IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2021

NO. 45

DAWNTA HARRIS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Respondent, the State of Maryland, accepts the Statement of the Case in Petitioner Dawnta Harris's brief.

QUESTIONS PRESENTED

1. Did the Court of Special Appeals correctly hold that the manslaughter-by-vehicle statute does not preempt the common-law felony-murder doctrine?

2. Did the Court of Special Appeals correctly hold that Harris was not entitled to a constitutionally-heightened sentencing procedure in accordance with *Miller v. Alabama*, 567 U.S. 460 (2012), but he effectively received one anyway?

STATEMENT OF FACTS

The State of Maryland accepts the Statement of Facts in Harris's brief with the exception of his conclusory statement that his conviction was "for an unintended homicide." (Petitioner's Br. at 9). In addition, several clarifications about the homicide are in order.

First, Harris asserts that when he turned his stolen Jeep around in the cul-de-sac and began driving toward Officer Amy Caprio, she directed him to stop, and he "stopped." (Petitioner's Br. at 3-4). Officer Caprio's body worn camera footage (and Detective Alvin Barton's analysis of that footage at trial) shows that Harris drove the Jeep *into* Officer Caprio—causing her to step backward and place her hand on the front grille of the Jeep—before he stopped. (E. 29, 39, 238-39, 299-304; State's Ex. 27a).

Second, Harris asserts that the body worn camera footage "shows the driver's door open slightly, whereupon Officer Caprio stepped in front of the Jeep and placed her hand on the Jeep." (Petitioner's Br. at 4). A careful examination of the body worn camera footage shows that after Harris initially drove the Jeep into Officer Caprio (stopping just short of running her over), she twice directed Harris to "get out of the car." (State's Ex. 27a). Officer Caprio then stepped to her right (toward her police cruiser and away from the center of the Jeep) and told Harris to "get out of the car right now." (*Id.*). Almost simultaneously, Harris opened the driver's door several inches. (*Id.*). Harris then seemed to hesitate for a moment, not fully opening the door. (*Id.*). Officer

Caprio then slapped the Jeep's fender with her left hand, moved back toward the center of the front of the Jeep, and again shouted at Harris to get out of the vehicle. (*Id.*). As defense counsel put it at trial, Officer Caprio moved "right dead in front of the [Jeep]." (E. 258). After Officer Caprio moved back in front of the Jeep, Harris continued to open the Jeep door. (State's Ex. 27a). The body worn camera footage shows that Officer Caprio was standing in front of the Jeep for a considerable period of time (approximately six seconds) before Harris closed the Jeep door and accelerated. (State's Ex. 27a).

Third, Harris implies that Officer Caprio fired her pistol through the windshield of the Jeep before he accelerated and ran over her. (Petitioner's Br. at 4). Detective Barton's testimony, the body worn camera footage itself, and the still images captured from that footage, establish that Harris accelerated first. (E. 240-41, 244, 311-14; State's Exs. 27a, 27t-27w).

Fourth, Harris cites his police interview and asserts that he "knew that the officer had been standing alongside of the Jeep, but he did not know that she stepped in front of it." (Petitioner's Br. at 8). His statements to the police do not support that assertion.

Harris told Detective Barton that he saw Officer Caprio pointing a gun "directly at [him]" and "knew she was standing there" when he accelerated the Jeep. (E. 228-29). Harris also told Detective Barton: "Once I seen [sic] the gun, I had put my head down and closed my eyes." (E. 230). Officer Caprio's body worn camera footage shows that she began pointing her pistol at Harris just before he drove the Jeep into her the first time and stopped. (State's Ex. 27a). She then continued pointing her pistol at him and directed him to get out of the Jeep. (*Id.*). At that point, she was standing directly in front of the Jeep. (*Id.*). If Harris closed his eyes when he saw Officer Caprio point her gun at him, then the last place he saw her standing was directly in front of the Jeep.

Lastly, Harris asserts that the "only theory of murder pursued at trial was felony murder." (Petitioner's Br. at 8). To be clear, Harris was charged with premeditated first-degree murder. (E. 72). In opening argument, the prosecution argued that

> Officer Caprio gave [Harris] eight different chances to get out of the car and comply, but he refused every one.
>
> What he did instead, his choice was to get out of there however he could. The evidence will show that he chose to escape punishment by any means necessary, whatever happens, happens. His choice,

> ladies and gentlemen, was to run Officer Caprio over breaking 19 of her ribs, puncturing her lung and hemorrhaging her spinal cord.

(T. 04/23/2019 at 27). Even defense counsel believed throughout trial that the State was going to argue that Harris committed premeditated murder. (E. 267-68). However, as there was no request for an instruction on premeditated murder, Harris is correct that the State never submitted the case on the theory of intent to kill murder; the only homicide offense submitted to the jury was first-degree felony murder. (E. 293).

ARGUMENT

I.

THE COURT OF SPECIAL APPEALS CORRECTLY HELD THAT THE MANSLAUGHTER-BY-VEHICLE STATUTE DOES NOT PREEMPT THE COMMON-LAW FELONY-MURDER DOCTRINE.

Harris argues that his conviction for first-degree felony murder is unlawful because that crime, when committed with a vehicle, effectively no longer exists in Maryland law. (Petitioner's Br. at 10-11). He claims that in enacting the manslaughter-by-vehicle statute, 1941 Md. Laws, Ch. 414—codified today in § 2-209 of the Criminal Law Article—the General Assembly preempted all

unintended homicides committed with a motor vehicle. He reasons that the vehicular homicide he committed was "unintentional," and so he was unlawfully convicted of common-law felony murder because that offense has been preempted. In support of his argument, Harris relies on the Court of Special Appeals' interpretation of the scope of the manslaughter-by-vehicle statute in *State v. Gibson*, 4 Md. App. 236 (1968) *aff'd*, 254 Md. 399 (1969), which held that the manslaughter-by-vehicle statute preempted common-law manslaughters committed with a vehicle, and *Blackwell v. State*, 34 Md. App. 547, *cert. denied*, 280 Md. 728 (1977), which held that the statute preempted depraved-heart murders committed with a vehicle. The Court of Special Appeals correctly rejected the claim that felony murder, where the killing is unintended and committed with a vehicle, is preempted by the manslaughter-by-vehicle statute.

First, there is no indication that the General Assembly intended the manslaughter-by-vehicle statute to supplant common-law felony murder. Applying to felony murder the same conflict preemption analysis that the Court of Special Appeals employed in *Gibson*, which this Court expressly adopted as its own,

this Court should conclude that felony murder is not in conflict with the manslaughter-by-vehicle statute. Moreover, even if this Court concludes that the legislature intended the manslaughter-by-vehicle statute to occupy an entire field, there is no evidence that the legislature intended that the field be so broad as to encompass common-law felony murder.

Second, felony murder is not an "unintended homicide" as contemplated by *Gibson*. The offender's intent as to the homicide victim is not an element of felony murder. Moreover, unlike gross negligence, felony murder has an element of malicious intent. Much like the doctrine of transferred intent, with felony murder, the offender's intent to commit a felony dangerous to human life is transferred to the homicide offense and satisfies the malice required for a murder conviction.

Lastly, even if vehicular felony murder is preempted by the manslaughter-by-vehicle statute when the homicide is unintended, vehicular felony murders that are committed with an intent to kill (or an intent to run over the victim) are not. And, if Harris is correct that intent to kill becomes an element of felony murder in vehicular homicide cases like this, it was incumbent

upon him to raise the issue at trial, but he did not. He should not be heard to complain for the first time on appeal that his murder conviction is invalid because the jury was not properly instructed on the elements of vehicular felony murder.

A. In the absence of clear legislative intent, the Court must presume that the General Assembly did not intend to preempt the common-law felony-murder doctrine.

At issue here is the preemptive effect of the General Assembly's enactment of the manslaughter-by-vehicle statute. As originally adopted, the statute criminalized homicide by operation of a vehicle "in a grossly negligent manner." 1941 Md. Laws, Ch. 414. The statute currently provides, in pertinent part: "A person may not cause the death of another as a result of the person's driving, operating, or controlling a vehicle or vessel in a grossly negligent manner." Md. Code Ann., Crim. Law ("CR") § 2-209(b)[1]

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[1] The original manslaughter-by-vehicle statute was codified as Article 27, Section 436A, and made it a misdemeanor, punishable by up to three years' imprisonment, to drive a vehicle "in a grossly negligent manner" that causes the death of another. 1941 Md. Laws, Ch. 414. The legislature later recodified the statute as Article 27, Section 455, and again as Article 27, Section 388, before moving it to the Criminal Law Article. *Sacchet v. Blan*, 353 Md. 87, 90 nn.2-3 (1999); *State v. Loscomb*, 291 Md. 424, 428

(Westlaw).[2] Harris argues that common-law felony murder, when committed with a vehicle, has been preempted by the manslaughter-by-vehicle statute. (Petitioner's Br. at 16). He is wrong.

As will be explained in more detail below, employing the same analysis used in *Gibson* reveals that the General Assembly did not intend to displace the felony-murder doctrine because the offenses are not in conflict. Nor is there any evidence of an intent to occupy an entire field that includes felony murder. The preemption intended by the legislature was limited to vehicular homicides committed with gross negligence and closely related offenses.

"The interpretation of a statute is a question of law that this Court reviews *de novo*." *Berry v. Queen*, 469 Md. 674, 686 (2020). "The goal of statutory interpretation is to effectuate the General

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n.1 (1981). It was reclassified as a felony in 1997. *Sacchet*, 353 Md. at 90 (citing 1997 Md. Laws, Chs. 372, 373). A violation of the current manslaughter-by-vehicle statute is a felony punishable by up to ten years' incarceration (or up to 15 years where the defendant previously has been convicted of certain homicide or DUI offenses). CR § 2-209.

[2] All code citations, Maryland and out-of-state, are to Westlaw current through 2021 legislation.

Assembly's intent." *Montgomery County v. Cochran*, 471 Md. 186, 208 (2020) (citation omitted). "Throughout this process, [courts should] avoid constructions that are illogical or nonsensical, or that render a statute meaningless." *Bell v. Chance*, 460 Md. 28, 53 (2018).

Under "Article 5 of the Declaration of Rights, the common law is Constitutionally guaranteed to the inhabitants of the State. Although that common law may be altered or repealed through statutes duly enacted by the General Assembly, given the Constitutional underpinning, its erosion is not lightly to be implied." *State v. North*, 356 Md. 308, 312 (1999). The "enactment of a statute ordinarily will not displace the common law," *Goldstein v. State*, 339 Md. 563, 571 (1995), and "statutes are not to be construed to alter the common-law by implication," *Hardy v. State*, 301 Md. 124, 131 (1984). "Thus, there is a presumption against statutory preemption of the common-law." *Id.*

"[S]tatutes in derogation of the common law are strictly construed, and it is not to be presumed that the Legislature by creating a statute intended to make any alteration in the common law other than what has been specified and plainly pronounced."

Trapasso v. Lewis, 247 Md. App. 577, 586-87 (2020) (cleaned up). That is, courts are "bound to interpret statutes that displace common law as narrowly as possible." *Anne Arundel County v. Reeves*, 474 Md. 46, 78 (2021).

Although abrogation by implication is "highly disfavored," it is "possible." *WSC/2005 LLC v. Trio Ventures Associates*, 460 Md. 244, 258 (2018). And when abrogation by implication occurs, it can take two possible forms: field preemption or conflict preemption. *Id.*

"Field preemption is implicated when an entire body of law is occupied on a comprehensive basis by a statute." *Genies v. State*, 426 Md. 148, 155 (2012). In *Robinson v. State*, 353 Md. 683 (1999), for example, this Court concluded that the 1996 enactment of Maryland's assault statutes was intended to occupy the field and subsume all statutory and common-law assault and battery offenses. *Genies*, 426 Md. at 155. In reaching that conclusion, the Court looked to legislative history—including "bill analyses and a floor report, which stated that the statutes would consolidate and replace the common law offenses"—as well as "the statute's

expressed repeal of the entire existing statutory scheme" as evidence of the legislature's intent. *Id.*

"Conflict preemption is implicated when a statute repeals the common law 'to the extent of inconsistency.'" *Id.* (quoting *Lutz v. State*, 167 Md. 12, 15 (1934)). In *North*, for example, the Court considered "whether the crime of attempted possession of a controlled dangerous substance" was "narrowed" by the enactment of a statute that "criminalized the possession or purchase of 'look alike drugs,' or non-controlled substance that the person reasonably believed to be a controlled substance." *Genies*, 426 Md. at 155. In that case, "there was no express preemption in the language of the statute or enacting session law," and so the Court "proceeded to review the statute's legislative history, which revealed an intent on the part of the Legislature to create a wholly separate offense, rather than supplanting the crime of attempt at common law." *Id.*

Here, it is undisputed that the felony-murder doctrine has always been a common-law offense. (Petitioner's Br. at 16); *see State v. Goldsberry*, 419 Md. 100, 136-37 (2011) (recognizing felony murder as a common-law offense). As explained below, however,

there is no evidence of a conflict that reflects a legislative intent to preempt, nor is there evidence of an intent to preempt a field that includes felony murder. In the absence of such clear legislative intent, the presumption stands that the common law remains unaltered.

1. *A "conflict preemption" analysis reveals that the felony-murder doctrine is not preempted because it is not in conflict with the manslaughter-by-vehicle statute.*

In *Gibson*, the Court of Special Appeals employed, and this Court expressly adopted, a "conflict preemption" analysis of the manslaughter-by-vehicle statute. Using *Gibson*'s conflict-preemption method of analysis, the manslaughter-by-vehicle statute does not conflict with the felony-murder doctrine, and therefore does not preempt it.

Gibson arose from a prosecution of Michael Gibson for causing a woman's death by his "illegal and improper operation of a motor vehicle." 4 Md. App. at 238. He was charged with four counts of common-law misdemeanor-manslaughter because the death occurred while he was committing various misdemeanor violations of the motor vehicle laws (as well as underage drinking).

Id. at 239. He also was charged with one count of violating the manslaughter-by-vehicle statute. *Id.* The trial court dismissed the misdemeanor-manslaughter counts, and the State appealed. *Id.* at 240.

The Court of Special Appeals affirmed, holding that the enactment of the manslaughter-by-vehicle statute preempted the common-law manslaughter offenses at issue. *Id.* at 247-48. In reaching that conclusion, the court explained that there was "no legislative history to which [it could] turn to ascertain the exact reach" or "the effect of that statute upon the common law felony of involuntary manslaughter." *Id.* at 245. In the absence of express legislative clues, the court was left to determine legislative intent by identifying incongruities in the law and reasoning that the legislature must have intended to preempt common-law offenses that "conflict with the statute." *Id.* at 246-47.

The *Gibson* court's rationale for interpreting the manslaughter-by-vehicle statute as preempting common-law manslaughters was to prevent a nonsensical incongruity among

the statute and common-law manslaughter offenses. It reasoned that the legislature would not intend

> to permit the prosecution of offenders either for the felony of common law manslaughter, with its ten-year penalty, or for the statutory misdemeanor of manslaughter by automobile, with its three-year penalty, even though, where the prosecution is based upon gross negligence, the proof necessary to justify a conviction in either case would be precisely the same (a wanton or reckless disregard to human life).

Id. at 246.

The court also noted a similar conflict between the statute and misdemeanor-manslaughter:

> A similarly incongruous result would follow from attributing an intention to the Legislature to permit a felony conviction and ten-year sentence upon simple proof that the accidental homicide occurred in the commission of an unlawful act (a misdemeanor), while requiring a greater degree of proof under the statute to support a conviction for a lesser grade of homicide, a misdemeanor punishable by a maximum of three years imprisonment.

Id. at 246-47 (footnote omitted). As this Court later reiterated, "a contrary conclusion [in *Gibson*] would have rendered [the statute] essentially nugatory" because "prosecutors would likely never use the statute," which required the same or greater degree of proof for a lesser penalty. *North*, 356 Md. at 317.

With that rationale in mind, the *Gibson* court concluded that, in enacting the manslaughter-by-vehicle statute, the General Assembly

> intended to deal with an entire subject matter—unintended homicides resulting from the operation of a motor vehicle—and that the common law crime of involuntary manslaughter, when based on homicides so occurring, *is in conflict with the statute and must yield to it to the extent of the inconsistency*. *See Lutz v. State*, 167 Md. 12. We observe in this connection that in enacting [the statute], the Legislature expressly provided (Section 2 of Chapter 414 of the Acts of 1941) that "*all acts inconsistent with the provisions of this Act are repealed to the extent of such inconsistency*." . . . The rule is well settled that 'where a statute prohibits a particular act, and imposes a penalty for doing it, and a subsequent statute imposes a different penalty for the same, *or practically the same*, offense, the later statute repeals the earlier one, and this is true whether the penalty is increased or diminished.

Id. at 247 (emphasis added) (citation and quotation marks omitted).

The *Gibson* court's quotation of the language from Section 2 of the 1941 Act (repealing other law "to the extent of [any] inconsistency") strongly implies that, notwithstanding the court's "entire subject matter" language, it was finding conflict preemption (not field preemption). *See Genies*, 426 Md. at 155 ("Conflict preemption is implicated when a statute repeals the

common law 'to the extent of inconsistency.'" (quoting *Lutz*, 167 Md. at 15)). That is, a conflict analysis can be replicated for each "unintended homicide[] resulting from the operation of a motor vehicle," and each offense must "yield" to the manslaughter-by-vehicle statute only "*to the extent of the inconsistency*." *Gibson*, 4 Md. App. at 247 (emphasis added).

This Court granted certiorari in *Gibson* and affirmed in a short opinion in which this Court adopted the Court of Special Appeals' analysis as its own, stating that "the result reached by the Court of Special Appeals was correct for the reasons given." *State v. Gibson*, 254 Md. 399, 401 (1969).

Employing that analysis here, the conflict between penalty and conduct that supported a conclusion of preemption in *Gibson* does not exist in the case of felony murder. The felony-murder doctrine serves a broader purpose than the manslaughter-by-vehicle statute. *See State v. Allen*, 387 Md. 389, 398 (2005) ("The purpose underlying the modern felony-murder rule is one of deterrence; the rule is intended to deter dangerous conduct by punishing as a first degree murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the

defendant did not intend to kill."). It requires proof of the commission of a felony dangerous to human life, the defendant's intent to commit the felony, and a resultant death. *Id.* at 397-98; *see also Fisher v. State*, 367 Md. 218, 263 (2001) (holding that a felony-murder conviction can be predicated on any felony that is dangerous to life, either due to the nature of the crime or the manner in which it was perpetrated in the circumstances of a given case). The prescribed penalty of life imprisonment when the murder occurs in the commission of certain enumerated serious felonies reflects the legislature's assessment of the gravity of the offense. CR § 2-201(b).

The manslaughter-by-vehicle statute, by contrast, requires proof of a death caused by the operation of a vehicle in a grossly negligent manner. CR § 2-209(b). The offense does not require proof of other felonious conduct. *Id.* And the three-year maximum penalty prescribed when the statute was first enacted (which has since been increased to a ten-year maximum) reflects the legislature's assessment that it is a comparatively less serious offense. 1941 Md. Laws, Ch. 414; CR § 2-209. Indeed, "[w]hen an accidental death resulted from even the grossly negligent

operation of an automobile, etc., the image of the perpetrator conjured up in the public mind was not that of the classic criminal." Judge Charles E. Moylan, Jr., *Criminal Homicide Law* § 12.11 at 240 (2002). The General Assembly's purpose for enacting the manslaughter-by-vehicle statute "was to lessen the severity of the crime and to ameliorate its punishment" in such cases. *Id.*

Thus, the two offenses do not prescribe different penalties for the same or similar conduct. The higher penalties for felony murder (life if in the first degree; up to 40 years if in the second degree) contemplate the greater degree of culpability and the legislature's intent to deter dangerous felonious conduct. Recognizing the viability of both felony murder (when committed with a vehicle) and the manslaughter-by-vehicle statute would not lead to an incongruity whereby the State could obtain a greater penalty with a lesser degree of proof by choosing to prosecute one offense over the other. *See North*, 356 Md. at 319 (distinguishing *Gibson* because of, *inter alia*, the "disparity in possible penalties" among the offenses at issue, noting that, "although there [was] some overlap between the two offenses, . . . [they were] by no means identical, or the same for merger purposes"). Nor would

recognizing the continued viability of the felony-murder doctrine in cases such as this render the manslaughter-by-vehicle statute "nugatory." *Id.* at 317.

On the other hand, concluding that the enactment of the manslaughter-by-vehicle statute preempts the felony-murder doctrine would lead to illogical and incongruous results. *State v. Bey*, 452 Md. 255, 266 (2017) (noting that, in reviewing a statute, courts will consider "how it relates to other laws, its general purpose and relative rationality and legal effect of various competing constructions" (citation omitted)). Consider that Harris's three co-defendants all pleaded guilty to identical felony murder charges, despite that they were nowhere near the Jeep when Harris ran over Officer Caprio.[3] All four convictions stem from the same circumstances. Under the felony-murder doctrine, all four confederates are equally liable for Officer Caprio's death, which is consistent with the deterrent purpose of the doctrine. Yet, it would make little sense that Harris should escape a murder

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[3] *See State v. Ward,* Circuit Court for Baltimore County case no. 03-K-18-002251; *State v. Matthews,* Circuit Court for Baltimore County case no. 03-K-18-002252; *State v. Genius*, Circuit Court for Baltimore County case no. 03-K-18-002253.

conviction for the death that he directly caused while his co-defendants each incur first-degree murder convictions for a death that they did not directly cause. In enacting the manslaughter-by-vehicle statute, the General Assembly did not intend such absurd results.

2. *To the extent that the legislature intended to preempt an entire subject matter, that field does not encompass felony murder.*

i. The legislature intended to limit any preemption to the field of vehicular manslaughters committed with gross negligence and related offenses.

As discussed above, the *Gibson* court's language, read in context, implies that it found conflict preemption. However, to the extent that this Court might read *Gibson* as finding field preemption, the Court should again look to legislative intent to reach the conclusion that the field that was preempted does not include felony murder. In doing so, this Court should look to "the normal, plain meaning of the statute." *Bey*, 452 Md. at 265 (citation omitted). Although the Court will not "read statutory language in a vacuum," it also should "not construe a statute with 'forced or

subtle interpretations' that limit or extend its application." *Id.* (citation omitted).

The manslaughter-by-vehicle statute, as it was written in 1941 and in its current form, criminalizes homicide by operation of a vehicle "in a grossly negligent manner." 1941 Md. Laws, Ch. 414; CR § 2-209(b). Its plain language therefore indicates that if the statute was intended to preempt a field, that field consists of vehicular homicides committed with gross negligence. *See* Moylan, *supra* § 12.12 at 242 ("[The manslaughter-by-vehicle statute] preempts the field with respect to the unintended death *caused by the gross[ly] negligent operation* of an automobile[.]" (emphasis added)); *see also North*, 356 Md. at 320-21 (Eldridge, J. dissenting) (stating that the manslaughter-by-vehicle statute "did not cover the entire field of common law involuntary manslaughter" but the *Gibson* court nevertheless found preemption in "the limited area of involuntary manslaughter by motor vehicle").

Gross negligence is not an element of felony murder. *Allen*, 387 Md. at 397-98. Nor is felony murder "the same, or practically the same, offense" as gross negligence homicide or misdemeanor-manslaughter. *Gibson*, 4 Md. App. at 247 (citation and quotation

marks omitted). The inclusion of a specific *mens rea* in the statute is a legislative limitation that leaves the culpability that arises from a killing in the course of a felony unaffected.

Indeed, the Court of Special Appeals has already said as much in *Anderson v. State*, 61 Md. App. 436, *cert. denied*, 303 Md. 295 (1985). There, Judge Moylan stated (albeit in dicta) that the manslaughter-by-vehicle statute "did not cover all unlawful killings where the instrumentality of death had been a vehicle, but only those where the vehicle had been operated 'in a grossly negligent manner,'" and so "*any vehicular homicide that would have qualified as common law murder was untouched by the statute. . . . The only area impacted by the statute was common law involuntary manslaughter* where the instrumentality of death had been a motor vehicle." *Id.* at 454 (emphasis added). Therefore, common-law felony murder remains "untouched by the statute." *Id.*

The Court of Special Appeals' *Blackwell* decision does not compel a different conclusion. There, Blackwell was convicted of second-degree depraved-heart murder and violating the manslaughter-by-vehicle statute on evidence that he was driving

his vehicle while intoxicated when he fatally struck a bicyclist. 34 Md. App. at 549, 553. The court first held that evidence of Blackwell's past "drinking habits" was insufficient to establish the "extreme indifference to the value of human life" form of malice, malice being the necessary *mens rea* element of murder. *Id.* at 553-54. Thus, the State simply failed to meet its evidentiary burden to prove murder.[4]

The court offered an alternative conclusion, however. It stated that "[i]n the absence of evidence of intentional homicide, . . . the statutory preemption applies as well to second degree murder [of the depraved-heart variety] as it did in *Gibson* to manslaughter." *Id.* at 555.

The Court of Special Appeals' extension of *Gibson* to depraved-heart murder does not compel a similar extension here to felony murder. There is "an extremely close relationship

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[4] This primary holding of *Blackwell* is reinforced by this Court's recent decision in *Beckwitt v. State*, ___ Md. ___, No. 16, Sept. Term 2021 (filed Jan. 28, 2022), which held that the extreme indifference to human life that is necessary to establish the malice element of depraved-heart murder is shown only where the defendant's conduct was reasonably likely, if not certain, to cause death. *Id.*, slip op. at 3-4.

between depraved-heart murder and gross negligence manslaughter." Moylan, *supra* § 12.5 at 228. The difference between the two offenses is "simply one of degree," and the variance in their "respective *mentes reae*," is "subtle to the point of being indiscernible." *Id.* §§ 6.4, 12.5 at 137, 228; *see also Ashe v. State*, 125 Md. App. 537, 546 (1999) ("[S]econd degree depraved heart murder is virtually identical to gross negligence involuntary manslaughter."). Given the degree of overlap between depraved-heart murder and gross-negligence manslaughter, the *Blackwell* court's conclusion that the manslaughter-by-vehicle statute also preempts depraved-heart murders when committed with a vehicle is arguably consistent with *Gibson's* rationale. *See Gibson*, 4 Md. App. at 247 ("[W]here a statute prohibits a particular act . . . , and a subsequent statute imposes a different penalty for the same, *or practically the same, offense*, the later statute repeals the earlier one[.]" (emphasis added) (citation and quotation marks omitted)).

Unlike depraved-heart murder, felony murder does not involve gross negligence and is not closely related to the conduct prohibited by the manslaughter-by-vehicle statute. As discussed, the felony-murder doctrine is intended to deter and punish conduct

that is significantly more blameworthy than the vehicular homicides at issue in *Gibson* and *Blackwell*. There is no overlap with the manslaughter-by-vehicle statute that would justify preemption of the felony-murder doctrine.

ii. Felony murder is not an "unintended homicide" as contemplated by *Gibson* because the offender intends to commit a felony that is inherently dangerous.

The Court of Special Appeals rejected Harris's statutory preemption claim on the ground that "[f]elony murder is not . . . within the scope of unintended homicides" as contemplated by *Gibson* because the defendant's intent to do the underlying felony supplies the malice required for a murder conviction. (E. 48). The court's assessment of homicide law is correct.

A defendant's intent to commit an underlying felony is transferred to, and stands in the place of, the intent to kill:

> The application of the felony-murder rule relies on the imputation of malice from the underlying predicate felony. In *State v. Allen*, 387 Md. 389 (2005), we limited the felony-murder rule to situations where the intent to commit the underlying felony existed prior to or concurrent with the act causing the death of the victim, and not afterwards. *Id.* at 402. In so doing, we explained: "the felony-murder rule is a legal fiction in which the intent and the malice to commit

> the underlying felony is 'transferred' to elevate an unintentional killing to first degree murder . . . ." *Id.* at 401 (citation omitted).

Christian v. State, 405 Md. 306, 331-32 (2008).

Harris cites this Court's *Christian* opinion for the proposition that this Court has "classified" felony murder as "an unintentional killing." (Petitioner's Br. at 11). His reliance on the phrase "unintentional killing" is misguided.

First, that an unintentional killing *can be* elevated to murder if committed in the course of a felony does not mean that *all* homicides prosecuted via the felony-murder doctrine are necessarily unintentional. Rather, the defendant's intent with respect to the decedent is legally irrelevant to felony murder. Under Maryland common law, "a homicide arising in the commission of . . . a felony is murder *whether death was intended or not*, the fact that the person was engaged in such perpetration or attempt being sufficient to supply the element of malice." *Watkins v. State*, 357 Md. 258, 267 (2000) (emphasis added) (cleaned up); *see also Malik v. State*, 152 Md. App. 305, 330 (2003) ("A murder committed in the course of the set of enumerated felonies is murder in the first degree, regardless of whether the

murder was reckless, accidental, or premeditated."). Classifying all felony murders as "unintentional" is a fundamental mischaracterization of the offense.

Second, Harris ignores the full context of the Court's statement in *Christian* that "the *intent and the malice* to commit the underlying felony is *'transferred'* to *elevate* an unintentional killing to first degree murder[.]" *Christian*, 405 Md. at 331-32 (emphasis added) (citation and quotation marks omitted); *see also Watkins*, 357 Md. at 267 ("That substituted form of malice represents, in a way, a vertical extension of the normal requirement that, for a homicide to constitute murder, the defendant must intend to kill the victim.").

In *Gladden v. State*, 273 Md. 383, 404 (1974), this Court equated the felony-murder rule to the doctrine of transferred intent. That is, the offender's malice (whether that be from an intent to murder a different person or an intent to commit a separate felony) is transferred to satisfy the *mens rea* for murder. Like the legal theory of transferred intent, the "felony-murder rule has been justified because the defendant is acting maliciously at

the time he kills, even if the object of his malice is unrelated to the victim's death." *Allen*, 387 Md. at 403.

In other words, a death (intentional or not) that occurs during the course of certain felonies can become a murder because the "general intent to do the death-producing act in the course of the commission, or attempted commission, of a felony" is transferred to the homicide offense. *Selby v. State*, 76 Md. App. 201, 210 (1988), *aff'd*, 319 Md. 174 (1990). Felony murder is not an "unintentional" homicide that would be preempted under *Gibson* because the defendant intends to commit a serious felony that is dangerous to human life, and "the malice involved in the underlying felony is permitted to stand in the place of the malice that would otherwise be required with respect to the killing." *Allen*, 387 Md. at 402.

For this reason as well, *Blackwell* is distinguishable. Unlike depraved-heart murder as addressed in *Blackwell*, which contains a *mens rea* element that falls below the level of criminal intent, felony murder can only arise from the defendant's intentional commission of a life-endangering felony.

In sum, there is no evidence (express or inferred) that the General Assembly intended to displace the common-law felony-murder doctrine. In the absence of that intent, this Court should hold that the manslaughter-by-vehicle statute does not preempt the common-law felony-murder doctrine.

B. Even if the manslaughter-by-vehicle statute preempts felony murder in some cases, it does not necessarily reach cases, like this, where there is evidence of intentional homicide.

Even if Harris is correct that felony murder would be preempted by the manslaughter-by-vehicle statute if the killing were unintended, the *Gibson* court clarified that the statute does not preempt homicides "where the killing was accomplished by intentionally running over the victim in an automobile." 4 Md. App. at 248 n.5. The *Blackwell* court similarly clarified that "[i]n the absence of *evidence* of intentional homicide, . . . statutory preemption applies," but "in a proper case where there is *evidence* of intentional homicide by use of an automobile, it is not improper to charge both crimes, and, if the evidence is sufficient, to submit

both to the jury for its determination of which, if either, is applicable." 34 Md. App. at 555 (emphasis added).

Here, there was *evidence* of intentional homicide. (E. 48) ("The State argued, and the facts would have permitted a finding, that [Harris] intended to run over Officer Caprio when he hit the gas while she was standing in front of the car."). Indeed, Harris does not dispute that the State could have properly submitted to the jury only first-degree felony murder—as he sees it, the State could have done so if the jury had also been required make a finding as to Harris's intent. (Petitioner's Br. at 21-22).

Harris, however, argues that because the jury was not asked to decide whether he intended to run over Officer Caprio, the Court of Special Appeals' alternative conclusion that felony murder was not preempted in this case because there was evidence of intentional homicide constitutes a violation of due process. (Petitioner's Br. at 18-22). His complaint is misguided because the critical question is not whether the jury found intent to kill—which is *not* an element of felony murder, *Whittlesey v. State*, 326 Md. 502, 520-21 (1992)—but, rather, whether felony murder was *preempted* in this case because there was no evidence of intentional

homicide. *Gibson*, 4 Md. App. at 248 n.5; *Blackwell*, 34 Md. App. at 555. The Court of Special Appeals was not invading the province of the jury. Rather, it was commenting on the propriety of submitting a murder offense to the jury in accord with *Blackwell*'s instruction that, in the case of where a vehicular homicide may be intentional, it is appropriate to submit to the jury both murder and statutory manslaughter-by-vehicle.

Harris's reliance on *Forbes v. State*, 324 Md. 335 (1991), is misplaced because the jury's verdict in that case *excluded* intentional murder. (Petitioner's Br. at 20-21). There, after an argument with the victim, Forbes got into his vehicle, "'revved' his engine, 'spun his tires' and then drove his car toward" the victim, striking and killing him. *Forbes*, 324 Md. at 337. Eyewitnesses provided conflicting testimony about whether Forbes drove his vehicle "straight at the victim," or whether the victim stepped into the path of Forbes's vehicle, and Forbes tried to swerve, but the victim "leaped up on the hood of Forbes's car." *Id.* "[T]he State's evidence at the trial supported the State's position that Forbes intended to strike the victim with his car, whereas the testimony of a defense witness tended to support the defendant's contention

that he did not intentionally hit the victim." *Id.* at 338. The State submitted to the jury murder and manslaughter, and the jury acquitted Forbes of murder and voluntary manslaughter, finding him guilty of only involuntary manslaughter. *Id.* at 338, 343. Thus, the jury found that Forbes *did not* intentionally run over his victim; it found that he was guilty only of being grossly negligent, which was squarely preempted per *Gibson*. *Id.*

Forbes stands for the proposition that the defendant's *mens rea* cannot be recharacterized on appeal in a manner that is directly contrary to the jury's verdicts. Unlike in *Forbes*, the jury here did not decide whether the homicide was intentional; the only homicide offense submitted to the jury was felony murder. (E. 293).

In any event, Harris's complaint, reduced to its essence, is that the circuit court failed to properly instruct the jury as to a supposed element of felony murder. He states that although "intent to kill would ordinarily not be an essential element for felony murder, it becomes an essential element in order to sustain a common law homicide offense that is perpetrated [with] a motor vehicle." (Petitioner's Br. at 19). Assuming *arguendo* that Harris is correct, then the defense should have requested a jury

instruction to properly reflect that "essential element." Or he could have done what the defense attempted but was precluded from doing in *Forbes*: argue to the jury that if Harris was guilty of anything, he was guilty of an offense that was not charged. 324 Md. at 338. Or, similarly, he could have moved for a judgment of acquittal on the ground that the State failed to prove this supposed element of its case. Harris, however, did not do any of these things—he never asked for a jury instruction, nor did he raise the preemption issue at trial. (E. 42; T. 04/30/2019 at 12-16, 31-32). His complaint should be deemed waived. *See Watts v. State*, 457 Md. 419, 426 (2018) ("This Court has consistently repeated that the failure to object to an instructional error prevents a party on appeal from raising the issue under Rule 4-325(e)."); *Ford v. State*, 330 Md. 682, 698 (1993) ("[Ford] acquiesced in the instructions and verdict sheet. By not objecting when the circuit court construed the indictment to cover both degrees of the misdemeanor and by failing to object after the court instructed the jury, Ford waived the issue and did not preserve it for appellate review."); *Graham v. State*, 325 Md. 398, 417 (1992) ("A claim of insufficiency of the evidence

is ordinarily not preserved if the claim is not made as a part of the motion for judgment of acquittal.").[5]

II.

HARRIS WAS NOT ENTITLED TO A CONSTITUTIONALLY-HEIGHTENED SENTENCING PROCEDURE IN ACCORDANCE WITH *MILLER V. ALABAMA*, 567 U.S. 460 (2012), BUT HE EFFECTIVELY RECEIVED ONE ANYWAY.

Harris argues that "a juvenile offender who is convicted of felony murder, and who is facing a mandatory sentence of life imprisonment with the possibility of parole, is entitled to a constitutionally-heightened sentencing procedure to include consideration of the juvenile's youth, the attendant circumstances, and penological justifications for a life sentence." (Petitioner's Br. at 23). He asserts that "'youth matters in sentencing'" (Petitioner's

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[5] Considering that Harris never raised the preemption argument below and there was ample evidence that could have supported a finding that Harris had an intent to kill, then at the very least, if the Court agrees with Harris that intent to kill is effectively an element of vehicular felony murder, the Court should remand for a new trial on the first-degree murder count. *See State v. Frye*, 283 Md. 709, 724 (1978) (granting the State the option to retry the defendant on murder and other charges because "[i]t was not in any manner the State's fault that . . . instructions were not given," which would have prevented an ambiguity in the jury's basis for its verdict).

Br. at 25-26) (quoting *Jones v. Mississippi*, 141 S. Ct. 1307, 1316 (2021)), and dedicates the bulk of his argument to establishing that juvenile homicide offenders generally have diminished culpability. Harris, however, fails to establish that *his* sentence—which is one of life *with* parole eligibility—was imposed in violation of the Eighth Amendment to the United States Constitution or Article 25 of the Maryland Declaration of Rights.

The Supreme Court's recent decision in *Jones* is clear that the Eighth Amendment never entitled Harris to a proceeding in which the sentencing court was required to methodically consider a list of factors and/or issue factual findings on incorrigibility. All that the Eighth Amendment requires with respect to juvenile homicide offenders is that sentencing courts have discretion to impose a sentence that is less than life without the possibility of parole. Harris received a life sentence *with* the possibility of parole (and other meaningful opportunities for release, discussed in more detail below), which *ipso facto* forecloses his Eighth Amendment claim.

Harris's Article 25 arguments are equally unpersuasive. This Court has consistently and repeatedly read Article 25 to be

in pari materia with the Eighth Amendment. There is no compelling reason to depart from that tradition now.

Even if Harris were correct that he was entitled to a sentencing procedure during which the court was required to expressly consider factors related his youth and attendant characteristics, the sentencing court did so.

Finally, Harris has not established that his life-with-parole sentence is unconstitutional as applied to him. His sentence is not grossly disproportionate to his crimes.

A. Harris's sentence of life *with* the possibility of parole does not violate the Eighth Amendment.

1. *Pertinent Eighth Amendment Jurisprudence*

The Eighth Amendment bars the infliction of "cruel and unusual punishments," including "sentences that are disproportionate to the crime committed." *Solem v. Helm*, 463 U.S. 277, 284 (1983). The Eighth Amendment does not require strict proportionality, however; it "forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and

concurring in the judgment); *see generally Thomas v. State*, 333 Md. 84, 94-96 (1993) (distilling as-applied disproportionality standard under Eighth Amendment and Article 25).

In addition to barring grossly disproportionate sentences in individual cases, the Eighth Amendment bars some punishments as categorically disproportionate. Pertinent here, in a series of four cases, the Supreme Court has addressed whether and under what circumstances the Eighth Amendment bars imposing a sentence of life without parole on a juvenile offender.

iii. Graham

First, in *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that the Eighth Amendment categorically bars sentencing a juvenile offender to life without parole for a non-homicide crime. *Id.* at 74. The Court thus held that a juvenile non-homicide offender's sentence must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75. The Court did not detail the nature of a "meaningful opportunity," leaving it to the states "in the first

instance, to explore the means and mechanisms for compliance." *Id.*

iv. Miller

In the second case, *Miller*, the Supreme Court held that the Eighth Amendment prohibits sentencing juvenile homicide offenders to *mandatory* sentences of life *without* parole. 567 U.S. at 465. Unlike in *Graham*, the Court did not categorically bar life-without-parole sentences for juveniles convicted of homicide crimes. Rather, it "mandate[d] only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing" that penalty. *Id.* at 483. Life-without-parole sentences under mandatory sentencing regimes are barred for juveniles because the sentencer cannot "consider[] a juvenile's 'lessened culpability' and greater 'capacity for change[.]'" *Id.* at 465 (citation omitted).

v. Montgomery

In the third case, *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Supreme Court held that *Miller* applies retroactively to convictions already final, explaining that *Miller* "announced a

substantive rule of law," *id.* at 208, albeit one with "a procedural component," *id.* at 209.

"*Miller*'s substantive holding," the Court said, is that "life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.* at 210. Or, put differently: that life without parole may be imposed only on "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* at 209.

The "procedural component" of *Miller*'s holding, which was "necessary to implement [its] substantive guarantee," is that a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors" is "necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* at 209-10. Yet, the *Montgomery* Court also agreed that "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility," declaring that "*Miller* did not impose a formal factfinding requirement." *Id.* at 211.

In order to give *Miller* retroactive effect, the Court said that juvenile homicide offenders who had been sentenced to mandatory life-without-parole "must be given the opportunity to show their

crime did not reflect irreparable corruption[.]" *Id.* at 213. But the Court did not require that opportunity necessarily to take the form of resentencing. *Id.* at 212. Rather, states could rely on their parole systems: "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole[.]" *Id.*

vi. Jones

Last year, in *Jones*, the Supreme Court resolved disagreement over what is necessary for a life-without-parole sentence to be validly imposed under *Miller* and *Montgomery*. 141 S. Ct. at 1311. It rejected the claim that a sentencer must either make an express "factual finding of permanent incorrigibility" or "provide an on-the-record sentencing explanation with an 'implicit finding' of permanent incorrigibility." *Jones*, 141 S. Ct. at 1318-19. Rather, the Court insisted, the only requirement is that life-without-parole is "not mandatory," such that the sentencer has "discretion to impose a lesser punishment in light of [the defendant's] youth." *Id.* at 1322. According to the Court, the sentencer's discretion not to impose life-without-parole "suffices to ensure individualized consideration of a defendant's youth" as a

mitigating factor. *Id.* at 1321. Thus, a state's ordinary "discretionary sentencing system"—*i.e.*, one "where the sentencer can consider the defendant's youth and has discretion to impose a lesser sentence than life without parole," *id.* at 1318—is "both constitutionally necessary and constitutionally sufficient." *Id.* at 1313.

vii. Carter

This Court decided *Carter v. State*, 461 Md. 295 (2018), after *Montgomery* but before *Jones*. *Carter* did not involve mandatory life-without-parole, which Maryland has never required for homicide offenses, nor did it involve formal sentences of life without parole at all. Rather, *Carter* involved three defendants serving parole-eligible sentences of different kinds. *Carter*, 461 Md. at 326-33. All three claimed that their sentences were illegal because, despite their formal eligibility for parole, they allegedly lacked a meaningful opportunity for release.

At the outset, the Court distilled key principles from the Supreme Court's then-existing caselaw, including the right of the "vast majority" of juvenile homicide offenders to have a meaningful

opportunity for release. *Id.* at 317. The Court also recognized that it is a meaningful opportunity for release, not parole *per se*, that matters. *Id.* at 318, 340. A "parole system that takes into account the offender's youth at the time of the offense and demonstrated rehabilitation" satisfies the meaningful opportunity requirement but is not the exclusive means to do so. *Id.* at 318.

Relevant here is the *Carter* Court's analysis of the claims of the two defendants (Carter and Bowie) who were serving life sentences (unlike the third petitioner, McCullough, who was serving several term-of-years sentences). The Court concluded that regulations of the Parole Commission that effectively required the Commission "to apply the factors identified by the Supreme Court in *Graham* and *Miller*" left "no doubt" that the Commission was required to "take into account an inmate's youth and demonstrated rehabilitation in making parole decisions." *Id.* at 343. It held that the "Maryland law governing parole, including the statutes, regulations, and executive order, provides a juvenile offender serving a life sentence with a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Id.*

at 365. Thus, it held that Carter's and Bowie's sentences were legal. *Id.*

2. *The Eighth Amendment does not require a sentencing court to expressly consider a list of youth-related factors or make any findings when imposing a life-with-parole sentence.*

Harris argues that juveniles who are convicted of felony murder for an "unintentional killing" are "entitled to a constitutionally-heightened sentencing procedure to include consideration of the juvenile's youth, the attendant circumstances, and penological justifications for a life sentence upon a juvenile for an unintentional killing." (Petitioner's Br. at 23). That constitutionally-heightened sentencing procedure, as Harris envisions it, would require the sentencing court to methodically consider a list of factors for evaluating the juvenile's youth and its attendant characteristics before a life-with-parole sentence may be imposed. (Petitioner's Br. at 47-50).

There are three fatal flaws in Harris's argument. The first is that the Supreme Court in *Jones* stated unequivocally that "an on-the-record sentencing explanation with an implicit finding of

permanent incorrigibility is not required by or consistent with *Miller*." *Jones*, 141 S. Ct. at 1320.

Harris counters that "*Jones* did not change the principle that 'the sentencer' still must 'consider the murderer's diminished culpability and heightened capacity for change' along with the juvenile's 'chronological age and its hallmark features.'" (Petitioner's Br. at 41) (quoting *Jones*, 141 S. Ct. at 1320 (internal quotation marks omitted)). Although that may be true when a court sentences a juvenile to life *without* parole, regardless, *Jones* makes clear that the record need not reflect that the court considered the offender's youth; a sentencing court's discretion to impose a sentence less than life without parole satisfies the Eighth Amendment. *Jones*, 141 S. Ct. at 1313, 1317-18.

Indeed, the Supreme Court expressly rejected Jones's argument (similar to the one that Harris makes here) that the record must reflect that the sentencing court considered the offender's youth. It stated that Jones's argument "rest[ed] on the assumption that meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth," a proposition that the Court

rejected because "if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth." *Id.* at 1319.

Furthermore, the Supreme Court's acknowledgement that States may "impose[] additional sentencing limits in cases involving defendants under 18 convicted of murder," including "requir[ing] sentencers to make extra factual findings before sentencing an offender under 18 to life without parole" or "direct[ing] sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth," *id.* at 1323, makes it abundantly clear that the Eighth Amendment does not require the extra factual findings or explanations that Harris demands here.

The second fatal flaw in Harris's argument is that *Graham*, *Miller*, *Montgomery*, and *Jones* each addressed the constitutional implications of imposing mandatory life-*without*-parole sentences on juveniles. That line of cases does not entitle a juvenile to a constitutionally-heightened sentencing proceeding when he or she is sentenced to life with parole eligibility.

In *Carter*, Daniel Carter challenged his sentence of life plus 20 consecutive years, entailing parole eligibility after 25 years (reduced by diminution credits). 461 Md. at 327. The Court concluded that Maryland's parole system provided him a meaningful opportunity for release and thus held that his sentence was lawful. *Id.* at 365. Notably, the Court stated that if Maryland's parole system had not offered Carter a meaningful opportunity for release, then Carter would have been "entitled to a new sentencing proceeding at which the court would consider whether he was one of the few juvenile homicide offenders who is incorrigible and may therefore be sentenced constitutionally to life without parole." *Id.* at 341. The Court, however, did *not* remand Carter's case for a resentencing because his life-with-parole sentence (which encompassed a meaningful opportunity for release via Maryland's constitutionally-sufficient parole system) was lawful.

Like Carter, Harris was sentenced to life *with* the possibility of parole. He will be eligible for parole after serving 15 years (ten less than Carter), reduced by diminution credits. Md. Code Ann., Corr. Servs. § 7-301(d)(1). His sentence is therefore not unconstitutional.

Harris attempts to characterize life-with-parole sentences as "one of the State's 'most severe punishments'" in a transparent attempt to establish a legal equivalency between life-with-parole and life-without-parole sentences. (Petitioner's Br. at 26) (quoting *Miller*, 567 U.S. at 472). He does so by taking the Supreme Court's language out of context and ignoring its holding: "We therefore hold that the Eighth Amendment forbids a sentencing scheme that *mandates* life in prison *without* possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479 (emphasis added). There is no doubt that life imprisonment is a "severe" sentence, but *Miller* and its progeny offer no relief when the court has imposed a sentence of life *with* parole eligibility. *See Montgomery*, 577 U.S. at 210 ("A hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not.") (quoting *Miller*, 567 U.S. at 465)). The *Miller* line of cases offers Harris no relief.

The third fatal flaw in Harris's argument is that his claimed entitlement to a constitutionally-heightened *sentencing proceeding* is contrary to Eighth Amendment jurisprudence, which, at most,

requires states to afford non-incorrigible juvenile offenders a "meaningful opportunity for release based on demonstrated maturity and rehabilitation," not a particular sentencing procedure. *See Graham*, 560 U.S. at 75 ("What [a] State must do . . . is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance."); *Carter*, 461 Md. at 318 (echoing the same). Indeed, the Supreme Court explained that a "State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery*, 577 U.S. at 212.

Providing a meaningful opportunity for release through parole is one way of satisfying the Eighth Amendment, *id.*, but that is not the only way, *Graham*, 560 U.S. at 75. In addition to Maryland's parole system, the General Assembly has recently created another mechanism that provides a meaningful opportunity for release to Harris and other juvenile offenders serving lengthy sentences: the Juvenile Restoration Act ("JUVRA"). 2021 Md. Laws, Ch. 61 (SB 494). JUVRA codified two

new provisions of the Maryland Code, Criminal Procedure Article ("CP"). Relevant here, CP § 8-110 establishes a robust mechanism for reduction of juveniles' sentences that independently satisfies the Eighth Amendment regardless of whether the sentencing court failed to take into consideration Harris's youth and its attendant characteristics.

JUVRA allows Harris (and eligible juvenile offenders like him) who have been imprisoned for at least 20 years for an offense to file up to three motions "to reduce the duration of the sentence." CP § 8-110(b)(1), (f). The statute requires the court to hold a hearing on each motion, where the offender and the State may present evidence, CP § 8-110(b)(2), (b)(4), and dictates that a court "shall" consider an enumerated list of factors in determining whether to reduce the sentence. CP § 8-110(d). The factors encompass substantially the same criteria that the Parole Commission and the Governor consider (by regulations and executive order, respectively) when deciding whether to grant an inmate parole. *See* COMAR 01.01.2018.06C; COMAR 12.08.01. 18A(3)-(4); *see also Carter*, 461 Md. at 320-23 (listing criteria). Consideration of those criteria "provides a juvenile offender

serving a life sentence with [the] 'meaningful opportunity to obtain release'" that the Eighth Amendment contemplates. *Carter*, 461 Md. at 365.

Most fundamentally, JUVRA requires the court to assess whether the offender "has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction." CP § 8-110(d)(5). That is, of course, the paramount concern of a meaningful opportunity for release. *See Graham*, 560 U.S. at 75 ("What the State must do . . . is give . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.").

Upon consideration of those factors, the court "may reduce the duration of a sentence imposed on an individual for an offense committed when the individual was a minor" if it determines that the individual is not a danger to the public and that a reduced sentence will "better serve[ ]" the "interests of justice." CP § 8-110(c). The court must issue its decision in writing and must address the mandatory factors in its decision. CP § 8-110(e).

In sum, Harris's insistence that he is entitled to a sentencing hearing in which the court is required to methodically and

expressly consider a list of factors and/or comment on whether he is incorrigible is foreclosed by prevailing Eighth Amendment case law. He has been sentenced to life with parole eligibility, and he has been afforded meaningful opportunities for release through two statutory mechanisms, both of which require the reviewer to consider youth and its attendant characteristics. Harris's sentence does not violate the Eighth Amendment.

3. *Harris's felony-murder conviction does not entitle him to a constitutionally-heightened sentencing procedure.*

Harris describes the felony-murder doctrine as "controversial," and he appears to argue that juveniles convicted of felony murder, at least where the homicide was unintended, deserve greater sentencing protections than those convicted of intentional homicides. (Petitioner's Br. at 27-35) (citation omitted). In support, Harris cites *Graham*, *Miller*, and similar cases, (Petitioner's Br. at 28-31), but those cases prohibit the imposition of life-*without*-parole sentences on "juvenile offenders whose crimes reflect the transient immaturity of youth," *Montgomery*, 136 S. Ct. at 734 (citations and quotation marks omitted).

Harris received a life-with-parole sentence. Maryland's parole system includes special consideration of factors related to juvenile offenders' youth and backgrounds. *Carter*, 461 Md. at 321. Therefore, sentences of life with parole in Maryland do not "mak[e] youth (and all that accompanies it) irrelevant," *Miller*, 567 U.S. at 479, but, rather, Maryland law accommodates the possible transience of Harris's youthful immaturity and includes "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," *Graham*, 560 U.S. at 75. Harris is not subject to "life incapacitation" because he has a meaningful opportunity to show that he has the "'capacity for change'" and to be released. (Petitioner's Br. at 31) (quoting *Miller*, 567 U.S. at 473).

Simply put, neither this Court nor the Supreme Court has ever held that the Eighth Amendment categorically bars life-with-parole sentences for unintentional homicides committed by juveniles. To the contrary, Kuntrell Jackson, one of the juvenile petitioners in *Miller*, was convicted of felony murder because he participated in a robbery during which an accomplice shot and killed a store clerk. *Miller*, 567 U.S. at 465-66. Jackson's less

culpable role in the homicide was not overlooked by the Supreme Court—it noted that "Jackson did not fire the bullet that killed [the clerk]; nor did the State argue that he intended her death. Jackson's conviction was instead based on an aiding-and-abetting theory . . . . All these circumstances go to Jackson's culpability for the offense." *Id.* at 478. The Supreme Court could have held that a sentencing proceeding in which the court must expressly consider the offender's youth and attendant characteristics is always mandatory before sentencing a juvenile to life-*with*-parole for an unintentional felony murder, but it did not. *Id.* at 478.

Granted, Justice Breyer wrote a concurring opinion in *Miller* in which he argued that, "[g]iven *Graham*'s reasoning, the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither kills nor intends to kill the victim." *Id.* at 490 (Breyer, J., concurring). Harris's reliance on Justice Breyer's concurrence is misplaced. (Petitioner's Br. at 28).

To begin, Justice Breyer's concurrence, joined by only one other Justice, is not the controlling opinion. Second, the sentence to which Justice Breyer was referring was "life *without* parole."

Miller, 567 U.S. at 491 (emphasis added). Lastly, even Justice Breyer recognized that juveniles could be sentenced to life without parole if, as Harris did, they personally killed someone. *Id.* at 492.

Harris also misses the mark with his related argument that a "juvenile convicted of felony murder has twice diminished culpability than an adult." (Petitioner's Br. at 29). The *Graham* Court said that "defendants who *do not kill*, intend to kill, *or foresee that life will be taken* are categorically less deserving of the most serious forms of punishment" and, "when compared to an adult murderer, a juvenile offender who did not *kill or* intend to kill has a twice diminished moral culpability." 560 U.S. at 69 (emphasis added). Thus, even if the Eighth Amendment might bar the imposition of a life-without-parole sentence on a juvenile who did not kill, intend to kill, or foresee that a life will be taken, that is not a concern here because Harris has been afforded meaningful opportunities for release, he personally killed Officer Caprio, and the consequences of his actions leading to her death were direct, clear, and foreseeable, even for a 16-year-old.

Harris also fails to establish that there is a "national consensus" against sentencing juveniles to life with parole for

felony murder. Among the states that he cites, only four (Hawaii,[6] Minnesota,[7] Wisconsin,[8] and Florida[9]) would offer a juvenile in Harris's position an advantage over Maryland's system. (Petitioner's Br. at 32).

A juvenile convicted of felony murder could receive the same sentence of life with parole eligibility after 15 years that Maryland prescribes if convicted in Colorado,[10] New York,[11] North Carolina,[12] Oregon,[13] Pennsylvania,[14] (and even Florida if the "*Miller*-type factors" were satisfied). A juvenile would fare no

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[6] Haw. Rev. Stat. § 707-701 (abrogated felony murder).

[7] Minn. Stat. Ann. § 609.19 (imposing 40-year maximum for most unintentional felony murders).

[8] Wis. Stat. Ann. § 940.03 (limiting punishment for felony murder).

[9] Fla. Stat. Ann. § 921.1401 (requiring consideration of the "*Miller*-type factors" before a juvenile may be sentenced to life imprisonment for felony murder).

[10] Colo. Rev. Stat. Ann. § 18-3-103.

[11] N.Y. Penal Law § 70.05.

[12] N.C. Gen. Stat. Ann. § 15A-1340.19B.

[13] Or. Rev. Stat. Ann. § 144.397.

[14] 18 Pa. Stat. and Cons. Stat. Ann. § 1102.1.

better in Alaska, which permits a "definite term" of up to 99 years for most felony murders. Alaska Stat. Ann. § 12.55.125(b); *see Carter*, 461 Md. at 352 (indicating that a sentence of 50-years or more is *de facto* life without parole).

To be sure, many of the states cited by Harris grant sentencing courts discretion to impose non-life sentences in cases where juveniles (and adults in some cases) are convicted of felony murder. But that does not constitute a national consensus *against* such sentences when they are warranted.[15]

With respect to the several states that Harris lists that have amended their laws to "require independent mental states to be proven other than the implied malice from the commission of the underlying offense," (Petitioner's Br. at 33-34), the evidence in this case would support a finding that Harris acted knowingly, recklessly, and/or with extreme indifference to the value of human

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[15] In Harris's case, the sentencing court had discretion to suspend *any portion* of Harris's life sentence, *Bratt v. State*, 468 Md. 481, 503 n.17 (2020), but it chose not to. Therefore, it stands to reason that the court would not have imposed a sentence less than life even if it had been authorized to do so.

life. Therefore, even if Maryland joined the minority "consensus" of those states, it would not warrant relief in Harris's case.

Curiously, Harris also points out that ten states have "limited the felony murder rule to the actual perpetrators of the homicide." (Petitioner's Br. at 35). Here, it is undisputed that Harris was the actual perpetrator of the homicide.

In 2018, the Supreme Court of Iowa considered essentially identical sentencing claims to those that Harris raises here. *State v. Harrison*, 914 N.W.2d 178 (Iowa 2018). It concluded that the "national consensus remains in favor of subjecting juvenile offenders convicted of first-degree murder under the felony-murder rule—regardless of whether an offender was aiding and abetting or the principal actor—to the same sentencing options as juvenile offenders convicted of premeditated first-degree murder." *Id.* at 197-98.

Maryland has, thus far, decided to remain part of that national consensus. The General Assembly has decided that a murder committed in the course of a first-degree burglary should be treated the same as premeditated homicide, CR 2-201(a)(4)(iii), and that 16-year-old juveniles charged with first-degree murder

should be prosecuted the same as adults, CP § 4-202(c)(2); Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(d)(1), except that JUVRA now grants sentencing courts unfettered discretion to impose juvenile sentences below the minimum, CP § 6-235. These statutes reflect the General Assembly's considered view of the appropriate treatment of juvenile felony murder offenders, which this Court should not override. Harris's criticism is more appropriately directed to the legislature than this Court.

B. Harris's life with parole sentence does not violate Article 25 of the Maryland Declaration of Rights.

Harris argues that the Court should expand sentencing protections for juveniles convicted of felony murder under State law. He claims that the "protections of Article 25 of the Maryland Declaration of Rights are broader than their federal counterpart." (Petitioner's Br. at 41).[16]

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[16] Unlike Article 25, which is "directed at action by the courts," Article 16 of the Maryland Declaration of Rights, which prohibits the making of "Law[s] to inflict cruel and unusual pains and penalties," is "directed toward legislative action." *Thomas*, 333 Md. at 92.

Although the Court stated in *Carter* that there may be "some textual *support for finding* greater protection in the Maryland provisions," 461 Md. at 308 n.6 (emphasis added), it has not held that Article 25 *in fact* provides broader protections than the Eighth Amendment. *Id.* ("These provisions of the Maryland Declaration of Rights have usually been construed to provide the same protection as the Eighth Amendment."). It should not do so now.

Article 25 of the Maryland Declaration of Rights is considered an analog of the Eighth Amendment's protection from cruel and unusual punishment, and this Court has, even in the face of requests for departure, "consistently construed" Article 25 "as being *in pari materia* with [its] Federal counterpart[]." *Evans v. State*, 396 Md. 256, 327 (2006).

Harris relies on the "disjunctive phrasing" of Article 25, which bars "cruel *or* unusual punishment," to argue that it provides more protection than the Eighth Amendment. (Petitioner's Br. at 42). This Court, however, has dismissed that argument. *Thomas*, 333 Md. at 103 n.5. While first noting that support exists for a potential difference between "cruel *and* unusual" and "cruel *or* unusual" punishment, this Court went on

to say that its "cases interpreting Article 25 of the Maryland Declaration of Rights have generally used the terms 'cruel and unusual' and 'cruel or unusual' interchangeably." *Id*. Moreover, this Court noted the Court of Special Appeals' conclusion that "the adjective 'unusual' adds nothing of constitutional significance to the adjective 'cruel' which says it all, standing alone." *Id*. (internal quotation marks omitted) (quoting *Walker v. State*, 53 Md. App. 171, 193 n.9 (1982)). This Court stated that it perceived "no difference between the protection afforded by that amendment and by the 25th Article of our Declaration of Rights." *Thomas*, 333 Md. at 103 n.5; *see also Aravanis v. Somerset County*, 339 Md. 644, 656 (1995) ("Article 25 is, textually and historically, substantially identical to the Eighth Amendment. Indeed, both of them were taken virtually verbatim from the English Bill of Rights of 1689.").

Harris's reliance on *Leidig v. State*, 475 Md. 181, 235-36 (2021), in which the Court expanded the protections of Article 21 of the Maryland Declaration of Rights beyond the Sixth Amendment, is unpersuasive. As the Court explained in *Leidig*, the Supreme Court failed, over several years and multiple cases, to garner a majority holding articulating a coherent standard in

that doctrinal area. *Id.* at 902-04. This Court in *Leidig* chose to break the "gridlock as a matter of state constitutional law." *Id.* at 905. On the issue of whether the Eighth Amendment demands express consideration of a list of factors before a juvenile may be sentenced to life with parole, there is no such gridlock. *Jones* squarely held that express considerations and findings are not required, even if the court is imposing life *without* parole.

Moreover, the General Assembly has spoken with regard to juvenile life sentences and determined that the appropriate response was to enact JUVRA, which bans juvenile life without parole prospectively and allows individuals serving long prison terms for crimes committed as juveniles to seek modification of the sentence. CP §§ 6-235, 8-110.

This Court should decline to find that Article 25 provides Harris more protections than the Eighth Amendment.

C. Harris's youth and its attendant characteristics were considered by the sentencing court.

Even if the circuit court was required to consider Harris's youth and its attendant characteristics at sentencing before

imposing a life-with-parole sentence, the Court of Special Appeals correctly concluded in the alternative that Harris effectively received such a sentencing proceeding. Specifically, as the Court of Special Appeals noted, Harris's "youth was presented to the court for consideration in the presentence investigation report ('PSI') and by defense counsel" at sentencing, and the "circuit court said it had considered all the evidence and all factors." (E. 66). This was beyond what is required by the Eighth Amendment as interpreted by *Jones*.

Harris retorts that his "'age,' not his 'youth,' was presented to the sentencing court," and the sentencing court "was not presented the information on youth and its hallmark features in a meaningful way." (Petitioner's Br. at 24, 46). He also suggests that the absence of a statute compelling the sentencing court to consider "the *Miller*-type factors" implies that the court did not consider such factors. (Petitioner's Br. at 46-47). Harris is wrong on both points.

Before imposing Harris's sentences, the court explained that it "considered the presentence investigation, the victim impact, the Defendant's prior record, the arguments of counsel, the allocution,

. . . [and] all factors[.]" (E. 399). The presentence investigation (PSI) cited by the court provided a nearly 50-page review of Harris's age, home life, family, upbringing, physical health, mental health, education, finances, criminal history, school disciplinary history, employment, and exposure to criminal activity. (E. 403-51). The evaluator considered Harris's youth—which included his involvement in the crimes, his reaction to the homicide, influence from peers, and comments from his mother—and the report opined whether Harris was incorrigible. (E. 424-26).

Additionally, at the sentencing hearing, defense counsel insisted that Harris was not "a young man, he's a boy," that it is difficult to know "what's going on in the mind of a 16-year-old in the way they see things," *i.e.*, juveniles are often irrational and immature, "but to determine that [Harris was] beyond redemption is absolutely absurd and ridiculous." (E. 368, 373). Counsel highlighted Harris's troubled family life, noted the negative influences on him (*i.e.*, "he was the follower" of "more streetwise guys"), and argued the harshness of applying the felony-murder doctrine to an incident that both Harris and counsel described as an "accident." (E. 368-77, 391). Counsel asked the court to impose

a partially suspended sentence to match the sentences of his co-defendants. (E. 479-80).

Harris, however, claims that the sentencing court did not "adequately consider" the information presented because, although Harris's background was detailed in the PSI "and discussed at the hearing, [those facts] were not identified in relation to how they impact a juvenile's behavior." (Petitioner's Br. at 49). Harris once again stretches the Eighth Amendment beyond what the Supreme Court has interpreted it to provide. "*Miller* required that sentencing courts *consider* a child's diminished culpability and heightened capacity for change before condemning him or her to die in prison." *Montgomery*, 577 U.S. at 195 (emphasis added) (citation and quotation marks omitted). Neither this Court nor the Supreme Court has ever said that a sentencing court must explain how each fact considered relates to juvenile sentencing theory. And we now know that no factfinding or explanation is required at all. *Jones*, 141 S. Ct. at 1318.

Additionally, "trial judges are presumed to know the law and to apply it properly," and they are "presumed to intend the necessary and legitimate consequences of their actions in its light."

State v. Chaney, 375 Md. 168, 180-81 (2003) (cleaned up). Harris was sentenced in 2019, years after *Miller* was decided. The sentencing court is presumed to know of *Miller* and how to consider the factors discussed therein.

In sum, the sentencing court did consider Harris's youth and its attendant characteristics, it was aware that it could impose a suspended sentence, and it decided that the "appropriate sentence" was life. (E. 399). Even if the sentencing court was required to consider youth-related factors before sentencing Harris to life with parole, it did so.

D. Reviewed for as-applied proportionality under the Eighth Amendment and Article 25, Harris's sentences are not grossly disproportionate.

Harris also argues that "[a]s applied, [his] automatic life sentence for felony murder is unconstitutional." (Petitioner's Br. at 45). Harris cites *Graham* and *Miller* and once again argues that his sentence is unlawful because the sentencing court failed to consider "the *Miller*-type factors." (Petitioner's Br. at 46). He then describes in detail what he thinks the court "should have . . . considered." (Petitioner's Br. at 47-50).

There is a distinct body of law, apart from the *Graham/Miller* line of cases that governs as-applied disproportionality claims under the Eighth Amendment and Article 25. That body of law recognizes that the Eighth Amendment "does not require strict proportionality between crime and sentence"; rather, review for as-applied disproportionality reaches "only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin*, 501 U.S. at 1001 (Kennedy, J., concurring in part and concurring in the judgment) (citing, *inter alia*, *Solem*, 463 U.S. at 2888).

In *Thomas*, this Court summarized the standard, derived from *Harmelin* and *Solem*. It stated that "most cases can be resolved by a threshold comparison of the crime committed to the sentence imposed," which involves considering "the seriousness of the conduct involved, . . . any articulated purpose supporting the sentence, and the importance of deferring to the legislature and to the sentencing court." *Thomas*, 333 Md. 94-96 (emphasis added); *see also id.* at 103 n.5 (same standard applies under Article 25).[17]

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[17] A more extensive "*Solem*-type analysis," necessary only when the threshold comparison suggests gross disproportionality,

There is some support for applying juvenile-specific standards in as-applied Eighth Amendment disproportionality review. In *Graham*, for example, Chief Justice Roberts concurred in the judgment, reasoning that an "offender's juvenile status" and the principle that "juveniles are typically less culpable than adults" can "rightly inform[] the case-specific inquiry" under as-applied disproportionality review; conducting such review, he found Graham's life-without-parole sentence grossly disproportionate. 560 U.S. at 86-96 (Roberts, C.J., concurring in the judgment).[18]

Although Harris details some of the youth-related factors that he believes that sentencing court failed to consider, (Petitioner's Br. at 47-49), he has not sought to establish as-applied

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considers "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions," *Solem*, 463 U.S. at 292, as well as "other relevant factors." *Thomas*, 333 Md. at 96.

[18] In addition, the dissent in *Jones* suggested that a non-incorrigible juvenile offender could challenge a life-without-parole sentence through a claim of as-applied Eighth Amendment disproportionality. *Jones*, 141 S. Ct. at 1337 n.6 (Sotomayor, J., dissenting). The majority neither rejected nor endorsed that proposition. *Jones*, 141 S. Ct. at 1322.

disproportionality of his sentences under governing Eighth Amendment standards. Yet even if he did, the claim would fail at the outset based on "threshold comparison of the crime committed to the sentence imposed." *Thomas*, 333 Md. at 94. A life sentence with eligibility for parole after 15 years (and eligibility for JUVRA consideration after 20) simply is not grossly disproportionate for first-degree felony murder—a horrific homicide that Harris personally committed—first-degree burglary, and theft over $1,000, even considering the "offender's juvenile status" and the principle that "juveniles are typically less culpable than adults," *Graham*, 560 U.S. at 90 (Roberts, C.J., concurring). *Cf. State v. Seam*, 823 S.E.2d 605, 364-65 (N.C. App. 2018) (holding parole-eligible life sentence not grossly disproportionate for felony murder notwithstanding that juvenile defendant was not shooter: "While Defendant did not fire the gun that killed Harold King, he was nonetheless an active participant in the events that resulted in King's murder."), *aff'd*, 837 S.E.2d 870 (N.C. 2020).

CONCLUSION

The State respectfully asks the Court to affirm the judgment of the Court of Special Appeals.

Dated: February 1, 2022

Respectfully submitted,

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Counsel for Respondent

CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Maryland Rule 8-112; and contains 12,998 words, excluding the parts exempted from the word count by Maryland Rule 8-503.

/s/ Andrew J. DiMiceli
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Counsel for Respondent

PERTINENT PROVISIONS

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland
Constitution of Maryland Adopted by Convention of 1867
Declaration of Rights

MD Constitution, Declaration of Rights, Art. 5

Article 5. Application of common law and statutes of England; trial by jury

Effective: December 1, 2010
Currentness

<Article effective until approval of amendments proposed by Acts 2021, c. 809, § 1. See, also, Art. 5 effective after approval of amendments proposed by Acts 2021, c. 809, § 1.>

(a)(1) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.

(2) Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds $15,000.

(b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.

(c) That notwithstanding the Common Law of England, nothing in this Constitution prohibits trial by jury of less than 12 jurors in any civil proceeding in which the right to a jury trial is preserved.

Credits
Acts 1992, c. 203, ratified Nov. 3, 1992; Acts 1992, c. 204, ratified Nov. 3, 1992. Amended by Acts 2006, c. 422, § 1, ratified Nov. 7, 2006; Acts 2010, c. 480, § 1, ratified Nov. 2, 2010.

Notes of Decisions (416)

MD Constitution, Declaration of Rights, Art. 5, MD CONST DECL OF RIGHTS, Art. 5
Current with all legislation from the 2021 Regular Session and 2021 First Special Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

DAWNTA HARRIS,	IN THE
Petitioner,	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2021
Respondent.	No. 45

CERTIFICATE OF SERVICE

In accordance with Md. Rule 20-201(g), I certify that on this day, February 1, 2022, I electronically filed the foregoing "Brief of Respondent" using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Megan E. Coleman, MarcusBonsib, LLC, 6411 Ivy Lane, Suite 116, Greenbelt, Maryland 20770.

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