

NO. 20-6614

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Derek N. Jarvis,
Petitioner
vs.

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SUPREME COURT, U.S.

Isiah Leggett, Et Al.,
Respondent(s)

On Petition For A Writ of Certiorari To The
Maryland Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
QUESTIONS PRESENTED.....	iii
PARTIES TO THE PROCEEDINGS.....	iv
OPINIONS BELOW.....	v
JURISDICTION.....	vi
CONSTITUTIONAL PROVISIONS & STATUTES.....	vi
RELATED CASES.....	vi
RELATED CITATIONS.....	vii
STATEMENT.....	1
REASONS FOR GRANTING WRIT Maryland Court of Appeals erred when it Held that Isiah Leggett was not liable for malicious act(s) by his County Officials Michael Subin & Melissa Wiak.....	3
THE MARYLAND COURT OF SPECIAL APPEALS UNREPORTED OPINION CONFLICTS WITH THE SUPREME COURT PRECEDENT & CONTRADICTS IT'S OWN PRECEDENT.....	4
ISIAH LEGGETT HAS NO IMMUNITY FOR MALICIOUS AND DELIBERATE ACT(S).....	5
ISIAH LEGGETT IS NEGLIGENT IN THIS CASE AS A RESULT OF DELIBERATE ACT(S) BY COUNTY OFFICIALS.....	7
MARYLAND COURT OF APPEALS UNREPORTED OPINIONS ARE UNCONSTITUTIONAL-MARYLAND GEN. PROVISION 1-104 is NOT AUTHORITY AND IS NEITHER PRECEDENT WITH THE RULE OF "STARE DECISIS".....	8
THE TRIAL COURT ERRED WHEN IT FAILED TO TRANSFER CASE TO ANOTHER VENUE.....	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

CASES	PAGE
Ashton, 456...Public Official immunity is not applicable for intentional torts.....	iii
Monell, 436 U.S. at 690.....	vi
ACLU vs. Wicomico County, 999 F.2d 780, 785 (4th Cir. 1993).....	vi
Connick vs. Thompson, 563 V. S. 51, 61 (2011).....	vi
Farmer vs. Brennan, 522 U.S. 834, 842,.....	vi
City of Canton, 489 at 694.....	vi
Monell, 436 U.S. at 694.....	vi
Santiago vs. Fenton, 891 F.2d 373, 381 (1st Cir. 1989).....	vi
Sawyer vs. Humptries, 82 Md.App.72 (1990).....	3
Malley vs. Briggs, 475 U.S. 335, 341 (1986).....	5
Monell vs. Dep't of Social Services, 436 U.S. 658, 691092 (1976).....	6
Rochin vs. California, 342 U.S. 165 (1952).....	6
Gibson vs. Brooks, 2004 WL 2095610 (D.Conn. 2004).....	6
Harlow vs. Fitzgerald, 457 U.S. 800, 818 (1982).....	6

QUESTIONS PRESENTED

1- Md. Gen. Provision, 1-104, is not authority, nor based on precedent within the rule of 'stare decisis', nor persuasive authority. Maryland General Provision 1-104, by their own rule states 1-104 is unconstitutional and does not follow precedent nor this Court. Since Md. Gen. Prov. 1-104, is neither precedent or within the rule of 'stare decisis', nor persuasive authority, are the Order(s) by the Maryland Court of Appeals, specifically, in this case, UNCONSTITUTIONAL, or void, since they fail to follow this Court, or is within the rule of '[s]tare [d]ecisis'?

Stare decisis is a legal doctrine that obligates Court's to follow historical cases. when making a ruling on a similar case. The Maryland Court of Appeals, have violated this rule and doctrine in failing to follow law and precedent.

2- The Maryland Court of Appeals states: "We conclude that public official immunity is not available with respect to deliberate act(s) that form the basis for intentional torts, or act(s) committed with actual malice". Md. Court of Appeals, In Ashton, 456..... Public Official immunity is not applicable for intentional torts. *Id.* The lower court stated that Isiah Leggett is not liable for deliberate acts committed by his County Officials. Did the lower Court err, when it stated Isiah Leggett is not liable or not personally responsible for the act(s) committed by County Officials for malicious and deliberate act(s) against Petitioner Jarvis?

3-Did the lower court err, when it stated that Isiah Leggett is not negligent for the malicious and deliberate act(s) committed by County Officials?

4-Did the lower Court err, when it failed to transfer the case out of Montgomery County, when Isiah Leggett's Office was in that County, as well as County Officials, County Attorney's and County judges'

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OPINIONS BELOW

Maryland Court of Special Appeals
Judgment[Apx.[D]]

The opinion by The Maryland Court of Appeals, was UNREPORTED. Maryland Court of Appeals failed to follow their own precedent and failed to follow The Supreme Court. In fact, Maryland General Provision 1-104, is UNCONSTITUTIONAL, with respect to Unreported opinions, as this provision states, Md.Gen.Prov. 1-104 (a) is NOT AUTHORITY-An Unreported opinion of the Court of Appeals in Maryland Appeals Court, is neither precedent, within the rule of 'stare decisis', nor persuasive authority, making the opinion UNCONSTITUTIONAL and void.

Maryland General Provision 1-104, makes the opinions by Maryland Court of Appeals, unconstitutional according to the legal doctrine of stare decisis.

Stare decisis, is a legal doctrine that obligates Court's to follow historical cases, when making a ruling on a similar case. Since The Maryland Court of Appeals, fails to follow precedent of this Court or similar cases, or even their own precedent or law, the Unreported opinions by The Maryland Court of Appeals are not authority by their own provisions, and thus, unconstitutional, and in which deprive litigants specifically, Petitioner Jarvis, in this case of his rights to an impartial judiciary, and impartial judge. The provision of Maryland Court of Appeals, appears designed to deny litigants of rights to fair access of the court.

This Supreme Court of United States, should absolutely, address the question of Md.Gen.Prov. 1-104, and it's failure to follow law, precedent or authority, and whether this provision is UNCONSTITUTIONAL.

JURISDICTION

Judgment of the Maryland Court of Appeals denied Petition of Petitioner Jarvis, August 21, 2020- Maryland Court of Special Appeals affirmed judgment of the trial Court on June 3, 2020. Petitioner Jarvis, invokes this Court's jurisdiction under 28 U.S.C. §1257, having timely filed this Petition for A Writ of Certiorari within 90 days of Maryland Court of Appeals judgment.

CONSTITUTIONAL PROVISION & STATUTES

42 U.S.C. §1983

Md.Gen.Prov. 1-104

Md.Ann.Code §20-304

Md.Rule 2-601(a)(1)

28 U.S.C. § 1257

RELATED CASES

Maryland Court of Special Appeals, Judgment- June 3, 2020

Montgomery County Circuit Court, Judgment-February 26, 2019

RELATED CITATIONS

In *Monell*, The Supreme Court determined that local governmental bodies may be held liable under 1983, based on it's individual agents or employees.....that resulted in a violation of the plaintiff's rights. 436 U.S. at 690.

The Maryland Court of Appeals, has held that, common law public official immunity is not available with respect to deliberate act(s), that form the basis for intentional torts, contrary, to the lower court's opinion.

Thus, retaliation by a public official, for the exercise of a constitutional right, is actionable. See *ACLU vs. Wicomico County*. 999 F.2d 780, 785 (4th Cir. 1993)).

Monell claims based on a failure to adequately train, show a deliberate difference to the rights of persons with whom the 'untrained employees' come into contact. *Connick vs. Thompson*, 563 V. S. 51, 61 (2011).

In *Farmer vs. Brennan*, 522 U.S. 834, 842, the Supreme Court held that, an official would be liable even if they had mere suspicions, but declined to investigate them. *Id.*

A government agency may be held liable, when the "execution of the governments policy or custom 'causes the injury. *City of Canton*, 489 U.S. at 694 (finding government liability appropriate where official policy was the moving force behind the constitutional violation"). See *Monell*, 436 U.S. at 694, *Santiago vs. Fenton*, 891 F.2d 373, 381 (1st Cir. 1989).

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STATEMENT

This Petition will illustrate that review is warranted, both Court of Special Appeals, and Maryland Court of Appeals, failed to follow The Supreme Court's precedent as well as the precedent of The Maryland Court of Appeals. The opinion of The Maryland Court of Appeals is completely inconsistent with this Court , and conflicts with similar rulings in this Court and others with respect to whether County Officials have immunity for malicious act(s)when violating constitutional rights.

The Maryland Court of Appeals, has held that Public Official immunity is not available with respect to deliberate act(s), 'that form the basis for intentional torts'. County Officials in Montgomery County, Maryland engaged in malicious acts against Petitioner Jarvis, when they threatened Petitioner Jarvis, depriving him of his constitutional rights if he attempted to file a discrimination complaint in the County.

Michael Subin, Official in the County Executive's Office Threatened to contact authorities on Petitioner Jarvis if he filed a complaint of discrimination at any County agency, depriving Petitioner Jarvis of his rights. Mr. Subin, was on conference call, with Melissa Wiak and other County Officials at County Executive's Office when he called Petitioner Jarvis to threaten him. [Apx.[A]

Michael Subin, County Official in Montgomery County, has engaged in the behavior several times before in his over 20 years as an Official in Montgomery County. Mr. Subin, has threatened County Officials in the County, engaged in sexual harassment against female staff, and had his law license suspended for taking money from clients without doing any work. In addition, Mr. Subin, has taken over 500,000.00 from Montgomery County and was ordered in Court to pay the money back.

Thus, retaliation by a Public Official for the exercise of a constitutional right is actionable. See ACLU vs Wicomico County, 999 F.2d 780, 785 (4th Cir. 1993). Thus Isiah Leggett is liable for the malicious act(s) and deliberate act(s) of his County Officials, contrary , to the lower court's ruling.

In Monell, The Supreme Court determined that local government bodies may be held liable under 1983, based on it's individual agents or employees.....that resulted in a violation of the plaintiffs rights.

REASONS FOR GRANTING THE W

I. THE COURT OF APPEALS ERRED WHEN IT HELD THAT ISIAH LEGGETT WAS NOT LIABLE FOR THE MALICIOUS ACT(S) OF COUNTY OFFICIALS MICHAEL SUBIN AND MELISSA WIAK FOR DELIBERATE AND MALICIOUS ACT(S) AGAINST PETITIONER JARVIS

In Sawyer vs. Humptries, 82 Md.App.72 (1990), we defined malice as the " intentional doing of a wrongful act, without just cause, excuse, or justification, which is reasonably calculated to injure another". In this case, Michael Subin, a County Official in the Executive's Office [Apx.[A] contacted Petitioner Jarvis, on September 14, 2017, and threatened Petitioner Jarvis, stating, "He would contact authorities on Petitioner Jarvis, if he contacted any agency to file a civil rights complaint', which is obviously 'malicious', an intentional doing of a wrongful act, without just cause, excuse, or justification, which is reasonably calculated to injure another. This is the precedent of Maryland Court of Appeals, which they disregarded and ignored.

Thus, retaliation by a public official for the exercise of a constitutional right, is actionable. See ACLU vs. Wicomico County, 999 F.2d 780, 785 (4th Cir. 1993)). As a result the Petition should be granted in this case.

If injury is the result of a policy, custom, or practice, liability can be demonstrated by showing a series of 'bad act(s)', and inviting the court to infer from them, that the policymaking level of government was bound to have noticed what was going on, and by failing to do anything, must have encouraged, or at least condoned the misconduct of subordinate officers who were directly involved in the violations against Petitioner here. Id.

II. THE MARYLAND COURT OF APPEALS UNREPORTED OPINION CONFLICTS WITH THE SUPREME COURT, CONTRADICTS IT'S OWN PRECEDENT AND FAILS TO FOLLOW SIMILAR CASES WITH RESPECT TO PUBLIC OFFICIALS NOT ENTITLED TO IMMUNITY FOR DELIBERATE OR MALICIOUS ACTS THAT VIOLATED THE RIGHTS OF PETITIONER JARVIS

In *Monell*, The Supreme Court determined that local government bodies may be held liable under 1983, based on it's individual agents or employees.....that resulted in a violation of the plaintiff's rights. This is in direct conflict with the lower court's ruling, as The Maryland Court of Appeals stated County Executive Isiah Leggett, is not liable for the unlawful act(s) committed against Petitioner Jarvis, by County Officials, who threatened Petitioner Jarvis, depriving Petitioner Jarvis of his constitutional rights, which contradicts this Court, which demonstrates the Court here, should grant the Petition, County Officials acted maliciously against Petitioner Jarvis. ("When one person threatens another, he clearly, harbors 'actual malice'). *Id.* [App.[A] [Apx.[B]

Monell claims based on a failure to adequately train, show a deliberate difference to the rights of persons with whom the 'untrained employees' come into contact. *Connick vs. Thompson*, 563 V, S. 51, 61 (2011).

A government agency may be held liable, when the " execution of the governments policy or custom 'causes the injury. *City of Canton*, 489 U.S. at 694 (finding government liability appropriate where official policy was the moving force behind the constitutional violation"). See *Monell*, 436 U.S. at 694. *Santiago vs. Fenton*, 891 F.2d 373, 381 (1st Cir. 1989).

III. ISIAH LEGGETT HAS NO IMMUNITY FOR THE MALICIOUS AND DELIBERATE ACT(S) BY COUNTY OFFICIALS MICHAEL SUBIN & MELISSA WIAK

Certiorari is warranted here, to address several questions in this case of public importance, because the Court of Appeals failed to address the questions of importance in the brief.

This Court should decide whether the Court of Appeals, erred, when it failed to follow the Supreme Court's precedent, committed facts in the case, and failed to address the crux of the case, and the important question on appeal, and that is Isiah Leggett has no immunity for deliberate and malicious act(s) in this case. County Officials Michael Subin, and Melissa Wiak, contacted Petitioner Jarvis, threatening to call authorities if he contacted any County agency to file complaint. These are malicious and deliberate acts, and an important question with respect to the public, as it relates to public officials in the County, violating the rights of citizens , and threatening them without consequence, and whether, Public officials have the right to threaten the public, denying rights to individuals. [Apx .[A][B]

The Maryland Court of Appeals, own precedent states: that, common law public official immunity is not available with respect to deliberate act(s) that form the basis for intentional torts, contrary , to the lower court's opinion.

Thus, immunity protects all but the plainly incompetent, or those who knowingly, violate the law. *Malley vs. Briggs*, 475 U.S. 335, 341 (1986).

The Court stated, 'either the risk must be abated, or, if the officer is uncertain as to it's depth or degree, an investigation must ensue. An officer "would not escape liability if the investigation showed that he merely, refused to verify underlying facts he strongly, suspected to exists".*Id.* at 842n.8.

The purpose of 1983, is to hold 'persons' including, government entities liable for official acts which violate an individual's constitutional rights. *Monell vs. Dep't of Social Services*, 436 U.S. 658, 691092 (1976)).

Government officials act outside the law, and are personally liable when their conduct 'shocks the conscious' or offends the community's sense of fair play'. *Rochin vs. California*, 342 U.S. 165 (1952).

An official cannot benefit from the doctrine of immunity, if he had fair warning that his conduct deprived his victims of constitutional rights. *Gibson vs. Brooks*, 2004 WL 2095610 (D.Conn. 2004)

When conduct violates 'clearly established statutory or constitutional rights of which reasonable persons would have known that, " the official is not protected by immunity". *Id.* (quoting *Harlow vs. Fitzgerald*, 457 U.S. 800, 818 (1982)

As a consequence of Isiah Leggett's illegal conduct, and violations of Petitioner's constitutional rights in facilitating the unlawful act(s), certiarari is warranted here.

IV. ISIAH LEGGETT IS NEGLIGENT IN THIS CASE, AS A RESULT OF THE MALICIOUS AND RETALIATORY ACT(s)

An accordance to Maryland law, under the MTCA, a party injured by the negligent act, or omission of a official or employee's, public duties may obtain compensation for that injury.....Id.

Thus, retaliation by a public official for the exercise of a constitutional right, is actionable. See ACLU vs. Wicomico County, 999 F.2d 780, 785 (4th Cir. 1993)). Thus Isiah Leggett, is liable for the malicious acts of his individual agents and employees.

Monell claims based on a failure to adequately train, show a deliberate difference to the rights of persons with whom the '[u]ntrained employees', come into contact. Connick vs. Thompson, 563 U. S. 51, 61 (2011).

In order to prevail on a negligence cause of action, the plaintiff must prove 'the applicable standard of care, a deviation from that standard by defendant, and a causal relationship between that deviation, and the plaintiff's injury'. Evans-Reid, *supra*, 930 A.2d at 937 n.6. Here, in this case, Isiah Leggett, owed a duty of care to Petitioner Jarvis, in which they failed as County Officials, engaging in threatening act(s), against Petitioner Jarvis, depriving him of his constitutional rights with malicious and deliberate act(s) . County Official, Michael Subin, threatened to contact the authorities on Petitioner Jarvis, if he attempted to file a discrimination complaint with a County agency, as well as threaten Petitioner Jarvis with 'guns', engaging in malicious and deliberate act(s) against Petitioner Jarvis. County Officials failed in that standard of care, and that caused injury to Jarvis.

V. MARYLAND UNREPORTED OPINIONS ARE UNCONSTITUTIONAL AS MD.GEN.PROV. 1-104 IS NOT AUTHORITY, AND IS NEITHER PRECEDENT WITHIN THE RULE OF "STARE DECISIS" AND IGNORES SUPREME COURT LAW

Unreported opinions at The Maryland Court of Appeals, are unconstitutional, as Md.Gen.Provi. 1-104, is not Authority, nor precedent of this Court, within the rule of [s]tare decisis, not persuasive authority. An unreported opinion in that Appeals Court, may not be cited in any Court, which makes unreported opinions unconstitutional. [Apx.[C][Apx.[D]

STARE DECISIS

Stare decisis, is a legal doctrine that obligates the Court's to follow historical cases, when making a ruling on a similar case. In this case, The Maryland Court of Appeals, failed to follow precedent, authority, or followed rulings in similar cases, which makes Md.Gen.Provi. 1-104 unconstitutional, and in which should grant this Petition on that question alone.

The Maryland Court of Appeals, failed to follow Supreme Court precedent when ruling on this case, failed to follow authority, and failed to follow precedent of their own Court, with respect to County Officials having no immunity for deliberate and malicious act(s). If an Appeals Court fails to follow persuasive authority, how can the public have any confidence in that Court, when their is no consistency in the law, and when that Court goes against the highest Court in the land. This is why this case, involves an important question in terms of the public. Which involves an Appeals Court, failing to follow persuasive authority, or precedent of the highest Court in the land, The Supreme Court. In fact, they disregard and ignore Supreme Court precedent, which is unconstitutional.
[Apx.[C]
[Apx.[D]

VI. THE TRIAL COURT ERRED WHEN IT FAILED TO TRANSFER CASE TO ANOTHER VENUE

Petitioner Jarvis, filed a motion to transfer venue, due to local prejudice, which occurred in the Montgomery County Circuit Court, and as a result of unfair ties and proximity to the Circuit Court in Montgomery County, and Petitioner Jarvis's inability to receive a fair trial, which was denied by the Circuit Court.

The change of venue was also to minimize the prejudicial impact of local sentiment by the Circuit Court in Montgomery County, Maryland, as well as politics involved in this case, creating a conflict of interest and the appearance of impropriety. As such the trial court erred in denying transfer of venue in this case. Not only because Isiah Leggett was County Executive, in Montgomery County, but all individuals involved were either County Officials, County Attorneys, and involved County agencies in Montgomery County, whom all of course were acquainted with one another.

The Circuit Court, being in the same County where County Officials were being sued, creates a conflict of interest and constitutes local prejudice that Petitioner Jarvis, would indeed be subject to, and was subjugated to by the Circuit Court in Montgomery County Maryland.

CONTRARY TO THE MARYLAND APPEALS COURT, IN IT'S ERRONEOUS RULING
SUITS AGAINST A MUNICIPAL OFFICER AND SUITS AGAINST MUNICIPALITIES
ARE FUNCTIONALLY EQUIVALENT

" Because suits against a municipal officer sued in his/her official capacity, and direct suits against municipalities, are functionally equivalent. There no longer exist a need to bring official-capacity actions against local government officials, because local government units, such as a County Executive or Mayor, can be sued directly". Busby vs. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991)).

In this case, the lower court's erred, as it was unnecessary to bring suit against the government official Michael Subin, and other County Officials in their official capacity, because as the 11th Circuit held, local government units, such as County Executive's or Mayor's , can be sued directly, and suits against municipal officers and municipalities are 'functionally the same. Id.

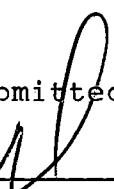
Claims against state officers in their capacity are functionally equivalent to claims against the 'entity they represent'. E.g., Ex Parte Town of Landesboro, 950 50.2d 1203, 1207.

As a consequence of the County Executive's illegal conduct, and facilitating and condoning of the unlawful act(s) of his County officials, Petitioner Jarvis, is entitled to the legal and equitable remedies available under 1983, including, but not be limited to, punitive damages. Id.

VII. CONCLUSION

The Petition for Writ of Certiorari should be granted. The Maryland Court of Appeals, failed to follow precedent of their own court, the Supreme Court, and the Maryland General Provision 1-104, is not authority, and is neither precedent with the rule of 'Stare decisis', which makes their unreported decisions, unconstitutional. The UNREPORTED OPINION IS INCONSISTENT with this Court, and conflicts with similar rulings in this Court, and their own appeals court rulings. Maryland Appeals Court precedent, holds that, ' County Officials do not have immunity for malicious and deliberate act(s), which violate rights.

Respectfully submitted,



Derek N. Jarvis, Petitioner-Pro se