about James Goss' intoxication.

There was also a significant question about whether James Goss' impairment had been caused voluntarily or involuntarily. A defendant's intoxication is "presumed to be voluntary unless some special circumstance is established to remove it from that category." *Dubs v. State*, 2 Md. App. 524, 542 (1967). Such "special circumstance[s]" include mistake, duress, or intoxication "produced by the acts or contrivance of third persons." *Id*. James Goss presented sufficient evidence demonstrating that his intoxication could have reasonably been caused by the acts of a third party.

In denying the instruction, the trial judge said:

> There was never any testimony from Mr. Goss that at the time the drink that he was speaking about was poured for him that it was ever done outside of his presence. So the Court can only assume that he was watching the gentleman when he poured the drink and gave it directly to him. I guess he wants the Court to infer that perhaps that—assume rather that perhaps the incident occurred while his cup was left and he was at the Art Scape.

(Tr[2]. 122) (emphasis added). However, the question of whether James Goss' drink had been spiked was a logical inference based on the evidence presented that should have been left for the jury. *See Dykes*, 319 Md. at 224 (stating that "when the trial judge resolves conflicts in the evidence . . . because he believes that the evidence supporting the request is incredible or too weak or overwhelmed by other evidence, he improperly assumes the jury's role as fact-finder"). For example, contrary to the trial judge's

assumption, there was no testimony that James Goss watched the host pour his drink when he first arrived at the party. (Tr.[2], 86). In addition, Mr. Goss' testimony that he believed he had been drugged, along with testimony demonstrating that after his drink was first poured there were multiple opportunities for his drink to have been tampered with, was some evidence that his intoxication was produced by the acts or contrivances of third parties. On this record, there was "some evidence" of James Goss' intoxication, either voluntary or involuntary, and the trial court's failure to give the requested instructions was error. *See Dykes*, 319 Md. at 216 (stating that the trial judge has a duty to present the law that governs any defenses supported by "some evidence" adduced at trial).

Finally, the failure to give these instructions clearly prejudiced James Goss. James Goss did not dispute that he was the person who attacked Officer Parris. Rather, his defense was that at the time he engaged in that conduct he was under the influence of some substance that rendered him substantially impaired. By refusing to allow these instructions, the defense's entire trial strategy was undermined and could not be presented or even referenced in closing arguments. As defense counsel explained to the court following the denial of the intoxication instruction, "Clearly, this was my defense." (Tr.[2], 136).

James Goss' testimony and the testimony of others was sufficient to provide "some evidence" that Goss was intoxicated at the time he attacked Officer Parris, Ms. Hall, and the security guard. Goss also provided "some evidence" that this intoxication was involuntary. Because the trial judge erred in denying the requested instruction, and

because James Goss' main defense was the fact that he was intoxicated at the time he attacked the officer, the failure to give the instructions clearly prejudiced the defense and thus constitute reversible error.

CONCLUSION

For the foregoing reasons, Mr. Goss respectfully asks that his conviction be vacated and his case be remanded for a new trial.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5673 words, excluding the parts of the brief exempted from the word count by Rule 8-112.

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

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TEXT OF CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. CONSTITUTION

U.S. Const. amend. 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.

MARYLAND CONSTITUTION

Maryland Declaration of Rights, art. XXI.
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.

JAMES GOSS,	*	IN THE
Appellant,	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
STATE OF MARYLAND	*	September Term, 2016
Appellee.	*	No. 669

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of November, 2016, three copies of the Brief of Appellant were mailed, first-class, postage pre-paid, to the Office of the Attorney General, Criminal Appeals Division, 17th Floor, 200 St. Paul Place, Baltimore Maryland, 21202.

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