



D.C. Court of Appeals

**ARBITRATION
COLLECTIVE BARGAINING AGREEMENT / INHERENT
EQUITABLE POWERS / ATTORNEY'S FEES / BACK
PAY ACT**

Arbitrator did not exceed authority by granting attorney's fees in a labor dispute where the collective bargaining agreement is silent on the issue of such fees. There is no direct legal authority prohibiting the arbitrator's interpretation of the Back Pay Act in this case and no law or policy prohibiting an arbitrator from awarding attorney's fees to a labor union. Award did not exceed arbitrator's authority since it was derived from his equitable powers. Reversed.

**AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, DISTRICT COUNCIL
20, LOCAL 2087, AFL-CIO v. UNIVERSITY OF THE
DISTRICT OF COLUMBIA**

D.C.C.A. No. 13-CV-1024. Decided on August 17, 2017. Before Blackburn-Rigsby, C.J., and Washington and Ferren, Sr.J., with Chief Judge Blackburn-Rigsby writing for the Court. (Hon. Anthony C. Epstein, Trial Judge). *Brenda C. Zwack*, Esq., with whom *Lisa M. Manson*, Esq., was on the brief, for Appellant. *Anessa Abrams*, Esq., with whom *Gary L. Lieber*, Esq., was on the brief, for Appellee.

BLACKBURNE-RIGSBY, *Chief Judge*: The critical dispute before the court is whether the arbitrator in this case exceeded his authority or contravened public policy by awarding attorney's fees, where the parties' Collective Bargaining Agreement ("CBA") is silent on the issue of attorney's fees. Appellant American Federation of State, County, and Municipal Employees, District Council 20, Local 2087, AFL-CIO ("AFSCME") seeks review of an order of the Superior Court vacating and remanding a decision by the District of Columbia Public Employee Relations Board ("PERB" or "Board") that affirmed an arbitration award of attorney's fees to AFSCME, to be paid by appellee University of the District of Columbia ("UDC" or "University"). The PERB concluded that the arbitrator was authorized to award attorney's fees under the arbitrator's inherent equitable powers. Judge Anthony C. Epstein, however, vacated the award because the arbitrator did not explicitly indicate whether the arbitration award was based on the CBA. We conclude that the arbitrator did not exceed his authority by granting attorney's fees under his inherent equitable powers and that the award does not contravene public policy. Accordingly, we reverse the Superior Court's decision to remand and reinstate the PERB's decision affirming the arbitration award. *See* D.C. Code § 1-605.02 (6) (2012 Repl.).

AFSCME — cont'd on page 2556

The DWLR will not publish a paper on Monday, September 4, 2017 in observance of Labor Day. The next published issue will be Tuesday, September 5, 2017.

D.C. Court of Appeals

**CRIMINAL LAW
CONTINUANCE / RECONSIDERATION /
INTERLOCUTORY ORDER**

Trial court's grant of continuance due to "late-breaking expert witness notice," during which time the government obtained a DNA sample from Appellant that led to his conviction, was not an abuse of discretion. A motion for reconsideration is not limited to situations where a movant presents newly discovered evidence, demonstrates and intervening change in the law or that the original decision was based on a manifest error in the law or was unjust. Trial courts have the authority to grant such motions as long as they are consonant with justice. Affirmed.

ANGEL BERNAL v. UNITED STATES

D.C.C.A. No. 15-CF-1001. Decided on June 29, 2017 (amended August 17, 2017). Before Blackburne-Rigsby, C.J., McLeese, J., and Ferren, Sr.J., with Chief Judge Blackburne-Rigsby writing for the Court. (Hon. Michael Ryan, Trial Judge). *Daniel S. Harawa*, Esq., Public Defender Service, with whom *Samia Fam*, Esq., and *Jaclyn S. Frankfurt*, Esq., Public Defender Service, were on the brief, for Appellant. *Peter S. Smith*, Asst. U.S. Atty., with whom *Channing D. Phillips*, U.S. Atty., and *Elizabeth Trosman, Suzanne Grealy Curt, Danny Nguyen*, and *Rebekah Holman*, Asst. U.S. Attys., were on the brief, for Appellee. [This is an amended opinion. The original opinion appeared in the July 11, 2017 issue of the DWLR (145-DWLR-1939).]

BLACKBURNE-RIGSBY, *Chief Judge*: Following a jury trial, appellant Angel Bernal was found guilty of sexually abusing, over the course of a year-and-a-half, E.A., the minor daughter of appellant's common law wife. The government's evidence included testimony from appellant's common law wife, Jacqueline Alvarez, and E.A., and DNA evidence that matched semen found on E.A.'s perianal-buttocks and external genitalia to appellant's saliva recovered from a police buccal swab. Appellant's sole argument on appeal is that the trial court erred in granting the government a one-week continuance prior to trial. The continuance gave the government enough time to procure a second buccal swab of appellant and match his DNA to semen recovered from E.A. after the trial court had suppressed the first buccal swab on Fourth Amendment grounds. We conclude that the trial court did not err, and accordingly did not abuse its discretion, in granting the government a one week continuance. We affirm.

I. Background

A. Factual Background

Appellant was in an eight-year relationship with Ms. Alvarez and lived in the same

Bernal — cont'd on page 2560

TABLE OF CASES

D.C. Court of Appeals

Am. Fed'n of Gov't Emps. v. University of
D.C.....2555

Bernal v. U.S.....2555

Also in this issue

Legal Notices.....2558

DWLR Aug. Quick Reference..2562

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AFSCME *Continued from page 2555*

I. Factual and Procedural Background

AFSCME filed a grievance against UDC on behalf of two union employees under the parties' CBA, after the employees were terminated by UDC for misuse of University funds. The parties went to arbitration before Arbitrator Michael Wolf, who found in favor of AFSCME, in part. He determined that the two union employees should have been given thirty-day suspensions, instead of being terminated. In a supplemental award, Mr. Wolf also awarded AFSCME reimbursement of reasonable attorney's fees that it incurred representing the two employees in the arbitration process. Although the CBA is silent on the issue of reimbursement of attorney's fees, Mr. Wolf concluded that AFSCME was entitled to reimbursement of reasonable attorney's fees under the authority of the federal Back Pay Act ("BPA"). See 5 U.S.C. § 5596 (b)(1)(A)(ii) (2014).

Although "[t]he Council of the District of Columbia itself has never promulgated regulations to implement the Back Pay Act, which is a vestige of the patchwork system in effect prior to the passage of Home Rule in 1973[.]" this court has held "that the Back Pay Act continues to apply to District employees under the broader [Comprehensive Merit Personnel Act ("CMPA")] policies of maintaining all 'concrete personnel entitlements or benefits' or their equivalents for employees hired before the CMPA . . . and maintaining the pre-CMPA compensation system for all employees whenever hired until a new one is enacted to replace it." *Am. Fed'n of Gov't Emps. v. District of Columbia Water and Sewer Auth.*, 942 A.2d 1108, 1112-13 (D.C. 2007) (citations omitted) ("AFGE"); see also *White v. District of Columbia Water and Sewer Auth.*, 962 A.2d 258, 259 (D.C. 2008) (per curiam). In *White*, we explained, however, that government entities statutorily eligible for CMPA exemption, such as then-Water and Sewer Authority ("WASA"), that adopt a new, comprehensive personnel and compensation system for its employees are exempt from "the CMPA-and with it, the counsel fees provisions [under the BPA] included in its compensation system." 962 A.2d at 259.

After conducting a thorough analysis of the CMPA provisions governing UDC employees, our decision in *White*, and the BPA, Mr. Wolf concluded that the BPA's provision for the reimbursement of attorney's fees could be, and should be, applied to this case. Specifically, he concluded that AFSCME is entitled to reimbursement of attorney's fees from UDC because UDC, as a governmental entity under the CMPA, had not adopted or implemented a comprehensive personnel and compensation system for its "Career Service" employees, to which the two aggrieved employees belonged. Mr. Wolf found that "major aspects" of UDC's Career Service employee system were still governed by the CMPA — for example, he noted that "negotiations with the University's Career Service employees has for many years been undertaken by the Mayor's Office of Labor Relations and Collective Bargaining on behalf of numerous D.C. agencies." Yet, while Mr. Wolf provided extensive analysis on why the BPA could be applied to the facts here, Mr. Wolf did not explain which provision within the parties' CBA authorized him to award reasonable attorney's fees to AFSCME. See, e.g., *Howard Univ. v. Metro. Campus Police Officer's Union*, 519 F. Supp. 2d 27, 32-33 (D.D.C. 2007) ("The genesis of arbitral authority is the contract, and arbitrators are permitted to decide only those issues that lie within the contractual mandate.") (citation and

brackets omitted).

Following Mr. Wolf's decision, UDC filed an arbitration review request with PERB, arguing that the arbitrator exceeded his authority by granting the award, and that the award was also contrary to law and public policy. See D.C. Code §§ 1-605.01 to -605.04 (2012 Repl.) (establishing and identifying the powers of the Public Employee Relations Board). In its Decision and Order, the PERB affirmed the arbitration award. The PERB concluded that the award was not contrary to law and public policy based on Mr. Wolf's analysis and application of the *White* decision to UDC's Career Service employees. The PERB further concluded that Mr. Wolf did not exceed his authority by looking to the BPA and granting AFSCME attorney's fees under the BPA because PERB "has long held that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement." See *District of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, PERB Case No. 06-A-05, at *4 (Aug. 27, 2012).

UDC then filed a petition for review of PERB's decision with Superior Court. See Super. Ct. Civ. Agency Rev. R. 1 (g) (stating that the Superior Court "shall base its decision . . . upon the administrative record and shall not set aside the action of the agency if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law"); see also *Nunnally v. District of Columbia Metro. Police Dep't*, 80 A.3d 1004, 1006-07 (D.C. 2013) (holding that certain agency decisions should first be reviewed by the Superior Court). Judge Epstein vacated the award and remanded the case to the PERB, concluding that the arbitrator failed to explain his authority for granting attorney's fees. Judge Epstein determined that the arbitrator granted attorney's fees based on his interpretation of the BPA, but that the BPA was never explicitly mentioned in the parties' CBA, and that the arbitrator "did not purport to construe or apply the CBA when he decided to award attorney[s] fees under the [BPA]." Thus, in the judge's view, "[b]ecause the record [provided] no basis for PERB or the [c]ourt to conclude that the [a]rbitrator's award of attorney[s] fees was arguably based on an interpretation of the CBA, the [a]rbitrator exceeded his authority."⁸ AFSCME now appeals Judge Epstein's decision to remand the arbitration award and asks this court to reinstate the PERB's decision.

II. Discussion

It is important to note that "[a]lthough this is an appeal from a review of agency action by the Superior Court rather than a direct appeal to this court, we review the PERB decision as if the matter had been heard initially in this court." *Gibson v. District of Columbia Pub. Emp. Relations Bd.*, 785 A.2d 1238, 1241 (D.C. 2001). Accordingly, while we respect the trial court's decision, we are not required to accord legal deference to its ruling. Moreover, our review of the PERB is limited; we "must sustain the Board's decision if it is supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law." *Id.* (citations and internal quotation marks omitted). Accordingly, "[u]nless 'rationally indefensible,' a PERB decision must stand." *Fraternal Order of Police/Dep't of Corrections Labor Comm. v. District of Columbia Pub. Emp. Relations Bd.*, 973 A.2d 174, 176 (D.C. 2009).

Further, PERB's review of an appeal of an arbitration award is, likewise, limited. *District of Columbia Pub. Emp. Relations Bd. v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 987 A.2d 1205, 1208 (D.C. 2010). PERB may only modify, set aside, or remand an arbitrator's decision

“if the arbitrator [1] was without, or exceeded, his or her jurisdiction; [2] the award on its face is contrary to law and public policy; or [3] [the award] was procured by fraud, collusion, or other similar and unlawful means . . .” D.C. Code § 1-605.02 (6).

To resolve the issue of whether the arbitrator’s decision to grant AFSCME attorneys’ fees under the BPA exceeded his authority or was contrary to law and public policy, we first examine UDC’s argument that the arbitration award of reasonable attorney’s fees to AFSCME based on the BPA was “contrary to law and public policy.” UDC claims that, contrary to Mr. Wolf’s and the PERB’s decisions, UDC had established its own comprehensive personnel and compensation system based on the criteria we set forth in *White*. UDC further claims that the DPM had superseded the BPA. Essentially, UDC seeks to re-litigate the question of whether the CMPA or the BPA — or neither — applies to UDC’s Career Services employees. This is something UDC cannot do at this stage of appellate review. “[W]hen parties have agreed to submit disputes to arbitration, they have bargained for the arbitrator’s construction of the contract . . . not some other tribunal’s.” *District of Columbia Pub. Emp. Relations Bd.*, *supra*, 987 A.2d at 1208 (citations and internal quotation marks omitted). Accordingly, whether an arbitration award has contravened law and public policy requires that the “public policy alleged to be contravened . . . be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.” *Id.* at 1208 (emphasis added) (citations and internal quotation marks omitted). Consequently, “[a]bsent a clear violation of law — one evident on the face of the arbitrator’s award, the PERB lacks authority to substitute its judgment for the arbitrator’s” even if the PERB (or this court) may disagree with the arbitrator’s interpretation. *Fraternal Order of Police/ Dep’t of Corrections Labor Comm.*, *supra*, 973 A.2d at 177 (emphasis added) (citations and internal quotation marks omitted).

Here, as the PERB concluded, UDC has not provided any clear case law from this court or statutes that unequivocally supports the conclusion that UDC Career Services employees are not governed by the CMPA and the BPA. Absent direct legal authority prohibiting Mr. Wolf’s interpretation of the applicability of the BPA in this case, his decision in this matter cannot be considered contrary to law. There is also no law or policy that prohibits an arbitrator from awarding attorney’s fees to the employee’s union. “Whether or not a union may solicit attorneys’ fees as a matter of independent entitlement, the victorious employee surely can, and the representative character of the union and its lawyers in the litigation for which fees are sought must be taken fully into account.” *Am. Fed’n of Gov. Emps., AFL-CIO, Local 3882 v. Fed. Labor Relations Auth.*, 944 F.2d 922, 929 (D.C. Cir. 1991). Here, Mr. Wolf applied our decision in *White* to the facts presented, and we see nothing inherently incorrect with his analysis. For example, Mr. Wolf

determined that UDC Career Service employees were not a part of a separate, comprehensive personnel and compensation system because they were “represented in negotiations by the Mayor’s Office of Labor Relations and Collective Bargaining, which acts on behalf of multiple D.C. agencies with employees in the same Compensation Unit of the Career Service.” This fact, among others, distinguishes this case from *White*, where WASA was statutorily permitted to seek CMPA exemption and for the most part had adopted its own comprehensive regulations governing employee compensation. 962 A.2d at 259. Consequently, we defer to the PERB’s decision that the arbitration award did not violate law or public policy. *Fraternal Order of Police/ Dep’t of Corrections Labor Comm.*, *supra*, 973 A.2d at 177-78.

We also reject UDC’s argument that Mr. Wolf exceeded his authority by looking to the BPA when the CBA was silent on the issue of attorney’s fees. It is true that “an arbitrator is confined to interpretation and application of the collective bargaining agreement [and] [his or her] award is legitimate only so long as it draws its essence from the collective bargaining agreement.” *Sindler v. Batleman*, 416 A.2d 238, 242 (D.C. 1980) (quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)). However, “an arbitrator does not exceed his [or her] authority by exercising his [or her] equitable power, unless it is expressly restricted by the parties’ collective bargaining agreement.” *District of Columbia Metro. Police Dep’t*, *supra*, PERB Case No. 06-A-05, at *4 (emphasis added); see also *Fraternal Order of Police/Dep’t of Corrections Labor Comm.*, *supra*, 973 A.2d at 177 (acknowledging the PERB’s recognition that an arbitrator has equitable powers unless restricted by the collective bargaining agreement). The parties’ CBA in this case is silent on the issue of attorney’s fees and no public policy prevents an arbitrator from awarding attorney’s fees, when the CBA is silent. Further, Article 34.6 of the parties’ CBA states, “The arbitrator’s award shall be final and binding, provided that it does not contradict applicable statute.” Accordingly, we defer to the PERB’s conclusion that Mr. Wolf’s arbitration award did not exceed the scope of his authority, as it was derived from his equitable powers.

In our view, a remand is not warranted. While Mr. Wolf did not explain whether his decision to award AFSCME reasonable attorney’s fees was based on the CBA or his equitable powers, the trial court identified two possible bases for affirming the arbitration award. See *supra* note 8. Typically, “[a]rbitrators . . . are not required to state the grounds for their decisions.” *Schwartz v. Chow*, 867 A.2d 230, 233 (D.C. 2005); see also *Cathedral Ave. Co op., Inc. v. Carter*, 947 A.2d 1143, 1153 (D.C. 2008) (“[A]rbitrators commonly do not offer reasons for [a] decision . . .”).

More importantly, we think that whether an arbitrator has exceeded his or her authority pursuant to the parties’ CBA is a question of law that, by statute, is for the PERB, and thereafter this court, to decide. See D.C. Code § 1-605.02 (6) (stating that the PERB may modify, set aside, or

remand an arbitration award “only if the arbitrator was without, or exceeded, his or her jurisdiction . . .”); *Motor City Drive, LLC v. Brennan Beer Gorman Monk Architects and Interiors, PLLC*, 890 A.2d 233, 236 (D.C. 2006) (“One of the statutory grounds for vacating an arbitration award is the arbitrator exceeded his powers. Whether an issue is arbitrable is a question of law, and a court must make its own determination on the issue. The standard of review of arbitrability, in other words, is *de novo*.”) (citations, internal quotation marks, and brackets omitted). In fact, it is “undeniably a legal issue for judicial determination.” *Howard Univ.*, *supra*, 519 F. Supp. 2d at 33 (citations and internal quotation marks omitted). The PERB concluded in this case that Mr. Wolf, as a matter of law, did not exceed his authority to grant attorney’s fees based on his equitable powers as arbitrator. We cannot conclude that the PERB’s conclusion that Mr. Wolf was authorized by his equitable powers to grant attorney’s fees where the CBA appears silent on the issue is “clearly erroneous as a matter of law.” *Gibson*, *supra*, 785 A.2d at 1241.

III. Conclusion

Based on the foregoing reasons, we reverse the Superior Court’s order and reinstate the PERB’s decision to uphold the arbitration award of reasonable attorney’s fees to AFSCME.

So ordered.

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First Insertions

Superior Court of the District of Columbia
PROBATE DIVISION
2017 ADM 929

SADIE VIVIAN JOHNSON, Deceased

THOMAS P. HARTNETT, Attorney
209 PENNSYLVANIA AVENUE, SE, WASHINGTON, DC
Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

DONALD JOHNSON, whose address(es) is/are 2942 E. CAPTIVA DRIVE, DOUGLASVILLE, GA 30135, was/were appointed personal representative(s) of the estate of SADIE VIVIAN JOHNSON, who died on AUG 14, 2016 WITHOUT a Will, and will serve WITH Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before MAR 1, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before MAR 1, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: SEP 1, 2017. /s/ DONALD JOHNSON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN NEWSPAPER. Pub Dates: SEP 1, 8, 15, 2017.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 FEP 77

LAWRENCE P. JONES, Deceased
JUL 8, 2006, *Date of Death*

Notice of Appointment of Foreign Personal Representative And Notice to Creditors

LYDIA JONES-NUNN and LAUREN JONES MULLINS, whose address(es) is/are 6200 TARGON COURT, FT. WASHINGTON, MD 20744, was/were appointed Personal Representative of the estate of LAWRENCE P. JONES, deceased, by the ORPHANS' Court for PRINCE GEORGE'S County, State of MARYLAND on MAY 18, 2017. Service of process may be made upon PHILIP J. MULLINS, 4538 EADS PLACE, N.E., WASHINGTON, D.C. 20019, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: UNDEVELOPED LOT, SQUARE 5132, LOT 30, IN N.E. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: SEP 1, 2017. /s/ LYDIA JONES-NUNN, LAUREN JONES MULLINS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN NEWSPAPER. Pub Dates: SEP 1, 8, 15, 2017.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 FEP 98

JONATHAN D. WATTS, Deceased
MAR 14, 2013, *Date of Death*

Notice of Appointment of Foreign Personal Representative And Notice to Creditors

CHERYL MAXWELL, whose address(es) is/are 5604 LINWOOD COURT, LANHAM, MD 20706, was/

were appointed Personal Representative of the estate of JONATHAN D. WATTS, deceased, by the ORPHANS' COURT Court for PRINCE GEORGE'S County, State of MARYLAND on OCT 10, 2013. Service of process may be made upon LAWRENCE WARD, 3447 24TH STREET, SE, WASHINGTON, D.C. 20020, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: 3428 24TH STREET, SE, WASHINGTON, D.C.. The decedent owned District of Columbia personal property. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: SEP 1, 2017. /s/ CHERYL MAXWELL. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN. Pub Dates: SEP 1, 8, 15, 2017.



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Second Insertions

Superior Court of the District of Columbia
PROBATE DIVISION
2017 FEP 96

JOHN H. BLOCKER, Deceased
DEC 28, 2008, *Date of Death*

Notice of Appointment of Foreign Personal Representative And Notice to Creditors

LEOMIE BLOCKER, whose address(es) is/are 99 CALHOUN STREET, JOHNSTON, SC 29832, was/were appointed Personal Representative of the estate of JOHN H. BLOCKER, deceased, by the PROBATE Court for EDGEFIELD County, State of SOUTH CAROLINA on FEB 7, 2017. Service of process may be made upon THOMAS L. CAMPBELL, ESQUIRE, 3807 MINNESOTA AVENUE, N.E., WASHINGTON, D.C. 20019, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: 1/6 INTEREST IN 2626 EVARTS STREET, N.E., WASHINGTON, D.C. 20018. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: AUG 25, 2017. /s/ LEOMIE BLOCKER. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, THE WASHINGTON DC AFRO AMERICAN NEWS. Pub Dates: AUG 25, SEP 1, 8, 2017.

Superior Court of the District of Columbia
PROBATE DIVISION
2016 ADM 626

DORA SMITH, Deceased

CLARISSA EDWARDS, Attorney
2402 LENAFANT SQUARE SE, WASHINGTON, DC 20020

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

DANIELLE WRIGHT / CATHY SMITH, whose address(es) is/are 1276 PATRIOT LANE BOWIE, MD 20716 / 99-04 57TH AVENUE QUEENS, NY 11368, was/were appointed personal representative(s) of the estate of DORA SMITH, who died on FEB 19, 2016 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 25, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 25, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 25, 2017. /s/ DANIELLE WRIGHT, CATHY SMITH. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRICAN AMERICAN. Pub Dates: AUG 25, SEP 1, 8, 2017.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 FEP 97

CALVIN H. STEINER, JR., Deceased
DEC 4, 2012, *Date of Death*

Notice of Appointment of Foreign Personal Representative And Notice to Creditors

ROBBYN TUREMAN-STEINER, whose address(es) is/are 12409 DELORAINNE CIRCLE, FORT WASHINGTON, MD 20744, was/were appointed Personal Representative of the estate of CALVIN H. STEINER, JR., deceased, by the ORPHANS' Court for PRINCE GEORGE'S County, State of MARYLAND on DEC 17, 2012. Service of process may be made upon JAMES LARRY FRAZIER, ESQUIRE, 918 MARYLAND AVENUE, N.E., WASHINGTON, D.C. 20002, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: ONE-THIRD INTEREST AS TENANT IN COMMON FOR REAL PROPERTY LOCATED AT 229 LONGFELLOW ST., N.W. WASHINGTON, DC. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: AUG 25, 2017. /s/ ROBBYN TUREMAN-STEINER. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, THE AFRO-AMERICAN NEWSPAPERS. Pub Dates: AUG 25, SEP 1, 8, 2017.

Third Insertions

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2017 CA 401 R(RP)

Calendar 12

Judge Brian F. Holeman

ROBINSON PROPERTY MANAGEMENT, INC.,
Plaintiff,

v.

ELSIE W. HAMMOND, et al.,
Defendants.

**AMENDED ORDER OF PUBLICATION
(Replacing and Superseding the Order of Publication
Issued on April 18, 2017)**

The object of this action is to quiet title in favor of Plaintiff Robinson Property Management, Inc. in and to the real property located in the District of Columbia at Square 3401, Lot 0033, and known as 66 Farragut Place, NW, Washington, D.C. 20011. On May 9, 2017, Plaintiff filed the Motion for an Amended Publication Order.

Upon consideration of this Motion, it is on this 10th day of July 2017, hereby

ORDERED that any and all persons having or claiming to have any interest in the leasehold or the fee

simple in the real property and premises situate, lying and being in the District of Columbia described as: Square 3401, Lot 0033, and known as 66 Farragut Place, NW, Washington, D.C. 20011, cause their appearances to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this Order; otherwise the cause will be proceeded with as in cause of default. It is provided, however, that a copy of this Order be published twice per month for three successive months in The Daily Washington Law Reporter and The Washington Times newspapers before said day. /s/ BRIAN F. HOLEMAN, JUDGE. Pub Dates: Aug 8, 15, Sep 1,8, Oct 2, 10, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2016 ADM 1437

JANIE M. BONDS, Deceased

VICKEY A. WRIGHT-SMITH, Attorney
1629 K STREET, NW, #300, WASHINGTON, DC 20006

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

VICKEY A. WRIGHT-SMITH, whose address(es) is/ are 1629 K STREET, NW #300, WASHINGTON, DC 200006, was/were appointed personal representative(s) of the estate of JANIE M. BONDS, who died on SEP 7, 2008 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ VICKEY A. WRIGHT-SMITH. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 916

TYRONE CEPHAS BONNER, Deceased

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

GAYLE C. RUTLAND, whose address(es) is/are P.O. BOX 5044, FREDERICKSBURG, VA 22403, was/were appointed personal representative(s) of the estate of TYRONE CEPHAS BONNER, who died on JUN 2, 2017 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ GAYLE C. RUTLAND. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 904

MAXINE J. CAIN, Deceased

BARBARA G. WHITAKER, Attorney
635 DAHLIA STREET, N.W., WASHINGTON,
D.C. 20012-1841

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

RAYNA BAILEY-SMITH, whose address(es) is/are 301 BENAM COURT ACCOKEEK, MD. 20607, was/were appointed personal representative(s) of the estate of MAXINE J. CAIN, who died on OCT 5, 2016 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ RAYNA BAILEY-SMITH. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, WASHINGTON AFRO-MERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 903

HILDA AUDREY HAMM, Deceased

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

TRACY LYNNE HAMM, whose address(es) is/are 12607 ABBOTTSFORD CIRCLE, FT WASHINGTON MD 20744, was/were appointed personal representative(s) of the estate of HILDA AUDREY HAMM, who died on FEB 11, 2008 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ TRACY LYNNE HAMM. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO AMERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 888

RICHARD Y. LEE, Deceased

ROBERT P. NEWMAN, Attorney
801 WAYNE AVENUE, SUITE 400,
SILVER SPRING, MD 20910

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

GARRETT WONG, whose address(es) is/are 9607 BELVEDERE PLACE, SILVER SPRING, MD 20910, was/were appointed personal representative(s) of the estate of RICHARD Y. LEE, who died on MAY 27, 2017 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ GARRETT WONG. TRUE TEST COPY /s/ ANNE MEISTER Register

of Wills. Name of Newspapers: DWLR, AFRO. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 920

DIANA HARVIE MAHER, Deceased

PATRICIA D. RYAN, Attorney
6106 HARVARD AVENUE, P.O. BOX 633,
GLEN ECHO, MD 20816

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

COIMBRA MAHER SIRICA, whose address(es) is/ are 188 WOODBINE AVENUE, NORTHPORT, NY 11768, was/were appointed personal representative(s) of the estate of DIANA HARVIE MAHER, who died on FEB 21, 2017 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ COIMBRA MAHER SIRICA. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 908

ARTHUR L. STEPHENS, Deceased

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

RENEE L. WILLIAMS, whose address(es) is/are 233 ONEIDA ST NE WASHINGTON DC 20011, was/were appointed personal representative(s) of the estate of ARTHUR L. STEPHENS, who died on MAR 18, 2017 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ RENEE L. WILLIAMS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO-AMERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

**Superior Court of the District of Columbia
PROBATE DIVISION**

2017 ADM 900

PHILLIP NELSON WALLACE, Deceased

SILBER, PERLMAN, SIGMAN & TILVE, P.A., Attorney
6930 CARROLL AVE, #610, TAKOMA PARK, MD 20912

Notice of Appointment, Notice to Creditors

And Notice to Unknown Heirs

JEANNELLE B. WALLACE, whose address(es) is/are 1411 RITTENHOUSE ST, NW, WASHINGTON, DC 20011, was/were appointed personal representative(s) of the estate of PHILLIP NELSON WALLACE, who died on MAY 23, 2017 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 18, 2018. Claims against the decedent shall be presented to the undersigned

with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 18, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 18, 2017. /s/ JEANNELLE B. WALLACE. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, AFRO AMERICAN. Pub Dates: AUG 18, 25, SEP 1, 2017.

Fifth Insertions

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

Civil Action No. 2012 CA 006633 L(RP)
(Action Involving Real Property)
Calendar 18

DEBRA M. OLSEN, TRUSTEE OF THE KURT OLSEN GIFT TRUST 2012, 13317 Drews Lane, Potomac, MD 20854; And KURT OLSEN, TRUSTEE OF THE DEBRA M. OLSEN GIFT TRUST 2012, 13317 Drews Lane, Potomac, MD 20854

Substitute Plaintiffs

vs.

FRITS JACOBSE LEVITAN, Address Unknown; And UNKNOWN PERSONAL REPRESENTATIVE OF THE ESTATE OF THOMAS J. LANE, JR., Address Unknown; And UNKNOWN HEIRS AND LEGATEES OF THOMAS J. LANE, JR., Address Unknown; And 22nd LP, 2401 Cedarwood Drive, Bloomington, IN 47401; And THE DISTRICT OF COLUMBIA, Serve: Mayor of the District of Columbia, Muriel Bowser, Attn: Office of the Secretary, 1350 Pennsylvania Avenue, N.W., #419, Washington, DC 20001, Serve: Attorney General of the District of Columbia, Attn: Darlene Fields, 441 4th Street, NW, Washington, DC 20001; And All Unknown Owners of the Property described below, their Heirs, Personal Representatives, Executors, Administrators, Grantees, Assigns or Successors in Right, Title, Interest, and Any and all persons having or claiming to have any interest in the leasehold or fee simple in the property and premises situate, lying and being in the District of Columbia described as: Square 0069 Lot 0829. May also be known as a lot comprising part of a wall located between improved real properties known as 1333 22nd Street NW and 1335 22nd Street, NW in Washington, D.C.

Defendants

ORDER OF SERVICE BY PUBLICATION

In accordance with D.C. Code §§ 47-1375 and 13-341, the object of this proceeding is to secure the foreclosure of the right of redemption in the real property, described as Square: 0069, Lot: 0829, which property may also be known as a lot comprising part of a wall located between improved real properties known as 1333 22nd Street NW and 1335 22nd Street, NW in Washington, D.C., which property was sold by the Mayor of the District of Columbia to the Plaintiff in this action.

The Amended Complaint states, among other things, that the amounts necessary for redemption have not been paid.

Accordingly, it is this 12th day of June, 2017, hereby

ORDERED by the Superior Court of the District of Columbia, that service upon Defendants Frits Jacobse Levitan, the Unknown Personal Representative of the Estate of Thomas J. Lane, Jr., and the Unknown Heirs and Legatees of Thomas J. Lane, Jr., be made by insertion of a copy of this order in The Afro American Newspaper and the Daily Washington Law Reporter, newspapers having a general circulation in the District of Columbia, twice a month for three consecutive months, notifying any and all persons interested in the above described real property to appear in this Court on or before the 4th day of October, 2017, and redeem the real property by payment of \$12,434.63, together with interest from the date the real property tax certificate was purchased; court costs; reasonable attorney's fees; expenses incurred in the publication and service of process; and all other amounts in accordance with the provisions of D.C. Official Code §§ 47-1361 through

1377, et seq., or answer the Amended Complaint, or, thereafter, a final judgment will be entered foreclosing the right of redemption in the real property and vesting in the Plaintiff a title in fee simple. /s/ Magistrate Judge Renee Raymond. Pub Dates: July 6, 13, Aug 1, 8, Sep 1, 8, 2017.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

Civil Action No. 2017 CA 004111 R(RP)
Judge Jennifer A. DiToro
1031 4TH STREET, LLC, Plaintiff

vs.

SIMON KAPLAN, his unknown heirs, devisees, or alienees; And ELIZABETH BRADEN, her unknown heirs, devisees, or alienees, Defendants.

ORDER OF PUBLICATION

This matter is before the Court on Plaintiff 1031 4th Street LLC's Motion for entry of an order permitting service of process on Defendants via order of publication, pursuant to Sections 13-336(a)(3), 13-336(b)(6) and (8), 13-339, and 13-341(b) of the District of Columbia Code (the "Motion").

The object of the action is to quiet title to the real property and premises situated, lying and being in the District of Columbia, located at the corner of 4th and I Streets, N.W., commonly known as 1033 4th Street, NW, Washington, D.C., (the "Property"), and specifically concerns that portion of the Property on which a three (3) foot wide private alley was located.

Upon consideration of the Motion, and it appearing that good cause exists to grant the Motion, it is this 30th day of June, 2017, hereby

ORDERED, that the Motion is GRANTED. It is further

ORDERED, that Plaintiff shall publish this Order of Publication two (2) times per month for three (3) consecutive months; for publication purposes, the first month shall run from July 1, 2017 through July 31, 2017; the second month shall run from August 1, 2017 through August 31, 2017; and the third month shall run from September 1, 2017 through September 30, 2017. It is further

ORDERED, that this order of publication shall be published for the time prescribed herein in at least one "legal newspaper or periodical of daily circulation" pursuant to Superior Court Rule of Civil Procedure 4-1, which shall be the following newspaper/periodical: The Daily Washington Law Reporter. It is further

ORDERED, that the Defendants, who are the heirs or devisees of the deceased Simon Kaplan, and Elizabeth Braden, or, if she is not living, the heirs or devisees of Elizabeth Braden, who if living would be proper parties to Plaintiff's action, cause their appearance(s) to be entered in this action. It is further

ORDERED, that any such appearance be entered in this action on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of first publication of this order. If no appearance as described in this order is entered within the time provided in this order, this cause will be proceeded with as in cause of default. /s/ Jennifer A. DiToro. Pub Dates: Jul 12, 19, Aug 1, 8, Sep 1, 8, 2017.

Bernal *Continued from page 2555*

household as Ms. Alvarez and E.A. since E.A. was one year old. E.A. refers to appellant as "my dad." According to E.A., appellant sexually abused her about "twice a week" starting in the second grade. The abuse included both oral and vaginal penetration. Ms. Alvarez did not know about the abuse because it always occurred at night when Ms. Alvarez was at work at a nearby restaurant. However, Ms. Alvarez discovered the abuse on May 23, 2014, when she left work at around 11:00 p.m. without first texting or calling appellant, as she normally would do. When she got home, she noticed that the bedroom door was locked and, upon unlocking the door with a key, Ms. Alvarez saw appellant lying with E.A. on the bed. According to Ms. Alvarez, she saw that appellant "had his hands spread out on E.A.'s abdomen," and that E.A. was pulling up her pajamas. Ms. Alvarez also noticed that appellant, who was wearing nothing but shorts, had an erect penis as he stood up. Ms. Alvarez testified that she was in a state of "shock" and was "devastated."

On the morning of May 24, E.A. told Ms. Alvarez that appellant had vaginally penetrated her the night before. In response, Ms. Alvarez called 911. The police took E.A. to Children's Hospital National Medical Center, where a medical examination was conducted. The medical examination revealed semen present on E.A.'s perianal-buttocks and external genitalia.

B. Police Custody

Metropolitan Police Department ("MPD") Detective Jonathan Rosnick arrested appellant at his place of employment in the afternoon of May 24. Appellant, who was from El Salvador and of limited English-language proficiency, was interviewed by Detective Rosnick at the Fourth District with the assistance of Officer William Vega, a certified Spanish-language interpreter. In Spanish, Officer Vega read appellant his *Miranda* rights through the Spanish version of MPD's PD-47 form. In response to question three, "Do you wish to answer any questions?", appellant answered that he did not want to answer questions. Nonetheless, the police continued their interrogation. The government concedes that the government's failure to respect appellant's decision violated his *Miranda* rights. During the subsequent interrogation, appellant confessed to sexually abusing E.A.

Following appellant's confession, appellant was moved to the Central Cellblock at MPD Headquarters; at around 6:00 p.m., Detective Rosnick, alone, visited appellant for a buccal swab sample. In English and without the presence of a Spanish interpreter and without first securing a warrant, Detective Rosnick asked appellant for a saliva sample and appellant, in response, agreed to provide one. The DNA of the saliva sample matched the semen found on E.A.

C. Procedural History

Appellant filed pre-trial motions to suppress both his confession and DNA sample, and the trial court conducted a motions hearing on the matter on May 6 and 8, 2015. At the start of the hearing, the government conceded that appellant's

confession was the result of a *Miranda* violation and, accordingly, the government agreed that it would not introduce the confession in its case-in-chief, and that it would only introduce the confession “for impeachment purposes should [appellant] testify.” The court then heard testimony from Officer Vega and Detective Rosnick on their conduct in procuring the confession and saliva sample.

At the beginning of the second day of the motions hearing, government counsel moved for a thirty-day continuance in the trial, which at the time was slated for May 11, for two reasons. First, the government sought authorization and additional time to secure a second buccal swab based on the probable cause that existed at the time of appellant’s arrest. In the government’s view, this would solve the need to consider whether the first swab was taken illegally. Second, the government had received appellant’s “expert notice for child suggestivity”⁵ only three days earlier, so the government sought additional time to consider whether it “would need to call its own expert for rebuttal.” Appellant opposed continuance of the trial. Later that day, the trial court orally denied the government’s motion to continue “based on the fact that both sides are ready otherwise.” The court noted, however, that it viewed the government’s request for authorization to obtain a second buccal swab “as being one that is separate from the motion to continue” for both obtaining and testing a second swab. The trial court reserved a formal ruling on the DNA sample procured by Detective Resnick.

On May 10, the government filed a written motion for the court to reconsider its denial of the thirty-day motion to continue based on the same two grounds it had asserted during the motions hearing on May 8. The government also asked the court to reconsider its request for appellant to submit to a second buccal swab. The government stated that, should the court deny its motion to reconsider its request for thirty days, “the government will request leave to file a dismissal of the indictment in this case, without prejudice, in order to seek a search warrant for [appellant’s] buccal swab.”

On May 11, the trial court in a written order granted appellant’s motion to suppress the DNA evidence recovered from appellant by Detective Resnick at MPD Headquarters. The court concluded that the warrantless seizure of appellant’s DNA was nonconsensual, even though appellant had agreed to the buccal swab, because his consent was not knowingly and voluntarily given. See *Martin v. United States*, 952 A.2d 181, 186 (D.C. 2008) (“To justify a search [or seizure] under the consent exception, the government must prove by a preponderance of the evidence that consent was, in fact, freely and voluntarily given.”) (citation and internal quotation marks omitted). Therefore, suppression of the sample was warranted as a violation of the Fourth Amendment. The trial court also concluded that the DNA sample should be suppressed on the alternative ground that Detective Resnick violated the District of Columbia’s Interpreter Act. See D.C. Code § 2-1902 (e)(3) (2012 Repl.). The court

ruled that the DNA evidence recovered from the buccal swab was inadmissible in the government’s case-in-chief, but could be used during rebuttal if appellant “opens the door.”

Thereafter, the parties met with the trial court to discuss pending matters before trial. The government stated that the court’s order did not change its position on its still-pending motion for reconsideration of the trial court’s denial of its motion for a thirty-day continuance. The parties and the court engaged in a brief colloquy and the court affirmed its decision to deny the government its request for a thirty-day continuance. However, the court then stated that it was willing to give the government “a week” based solely on the late expert notice by appellant’s counsel. At the government’s urging, the court also stated that it was willing to sign the government’s motion for a second buccal swab because, in the court’s view, the government has a “basis for asking for one, independent of [the sample that the court had] suppressed” earlier. The court emphasized, however, that “the late-breaking expert witness notice” was the only reason for the one-week continuance; and although the government could try, the trial court did not care whether a week gave the government enough time to procure a second DNA test. Indeed, the trial court expressed some doubts about the feasibility of a second test given the time constraints. With those conditions, the government agreed with the court’s compromise of a one-week continuance.

The government took a second buccal swab of appellant and was ultimately able to procure a second DNA testing within the one-week confine. Appellant sought to exclude the second DNA test results as a Super. Ct. Crim. R. 16 violation, but the court denied appellant’s motion. Thereafter the case went to trial where the jury heard that the semen found on E.A. matched the second buccal swab sample provided by appellant. This appeal followed.

II. Discussion

On appeal, appellant challenges the trial court’s decision to grant the government a one-week continuance. Specifically, appellant argues that the trial court erred in granting the government’s motion for *reconsideration* for a thirty-day continuance because the government did not offer any new information to justify reconsideration of the court’s initial ruling.

Even assuming, without deciding, that the trial court’s decision can be construed as a grant of the government’s motion for reconsideration in part, we are not persuaded by appellant’s argument that a motion for reconsideration can only be granted when the party seeking reconsideration “presents newly discovered evidence, [shows that] there has been an intervening change in the law, or . . . demonstrate[s] that the original decision was based on a manifest error of law or was clearly unjust.” *United States v. Allen*, 573 F.3d 42, 53 (1st Cir. 2009).

We do not read the trial court’s authority to grant a motion for reconsideration so narrowly, especially in light of the great deference we give to trial courts over issues pertaining to case management. See, e.g., *Johnson v. Washington*,

756 A.2d 411, 416 (D.C. 2000). Our recent decision, *Marshall v. United States*, 145 A.3d 1014 (D.C. 2016), governs the standard by which a trial court may revisit an earlier interlocutory decision. In *Marshall*, this court considered the issue of whether the trial court has the authority to reconsider an order granting a motion to withdraw from a guilty plea. *Id.* at 1016. We held that the trial court does have such authority, so long as the reconsideration was “consonant with justice.” *Id.* at 1019 (quoting *United States v. Jerry*, 487 F.2d 600, 604-05 (3d Cir. 1973)). Specifically, we observed that this court has held that “trial judges in Superior Court are free to rely on their inherent powers where superseding procedural rules and constitutional restraints are absent[,]” and that we have also “noted that while there are no procedural rules (civil or criminal) that allow for reconsideration of interlocutory orders, nothing prevents a trial court from doing so while it exercises plenary jurisdiction over a case.” *Id.* at 1018 (citing *Siddiq v. Ostheimer*, 718 A.2d 145, 148 (D.C. 1998) and *Williams v. Vel Rey Props.*, 699 A.2d 416, 419 (D.C. 1997)). Accordingly, we adopted the Third Circuit’s standard for criminal motions for reconsideration in *Jerry* and held that there are “no procedural restraint[s] to the trial court’s reconsideration of its earlier improvident order, so long as it was, in fact, interlocutory, and reconsideration was „consonant with justice.”” *Id.* at 1019 (quoting *Jerry*, *supra*, 487 F.2d at 604-05). For example, in *Marshall*, we concluded that it was “consonant with justice” for the trial court to reconsider its ruling on appellant’s motion to withdraw his guilty plea because “the case had not proceeded to trial,” the “trial court recognized its failure to conduct a factual inquiry and fully to analyze factors intended to guide it in its exercise of discretion,” and “in light of the government’s proffer” that “placed the appellant’s motive for seeking to withdraw his plea into question.” *Id.* at 1019-20 (footnotes omitted). Similarly, the trial court in the present case fully analyzed the government’s reasons for requesting the continuance, an analysis that is not otherwise apparent from the record because the initial denial of the continuance was due to both parties being ready for trial.

Here, the court’s decision to grant the government a one-week continuance was also “consonant with justice” because, although the court did not consider it fair for appellant to wait thirty days to proceed to trial so that the government can rectify its own initial unlawful action, the court indicated that a seven-day continuance was appropriate given appellant’s late disclosure of its expert. *Id.* The trial court’s decision reflects a thoughtful balancing of competing considerations, which we cannot say was an abuse of discretion.

III. Conclusion

Based on the preceding reasons, we affirm appellant’s convictions on appeal. This case is remanded solely for the trial court to merge Counts Three and Four, without the need for resentencing.

The Daily Washington
LAW
Reporter

(USPS 146-840)

PERIODICALS
PAID at Baltimore, MD

100 E. Pratt Street
Suite 2520
Baltimore, MD 21202



PERIODICALS

**DWLR Quick Reference
August 2017**

Opinions

- Aug. 1 - Clark Construction Group v. DC DOES
- Aug. 1 - Sierra Club v. EPA
- Aug. 2 - US v. Pyles
- Aug. 3 - Brewer v. DC DOES and DC Public Schools
- Aug. 4 - US v. Mohammed
- Aug. 7 - Boyd v. Kilpatrick Townsend & Stockton
- Aug. 7 - Campbell v. US
- Aug. 8 - Long v. US
- Aug. 8 - Flyers Rights Education Fund v. FAA
- Aug. 9 - Cherry v. DC
- Aug. 10 - Attias v. Carefirst Inc.
- Aug. 11 - Armstrong & Joiner v. US
- Aug. 14 - Dickens & Fenner v. US
- Aug. 14 - Cruz v. US
- Aug. 15 - Carrell v. US
- Aug. 15 - Aguiar v. DEA
- Aug. 16 - Competitive Enterprise Institute v. US Dep't of Transportation and Chao
- Aug. 16 - Oberthur Tech. of America v. NLRB
- Aug. 17 - United Source One Inc. v. USDA
- Aug. 18 - Associated Estates LLC v. BankAtlantic
- Aug. 21 - Texas Neighborhood Services v. US Dep't of HHS
- Aug. 21 - In re Khalid Mohammad
- Aug. 22 - Buchanan v. US
- Aug. 22 - Judicial Watch v. Dep't of State
- Aug. 23 - Price v. DOJ
- Aug. 23 - Dewees v. US
- Aug. 24 - El-Amin v. Downs
- Aug. 25 - US v. Lefsih
- Aug. 28 - In re The Yellow Line Cases
- Aug. 29 - US v. Meadows
- Aug. 29 - Davis v. US
- Aug. 30 - In re K.M.
- Aug. 31 - Turner v. US
- Aug. 31 - Fawzi v. Al Jazeera Media Network

* D.C. Superior Court opinion

Orders

- Aug. 28 - Admin. Order No. 17-11
- Aug. 30 - Rule Prom. Order 17-03



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