UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0141 and 2031

September Term, 2014

CONSOLIDATED CASES

JOE DEAN CRAWFORD

v.

CARRIE M. WARD, ET AL.
SUBSTITUTE TRUSTEES

Berger,
Friedman,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 17, 2015

These consolidated appeals arise out of a foreclosure action initiated in the Circuit Court for Prince George's County by substitute trustees Carrie M. Ward, Jacob Geesing, Howard N. Bierman, Pratima Lele, Yayyaba C. Monto, and Joshua Coleman (collectively, the "Substitute Trustees"), appellees, against mortgagor Joe Dean Crawford ("Crawford"), appellant. This matter involves multiple appeals filed by Crawford.[1]

On appeal, Crawford presents eight questions for our review[2], which we have

[1] Appeals were taken from the following orders of the trial court:

1. March 20, 2014 order denying Crawford's "Motion for Summary Dismissal";

2. April 24, 2014 order denying Crawford's emergency motion for preliminary injunction;

3. July 10, 2014 order overruling Crawford's exceptions and denying Crawford's motion to challenge certificate of vacancy;

4. July 29, 2014 order granting the Substitute Trustees' motion to strike Crawford's request for mediation; and

5. October 8, 2014 order denying Crawford's motion to dismiss, amendment to motion to dismiss, motion to recuse, and motion to revise and vacate.

[2] The questions presented in Crawford's brief are:

1. May circuit court deny a requested evidentiary hearing on a claim of absolute immunity to foreclosure?

2. Does circuit court have authority to authorize foreclosure of property of non-debtor tenant for the debts of the other tenant?

(continued...)

rephrased and consolidated as a single question as follows:

> Whether the circuit court erred in denying Crawford's motions to stay and dismiss, overruling Crawford's exceptions without a hearing, and ratifying the foreclosure sale of the Property.

As we shall explain, the specific allegations of error set forth by Crawford are either not properly before this Court or unavailing on the merits. Accordingly, we shall affirm the judgments of the Circuit Court for Prince George's County.

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[2] (...continued)

3. Was it reversible error to deny injunctive relief to non-debtor tenant by entirety owner?

4. Is Appellant entitled to a ruling on motion for mandatory judicial notice that Federal National Mortgage Associate a mortgagee? (Constitution, Art. IV, § 23)

5. Is Appellant entitled to a ruling on his motion to revise and vacate foreclosure and sale based on fraud? Rule 2-535[.]

6. Does equity doctrine of unclean hands bar action based on deed created by unlicensed practice of law as well as being unsupported by recorded power of attorney?

7. Was it an abuse of discretion for trial judge to cancel loan mediation proceedings scheduled by the Office of Administrative Hearings?

8. Did the trial court commit reversible error in refusing to grant summary judgment in favor of Appellant on issue of whether he was grantor in deed of trust?

FACTS AND PROCEEDINGS

On November 4, 2005, Crawford and his wife, Carrie H. Crawford ("Carrie"), executed a deed conveying real property located at 4934 Gunther Street, Capitol Heights, Maryland 20743 ("the Property") from Carrie as sole owner to both Carrie and Crawford (collectively, "the Crawfords") as tenants by the entireties. On the same date, the Crawfords executed a refinance deed of trust encumbering the Property.

The Crawfords subsequently defaulted on the loan by failing to remit required payments.[3] On November 5, 2013, the Substitute Trustees, on behalf of the secured party, filed a foreclosure action in the circuit court. The final loss mitigation affidavit was filed with the order to docket on November 5, 2013. On January 10, 2014, Crawford filed a motion entitled "Motion for Summary Dismissal." Pursuant to Maryland Rule 14-211, the motion was treated as a motion to stay and dismiss. The motion was denied by the circuit court on March 20, 2014 without a hearing. Crawford noted an appeal.

On April 11, 2014, Crawford filed motions entitled "Emergency Motion for Temporary Restraining Order" and "Emergency Motion for Preliminary Injunction," which were again treated as a motion to stay and dismiss pursuant to Md. Rule 14-211. The circuit court denied the motions on April 18, 2014 without a hearing. Crawford noted an appeal.

[3] The Crawfords made no payments since January 2009.

The Property was sold at auction on April 22, 2014 to Federal National Mortgage Association, and the Substitute Trustees filed a report of sale on May 7, 2014. On June 6, 2014, Crawford filed exceptions to the sale. On the same day, Crawford filed a "Motion to Challenge 'Certificate of Vacancy,' Request for Automatic Stay and Request for Hearing." On June 16, 2014, Crawford filed a pleading entitled, "Demand and Motion to Strike and Disallow Affidavit of Sale and Request for Hearing." On June 30, 2014, Crawford filed a request for foreclosure mediation, which the Substitute Trustees moved to strike as untimely.

On July 9, 2014, the trial court issued a memorandum and order addressing the various motions filed by Crawford. The court treated Crawford's "Demand and Motion to Strike and Disallow Affidavit of Sale" as a supplement to his exceptions. The court ordered that Crawford's exceptions were overruled and that Crawford's motion to challenge "certificate of vacancy" was denied.

Crawford filed another motion to dismiss on July 14, 2014. On July 25, 2014, Crawford filed a motion for continuance of mediation. On July 29, 2014, the trial court granted the Substitute Trustees' motion to strike Crawford's request for mediation. Crawford noted an appeal.

On August 22, 2014, Crawford filed a motion to stay pending appeal, which was denied on August 11, 2014. On August 11, 2014, Crawford filed a motion to revise and vacate, and Crawford filed a motion to recuse on August 25, 2014.

On October 3, 2014, the trial court issued an order addressing the remaining pending motions. The court denied Crawford's motion to dismiss foreclosure, motion to recuse, and motion to revise and vacate. The trial court ordered that Crawford's motion to stay was granted if Crawford posted bond in the amount of forty thousand dollars ($40,000.00) by or before Wednesday, October 15, 2014, at 4:00 p.m.; the court ordered that if bond was not timely posted, no stay would take effect, and the case would continue in due course. Crawford noted another appeal.

Crawford's appeals noted on March 26, 2014,[4] April 8, 2014,[5] May 12, 2014,[6] and August 11, 2014[7] were consolidated by this Court as Case No. 141, September Term 2014. The appeal noted on November 7, 2014[8] was assigned Case No. 2031, September Term 2014. Crawford filed a single brief in which he consolidated Case Nos. 141 and 2031.

[4] This appeal involves the March 20, 2014 order denying Crawford's motion to stay and dismiss.

[5] This second apparent appeal also concerns the March 20, 2014 order denying Crawford's motion to stay and dismiss.

[6] This is an appeal of the April 24, 2014 order denying Crawford's "Emergency Motion for Preliminary Injunction."

[7] This appeal concerns the July 10, 2014 order overruling Crawford's exceptions and denying Crawford's motion to challenge certificate of vacancy, and the July 29, 104 order granting the Substitute Trustee's motion to strike Crawford's request for mediation.

[8] This is an appeal of the October 8, 2014 order denying Crawford's motion to dismiss, amendment to motion to dismiss, motion to recuse, and motion to revise and vacate.

DISCUSSION

I. Pre-Sale and Post-Sale Challenges to the Foreclosure

An owner of real property is "possessed of three means of challenging a foreclosure: obtaining a pre-sale injunction pursuant to Maryland Rule [14-211], filing post-sale exceptions to the ratification of the sale under Maryland Rule 14–305(d), and the filing of post-sale ratification exceptions to the auditor's statement of account pursuant to Maryland Rule 2–543(g), (h)." *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 726 (2007).[9]

We review a circuit court's decision whether to grant or deny a motion to stay foreclosure for an abuse of discretion. *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 546 (2013). "The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court." *Anderson v. Burson*, 424 Md. 232, 243 (2011). We review the trial court's legal conclusions *de novo*. *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012).

In its opinion in *Fagnani v. Fisher*, the Court of Appeals summarized the law governing foreclosure sales and exceptions to them. The Court explained:

[9] In *Wells Fargo*, the Court of Appeals explained that a pre-sale challenge was governed by Md. Rule 14–209(b)(1). 398 Md. at 726. Currently, "a pre-sale challenge would be made by means of a motion to stay the sale and dismiss the foreclosure action under Maryland Rule 14–211." *Thomas v. Nadel*, 427 Md. 441, 444 n.5 (2012). In this case, the circuit court treated Crawford's pre-sale filings as motions to dismiss pursuant to Md. Rule 14-211.

> A foreclosure sale is governed by Md. Code (1974, 1996 Repl. Vol. 1999 Supp.), § 7-105 of the Real Property Article, and the Maryland Rules. Maryland Rule 14-305(d) provides that if a party perceives an irregularity in the foreclosure sale, it may file exceptions to the sale of the property. The ratification of a foreclosure sale is, however, presumed to be valid. *Webster v. Archer*, 176 Md. 245, 253, 4 A.2d 434, 437-438 (1939). It is settled law that, "there is a presumption that the sale was fairly made, and that the antecedent proceedings, if regular on the face of the record, were adequate and proper, and the burden is upon one attacking the sale to prove the contrary." *Id*. The party excepting to the sale bears the burden of showing that the sale was invalid, and must show that any claimed errors caused prejudice. *Ten Hills Co. v. Ten Hills Corp*., 176 Md. 444, 449, 5 A.2d 830, 832 (1939). Additionally, "[i]n reviewing a court's ratification of a foreclosure sale, we will disturb the circuit court's findings of fact only when they are clearly erroneous." *Fagnani*, 190 Md. App. at 470, 988 A.2d at 1138 (relying on *Jones v. Rosenberg*, 178 Md. App. 54, 68-69, 940 A.2d 1109 (2008)). Further, "if a mortgagee or his assignee complies with the terms of the power of sale in the mortgage, and conducts the foreclosure sale properly, the court will not set aside the sale merely because it brings loss and hardship upon the mortgagor." *Bachrach v. Washington United Cooperative, Inc.*, 181 Md. 315, 324, 29 A.2d 822, 827 (1943).

Fagnani v. Fisher, 418 Md. 371, 383-84 (2011).

The timing for filing a motion to stay and dismiss is regulated by Md. Rule 14-211(a), which provides the following:

> (2) *Time for filing.*
>
> (A) Owner-Occupied Residential Property. In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

> (i) the date the final loss mitigation affidavit is filed;
>
> (ii) the date a motion to strike postfile mediation is granted; or
>
> (iii) if postfile mediation was requested and the request was not stricken, the first to occur of:
>
> (a) the date the postfile mediation was held;
>
> (b) the date the Office of Administrative Hearings files with the court a report stating that no postfile mediation was held; or
>
> (c) the expiration of 60 days after transmittal of the borrower's request for postfile mediation or, if the Office of Administrative Hearings extended the time to complete the postfile mediation, the expiration of the period of the extension.
>
> (B) Other Property. In an action to foreclose a lien on property, other than owner-occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14-209 shall be filed within 15 days after the moving party first became aware of the action.
>
> (C) Non-Compliance; Extension of Time. For good cause, the court may extend the time for filing the motion or excuse non-compliance.

In the present case, the Property was not owner-occupied. Accordingly, pursuant to Md. Rule 14-211(a)(2)(B), Crawford was required to file a pre-sale challenge no later than 15 days after service. The record reflects that service was effectuated on November 12, 2103. Crawford's first pre-sale challenge, in the form of a filing entitled "Motion for Summary Dismissal," was not filed until January 10, 2014. This was well outside the time

for filing set forth in Md. Rule 14-211. Furthermore, Crawford's motion failed to set forth any reason for the untimely filing. Because Crawford's pre-sale challenge was untimely filed, the circuit court's denial was appropriate. Crawford's further pre-sale challenges, which were filed on April 11, 2014 in the form of motions entitled "Emergency Motion for Temporary Restraining Order" and "Emergency Motion for Preliminary Injunction," were also untimely filed and were properly denied by the circuit court.

Turning our attention to the post-sale exceptions filed by Crawford, we are unpersuaded by Crawford's allegations of error by the circuit court. "After [a foreclosure] sale, the borrower is ordinarily limited to raising procedural irregularities in the conduct of the sale." *Thomas*, *supra*, 427 Md. at 442-43. Pursuant to Md. Rule 14-211, a borrower must raise issues relating to a lender's right to foreclose prior to the foreclosure sale through a motion to stay and dismiss rather than post-sale through the filing of exceptions. *Bates v. Cohn*, 417 Md. 309, 329 (2010).

In this case, the issues raised in Crawford's exceptions were largely unrelated to any irregularity with the foreclosure sale procedures, and were therefore properly denied by the trial court as improperly raised.[10] Various exceptions challenged the validity of the deed of trust, the validity of the assignment of the deed, the existence of a default, and the Substitute Trustees' authority to enforce the note. The only alleged irregularities with respect to the

[10] Crawford set forth twenty-nine exceptions to the foreclosure sale, the vast majority of which have been abandoned on appeal.

sale which were raised before the trial court were either factually rebutted or in direct contravention of established law.[11] Moreover, these arguments have been abandoned on appeal, so we need not address them here.

II. The Specific Issues Raised by Crawford on Appeal

In his brief, Crawford presents four separate arguments.[12] First, Crawford claims that he was deprived of due process when the circuit court ruled upon his motions without a hearing. Second, Crawford asserts that he is not a borrower under Maryland law and therefore cannot be foreclosed upon. Third, Crawford asserts that the circuit court erred by failing to take judicial notice of facts he argues are established by an unauthenticated printout purporting to be from a website operated by Federal National Mortgage Association. Fourth, Crawford claims that the appointment of the Substitute Trustees was

[11] For example, Crawford claimed that the Substitute Trustees "failed to provide notice as required by law to [Crawford] before [the] sale." To rebut this claim, the Substitute Trustees pointed to an affidavit of notice by mail prior to sale that had been filed with the court.

As another example, Crawford claimed that the bidding was chilled because the noteholder's bid was too high and exceeded the fair market value of the Property. The Substitute Trustees rebutted this claim by pointing to established case law. *See*, *e.g.*, *J. Ashley Corp. v. Burson*, 131 Md. App. 576, 586 (2000) ("A mortgagee is 'permitted to bid as freely and as fully as any other person desiring to purchase the property . . . .'") (quoting *Heighe v. Evans*, 164 Md. 259, 270 (1933)).

[12] The issues discussed in Crawford's brief are not set forth in the same manner as the questions presented. Certain issues referred to in Crawford's questions presented are not discussed in the argument section at all. We shall not discuss those issues.

defective for multiple reasons.[13] As we shall explain, certain of these issues are not properly before us, while others are unavailing on the merits.

A. Due Process

Crawford asserts that he was denied due process of law when the circuit court disposed of his various motions and filings without a hearing. We are unpersuaded.

Crawford conflates the opportunity to be heard with the right to an in-court hearing. To be sure, "[t]he due process requirements of notice and an opportunity to be heard have long been held to apply to . . . foreclosure proceedings." *Knapp v. Smethurst*, 139 Md. App. 676, 708 (2001). Due process, however, does not always require an in-court hearing; rather, it is a "flexible concept that calls for such procedural protection as a particular situation may demand." *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996). We have explained:

> Article 24 of Maryland's Declaration of Rights states: "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land." Just what process is due is determined by an analysis of the particular circumstances of the case, including the functions served and interests affected. *Techem Chemical Co. v. M/T Choyo Maru*, 416 F.Supp. 960, 968 (D. Md.1976). Due process, however, does not mean that a litigant need be satisfied with the result. *Bugg v. Maryland Transport. Auth.*, 31 Md.App. 622, 630, 358 A.2d 562 (1976), appeal dismissed, 429 U.S. 1082, 97 S.Ct. 1088, 51 L.Ed.2d 529 (1977). Neither does

[13] In Crawford's brief, this argument is set forth in section 4, "Unclean Hands and Equity," as well as in section 5, "Invalid Deed of Appointment of Substitute Trustees."

> it necessarily mean "judicial process." Indeed, it is sufficient if there is at some stage an opportunity to be heard suitable to the occasion and an opportunity for judicial review at least to ascertain whether the fundamental elements of due process have been met. *Burke v. Fidelity Trust Co.*, 202 Md. 178, 188, 96 A.2d 254 (1953). Moreover, with respect to legal issues, due process does not even necessarily require that parties be given an opportunity to present argument. *Blue Cross of Maryland, Inc. v. Franklin Square Hosp.*, 277 Md. 93, 103–04, 352 A.2d 798 (1976).

Wagner, *supra*, 109 Md. App. at 23-24 (footnote omitted).

As discussed *supra*, a mortgagor has three separate opportunities to challenge a foreclosure at various stages: by seeking a pre-sale injuction pursuant to Md. Rule 14-211, by filing post-sale exceptions to the ratification of the sale pursuant to Md. Rule 14-305(d), and by filing post-sale exceptions to the auditor's statement of account pursuant to Md. Rule 2-543(g). These various methods of challenging a foreclosure afford the borrower the opportunity to be heard and defend against the foreclosure at all stages. Indeed, Crawford availed himself of the opportunity to defend against the foreclosure through his multiple filings. Accordingly, we are persuaded that the opportunities for challenging of a foreclosure are "suitable to the occasion" and due process is satisfied. *Id.*

Furthermore, the circuit court did not err by declining to hold a hearing on any of Crawford's filings. Pursuant to Md. Rule 14-211(b)(1), the circuit court "shall deny the motion, **with or without a hearing**, if the court concludes from the record before it that the motion: (A) was not timely filed and does not show good cause for excusing

non-compliance with [the time requirements]; (B) does not substantially comply with the requirements of this Rule; or (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action." (Emphasis added.) The circuit court properly found that the various motions to stay and dismiss filed by Crawford were untimely and failed to state a valid defense. As such, the court was within its discretion to deny the motions without a hearing.

With respect to Crawford's exceptions, the circuit court similarly was not required to hold a hearing. Pursuant to Md. Rule 14-305, when determining whether to hold a hearing on exceptions, the circuit court "shall hold a hearing **if** a hearing is requested **and** the exceptions or any response clearly show a need to take evidence." (Emphasis added.) As we have explained:

> A hearing is by no means mandatory under Rule 14–305(d)(2), even if one of the parties requests it. Because this rule is written in conjunctive form, authorizing a proceeding "if a hearing is requested *and* the exceptions or any response clearly show a need to take evidence," it gives the court discretion. We hold that the court below did not abuse this discretion by declining to hold a hearing after finding . . . that [the appellant] had not established the necessity to take evidence.

Four Star Enterprises Ltd. P'ship v. Council of Unit Owners of Carousel Ctr. Condo., Inc., 132 Md. App. 551, 567 (2000).

In this case, the circuit court similarly did not abuse its discretion by declining to hold a hearing on Crawford's exceptions. The overwhelming majority of the exceptions raised

by Crawford did not relate to any irregularities with the sale and thus were not properly before the court. *See Thomas*, *supra*, 427 Md. at 442-43. Other exceptions -- such as Crawford's claims that bidding was chilled when the mortgagee was permitted to bid, and that the Trustee was not authorized to bid on behalf of the secured party -- were clearly contrary to established law. As such, no hearing was required because no evidence was needed. The only exception relating to alleged irregularities in the sale itself was based upon an alleged lack of notice. This claim was rebutted in the Substitute Trustee's opposition, which provided an additional affidavit and evidence that notice was mailed. Accordingly, the circuit court acted within its discretion by overruling Crawford's exceptions without a hearing.

B. Crawford's alleged borrower status

Crawford asserts that his name is "nowhere on the promissory note" and that he is "a not 'borrower' under Maryland law." This claim is not preserved for our review as it was not properly raised or decided by the trial court. Pursuant to Md. Rule 8-131(a), we will "not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." This is a challenge to the Substitute Trustees' authority to foreclose and not an alleged irregularity with the sale. As such, the issue was required to be raised in a timely motion to stay and dismiss pursuant to Md. Rule 14-211. It was not.[14]

[14] Crawford did attempt to raise this issue in his untimely motions to dismiss as well as in his exceptions.

Crawford cannot raise issues now which were never decided by the circuit court and could have only properly been argued in the context of a timely motion to stay and dismiss pursuant to Md. Rule 14-211.[15]

C. Judicial Notice

We are further unpersuaded by Crawford's assertion that the circuit court erred by failing to "take judicial notice that Federal National Mortgage Association does not own the loan on the [P]roperty" and that this Court should take judicial notice of the same.

Md. Rule 5-201 provides as follows:

> A judicially noticed fact must be **one not subject to reasonable dispute** in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources **whose accuracy cannot reasonably be questioned**.

[15] Furthermore, we observe that Crawford's assertion lacks merit. On November 4, 2005, along with the execution of the deed of trust, defendant Carrie H. Crawford executed a deed conveying the Property from herself as sole owner to herself and Crawford as tenants by the entireties. Both documents were recorded on December 15, 2005, with the deed recorded in the Land Records immediately prior to the deed of trust. By executing the deed of trust, Crawford encumbered his interest in the Property. Furthermore, even if Carrie Crawford were the sole owner of the Property when the note and deed of trust were executed, her execution of the note and deed of trust operated to encumber the entire Property. *See Kelly v. Nagle*, 150 Md. 125. 136 (1926) ("[A grantor can] convey no more or greater interest than he possessed."). Even if Crawford's interest in the Property was acquired after his execution of the deed of trust, the interest conveyed to him remained subject to the deed of trust, because Carrie Crawford was incapable of conveying an interest in the property free of the lien.

(Emphasis added.) The alleged fact for which Crawford asserts that judicial notice would be appropriate is contained on an unauthenticated printout purporting to be from a website operated by Federal National Mortgage Association. Crawford asks this Court to take judicial notice of the web site as well as its contents, which Crawford argues proves that Federal National Mortgage Association owns the note. This is not a fact for which judicial notice is appropriate, as the introduction of the web site print out would place the ownership of the note -- a foundational element of the foreclosure -- in dispute. *See id.* Furthermore, the authenticity of the web site printout and the accuracy of its contents can "reasonably be questioned." *Id.* Accordingly, the circuit court did not err by declining to take judicial notice of the purported web site print out and/or its contents, and we decline to do so in this appeal.[16]

D. Appointment of Substitute Trustees

Crawford's remaining arguments challenge the appointment of the Substitute Trustees, asserting that the deed of appointment of the Substitute Trustees "represents the unlicensed practice of law" and that "the documents submitted violate the clear law on

[16] Furthermore, we observe that the Substitute Trustees established ownership of the note by filing a copy of the note and an affidavit certifying ownership. *See* Md. Rule 14-207(b)(3) ("[A] complaint or order to docket shall include or be accompanied by . . . a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument . . . ."). To the extent Crawford sought to challenge the ownership of the note, he could not do so by asking the court to take judicial notice of unsubstantiated disputed facts.

agency." These arguments were not raised in Crawford's filings below, and were not ruled upon by the circuit court. Accordingly, this claim is not preserved for our review on appeal. *See* Md. Rule 8-131(a) ("[T]he appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.").[17]

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[17] Although we need not reach the merits, we note that the Substitute Trustees set forth a compelling argument on these issues in their brief, with respect to both factual and legal issues. Had the issues been raised before the trial court, we find it unlikely that Crawford would have prevailed.