DAWNTA HARRIS,	IN THE
Petitioner,	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2021
Respondent.	Petition Docket No. 254

ANSWER TO PETITION FOR A WRIT OF CERTIORARI

The State of Maryland, Respondent, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Andrew J. DiMiceli, Assistant Attorney General, in answer to the Petition for Writ of Certiorari filed herein, pursuant to Maryland Rule 8-303(d), states that the Petition should be denied, further review being neither necessary nor in the public interest. Md. Code Ann., Cts & Jud. Proc. § 12-203 (LexisNexis 2020 Repl. Vol.).

QUESTIONS PRESENTED

1. Did the Court of Special Appeals correctly hold that the felony murder doctrine was not derogated by the enactment of the manslaughter-by-vehicle statute?

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 adopts the facts set forth in *Dawnta Harris v. State*, __ Md. App. __, No. 1515, Sept. Term, 2021, slip op. at 2-16 (2021) (Cert. Pet. App. 28-42).

REASONS FOR DENYING THE PETITION

I.

THE COURT OF SPECIAL APPEALS CORRECTLY HELD THAT THE FELONY MURDER DOCTRINE WAS NOT DEROGATED BY THE MANSLAUGHTER BY VEHICLE STATUTE.

In 1941, the General Assembly codified a statute titled "manslaughter by automobile, motor vehicle, locomotive, engine, car, street car, train or other vehicle" ("manslaughter by vehicle statute"). 1941 Laws of Maryland, Ch. 414. The statute currently is codified as Section 2-209 of the Criminal Law Article of the Maryland Code and states, 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) (Westlaw thru 2021 legis. sess.).

In *State v. Gibson*, 4 Md. App. 236 (1968), the Court of Special Appeals held 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.

4 Md. App. at 239. This Court affirmed, issuing a short opinion adopting the reasoning of the Court of Special Appeals. *State v. Gibson*, 254 Md. 399, 401 (1969).

In one of two alternative holdings in *Blackwell v. State*, 34 Md. App. 547 (1977), the Court of Special Appeals held 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.

In this case, Harris argued, for the first time on appeal, that, like gross-criminal negligence manslaughter at issue in *Gibson* and depraved-heart second-degree murder at issue in *Blackwell*, the felony murder doctrine, which unlike the foregoing, looks to the intent to commit an underlying felony, was also derogated by the enactment of the manslaughter by vehicle statute whenever a homicide is committed with a vehicle. The Court of Special Appeals refused to extend the statutory preemption from the former offenses, based on criminal negligence of one degree or another, to felony murder. The court was correct because: (1) the statute indicates that the General Assembly intended the manslaughter by vehicle statute to occupy the field of "grossly negligent" homicide committed with a vehicle, which does not encompass felony murder, and, in the absence of clear legislative intent indicating otherwise, the statute should not be interpreted to derogate the common law; (2) Harris intended to run over Officer Amy Caprio, which removes this case from the scope of *Gibson*; and (3) the Court of Special Appeals correctly applied this Court's precedent to conclude that a defendant's intent to commit an underlying felony is transferred to, and stands in the place of, the

intent to kill, and so felony murder is not one of the "unintended homicides" contemplated by the *Gibson* court.

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

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.*

As the *Gibson* court noted, there is "no legislative history to which [a court could] turn to ascertain the exact reach of [the manslaughter by vehicle statute], or of the effect of that statute upon the common law felony of involuntary manslaughter." *Gibson*, 4 Md. App. at 245. Nevertheless, the language of the statute itself contains an express limitation that contradicts Harris's claim that felony murder was derogated by its enactment.

By its plain language, the manslaughter by vehicle statute intended to supplant *only* homicides committed by operating a

vehicle "in a grossly negligent manner." CR § 2-209(b); *see also Anderson v. State*, 61 Md. App. 436, 454 ("[T]he 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*." (emphasis added)), *cert. denied*, 303 Md. 295 (1985). Gross negligence is not an element of felony murder. This plainly stated legislative limitation leaves the culpability that arises from a killing in the course of a felony untouched. The General Assembly did not intend to occupy the field of felony murder in addition to the criminal negligence offenses.

Additionally, the rationale employed by the *Gibson* court to find preemption of common law manslaughter does not apply to felony murder. As indicated, there is a lack of legislative history that might explain the intended scope of the statute, so the *Gibson* court determined the scope of the statute by identifying incongruities in the law and reasoning that the legislature intended to abrogate common law offenses that "conflict with the statue." *Id.* at 246-47. Specifically, the manslaughter by vehicle

statute (then a misdemeanor)[1] conflicted with common law manslaughter (a felony) because the statute required the same or more proof than the common law offense, yet the former prescribed a lesser penalty than the latter. The *Gibson* court concluded that the legislature must have intended to abrogate common law manslaughter when committed with a vehicle because "a contrary conclusion [in *Gibson*] would have rendered [the manslaughter by vehicle statute] essentially nugatory" because "prosecutors would likely never use the statute" that required the same or greater degree of proof for a lesser penalty. *State v. North*, 356 Md. 308, 317 (1999).

The legislative intent gleaned by the court in *Gibson* does not apply to felony murder, which involves the commission of a separate felony and was designed to punish more serious conduct than the negligence crimes encompassed by the manslaughter by vehicle statue. In short, there is zero evidence (express or inferred) that the General Assembly intended to displace the common law

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[1] The manslaughter by vehicle statute originally was classified as a misdemeanor, but in 1997, it "was reclassified as a felony." *Sacchet v. Blan*, 353 Md. 87, 90 (1999) (citing Laws of Maryland, 1997, Chs. 372, 373).

felony murder doctrine and, in the absence of that intent, the Court of Special Appeals was correct to refuse to extend *Gibson* to felony murder.

B. *Gibson* preemption does not apply when there is evidence of intentional homicide.

The *Blackwell* court stated that, "[i]n the absence of *evidence* of intentional homicide, . . . statutory preemption applies[.]" 34 Md. App. at 555 (emphasis added)). Here, there was *evidence* of intentional homicide. (App. 44) ("[T]he 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."). Therefore, preemption would not apply even if an unintentional felony murder would be preempted under a different set of facts.

C. Review is unwarranted because the Court of Special Appeals properly applied this Court's precedent in rejecting Harris's preemption argument.

The Court of Special Appeals rejected Harris's preemption claim, holding that "[f]elony murder is not . . . within the scope of unintended homicides" because the defendant's intent to do the underlying felony replaces the intent to kill otherwise required for

a murder conviction. (App. 49). In doing so, the court properly applied this Court's precedent.

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 seizes upon the words, "an unintentional killing," while ignoring the surrounding language: "the *intent and the malice* to commit the underlying felony is *'transferred'* to *elevate* an unintentional killing to first degree murder." *Id.* (emphasis added). 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. *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.*

Watkins v. State, 357 Md. 258, 267 (2000) (emphasis added) (cleaned up); *see also Commonwealth v. Matchett*, 436 N.E.2d 400, 409-10 (Mass. 1982) ("[T]he felony-murder rule is based on the theory that the intent to commit the felony is equivalent to the malice aforethought required for murder."). In other words, an unintentional killing can become a first-degree murder because the intent to do the "death-producing act" is transferred from the underlying felony to the homicide offense. (App. 48-49) (quoting *Selby v. State*, 76 Md. App. 201, 210 (1988), *aff'd*, 319 Md. 174 (1990)).

Felony murder is not an "unintentional" homicide as contemplated in *Gibson* because the offender *intends* to commit an inherently dangerous felony, 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. The Court of Special Appeals therefore properly refused to extend the preemptive effect of the manslaughter by vehicle statute from fatality causing crimes

involving varying degrees of criminal negligence, to fatality causing crimes involving intent to commit a felony, in this case, a burglary.

Harris, however, argues that the concept of "malice" encompasses "'four distinct intents,'" namely: "(1) intent to kill murder; (2) intent to commit grievous harm murder; (3) felony murder; and (4) depraved heart murder." (Cert. Pet. at 5). He asserts that only a *specific intent to kill* can avoid *Gibson* preemption and, under the modern interpretation of "malice," the lesser three "intents" do not imply an intent to kill; they are only mental states that independently satisfy the *mens rea* for murder.

Harris conflates the words of *Gibson*—the "subject matter of unintended homicides"—with the *mens rea* of "specific intent to kill." The language of *Gibson*, however, does not support that interpretation.

Gibson stated that the manslaughter by vehicle statute "does not, of course, abrogate the crime of manslaughter in those cases where the killing was accomplished by intentionally running over the victim in an automobile." 4 Md. App. at 248 n.5. Notably, the court did not say "intent to kill"; it said "killing . . . by

intentionally running over the victim," which encompasses *mentes reae* other than a specific intent to kill. *Id.* (emphasis added). Indeed, if a specific intent to kill were necessary to avoid *Gibson* preemption, then a caveat for *manslaughters* perpetrated by intentionally running over the victim would be meaningless—that is, if the evidence established a specific intent to kill, then the defendant would be guilty of murder, not manslaughter.[2]

Harris's interpretation of *Gibson* also conflicts with the Court of Special Appeals' view regarding the scope of the manslaughter by vehicle statute. In *Anderson*, Judge Charles E. Moylan, Jr., writing for the court, stated that "the 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*

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[2] Harris's reliance on *Forbes v. State*, 324 Md. 335 (1991), is misplaced. There, 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 343. Thus, the jury's verdict indicated that Forbes did not intentionally run over his victim and was guilty only of being "grossly negligent," which is squarely preempted per *Gibson*. *Id.*

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." 61 Md. App. at 454 (emphasis added). Therefore, Harris is wrong that a specific intent to kill is the only *mens rea* that escapes *Gibson* preemption.

Here, the State established at trial that Harris: (a) intended to commit the underlying felony of first-degree burglary, the act that led to Officer Caprio's death; and (b) intended to run over Officer Caprio in an attempt to avoid being arrested. The Court of Special Appeals' holding that Harris's felony murder conviction was not preempted by the enactment of the manslaughter by vehicle statute was a faithful application of this Court's precedent.

II.

THE COURT OF SPECIAL APPEALS CORRECTLY HELD 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.

A. This Court's *Carter* decision is unambiguous and plainly controls here.

In *Carter v. State*, 461 Md. 295 (2018), this Court addressed whether the sentences imposed in the cases of three juvenile

offenders were lawful. One of those petitioners, Daniel Carter, was sentenced to life and was eligible for parole after serving 25 years (less diminution credits), instead of 15, because of a consecutive sentence for a handgun charge. *Id.* at 327. The Court concluded that Maryland's parole system provided him a meaningful opportunity for release and held that his sentence was lawful. *Id.* at 365. Notably, the Court stated that if Maryland's parole system did not offer 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 per *Miller* because his life *with* parole sentence 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). *See* Md. Code Ann., Corr. Servs. § 7-301(d)(1) (stating that, with exceptions not applicable here, "an inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served 15 years or the

equivalent of 15 years considering the allowances for diminution [credits]"). The result in *Carter* plainly controls here. No further explication of *Carter* by the Court is necessary.

Harris argues, however, that the Court "has never considered whether the Constitution requires" a *Miller*-type sentencing "before a juvenile convicted of an unintentional homicide can be sentenced to life imprisonment" with parole. (Cert. Pet. at 10) (cleaned up). But the recent Eighth Amendment jurisprudence of the Supreme Court of the United States has never intimated that the constitutionality of a juvenile's sentence might depend on whether the killing was intentional where a juvenile is sentenced to life *with* parole.

Indeed, Kuntrell Jackson, one of the juvenile petitioners in *Miller*, was convicted of felony murder for a homicide committed by an accomplice. *Miller*, 567 U.S. at 465-66. The Supreme Court could have held that a sentencing in which the court considers the offender's youth and attendant circumstances is always mandatory for felony murder homicides not directly committed by the juvenile offender, but it required such a sentencing only when the juvenile is sentenced to life and deprived of a meaningful

opportunity for parole. *Id.* at 478; *see also id.* at 490-92 (Breyer, J., concurring) (arguing that life *without* the possibility of parole is a categorically inappropriate sentence for a juvenile "who neither kills nor intends to kill" and is convicted under a theory of transferred intent).

Here, Harris killed Officer Caprio by intentionally driving a vehicle over her, that is, Officer Caprio's death was a direct and foreseeable result of Harris's actions. He was appropriately sentenced to life *with* the possibility of parole, and so he has been afforded a meaningful opportunity for release. No reasonable reading of *Miller* and its progeny, state and federal, entitles Harris to a *Miller*-type sentencing procedure, and so review is unwarranted.

B. The Court should leave sentencing policy to the legislature.

Harris complains that "Maryland law provides no guidance for how a sentencing judge should exercise its discretion to suspend any portion of that life sentence for a juvenile convicted of an unintentional killing." (Cert. Pet. at 11). He points out that Florida has a statute that requires a sentencing court to consider

aspects of a defendant's youth when sentencing a juvenile offender for felony murder. (Cert. Pet. at 11). Maryland law does not lack "guidance"; Harris is simply lobbying for more stringent procedures for juvenile sentencing in homicide cases. Whether Maryland *should* adopt such procedures is a policy matter for the legislature to weigh and is a separate question from whether constitutional law *compels* courts to employ such procedures.

That the legislatures of other states have chosen to modify their criminal statutes governing juvenile sentences does not mean that Maryland's laws are *unconstitutional*. Harris asserts that the General Assembly "has remained silent" and invites this Court to legislate on its behalf. (Cert. Pet. at 12). This Court should decline to do so.

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

The Court of Special Appeals concluded in the alternative that Harris effectively received a *Miller*-type sentencing proceeding because his "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." (App. 67). This was constitutionally sufficient under *Jones v. Mississippi*, 141 S. Ct. 1307, 1313 (2021) ("In a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient."); *see also id.* at 1319 ("[I]f 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. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant's youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.").

Harris simply disagrees with the Court of Special Appeals' factual assessment. (Cert. Pet. at 15). In short, even if Harris's were entitled to a *Miller*-type sentencing, this Court ultimately would be relegated to resolving a factual dispute and engaging in error correction.

D. This case would not assist in resolving *Jedlicka*.

The petitioner in *Jedlicka* was sentenced to life, all but 60 years' suspended and, because the State unsuccessfully sought a sentence of life without parole, Jedlicka will be eligible for parole after serving 25 years. Jedlicka is now raising issues related to those unique aspects of his sentence.

As discussed, Harris received a basic life sentence *with* parole eligibility after 15 years, which plainly does not require an individualized sentencing per *Carter*. To the extent that Jedlicka's "stacked" term-of-years sentences or his parole eligibility being at 25 years raise novel complications, Harris's case offers no insight or variety to enrich the Court's resolution of those matters.

CONCLUSION

The State of Maryland respectfully asks the Court to deny the petition for a writ of certiorari.

Dated: September 28, 2021

Respectfully submitted,

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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 3,515 words.

/s/ Andrew J. DiMiceli

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CERTIFICATE OF SERVICE

In accordance with Maryland Rule 20-201(g), I certify that on this day, September 28, 2021, I electronically filed the foregoing "Answer to Petition for a Writ of Certiorari" 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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