
IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 2183

September Term, 2016

KELVIN SEWELL,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

On Appeal from the Circuit Court for Worcester County, Maryland

Hon. D. William Simpson, Judge

**BRIEF OF AMICI CURIAE CITIZENS FOR A BETTER POCOMOKE,
DIANE DOWNING, HOWARD UNIVERSITY SCHOOL OF LAW CIVIL
RIGHTS CLINIC, AND CAUCUS OF AFRICAN AMERICAN LEADERS
IN SUPPORT OF PETITIONER KELVIN SEWELL**

Ajmel Quereshi
Howard University School of Law
2900 Van Ness Street NW
Washington DC 2008
(202) 806-8000
ajmel.quereshi@law.howard.edu

Counsel for Amici Curiae

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INTRODUCTION

History teaches us that, if not today, years from now, the firing and criminal prosecution of Kelvin Sewell will be, yet another example of how Black people were punished for resisting race discrimination on Maryland's Eastern Shore.

The legacy of centuries of race discrimination continues to loom large for *Amici* and other Black residents of the Shore. Historically, Black Shore residents have experienced racial discrimination and misconduct unlawfully excluding them from positions of influence within government, and too-often targeting them for unjustified punishment within the criminal justice system.

Amici are civil rights organizations and activists, including Pocomoke residents most familiar with Mr. Sewell's record as the Town's first Black Police Chief. As Eastern Shore residents, *Amici* Citizens for a Better Pocomoke and Diane Downing are deeply proud of many Shore traditions. But *Amici* also continue to battle this community's long-standing and entrenched resistance to social progress and denial of even the most egregious incidents of race discrimination, which shape life on the Eastern Shore to this day. See James Lee Purnell, Jr. and Kimberley Chase, *Memories of Struggles and Progress in a Segregated Worcester County, Maryland* (2017).

Half the population of Pocomoke City is Black, but historically, its government has been almost entirely white. This is still true today. The mayor, Bruce Morrison, is white. Russell Blake, the city manager for 40 years, is white. Ernest Crofoot, who took over as Mr. Blake's replacement in 2016, is white, as is Mr. Crofoot's 2017 replacement, Robert Cowger. All members of the city council are white, except for Diane Downing, the Town's only African American official and the only one who voted against Mr. Sewell's firing.

Amici represent many Worcester residents who organized in support of Mr. Sewell to challenge his firing, which was devastating for the community. Immediately after the firing, Rev. James Jones, pastor of Macedonia Baptist Church and a co-founder of *Amicus* Citizens for a Better Pocomoke, told officials that they had “terminated a man who made a difference” at a standing-room-only meeting, presenting a petition of 500 signatures seeking Mr. Sewell’s reinstatement. See DeNeen L. Brown, *Racial turmoil in Md.’s ‘Friendliest Town’ after black police chief is fired*, Wash. Post, July 19, 2015.

Amici view this prosecution as an outgrowth of longstanding practices on the Eastern Shore denying blatant race discrimination, holding Black residents to a different standard than their white counterparts, and punishing those who resist white officials’ abuse of authority. The criminal investigation against Mr. Sewell followed on the heels of race discrimination and retaliation complaints by Black officers in a region known for its resistance to racial progress. In the longstanding tradition of the Shore, white officials confronted with allegations of race discrimination were personally aggrieved, acknowledged no responsibility for a law enforcement culture in which the most offensive racial slurs are tossed about without consequence, and took no steps to address the underlying concerns. Rather, they launched a counterattack, using all the resources at their disposal, until they found something that stuck, even against one of the most well-liked and successful police chiefs in the Eastern Shore’s “friendliest town.”

To *Amici*, this prosecution – placed in context – shows that in Worcester County, white officials still have the freedom to engage in blatant race discrimination and retaliation

without fear of retribution; Blacks, as has been the case historically, are expected to stay silent and just let it go. *Amici* decline to do so.

STATEMENTS OF INTEREST

Citizens for a Better Pocomoke (CBP) is a Pocomoke City-based group of residents, activists and church leaders who banded together in the aftermath of Mr. Sewell's firing in 2015 to voice concerns about the discrimination and retaliation they saw white government officials directing against Mr. Sewell, other African American police officers and residents. Since 2015, CBP members have regularly attended local government meetings, spoken out about official misconduct they perceive, and fought for Mr. Sewell's reinstatement to his position.

Diane Downing, a native of Worcester County, is Pocomoke City's only African-American elected official, currently serving on the City Council. In this capacity, Ms. Downing has witnessed first-hand the discrimination and retaliation experienced by Mr. Sewell and many African-Americans at the hands of white Worcester County officials, and joins this effort to share her unique perspective and insights with the Court.

Howard University School of Law Civil Rights Clinic has a long tradition of fighting for human rights, civil rights and reforms to the criminal justice system. The work of the Howard University School of Law Civil Rights Clinic reinforces the principles ingrained in the law school's history. As part of its work, the Clinic regularly files amicus briefs federal and state appellate courts. These briefs have concerned various issues related to the reform of the criminal justice system. This Court's decision regarding the

prosecution of Kelvin Sewell has the potential to seriously impact the communities the Civil Rights Clinic regularly serves.

Caucus of African-American Leaders (CAAL) is a consortium whose membership includes individuals and organizations ranging from the NAACP to the Black Chamber of Commerce. CAAL is a community-based organization that addresses issues that adversely impact African-American communities in Maryland. CAAL collaborates with other civil rights organizations on issues of social justice, working through the courts and in the community on cases involving alleged police misconduct, racial injustice, and abuse in the criminal justice system.

ARGUMENT

I. FOR AFRICAN-AMERICANS IN WORCESTER COUNTY, THE PAST IS NOT DEAD; IT'S NOT EVEN PAST¹

“The assumption of most whites is that history is dead, unimportant, and irrelevant to the modern reality of life on the Eastern Shore. But in fact, a town’s reputation as a racially violent one often lives on in the lore shared among blacks.” Sherrilyn A. Ifill, *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-First Century*. 21 (2007).

A. The History of Race Discrimination Against Black Residents of Worcester County

Pocomoke City and surrounding Worcester County, like other parts of the Shore, were a slavery stronghold. In colonial Worcester County, “slavery was the dominant

¹ William Faulkner, *Requiem for a Nun* (1951).

source of labor.” Barry Neville and Edward Jones, *Slavery in Worcester County, Maryland, 1688-1766*, 89 *Maryland Historical Magazine*, 326 (Fall 1994). At the turn of the 18th century, nearly half of Worcester households owned at least one enslaved person. *Id.* at 321. As the agricultural landscape changed, resulting in a declining demand for slave labor, the free Black population grew, and whites worried about this. Kevin Conley Ruffner, *Maryland’s Blue and Gray: A Border State’s Union and Confederate Junior Officer Corps* 21 (1997). When the Civil War broke out, many in the Shore counties sympathized with and even fought for the Confederacy. *See, e.g.*, Miranda Spivak, *The not-quite-Free-State: Maryland dragged its feet on emancipation during Civil War*, *Wash. Post*, Sept. 13, 2013.

Well after the war’s end, many people on the Shore continued to identify with the Confederacy. Indeed, 50 years later, in 1916, Talbot County erected a statue to Confederate soldiers on the courthouse lawn. Survey No. T-934, Talbot Boys, Maryland Historical Trust State Historic Sites Inventory Form, at 8-1 (citation omitted), <https://mht.maryland.gov/secure/medusa/PDF/Talbot/T-934.pdf>. Efforts to raise funds for a Union statue failed. *Id.*

Throughout the century after the war, Jim Crow flourished in Worcester County and across the Shore. When, in 1962, Maryland’s Governor called for legislation to prohibit race discrimination in public accommodations, the entire Eastern Shore legislative contingent opposed the bill, succeeded in amending themselves out of it, and then – despite being exempt – *still* led a referendum drive to repeal it. Peter B. Levy, *Civil War on Race*

Street: The Black Freedom Struggle and White Resistance in Cambridge, Maryland, 1960-1964, 89 Md. Historical Magazine, 299 (Fall 1994).

Until the civil rights victories of the 1960s, Ocean City's boardwalk and beaches were forbidden to Blacks except on "Colored Excursion Days," when, for three days after Labor Day, they were permitted. B. Drummond Ayres, Jr., *Maryland Shore Cited by Blacks in Cases of Bias*, N.Y. Times, Aug. 17, 1988. Worcester was the last county in Maryland—and one of the last 25 nationwide – to desegregate schools, not closing its last "Blacks-only" school until 1970, 16 years after *Brown v. Board of Education*. No. WO-586, Worcester High School, Maryland Historical Trust State Historic Sites Inventory Form, at 1-2, <https://mht.maryland.gov/secure/medusa/PDF/Worcester/WO-586.pdf>.

Still, Jim Crow persisted. In 1986, Blacks made up 75 percent of Ocean City's "kitchen, housekeeping and janitorial staffs but only 3 percent of headwaiter, desk clerk and other non-menial positions." Ayres, *Maryland Shore Cited by Blacks in Cases of Bias*. One survey found that "blacks were far more likely than whites to live on unpaved roads, that volunteer fire companies had no black member[s], that blacks employed by the county were relegated to menial jobs, that blacks were under-represented on juries and that at-large elections in the county and many towns prevented blacks from gaining office and discouraged black voting." *Id.*

B. Race Discrimination Against Black Residents of Worcester County in the Contemporary Era

Blatant race discrimination has persisted in Lower Shore counties to the present day, as has the recalcitrance of Worcester County officials to address it—sometimes manifesting as outright opposition to progress in fundamental rights.

In 1994, Maryland's federal court found that Worcester's election system violated the voting rights of Black residents, relying, in part, on facts "show[ing] a history of official resistance to desegregation in Worcester County." *Cane v. Worcester County, Md.*, 840 F. Supp. 1081, 1091 (D. Md. 1994). "At the time the suit was filed, never in Worcester County's 250-year history ha[d] a black been elected to any countywide public office." William Thompson, *Worcester Bias Trial to Begin*, Balt. Sun, Nov. 7, 1993. The County hired a voting rights defense lawyer from Mississippi, resisting the ruling and implementation of a fair voting system while appealing, unsuccessfully, three times to the Fourth Circuit and twice to the U.S. Supreme Court. Ultimately, the federal courts forced Worcester officials to adopt the new system, and only then, in 1995, did the County elect its first Black Commissioner, James L. Purnell, Jr. See Joshua Shaffer, *History Made in Worcester*, The Daily Times, Nov. 8, 1995. Likewise, in Worcester County municipalities Berlin, Snow Hill and Pocomoke, election fairness for Blacks came only through court orders. See, e.g., Peter Jensen, *The Mark of Cane*, Balt. Sun (Apr. 24, 2004),.

The first Black state legislator from the Shore was not elected until 1998 – and then only after an NAACP-led challenge to Lower Shore legislative districts. See *Maryland for Fair Representation v. Schaefer*, 849 F.Supp. 1022 (D. Md. 1994). Discrimination against Blacks in elections and government has continued in Pocomoke, where in 2015 the City unlawfully canceled an election in its majority-black District Four and installed as the district representative white police officer Brian Hirshman. See, e.g., Julian Sadur, *Pocomoke Residents Hold Press Conference Calling for Mayor's Resignation*, Channel 47/ABC News, Jul. 25, 2015.

One case is particularly illustrative of both the enduring climate of racial bias and the refusal of Worcester County officials to acknowledge its severity. The case involves the Worcester County Sheriff's Office (WCSO), which houses the task force to which Detective Franklin Savage was assigned when he experienced a racially-hostile work environment as described in Appellant's brief at 7-8. In *Demby v. Preston Trucking Company*, 961 F.Supp. 873 (1997), Frederick Demby, a Black employee, alleged egregious race discrimination at his workplace. In the course of denying summary judgment to the employer, then-district-judge Andre Davis described the WCSO's failure to investigate a serious hate crime against Demby:

The ugliest and most distressing incident of racial bigotry and hatred directed at Demby occurred [when]. . . . Demby entered his [work] area and found that a swastika had been painted on his desk, the phrase "woch [sic] your back n*****" had been painted on the wall behind his desk[.]

Id. at 877. As recounted by Judge Davis, despite Mr. Demby's efforts to pursue the crime, the WCSO not only failed to investigate, but also misrepresented the gravity of the situation in its official report closing the case, claiming that Mr. Demby was "uncooperative." *Id.* at 878. In reviewing the WCSO's report, Judge Davis called the report a "classic example of a carefully-constructed document designed to give the appearance that care was taken to conduct a thorough investigation" when, in truth, the report was just for cover.

It is important to note that this incident was a serious "hate crime" under Maryland law . . . carrying from three to ten years as a maximum punishment, but the Worcester County Sheriff's Office booked it as a mere "malicious destruction of property." This was far more than a simple complaint that Demby's "work station had been tampered with," as Deputy Hurley's report described the incident, it was on its face a direct threat of physical injury."

Id. at n 9.

The *Demby* case is emblematic of a pattern in which white Shore officials minimize or deny blatant racial hostility and discrimination, creating a pervasive culture of second-class citizenship endorsed by government officials. For example, during a town meeting in nearby Mardela Springs, a white commissioner “casually referred to the Martin Luther King Jr. holiday ... as ‘Buckwheat’s birthday.’” When Black residents complained, the commissioner told a reporter “that he had not intended the comment as ‘a prejudice thing.’ ‘It’s something I heard earlier that I repeated.’” He thought the reaction was “‘blown out of proportion.’” William Thompson, *Gathering protests racial slur: Shore Official Likened King to ‘Buckwheat’*, Balt. Sun, Jan. 28, 1992. Some white residents blamed the reporter who wrote about the commissioner’s remark: “‘He doesn’t understand our small town here...The black people here do not take offense.’” *Id.*²

This is the culture that Detective Savage walked into when he was assigned as the first Black officer on a Worcester drug task force.³ The same office that “investigated”

² Although this brief’s primary focus is the actions of government officials, racial bias in Worcester is frequently demonstrated by private actors as well, as the facts of *Demby* plainly show. See also, e.g., *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264 (4th Cir. 2015) (en banc) (Black waitress at resort in Worcester County subjected to racial slurs by manager and threatened with loss of job for reporting use of slurs); Ryan Marshall, *Worcester student’s racist post sparks outcry*, Delmarvanow.com, Jan. 23, 2015; Vanessa Junkin, *Berlin residents awake to vandalism of 37 vehicles: Spray paint vandals hit Berlin vehicles and buildings, Some included racial slurs*, Delmarvanow.com, Jan. 26, 2015.

³ The climate of racial bias in Worcester County government is reinforced by the overall climate of governmental bias throughout the Lower Shore counties. It was not until 2010 that Somerset County, which is more than 40% Black and lies just across the river from Pocomoke City, had its first Black official appointed or elected to a high-level position in County government. Previously, a federal jury found that the Somerset County Board of Education illegally fired its first Black school Superintendent, Dr. H. DeWayne Whittington, because of his race, awarding him a large monetary verdict including punitive damages against individual board members because of the school system’s blatant discrimination. Eugene Meyer, *In Md., a Verdict on Racism*, Wash. Post, Jan. 16, 1997. The evidence in the case included testimony that the school Board President openly used racial slurs toward African Americans, including against Superintendent Whittington. Somerset County NAACP and ACLU of Maryland, *Semper Eadem: Always the Same? A Report on Continuing Racial Disparities in Somerset County Government* 5 (2009),

Mr. Demby's claims, the WCSO, issued a press release announcing that no discrimination had occurred after Detective Savage complained of racial hostility at the Criminal Enforcement Team task force. *See Savage v. Pocomoke City*, Civ, Action No 1:16-cv-00201-JFM (D. Md. Mar. 16, 2016), Docket No. 122, Department of Justice Complaint at 10, ¶53.

C. White Officials' Denial of Allegations that Race Discrimination Exists in Worcester County

White officials in Worcester continue to deny that anything approaching racial harassment or discrimination occurred with respect to Officers Savage, Green and Sewell, notwithstanding significant evidence supporting their claims. These blanket denials are how Worcester County operates.

On the Lower Shore, white officials have always denied that anything is amiss even while engaging in or tacitly condoning extreme race discrimination—whether that was subjugation of Black people through slavery, Jim Crow, denial of voting rights, segregation in education, hostile work environments, or any of the countless other ways in which Blacks have been denied full participation in public life. White officials blame Black residents for being ungrateful troublemakers or act mystified by Blacks' frustration at the discrimination they face. The underlying sentiment is that any complaint of racism necessarily lacks merit.

http://www.aclu-md.org/uploaded_files/0000/0348/finalreportwapp.pdf. *See also* Audio: Maryland Trooper Uses Racial Slur in Voicemail from 2009, Delmarvanow.com, <http://www.delmarvanow.com/videos/news/2015/05/12/27189141/>. (Maryland State Police trooper assigned to Somerset barrack recorded using racial slurs against woman he sought to interview).

For example, when the town of Berlin was pressured by Black residents (who made up one-third of the population) to remedy the exclusion of Black elected officials by adopting fair voting districts, the Mayor stated: ““There wasn’t any racial tension in Berlin until all this pressure began . . . We even offered to compromise by letting blacks elect a council member from their own district while the rest of us continued to vote at-large. I don’t understand it.”” Ayres, Jr., *Maryland Shore Cited by Blacks in Cases of Bias, supra*. Similarly, when Worcester County was sued for voting rights violations that had prevented any Black person from being elected to county government since 1742, the County Commission president lamented that the system had “nothing to do with race” and that “It’s not fair that black citizens automatically bring up the race issue when a white person disagrees with them.” Thompson, *Worcester Bias Trial to Begin, supra*. In 2013, when confronted with evidence that “only one black person heads a department in a county that is 17 percent non-white,” County Commissioner Judy Boggs complained: “I distrust statistics . . . I think what Worcester County does and the way we’re living, it works. If there’s a problem, we would fix it . . . We don’t have an unhappy staff.” E. Bean, *White Men Dominate Leadership*, Salisbury Daily Times, Sept. 9, 2013.

After Mr. Sewell’s firing, at town meetings packed with residents urging his reinstatement, white officials pled ignorance about how to communicate with their Black constituents, using language illustrating the racial divisions that exist to this day. George Tasker, a white City Councilman, stated, ““I’m just a mountain boy...I don’t know how to address y’all African American people.”” Brown, *supra*, *Racial turmoil in ‘Friendliest Town’*.

II. THE INSTANT CASE REFLECTS THE ONGOING STRUGGLE FOR RACIAL EQUALITY IN WORCESTER COUNTY

The enduring struggle of Black people in Worcester County to establish they are not second-class citizens is rooted in the County's history. This context is essential to understanding how a beloved police chief ended up in the crosshairs of the Office of the State Prosecutor on a flimsy theory of wrongdoing involving another Black man after he and other Black officers angered local white law enforcement officials.

Blacks who stand up for their rights in Worcester County find themselves subjected to exasperation, ridicule, and retaliation by the powers that be for "imagining" wrongs or "blowing them out of proportion." The only people who ever acknowledge that their claims might have merit are usually the other Black people on the Shore. Unfortunately, the facts of this case follow this disappointing pattern.

In this case, Franklin Savage was assigned to an all-white task force, where he was subjected to the kinds of racist attitudes – explicit and implicit – that persist in Worcester County because of its history and the refusal of white officials to acknowledge it. Officer Savage stood up to challenge it, and was attacked for doing so. When Mr. Sewell refused to participate in the retaliatory scheme to deny Officer Savage his job, Mr. Sewell was swept up in the controversy, costing him his own job. Diane Downing, who is African-American, was the only City councilmember to vote against firing Mr. Sewell. She risked her own standing within the government by speaking out against Mr. Sewell's firing,

saying she believed it was unjust and discriminatory. *See* Sheryl Gay Stolberg, *A Maryland Town Fires Its Black Chief, Exposing a Racial Rift*, N.Y. Times, Aug. 2, 2015.⁴

After Mr. Sewell was dismissed, a longtime state trooper with the Maryland State Police barrack in Berlin, Earl Starner was appointed Interim Chief. Mr. Starner's approach to the controversy that had led to Mr. Sewell's firing was to encourage the OSP to investigate *Mr. Sewell*, and to initiate an investigation of Officer Savage, on the theory that he had somehow acted dishonorably or untruthfully in filing a complaint against Worcester County State's Attorney Beau Oglesby one year earlier (based on Mr. Oglesby's repeated use of the n-word at a meeting). Mr. Starner felt no such compulsion to investigate when a white, on-duty police officer under his supervision circulated a social media post showing a fake Monopoly piece called the "Race Card," used as "a tool of the intellectually lazy when they cannot counter a factual argument." *See Councilwoman Gives Inside Story of How City's First Black Chief was Fired*, The Real News Network, Aug. 18, 2015, http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=14508; *Earl Starner Caught In Lie On Officer Morgan "Race Card" Incident*, Lower Eastern Shore News, Sept. 1, 2015, <http://www.lowereasternshorenews.com/2015/09/earl-starner-caught-in-lie-on-officer.html>.

⁴ Ms. Downing told reporters that Pocomoke's mayor pushed the council to fire Mr. Sewell in violation of the City Charter, and begged her to vote in favor of this unlawful action. "I am not stupid, and I was not born last night," she said. "He wanted my vote because I am black." *Id.*

In short, *Amici* and other Black residents of Worcester County see this criminal case as one brought by the State unfairly targeting a dedicated public servant they know and revere. It cannot be divorced from the history that came before it, up to and including the ongoing civil rights challenge by Mr. Sewell and two other Black officers subjected to egregious race discrimination.

CONCLUSION

Amici respectfully urge this Court to grant Mr. Sewell's request to dismiss the case with prejudice for the reasons argued in his opening brief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ajmel Quereshi', is written over a horizontal line.

Ajmel Quereshi
Howard University School of Law
2900 Van Ness Street NW
Washington DC 2008
(202) 806-8000
ajmel.quereshi@law.howard.edu

Counsel for Amici Curiae

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,704 words, excluding those sections exempted by Rule 8-503.
2. This brief was prepared in a proportionally-spaced typeface in 13-point, Times font in compliance with Rule 8-112.



Ajmel Quereshi

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2017, two copies of the foregoing brief of amici curiae were sent via first-class mail, postage prepaid to:

Barry Coburn, Esq.
1710 Rhode Island Avenue NW
Second Floor
Washington, DC 20036
(202) 643-9472
barry@coburngreenbaum.com

Emmet Davitt, Esq.
Kelly Madigan, Esq.
Office of the State Prosecutor
300 East Joppa Rd.
Towson, MD 21286

Criminal Appeals Division
Office of the Attorney General
200 Saint Paul Place, 17th Floor
Baltimore, Maryland 2120



Ajmel Quereshi