
IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 0854

September Term, 2019

KELVIN SEWELL,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

On Appeal from the Circuit Court for Worcester County, Maryland

Hon. W. Newton Jackson, III Judge

**BRIEF OF AMICI CURIAE CITIZENS FOR A BETTER POCOMOKE,
POCOMOKE CITY COUNCILWOMAN DIANE DOWNING,
WORCESTER COUNTY BRANCH OF THE NAACP,
CAUCUS OF AFRICAN AMERICAN LEADERS, and
PUBLIC JUSTICE CENTER
IN SUPPORT OF PETITIONER KELVIN D. SEWELL**

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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 shameful 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 oppression and misconduct excluding them from positions of influence within government, and too-often targeting them for unjustified punishment within the criminal justice system.

Amici include Eastern Shore residents, organizations, and activists, including Pocomoke residents most familiar with Sewell's record as the Town's first Black Police Chief. As Eastern Shore residents, Amici Citizens for a Better Pocomoke (CBP), Worcester County Branch of the National Association for the Advancement of Colored People (NAACP), and Councilwoman Diane Downing are deeply proud of many Shore traditions. But Amici also continue to battle this community's entrenched resistance to social progress and denial of even the most egregious race discrimination, which shape Eastern Shore life to this day. *See* JAMES LEE PURNELL, JR. AND KIMBERLY CHASE, *MEMORIES OF STRUGGLES AND PROGRESS IN A SEGREGATED WORCESTER COUNTY, MARYLAND* (2017).

Although half the population of Pocomoke City is Black, historically, its government has been almost entirely white. Likewise, nearly all law enforcement officials and prosecutors in Worcester County and in the Office of State Prosecutor (OSP), are white.

Amici represent many of the residents who organized in support of Chief Sewell to challenge his unlawful firing,¹ which was devastating for the community. Immediately after the firing, Rev. James Jones, minister at Macedonia Baptist Church and a co-founder of Citizens for a Better Pocomoke, told officials that they had “terminated a man who made a difference” at a standing-room-only town meeting, presenting a petition of 500 signatures seeking Chief Sewell’s reinstatement. *See* DeNeen L. Brown, *Racial turmoil in Md.’s ‘Friendliest Town’ after black police chief is fired*, WASH. POST (July 18, 2015) [hereinafter Brown].

Amici view this prosecution as an outgrowth of longstanding practices on the Eastern Shore of denying blatant race discrimination, holding Black residents to a higher standard than their white counterparts, and punishing those who resist white officials’ abuse of authority. The criminal investigation against Chief Sewell began only *after* Sewell’s discriminatory firing and the Black community’s organized protests, 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 police culture in which the most offensive racial slurs are tossed about without consequence, and failed to address the underlying concerns. Rather, they launched a counterattack, using all resources at their disposal, until they

¹ Given that a civil judgment against Pocomoke City was recently entered by the federal court, and the City paid over \$1.6 million to Sewell and his co-plaintiffs in damages and costs, Amici believe it is now indisputable that Sewell’s firing was unlawful. *Savage v. Pocomoke City*, Civ. Action No 1:16-cv-00201-ELH (D. Md.), Docket No. 314, Order entering Judgment for Kelvin Sewell (January 10, 2020).

cooked up 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 (hereinafter “Worcester”), white officials remain free to engage in blatant race discrimination and retaliation without fear of retribution while Black residents, 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 Chief Sewell’s firing to voice concerns about the discrimination and retaliation they saw white government officials directing against Sewell, other African-American police officers, and residents. Since 2015, CBP members have regularly attended local government meetings, spoken out about official misconduct, and fought for Chief Sewell’s vindication.

Diane Downing, a native of Worcester, is one of two African-American members of the Pocomoke City Council. In this capacity, Councilwoman Downing has witnessed the discrimination and retaliation experienced by Chief Sewell and many African-Americans at the hands of white Worcester officials, and joins this effort to share her unique perspective and insights with the Court.

Worcester County Branch of the NAACP (NAACP) is an affiliate of the National Association for the Advancement of Colored People. The NAACP has been a leader in the struggle for civil rights on the Lower Shore, through community activism and work on history-making litigation challenging discrimination and retaliation by Worcester’s white

majority, including its role as a plaintiff in litigation forcing Worcester to adopt a racially-fair election system, resulting in the election of the first African-American County Commissioner in history.

Caucus of African-American Leaders (CAAL) is a community-based consortium whose membership includes individuals and organizations ranging from the NAACP to the Black Chamber of Commerce, 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 criminal justice system abuse.

The **Public Justice Center (PJC)**, a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting constitutional rights, fighting discrimination, and pursuing economic justice and racial equity. The PJC often participates as *amicus curiae* in cases seeking to protect the right to be free from race discrimination and retaliation for opposing it.²

² Dena Elizabeth Robinson, Public Justice Center Fellow, took no part in the preparation of this brief or discussions of this case. She was subject to an ethical walling off from the case because she was employed as a judicial law clerk for the Hon. Alexander Wright during this Court's consideration of Chief Sewell's first appeal.

ARGUMENT

I. FOR WORCESTER COUNTY AFRICAN-AMERICANS, THE PAST IS NOT DEAD; IT'S NOT EVEN PAST³

“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, like other parts of the Shore, were a stronghold of enslavement. In colonial Worcester, “[s]lavery was the dominant source of labor.” Barry Neville and Edward Jones, *Slavery in Worcester County, Maryland, 1688-1766*, 89 MD. HIST. MAG. 319, 326 (1994). At the turn of the 18th century, nearly half of Worcester households owned at least one slave. *Id.* at 321. As the agricultural landscape changed, reducing demand for enslaved 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 on the Shore sympathized with and fought for the Confederacy. *See, e.g.,* Miranda Spivack, *The not-quite-Free State: Maryland dragged its feet on emancipation during Civil War*, WASH. POST, Sept. 13, 2013.

³ WILLIAM FAULKNER, *REQUIEM FOR A NUN* 73 (1951).

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 honoring Confederate soldiers on its courthouse lawn. MARYLAND HISTORICAL TRUST, SURVEY NO. T-934, TALBOT BOYS, MARYLAND HISTORICAL TRUST STATE HISTORIC SITES 1 (1998). Efforts to raise funds for a Union statue failed. *Id.* at 7.

Throughout the century after the war, Jim Crow flourished in Worcester 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 delegation 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. HIST. MAG. 291, 299 (1994).

Until the 1960's, 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, at A14 [hereinafter Ayres, Jr.]. Moreover, 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 16 years after *Brown v. Board of Education* in 1970. MARYLAND HISTORICAL TRUST, INVENTORY FORM NO. WO-586, WORCESTER HIGH SCHOOL, MARYLAND HISTORICAL TRUST STATE HISTORIC SITES 1-2, 4 (2014).

Still, Jim Crow persisted. In 1986, Black employees made up 75 percent of Ocean City's "kitchen, housekeeping and janitorial staffs but only [three] percent of headwaiter,

desk clerk, and other non-menial positions.” Ayres, Jr., *supra Maryland Shore Bias*. One NAACP survey found that:

[B]lacks were far more likely than whites to live on unpaved roads, that volunteer fire companies had no black member, 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 During the Contemporary Era in Worcester County

Blatant race discrimination has persisted in Lower Shore counties to the present day, as has the recalcitrance of Worcester 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 Black residents’ voting rights, relying, in part, on facts “show[ing] a history of official resistance to desegregation in Worcester...” *Cane v. Worcester County*, Md., 840 F. Supp. 1081, 1091 (D. Md. 1994). At the time the suit was filed, never in Worcester’s 250-year history had a Black been elected to any countywide public office. William Thompson, *Worcester bias trial to begin Blacks' suit charges at-large elections favor county's whites*, BALT. SUN, Nov. 7, 1993 [hereinafter Thompson]. The County hired a Mississippi voting rights defense lawyer, resisting court rulings and implementation of a fair voting system while appealing, unsuccessfully, three times to the Fourth Circuit and twice to the Supreme Court. Ultimately, federal courts forced Worcester officials to adopt the new system, and only then, in 1995, did the County elect its first Black Commissioner. *See* Joshua Shaffer, *History Made in Worcester*, THE DAILY TIMES, November 8, 1995. Likewise, in Worcester

municipalities Berlin, Snow Hill, and Pocomoke, election fairness for Black residents 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 wasn't elected until 1998 – and then only after an NAACP-led challenge to Lower Shore legislative districts. *Maryland for Fair Representation v. Schaefer*, 849 F. Supp. 1022 (D. Md. 1994). In 2015, Pocomoke City unlawfully canceled an election in its majority-Black District Four and installed a white police officer as the district representative, continuing the discrimination against Black residents. *See, e.g.*, Julian Sadur, *Pocomoke Residents Hold Press Conference Calling for Mayor's Resignation*, 47 ABC, July 25, 2015. Even in 2020, *after* Pocomoke officials finally settled the Sewell litigation, the white majority of the City Council overrode the objections of Black Councilmembers, hiring a new City Manager embroiled in her own racially-charged scandal involving the police killing of a young Black man in the Town where she oversaw operations, prompting community outcry. *See* Glynis Kazanjian, *Fury Over Anton Black Case Leads to Pocomoke City Manager's Resignation*, MD. MATTERS, Feb. 11, 2020.

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 the Appellant's brief. Appellant's Br. at 12-13. In *Demby v. Preston Trucking Company*, 961 F.Supp. 873 (1997), Black employee Frederick Demby

alleged egregious race discrimination at his workplace. Then-district-judge Andre Davis described 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 Demby's cooperation, the WCSO not only failed to investigate, but misrepresented the gravity of the situation in its report closing the case, claiming Demby was "uncooperative." *Id.* at 878. Judge Davis called WCSO's 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 [WCSO] 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 Worcester officials minimize or deny blatant racial 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.'" William Thompson, *Gathering protests racial slur Shore Official likened King to 'Buckwheat'*, BALTIMORE SUN, Jan. 28, 1992. When

Black residents complained, the commissioner told a reporter “he had not intended the comment as ‘a prejudice thing.’ *Id.* ‘It’s something I heard earlier that I repeated.’” *Id.* He thought the reaction was “blown out of proportion.” *Id.* Some white residents blamed the *reporter* for writing about the commissioner’s remark: “He doesn’t understand our small town here...The black people here do not take offense.” *Id.*⁴

This is the culture that Detective Savage walked in to when he was assigned as the first Black officer on a Worcester drug task force.⁵ The same office that “investigated” Demby’s claims, the WCSO, issued a press release announcing that no discrimination had occurred after Detective Savage complained of outrageous racial hostility at the Criminal

⁴ 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* 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 subjected to racial slurs by manager and threatened with loss of job for reporting slurs); Ryan Marshall, *Student’s racist post sparks outcry*, DELMARVANOW.COM, Jan. 23, 2015; Vanessa Junkin, *37 vehicles vandalized in Berlin*, DELMARVANOW.COM, Jan. 26, 2015.

⁵ The climate of racial bias in Worcester government is reinforced by the overall climate of governmental bias throughout the Lower Shore. It was not until 2010 that Somerset County, which is more than 40 percent Black and lies just across the river from Pocomoke City, had its first Black official appointed or elected to a high-level County position. Previously, a federal jury found that the Somerset County school board 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, 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). *See also Audio: Maryland Trooper Uses Racial Slur in Voicemail from 2009*, DELMARVANOW.COM (May 12, 2015) (Maryland trooper assigned to Somerset recorded using racial slurs against woman he sought to interview).

Enforcement Team. *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 (“DOJ Complaint”) at 10, ¶53 (Dec. 1, 2016).

C. White Officials’ Denial of Race Discrimination

White officials in Worcester continue to deny that any racial harassment or discrimination occurred with respect to Officers Savage, Green, and Sewell, even after entry of judgment against them. These blanket denials are how Worcester operates, and the State Prosecutor’s willful disregard for this reality – indeed, OSP’s active complicity – is what caused the wrongful prosecution of Chief Sewell.

On the Shore, white officials have always denied that anything is amiss even while engaging in or tacitly condoning extreme race discrimination—whether by subjugation of Black people through enslavement, Jim Crow, denial of voting rights, hostile work environments, or any of the countless ways that Black residents have been treated as inferior. White officials blame Black residents for being ungrateful troublemakers or act mystified by their distress at the discrimination they face. The underlying assumption is that any complaint of racism necessarily lacks merit.

For example, when the town of Berlin was pressured by Black residents to remedy 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., *supra Maryland Shore Bias*. Similarly, when Worcester was sued for voting rights violations that had

precluded any Black person from being elected to county government since 1742, the Commission president lamented that the system had “nothing to do with race” and complained, “It’s not fair that black citizens automatically bring up the race issue when a white person disagrees with them.” Thompson, *supra Worcester At-Large Elections*. In 2013, when confronted with evidence that “only one black person heads a department in a county that is 17 percent non-white,” Commissioner Judy Boggs complained: “I distrust statistics...I think what Worcester County does and the way we’re living, it works...We don’t have an unhappy staff.” E. Bean, *White Men Dominate Leadership*, THE DAILY TIMES, Sept. 9, 2013.

After Chief Sewell’s firing, at town meetings packed with residents urging reinstatement, white officials pled ignorance about how even to communicate with their Black constituents, illustrating the racial divide that remains today. 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 ‘Friendliest Town’*.

So it was that Pocomoke City officials refused to heed their constituents’ calls for justice, leading the town through one of the most painful and racially divisive chapters in municipal history, ultimately ending with federal oversight of police, and the City paying more than \$1.6 million.

II. THIS CASE REFLECTS WORCESTER’S ONGOING STRUGGLE FOR RACIAL EQUALITY

Black people in Worcester’s enduring struggle 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 State Prosecutor on a flimsy theory

of wrongdoing after he and other Black officers angered white law enforcement by raising concerns about racism.

Black people who stand up for their rights in Worcester find themselves subjected to ridicule, exasperation, and retaliation by those in power for “imagining” wrongs or “blowing them out of proportion.” This is how it has always been and this is what happened here.

Detective Franklin Savage was assigned to an all-white task force, where he was subjected to the kinds of racist mistreatment that persists in Worcester because of its history and the refusal of white officials to acknowledge it. Appellant Br. at 10. Savage stood up to challenge it and was attacked for doing so. When Chief Sewell refused to participate in the retaliatory scheme to fire Savage, Sewell was swept up in the controversy, costing him his own job. *Id.* at 10, 17. African-American Councilwoman Diane Downing was the only person to vote against the Chief’s firing. She risked her own standing within the community by speaking out against the Chief’s firing, saying she believed it was unjust and discriminatory. See Sheryl Gay Stolberg, *A Maryland Town Fires Its Black Police Chief, Exposing a Racial Rift*, N.Y. TIMES, Aug. 2, 2015.

After Chief Sewell was dismissed, an “old acquaintance” of OSP investigators, white state trooper Earl Starner, was appointed Pocomoke Police Chief. Appellant Br. at 13-14. Starner’s approach to the controversy that had led to Sewell’s firing was to ask OSP to investigate Sewell and Detective Savage, on the theory that they had somehow acted dishonorably by filing a complaint a year earlier against Starner’s close friend, Worcester State’s Attorney Beau Oglesby (based on Oglesby’s repeated use racial slurs at a meeting).

Starner felt no such compulsion to investigate when a white, on-duty Pocomoke officer under his supervision circulated a social media post showing a fake Monopoly game piece called the “Race Card,” purportedly used as “a tool of the intellectually lazy when they cannot counter a factual argument.” See *Pocomoke Councilwoman Gives Inside Story of How City’s First Black Chief was Fired*, THE REAL NEWS NETWORK, Aug. 18, 2015; *Earl Starner Caught In Lie On Officer Morgan "Race Card" Incident*, LOWER EASTERN SHORE NEWS, Sept. 1, 2015; Appellant Br. at 14.

Throughout this ordeal, Amici have supported Chief Sewell in fighting what they view as a vindictive prosecution by the OSP. They submitted an amicus brief in his first appeal explaining their views that the prosecution was an outgrowth of systemic racism in their community. When his conviction was overturned, they pleaded with OSP to reevaluate, gathering more than 1,100 petition signatures urging OSP to close the case. See Sara Swann, “*Stop the Unfair Prosecution of Chief Sewell*”: *Petition, letter asks for end of case*, DELMARVANOW.COM, Jan. 31, 2019. But as is typical of white Shore law enforcement, OSP ignored the pleas of the Black community, forging ahead with a retrial. Amici attended the re-trial, submitted letters to the court attesting to Sewell’s sterling character, and testified at sentencing about their enormous respect for Sewell and their appreciation for his service as Pocomoke’s Police Chief.

Amici and most Black residents of Worcester see the misguided criminal case against Kelvin Sewell as one brought by the State against a public servant they know and revere as punishment for their community’s efforts to stand up to white supremacy. To be

understood and adjudged fairly by this Court, it cannot and must not be divorced from the history that came before it.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3899/3900 words, excluding those sections exempted by Rule 8-503.

2. This brief was prepared in a proportionally-spaced typeface in 13-point, Times New Roman font in compliance with Rule 8-112.

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CERTIFICATE OF SERVICE

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