September Term, 2021
No. 45

IN THE
COURT OF APPEALS OF MARYLAND

DAWNTA HARRIS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

OPENING BRIEF OF PETITIONER

REDACTED

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STATEMENT OF THE CASE

This is an appeal from the conviction of the Petitioner, Dawnta Harris, ("Harris"), for first-degree felony murder, first-degree burglary, and theft greater than $1,500 but less than $25,000, in the Circuit Court for Baltimore County, Maryland, Case No. 03-K-18-002254.

On May 30, 2018, Harris was indicted in a nineteen-count indictment, and charged, *inter alia*, with first-degree murder, first-degree burglary of 3 Linwen Way, first-degree burglary of 9610 Northwind Road, fourth-degree burglary of 7909 Ardmore Avenue, and theft of a Jeep having a value of at least $1,500 but less than $25,000.

On April 22, 2019, a jury trial began before the Honorable Jan M. Alexander in the Circuit Court for Baltimore County.

At the conclusion of the State's case, the State entered every count *nolle prosequi* except for the murder, burglary, and theft charges. The State submitted the murder count on the sole theory of felony murder, and the burglary charges were submitted with an accomplice liability instruction.

On May 1, 2019, the jury returned verdicts of guilty to first-degree felony murder, first-degree burglary of 3 Linwen Way, and theft of the Jeep. The jury returned verdicts of not guilty to first-degree burglary of 9610 Northwind Road and fourth-degree burglary of 7909 Ardmore Avenue.

On August 21, 2019, Harris was sentenced to life imprisonment with the possibility of parole for first-degree felony murder, twenty years for first-degree burglary, and five years for theft, all concurrent.

Harris timely noted an appeal.

On July 28, 2021, the Court of Special Appeals issued a reported opinion in *Dawnta Harris v. State*, No. 1515, Sept. Term, 2019, affirming the conviction and sentence. The court's mandate issued on August 30, 2021.

On September 14, 2021, Harris filed a petition for writ of certiorari to this Court.

On November 11, 2021, this Court granted both of Harris's questions presented.

STATEMENT OF FACTS

On May 21, 2018, four teenage boys, Harris a/k/a "Tay", Darrell Ward ("Ward") a/k/a "Rel", Derrick Matthews ("Matthews") a/k/a "Nute", and Eugene Genius ("Genius") a/k/a "Doobie," skipped class in Baltimore City and drove a stolen black Jeep Wrangler into Baltimore County to commit burglaries.

A. The Burglaries

1. 7909 Ardmore Avenue, Parkville, Maryland

Around 12:30 p.m., Kenneth Chambers ("Chambers") noticed a black Jeep pull in front of 7909 Ardmore Avenue. There were four people in the vehicle. One person exited and took a package from the porch. (E. 144-47).

Chambers contacted the homeowner, Constantine Hagepanos, who reviewed home surveillance which showed a suspect wearing a white shirt, a black jacket, and blue jeans. At trial, this person was identified as Genius. (E. 148).

2. 9610 Northwind Road, Parkville, Maryland

Around 1:30 p.m., Donald Williams ("Williams") noticed a dark Jeep pull outside of 9610 Northwind Road. Williams observed a black male wearing an orange shirt standing outside of the vehicle. (E. 141-43).

This residence belonged to Patricia Smith ("Smith"). Upon Smith's arrival home at 4:00 p.m., she discovered that her home had been burglarized and several items had been taken.

3. 3 Linwen Way, Nottingham, Maryland

Around 2:00 p.m., Kirsten Roller ("Roller") noticed a black Jeep and a person wearing a black t-shirt standing in front of the door of 3 Linwen Way. (E. 81, 83).

The Jeep's trunk opened and two people jumped out, one wearing an orange sweatshirt and one wearing a white t-shirt. (E. 84-85). Roller called 911 and reported that "these kids" jumped out of the back of a Jeep and walked to the back of the house. (E. 86).

Roller testified that the three males entered her neighbor's home and the driver of the Jeep stayed in the vehicle and did not enter the home. (E. 110, 117).

B. The Arrival of Officer Amy Caprio

Roller saw a police officer arrive on scene and begin to chase the Jeep down the street. (E. 94). The Jeep turned around and drove back to the cul-de-sac where Roller lived. (E. 97). The officer followed in pursuit. (E. 97).

The officer parked her car and stepped out. (E. 97, 115). The Jeep turned around at the cul-de-sac, and approached the officer. (E. 108, 116). The officer stepped into the path of the Jeep, yelling "stop. Get out of the fucking car. Stop the fucking car." (E. 108, 110).

The Jeep stopped and the driver's door opened. (E. 97). It appeared as though the driver of the Jeep was about to get out of the vehicle, (E. 109), but then the Jeep's door shut and Roller heard a gunshot. (E. 97). After the gunshot, the Jeep took off and the officer fell onto the ground. (E. 97, 107, 114).

Roller went outside and saw blood coming from the officer's head, and tire tracks on her legs. (E. 105, 111-12). The officer would later be identified as Officer Amy Caprio of the Baltimore County Police Department.

Officer Caprio was taken to a hospital where she was pronounced dead. Officer Caprio's body-worn camera was recovered. (E. 149). The entire pursuit, as well as her tragic death, were captured on her body-worn camera which was played at trial. (E. 105-51) (State's Exhibit 75).

The footage from Officer Caprio's camera showed that Officer Caprio had her firearm pointed directly at the driver of the Jeep. *See* State's Exhibit 27M. (E. 304). Officer Caprio then moved to the left side of the Jeep, behind her police cruiser, and was not standing directly in the path of the Jeep. *See* State's Exhibits 27N-S. (E. 305-10).

The footage shows the driver's door open slightly, whereupon Officer Caprio stepped in front of the Jeep and placed her hand on the Jeep. The driver's door then closed. *See* State's Exhibits 27S-T. When the driver's door closed, Officer Caprio fired her weapon into the windshield at the driver and the jeep drove away striking her. *See* State's Exhibits 27U and 10E-F. (E. 240, 312, 326-27).

C. The Investigation into Harris.

Christopher Squires ("Squires") of 9514 Dawnvale Road in Nottingham was sitting on his patio around 2:00 p.m. when he observed a black Jeep Wrangler drive quickly down his street and park behind a neighbor's vehicle. (E. 123-24). The back window of the Jeep was broken out and the front windshield had a "bullet hole" in it. *See* State's Exhibits 10A-F. (E. 124, 127, 322-27). A man exited the vehicle and Squires called 911, describing the man as black, thin, wearing brown pants and a black sweatshirt. (E. 127).

Baltimore County Police Officer Michael Deremiek responded to Linwen Way around 2:20 p.m. As he was traveling towards Linwen Way he observed a black teenager casually walking in the same direction. Officer Deremiek received information that a black male parked a black Jeep Wrangler in a nearby court so Officer Deremiek stopped the subject. Officer Deremiek approached the subject who was identified as Harris.

Police brought Squires to this scene and Squires identified Harris as the person he saw driving the Jeep. (E. 135-37). Harris was subsequently arrested.

Detective Alvin Barton of the Homicide Unit of the Baltimore County Police Department performed a custodial interrogation of Harris. Harris was sixteen years and four months old on May 21, 2018. (E. 168). Harris was in the 9th grade, attending the Francis Wood School in Baltimore City and living with his mother and little sister in the projects of Baltimore. (E. 168-69, 175).

Initially Harris provided inaccurate information to the police, but he eventually disclosed what had occurred, and turned over the key to the Jeep.

The morning began after Harris had spent the night at Ward's house. (E. 180). Harris left Ward's house with another teenager, and while on the way to school, Ward pulled up alongside Harris in the Jeep and told Harris that he and Genius were going to meet up. (E. 187). Harris suspected that they were going to "pull[] shit off" and told Ward to "get out of there." (E. 187).

Ward drove off, but then stopped the Jeep further down the road, "waiting" for Harris to pass by. (E. 187-88). Ward continued to pursue Harris, asking him "to get in" the Jeep. (E. 188).

Harris kept walking to a bus stop and saw Ward turn the corner, trying to follow him. (E. 190). Harris got on the bus and went to school. When he got off the bus at school, Ward was there waiting in the Jeep. (E. 190). Harris got back on the bus and headed to his sister's house to try to get a phone number for his father. (E. 192-93).

His sister was not home, but as he was leaving her house, he again saw Ward following him in the Jeep. This time Genius was in the Jeep as well. (E. 193). Ward parked and asked Harris to get in. (E. 193). Harris "was skeptical of getting in" but he eventually acquiesced even though he "did not feel comfortable." (E. 193-94).

Ward then drove Harris and Genius to a gas station. Ward and Genius entered the gas station, and returned with Matthews, who Harris did not know. (E. 198).

Matthews then got in the driver's seat and drove the Jeep to a neighborhood in Baltimore County. (E. 201). The Jeep stopped at two different neighborhoods first. (E. 205-07). Harris never entered the first two homes, nor did he remove any property. (E. 206).

The Jeep then drove to Linwen Way where Genius and Matthews exited the vehicle, Ward got into the passenger seat, and Harris remained in the back seat. (E. 214-16).

Harris said to Ward, "Let's go back this time, because I don't feel safe around here." (E. 216). Ward exited the Jeep and Harris moved over to the driver's seat to turn off the engine. (E. 220).

At that time, a Baltimore County police car arrived and pulled alongside the Jeep. (E. 221). Harris started the Jeep and pulled off, but soon returned to the cul-de-sac. (E. 221, 223). The police car followed him, ultimately parking her car at the entry of the cul-de-sac. (E. 223-25).

Harris saw the officer exit her vehicle and point her gun towards the Jeep. (E. 226). He explained that he "had seen a gun that was pointed directly at [him]" so he put his head down, gripped the steering wheel, and was getting even "scareder." (E. 228). Harris recalled, "[o]nce I see the gun, I had put my head down and closed my eyes," "asking myself, what should I do?" (E. 230-31).

Harris heard the officer yell, "get out of the car," but he was "too scared to get out" so he closed the door after briefly opening it. (E. 226). Then Harris heard Officer Caprio fire her gun. Harris thought he had been shot. (E. 178). Harris told the police that when the gunshot happened his eyes were closed. (E. 178). Glass from the windshield landed in Harris's hair. (E. 179). Harris kept his eyes shut and ducked his head.

Harris began driving because he "didn't want to be in there...[he] didn't feel safe there." (E. 178). Harris "just wanted to go home." (E. 177).

Harris pulled straight off and did not know that he hit Officer Caprio. (E. 229). Harris knew that the officer had been standing alongside of the Jeep, but he did not know that she stepped in front of it, or that he hit her. (E. 227-29). Harris was too scared to look because he "didn't know if [he] was gonna get shot or not" (E. 229). Harris never wanted anything bad to happen to Officer Caprio. (E. 176).

D. Cause of Death of Officer Caprio

Assistant Medical Examiner Melissa Brassell, M.D. performed an autopsy on Officer Caprio which revealed that she suffered blunt force trauma. (E. 154-61). Dr. Brassell testified that the injuries were consistent with Officer Caprio having been run over by a motor vehicle. (E. 159). The cause of death was multiple injuries and the manner of death was homicide. (E. 163-64).

E. The Verdict and the Sentence

The only theory of murder pursued at trial was felony murder. The State never submitted the case on the theory of intent to kill murder. As to the burglary charges, the jury was instructed that they could find Harris guilty under an accomplice liability theory. (E. 271).

The jury returned verdicts of guilty to first-degree felony murder, first-degree burglary of 3 Linwen Way, and theft of the Jeep. (E. 293). The jury returned verdicts of not guilty to first-degree burglary of 9610 Northwind Road and fourth-degree burglary of 7909 Ardmore Avenue. (E. 293).

The court sentenced Harris to life imprisonment for felony murder, twenty years for burglary, concurrent, and five years for theft, concurrent. (E. 399).

F. The Court of Special Appeals Opinion

Harris appealed, challenging both his conviction for an unintended homicide committed by motor vehicle, and the constitutionality of his sentence.

The Court of Special Appeals determined that felony murder "is not an unintended homicide," because as a murder, it "must be committed with malice," and as such, it is not "within the scope of unintended homicides." (E. 47-48). The court also concluded that even though the jury was not asked to specify whether it found an unintentional homicide, "the facts would have permitted a finding, that [Harris] intended to run over Officer Caprio[.]" (E. 48).

The Court of Special Appeals determined that Harris's life sentence was not "grossly disproportionate" based upon the seriousness of the offense and the General Assembly's classification of felony murder as a first-degree murder. (E. 67-68). The court also determined that because Petitioner's "youth was presented to the court for consideration in the presentence investigation report [ ] and by defense counsel," Petitioner's "contention that his sentence is unconstitutional because he did not receive an individualized sentencing hearing is without merit." (E. 66).

STATEMENT OF QUESTIONS PRESENTED

1. As a matter of first impression, is a common law felony murder an unintended homicide that, if perpetrated by the operation of a motor vehicle, has been preempted by the manslaughter by vehicle statute, thereby precluding the common law offense from serving as a basis for a crime in Maryland?

2. Did the Court of Special Appeals err in holding that a juvenile offender who is convicted of felony murder, and who is sentenced to a term of life imprisonment with the possibility of parole, is not 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?

ARGUMENTS

I. Common law felony murder is an unintended homicide that, if perpetrated by the operation of a motor vehicle, has been preempted by the manslaughter by vehicle statute, thereby precluding the common law offense from serving as a basis for a crime in Maryland.

For the last 53 years, Chief Judge Murphy's holding in *State v. Gibson*, 4 Md. App. 236 (1968), that the "entire subject matter - unintended homicides resulting from the operation of a motor vehicle," was preempted by the enactment of the manslaughter by automobile statute, has remained good law and has been undisturbed by the General Assembly, despite various re-enactments and amendments to the statute.

This holding has remained good law, acquiesced to by the General Assembly, even when the court applied it to a common law second-degree murder which contains the element of malice. *See Blackwell v. State*, 34 Md. App. 547, *cert. denied*, 280 Md. 728 (1977).

It has also long been recognized that the common law offense of felony murder is an "an unintentional killing." *See Christian v. State*, 405 Md. 306, 332 (2008) (citing *State v. Allen*, 387 Md. 389, 401 (2005)).

Despite this history, and contrary to its own precedence in *Blackwell*, the Court of Special Appeals held that a homicide committed "with malice" is not "within the scope of unintended homicides." (E. 47-48).

The Court of Special Appeals did something else that was unprecedented. It determined as an appellate court, rather than as the trier-of-fact, that there existed the requisite "intent" necessary to find an intended homicide, even though the jury was never asked to decide, or to specify, whether Harris had an intent to kill Officer Caprio. (E. 48).

This finding by the intermediate court runs afoul of federal and state constitutional protections of the right to a trial by jury which includes "the nondelegable and nonremovable responsibility of the jury to decide the facts." *State v. Allen*, 423 Md. 208, 221 (2011). "It is well settled that '[w]here intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the [trier of fact].'" *Thornton v. State*, 397 Md. 704, 714 (2007) (citing *Morissette v. United States*, 342 U.S. 246, 274 (1952)).

The intent to kill became an ingredient of common law felony murder when perpetrated by a motor vehicle, because without such intent, the offense has been preempted by the manslaughter by vehicle statute.

A. Standard of Review

In *Forbes v. State*, 324 Md. 335, 343 n. 4 (1991), this Court expressly said that the issue of whether one who unintentionally causes a death by motor vehicle may be convicted of common law homicide in light of the manslaughter by vehicle statute, is an issue that "may even be raised for the first time at the appellate level." (Internal citations omitted).

Moreover, "a challenge to the trial court's subject matter jurisdiction may be raised on appeal even if not raised in or decided by the trial court" because "a court may not validly enter a conviction on a charge that does not constitute a crime and [ ] the deficiency in any such judgment is jurisdictional in nature." *Lane v. State*, 348 Md. 272, 278 (1997); Maryland Rule 8-131(a).

Furthermore, if the conduct has been preempted, then Harris was given an illegal sentence which may be reviewed by this Court at this time. *See Roary v. State*, 385 Md. 217, 225-26 (2005); *accord Fisher v. State*, 367 Md. 218, 239-40 (2011).

B. The entire subject matter of common law unintended homicides resulting from the operation of a motor vehicle has been preempted by statute.

1. <u>The Manslaughter by Vehicle Statute.</u>

The Maryland General Assembly enacted Section 388 of Chapter 414 of the Acts of 1941, a misdemeanor manslaughter by automobile statute, which the *Gibson* Court set forth as follows:

> Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, motorboat, locomotive, engine, car, streetcar, train or other vehicle in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile,[']…and the person so convicted shall be sentenced to jail or the house of correction for not more than three years[.]

Gibson, 4 Md. App. at 239-40 (citing MD. ANN. CODE art. 27, § 388 (1967 Repl. Vol.)).

That statute has since been recodified as Criminal Law § 2-209 of the Annotated Code of Maryland and is now called "Manslaughter by vehicle or vessel." The statute prohibits the following:

> 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 § 2-209(b) (West 2002, c. 26). (App. 11).

The statute is now a felony carrying up to ten years' imprisonment for a first-time offender. C.L. § 2-209(d)(1). However, the legislative notes explicitly say that "[t]his section is new language derived without substantive change from former Art. 27, § 388." *See* Revisor's Note to C.L. § 2-209 (Acts 2002, c. 26). (App. 12).

The courts have previously determined that "[t]here is no legislative history to which [the Court] may turn to ascertain the exact reach of [the manslaughter by vehicle statute], or the effect of that statute upon the common law felony of involuntary manslaughter." *Gibson*, 4 Md. App. at 245.

However, that did not stop previous courts from concluding that that the General Assembly intended to derogate common law manslaughter when committed by motor vehicle, and the "entire subject matter-unintended homicides resulting from the operation of motor vehicle." *Id*. at 246; s*ee also Gibson*, 254 Md. at 399.

2. *State v. Gibson*: Preemption of Common Law Involuntary Manslaughter When Committed with a Motor Vehicle.

In *State v. Gibson*, 254 Md. 399 (1969), this Court affirmed the opinion by Chief Judge Murphy of the Court of Special Appeals, determining that a violation of the common law offense of misdemeanor manslaughter by the operation of a motor vehicle was no longer applicable, having been repealed by Maryland's manslaughter by automobile statute.

Gibson was charged with four counts of common law misdemeanor-manslaughter and one count of violating the manslaughter by automobile statute. The *Gibson* Court gave due consideration to common law involuntary manslaughter convictions that were based upon a death occurring "in the course of committing a crime" and while doing something "in its nature dangerous to life" even when there is no intent to kill. *Id*. at 243.

It was "against this background" that the *Gibson* Court examined whether the common law offenses could be returned against Gibson, when considered in light of the manslaughter by automobile statute. *Id*. at 243-44.

Even though misdemeanor-manslaughter did not require a finding of "gross negligence" and even though it was a ten year felony offense, the *Gibson* Court still determined that the Legislature's enactment of Section 388, which at that time was a three year misdemeanor and required gross negligence, "intended to treat all unintended homicides thereby resulting in the same way, without regard to whether the homicide occurred in the course of doing a lawful or an unlawful act, or whether such act was malum in se or merely malum prohibitum." *Id*. at 246.

Thus, the Court of Special Appeals held that:

> [I]n enacting Section 388, the Legislature 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.

Id. at 247.

3. *Blackwell v. State*: Preemption of Common Law Depraved-Heart Murder When Committed with a Motor Vehicle.

In *Blackwell v. State*, the Court of Special Appeals extended the rationale of *Gibson* to the charge of second-degree murder of the depraved-heart murder variety, holding that "in the absence of express intent, defendant could not be convicted of homicide as a result of the operation of his motor vehicle in a manner leading to death" because by enacting Section 388, "the legislature intended to preempt the subject matter of unintended homicides resulting from the operation of a motor vehicle." *Blackwell v. State*, 34 Md. App. 547, 554 (1977).

The *Blackwell* Court found that "the 'careful and thorough' language we used [in *Gibson*] did not restrict the statutory preemption to common law manslaughter, but specifically applied our ruling to encompass all 'unintended homicides.'" *Id*. at 555. Thus, "the Legislature intended to deal with an entire subject matter-unintended homicides resulting from the operation of a motor vehicle." *Id*. (internal citation omitted). Therefore, "[i]n the absence of evidence of intentional homicide," the *Blackwell* Court held "that the statutory preemption applies as well to second degree murder as it did in Gibson to manslaughter." *Id*.

4. Like Involuntary Manslaughter and Depraved-Heart Second-Degree Murder, Felony Murder is a Common Law Unintentional Homicide that Does Not Require an Intent to Kill, and therefore, is Preempted by the Statute.

Felony murder remains a common law offense. *Evans v. State*, 28 Md. App. 640, 686 n. 23 (1975), *aff'd*, 278 Md. 197 (1976). The felony murder rule "elevate[s] an unintentional killing to first degree murder" by transferring the intent and malice from the underlying felony. *Allen*, 387 Md. at 401.

Felony-murder only requires "the general intent to do the death-producing act in the course of the commission" of a felony. *Selby v. State*, 76 Md. App. 201, 209-10 (1988), *aff'd*, 319 Md. 174 (1990). For felony-murder "the death of the victim is not only unintended but sometimes not even reasonably foreseen" and "[a] felony-murder has no necessary specific intent that harm should come to a victim, let alone that a victim should die." 76 Md. App. at 212.

It is precisely because "intent to kill" is not an element of felony murder, that the preemption recognized in *Gibson* and *Blackwell* applies to felony murder. Indeed, this Court has classified felony murder as "an unintentional killing." *Christian v. State*, 405 Md. 306, 332 (2008) (citing *Allen*, 387 Md. at 401).

The application of this principle is straightforward. Even the Court of Special Appeals had to concede that "intent to kill is not a required element of felony murder," and that Maryland courts have "found preemption in situations involving 'unintended homicides resulting from the operation of a motor vehicle.'" (E. 47) (internal citations omitted).

C. The Court of Special Appeals attempted to save the conviction by creating an exemption to preemption that contravened its own prior precedent.

The Court of Special Appeals improperly reasoned that felony murder "is not an unintended homicide," because as a murder, it "must be committed with malice, a mental state that includes an intent to do the 'death-producing act in the course of the commission, or attempted commission, of a felony.'" (E. 47-48) (citing *Selby*, 76 Md. App. at 210). It held, "[f]elony murder is not, therefore, within the scope of unintended homicides." (E. 48).

The Court of Special Appeals erroneously equated "malice" of any type with the requirement of "intent to kill." While malice is a necessary component of murder, malice is defined by "four distinct intents" including: (1) intent to kill murder; (2) intent to commit grievous harm murder; (3) felony murder; and (4) depraved heart murder. Charles E. Moylan, Jr., *Criminal Homicide Law*, § 2.15, p. 38 (2002).

"The original legal fiction," like the one employed by the Court of Special Appeals, "was that any of the latter three states of mind 'implied' the former." *Id*. However, it is now "recognize[d] that each of these four intents is… an autonomous murderous *mens rea* in its own right and no mere evidentiary avenue to its senior sibling [intent to kill]." *Id*. at 38-39.

Therefore, "intent to kill" is the test for determining whether a homicide is unintended. *Forbes*, 324 Md. at 343.

The intermediate court's newfound "malice" exemption contravenes *Blackwell*. The *Blackwell* Court extended preemption to depraved-heart murder noting in its very opinion

that "[m]alice is the indispensable ingredient of murder; by its presence, homicide is murder; in its absence, homicide is manslaughter." 34 Md. App. at 552 (internal citation omitted).

Never since *Blackwell* has the Legislature acted to make malice an exemption to preemption of all common law unintended homicides committed by a motor vehicle.

D. Where the State did not ask the jury to find an intentional homicide beyond a reasonable doubt, the intermediate court violated Harris's constitutional rights by making an appellate finding that the evidence could have permitted such a fact.

1. The United States and Maryland Constitutions guarantee that a criminal defendant has the right to have a jury decide all facts that are necessary to sustain a conviction.

The United States Constitution provides that "[n]o person shall…be deprived of life, liberty, or property, without due process of law[.]" U.S. CONST. amend. V. (App. 1). The U.S. Constitution also provides that in "all criminal prosecutions, the accused shall enjoy the right a speedy and public trial, by an impartial jury[.]" U.S. CONST. amend. VI. (App. 2). These rights have been extended to the States through the Fourteenth Amendment. U.S. CONST. amend. XIV. (App. 4).

Similarly, the Maryland Declaration of Rights provides "[t]hat in all criminal prosecutions, every man hath a right…to a speedy trial by an impartial jury, without whose unanimous consent he ought not be found guilty." MD. CONST. DECL. OF RTS. art. 21. (App. 7). Moreover, "[i]n the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact[.] MD. CONST. DECL. OF RTS. art. 23. (App. 8). Lastly, "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." MD. CONST. DECL. OF RTS. art. 24. (App. 9).

This Court has previously determined that the trier-of-fact establishes the facts, not appellate courts. That constitutional right to a trial by jury includes "the nondelegable and nonremovable responsibility of the jury to decide the facts." *Allen*, 423 Md. at 221 (internal citation omitted). It is "the jury alone who discharges the entirety of this duty[.]" *Ibid.*

"It is well settled that '[w]here intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the [trier of fact].'" *Thornton v. State*, 397 Md. 704, 714 (2007) (citing *Morissette v. United States*, 342 U.S. 246, 274 (1952)). "'[T]he question of intent can never be ruled as a question of law, but must always be submitted to the [trier of fact].'" *Ibid.* "No presumption of intent may be raised by law from an act." *Thornton*, 397 Md. at 714.

While 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 by the commission of a motor vehicle. Otherwise, the offense would not exist because a common law unintended homicide perpetrated by a motor vehicle has been preempted by the manslaughter by vehicle statute.

Thus, if intent to kill is a fact necessary to sustain this conviction, which it is, then that fact should have found by the jury beyond a reasonable doubt. The constitutionally-based functions of the jury would be undermined by allowing the prosecution to establish facts on appeal that the jury was not asked to determine.

2. The Court of Special Appeals violated Harris's constitutional rights by determining facts that were not determined by the jury.

The Court of Special Appeals determined:

> [A]lthough [Harris] argues that the killing here was unintentional, the jury in this case was not asked to, and it did not specify, whether it found an unintentional homicide. 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.

(E. 48) (emphasis added).

This Court has previously rejected an argument that an appellate court's determination that the facts *could have* or *would have* permitted a finding of intent to kill could exempt the common law homicide from preemption.

In *Forbes v. State*, Forbes was charged with murder in a single count indictment, just as Harris was. The State presented evidence that Forbes intended to kill the victim. 324 Md. at 337-38. The defense presented evidence that Forbes did not intend to kill the victim.

The circuit court instructed the jury on first degree murder, second degree murder, voluntary manslaughter and involuntary manslaughter. *Id*. at 338. The jury acquitted Forbes of the first three intent to kill charges, but convicted him involuntary manslaughter.

On appeal, this Court determined that the manslaughter by automobile statute preempted the conduct found by the jury to exist: namely causing a death by driving a vehicle in a grossly negligent manner "but without an intent to kill." *Id*.

The State sought to distinguish the facts from *Gibson* by emphasizing that the State's evidence indicated that Forbes used his vehicle as a "weapon" and that he

intentionally drove his automobile at the victim. *Id*. at 343. The *Forbes* Court rejected that argument.

Importantly, the *Forbes* Court actually found that "[t]he State's evidence was fully sufficient to have convicted the defendant of murder or voluntary manslaughter." *Id*. at 343, n. 4. However, that finding was of no consequence. What mattered was that the jury did not find that the defendant intended to kill the victim. *Id*. at 343.

Similar to *Forbes*, it does not matter that an appellate court *could* find that "the facts would have permitted a finding, that [Harris] intended to run over Officer Caprio[.]" (E. 48). *Accord Sequeira v. State*, 250 Md. App. 161, 191 (2021) ("It did not matter that the jurors could have found that Hallowell had committed the uncharged felony of first-degree assault[.]").

What matters is that the jury did not make a finding that the Harris intended to kill Officer Caprio. *See also Blackwell*, 34 Md. App. at 556 ("[I]n 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.").

The State had its chance to submit both intent to kill and felony murder to the jury for the jury to determine whether Harris possessed an intent to kill Officer Caprio.

Alternatively, the State had the chance to submit a special verdict question to the jury asking them to find intent to kill. *Accord Rogers v. State*, 468 Md. 1, 44 (2020), *cert. denied*, 141 S. Ct. 1052 (2021) ("In the event of a jury trial, where the State seeks to have the defendant ordered to register as a Tier II sex offender…and the age of the victim is not

an element of the offense, determination of the victim's age beyond a reasonable doubt could be achieved by a special verdict question submitted to the jury.").

The State did not do either.

An appellate court cannot make a finding of fact regarding Harris's intent which serves as the linchpin for determining whether a common law homicide perpetrated by a motor vehicle remains a viable common law offense, or instead, has been preempted by the manslaughter by vehicle statute.

E. Stare Decisis and Legislative Acquiescence Support this Court's Finding that the Entire Matter of Common Law Unintended Homicides Resulting from the Operation of a Motor Vehicle were Preempted by Statute.

The *Forbes* Court noted that the manslaughter by vehicle statute "ha[s] been reenacted with amendments on five occasions since it was interpreted in the *Gibson* case, and the General Assembly has not changed the statute so as to modify the *Gibson* interpretation." 324 Md. at 342.

Thus, "[u]nder these circumstances, a court should be most reluctant to overrule its prior interpretation of that statutory language" because "[t]he General Assembly is presumed to be aware of this Court's interpretation of its enactments and if such interpretation is not legislatively overturned, to have acquiesced in that interpretation." *Id*. (internal quotations and citations omitted).

Since *Forbes*, the manslaughter by vehicle statute has been reenacted with amendments at least two more times, in 2002 and in 2016. (App. 12). Yet the Legislature has done nothing to reject the interpretations of *Gibson*, *Blackwell*, or *Forbes*.

This Court must now extend those holdings to the common law offense of felony murder, by continuing to find that the statutory preemption applies to *all* unintended homicides resulting from the operation of a motor vehicle. This Court should further hold that if the State seeks to apply an exemption to preemption, the State must submit the element of intent to kill to the jury to make a finding beyond a reasonable doubt.

II. 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 upon a juvenile for an unintentional killing.

When the Court of Special Appeals held that Harris's life sentence was not "grossly disproportionate" based upon the seriousness of the offense and the General Assembly's classification of felony murder as a first-degree murder, (E. 67-68), the court fell into the same trap that has plagued juvenile sentences for centuries. Statutory schemes that prescribe harsh penalties for serious offenses may be constitutional for adults, but that does not make them automatically constitutional for a juvenile. *Graham v. Florida*, 560 U.S. 48, 67 (2010).

The punishment of life is not necessarily proportionate to the crime of felony murder when committed by a juvenile, merely because the General Assembly said that it was appropriate for an adult. Rather, the sentencing court must consider whether it is proportionate to "the criminal." *State v. Stewart*, 368 Md. 26, 34 (2002).

For a juvenile "criminal" - "youth matters in sentencing." *Jones v. Mississippi*, --- U.S. ---, 141 S. Ct. 1307, 1316 (2021). This is because "children are constitutionally

different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

The Court of Special Appeals wrongly determined that Harris's "youth was presented to the court for consideration in the presentence investigation report [ ] and by defense counsel." (E. 66).

Harris's "age," not his "youth," was presented to the sentencing court – a difference with a meaningful distinction. Of critical importance, the sentencing court was not given any parameters to follow regarding consideration of youth before imposing a harsh sentence on a juvenile offender. This procedural flaw was found fatal in a similar context regarding Eighth Amendment challenges to juvenile sentences in *Carter v. State*, 461 Md. 29, 341 (2018).

A. Standard of Review

A claim that a sentence constitutes cruel and unusual punishment constitutes a claim of an illegal sentence within the meaning of Maryland Rule 4-345. (App. 27). *Randall Book Corp. v. State*, 316 Md. 315 (1989). Where a contention is made that a sentence is illegal, it may be corrected at any time. *Id*.

This Court must review the constitutional issue *de novo*. *Blickenstaff v. State*, 393 Md. 680, 683 (2006).

B. "Youth matters in sentencing"[1] when a juvenile homicide offender is facing a life sentence in adult court.

1. "[C]hildren are constitutionally different from adults for purposes of sentencing."[2]

There are "well accepted differences between juveniles and adults" that mandate "[c]onstitutional limits on the punishment of juvenile offenders." *Carter*, 461 Md. at 308-09 (reviewing *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham*, 560 U.S. 48; and *Miller*, 567 U.S. 460).

As the *Carter* Court recognized, first, "juveniles lack maturity, leading to 'an underdeveloped sense of responsibility,' as well as 'impetuous and ill-considered actions and decisions[.]'' *Id*. at 309 (citing *Roper*, 543 U.S. at 569). Second, "juveniles are more vulnerable or susceptible to negative influences and peer pressure due, in part, to juveniles having less control over their environment or freedom 'to extricate themselves from a criminogenic setting[.]'" *Carter*, 461 Md. at 309 (citing *Roper*, 543 U.S. at 569). Third, "the personality of a juvenile is not as well formed as that of an adult, and their traits are more transitory and less fixed." *Carter*, 461 Md. at 309 (citing *Roper*, 543 U.S. at 570).

The findings of "transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed." *Miller*, 567 U.S. at 472 (internal citations omitted). These premises have been

[1] *Jones v. Mississippi*, --- U.S. ---, 141 S. Ct. 1307, 1316 (2021).

[2] *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

reviewed over the decades and the conclusions have "become even stronger" with time. *Id.* at 472, n.5.

Critically, "none of what it said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific. Those features are evident in the same way, and to the same degree, when…a botched robbery turns into a killing," like felony murder in Harris's case. *Id.* at 473.

Thus, these distinctive mental traits and environmental vulnerabilities must be considered anytime a juvenile is being sentenced as an adult because "youth matters in sentencing." Jones,141 S. Ct. at 1314, 1316.

2. "[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."[3]

It was based upon these "distinctive attributes of youth," that the Supreme Court determined there are "diminish[ed] [ ] penological justifications for imposing the *harshest sentences* on juvenile offenders, even when they commit terrible crimes." *Miller*, 567 U.S. at 472 (emphasis added). Children "are less deserving of *the most severe punishments*." *Id.* at 471 (citing *Graham*, 560 U.S. at 68) (emphasis added).

Life with the possibility of parole is one of the State's "most severe punishments." *Id*. While "the death penalty is the most severe punishment[,]" *Roper*, 543 U.S. at 568; and "life without parole is the second most severe penalty permitted by law[,]" *Graham*, 560 U.S. at 69 (internal quotation marks omitted); "life imprisonment *with* possibility of parole

[3] *Miller*, 567 U.S. at 472.

is also unique in that it is the third most severe." *Harmelin v. Michigan*, 501 U.S. 957, 996 (1991) (italics in original).

The *Miller* Court was aptly aware of *Harmelin* and cited it to highlight "that a sentencing rule permissible for adults may not be so for children."567 U.S. at 481. When the *Miller* Court announced that the "[i]mposition of a State's *most severe penalties* on juvenile offenders cannot proceed as though they were not children[,]" 567 U.S. at 474 (emphasis added), the Supreme Court did not say that juveniles should only be treated as children when facing death or life without parole. Rather, the Supreme Court used the broader category of "a State's most severe penalties." *Id*. When the court is about to impose "a State's most severe penalties on [a] juvenile," the court "cannot proceed as though they were not children." *Id*.

C. When a Juvenile is Convicted of the Unintentional Homicide of Felony Murder, the Distinctive Attributes of Youth Diminish the Penological Justifications for Imposing an Automatic Life Sentence.

1. Justifications for imposing a state's most severe penalties on adults who commit felony murder are based upon the very attributes that juveniles lack.

The crime of felony murder has been deemed a "legal fiction" because it artificially transplants the intent to commit the underlying felony into the malice that is necessary for murder. *Allen*, 387 Md. at 401 (citation omitted). The reduced quantum of proof has caused the felony murder doctrine to be called "[o]ne of the most controversial doctrines in the field of criminal law…" Erwin S. Barbre, Annotation, *What Felonies are Inherently or Foreseeably Dangerous to Human Life for Purposes of Felony-Murder Doctrine*, 50 A.L.R.3d 397, 399 (1973).

That sentiment has grown stronger when applied to juveniles. *See generally*, Erin H. Flynn, Comment, *Dismantling the Felony-Murder Rule: Juvenile Deterrence and Retribution Post- Roper v. Simmons*, 156 U. Pa. L. Rev. 1049 (2008).

a. *Reasonable foreseeability is not the same for juveniles as it is for adults.*

Because felony murder liability is premised upon the assumption that an individual who takes part in a felony should understand, foresee, and thus reasonably assume the risk that someone might get killed during the commission of a felony, *Fisher*, 367 Md. at 262, a judge sentencing a minor convicted as an adult must consider that what is "reasonably foreseeable" to an adult, is likely not "reasonably foreseeable" to a child. *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011).

The "artificially constructed" transferred intent for felony murder "does not count as intent for purposes of the Eighth Amendment" and does not justify a harsh sentence because:

> [T]he theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed…Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively.

Miller, 567 U.S. at 491-92 (2012) (Breyer, J., concurring).

"[A]dolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance." *Id.* at 472, n. 5 (internal citation omitted). Therefore, a juvenile should not be punished as harshly for being unable to "reasonably foresee" the same risks that an adult should.

b. *A juvenile convicted of felony murder has twice diminished culpability than an adult.*

All homicides are not the same. "It is fundamental that 'causing harm intentionally must be punished more severely than causing the same harm unintentionally." *Enmund v. Florida*, 458 U.S. 782, 797 (1982) (internal citation omitted).

"[W]hen compared to an adult murderer, a juvenile offender who did not…intend to kill has a twice diminished moral culpability." *Graham*, 560 U.S. at 69. This twice diminished culpability reduces the relevance of the goals of penal sanctions – retribution, deterrence, incapacitation, and rehabilitation *Id*. at 71 (citing *Ewing v. California*, 538 U.S. 11, 25 (2003).

Therefore, "[t]he age of the offender and the nature of the crime each bear on the analysis." *Graham*, 560 U.S. at 69.

c. *Juveniles are more likely to engage in risky behaviors and less likely to appreciate potential long-term consequences.*

Juveniles "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *J.D.B.*, 564 U.S. at 272. Juveniles have "[d]ifficulty in weighing long-term consequences" and "a corresponding impulsiveness" causing juveniles to make different calculations than adults. *Graham*, 560 U.S. at 78. Juveniles have difficulty thinking realistically about what may occur in the future.

This lack of future orientation means that juveniles are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they have identified, especially when faced with the prospect of short-term rewards, causing

juveniles to make different calculations than adults when they participate in criminal conduct. *Graham*, 560 U.S. at 78.

d. *Juveniles are more susceptible to negative influences.*

"[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Roper*, 543 U.S. at 569 (internal citation omitted). "[E]xposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency." *Miller*, 567 U.S. at 472, n. 5 (internal citation omitted).

Therefore, a juvenile's decision to participate in a felony is more often driven by fear of ostracism than rational thinking. Alison Burton, *A Commonsense Conclusion: Creating A Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 HARV. C.R.-C.L. L. REV. 169, 186-87 (2017) (internal citation omitted).

e. *There is diminished penological justification for imposing harsh sentences on juveniles convicted of felony murder.*

"Two primary justifications are given for the felony murder rule: deterrence and retribution**.**" Alison Burton, Note, *A Commonsense Conclusion: Creating a Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 Harv. C.R.-C.L. L. Rev 169, 172 (2017). Yet, both of these justifications are wholly improper when considering juveniles.

Deterrence does not work because "the same characteristics that render juveniles less culpable than adults – their immaturity, recklessness, and impetuosity, make them less likely to consider potential punishment." *Miller*, 567 U.S. at 472; *Graham*, 560 U.S. at 72 (same); *Roper*, 543 U.S. at 571 (same).

"[T]he case for retribution is not as strong with a minor" because "'[t]he heart of retribution rationale'" relates to an offender's blameworthiness and juveniles have less blameworthiness than adults. *Miller*, 567 U.S. at 472 (internal citations omitted).

Similarly, life incapacitation is not justified for an unintentional homicide, nor is it justified for a youth because of a youth's "capacity for change." *Miller*, 567 U.S. at 473.

Therefore, a juvenile's shortcomings bear directly on the culpability of the juvenile, and on the type of sentence that should be imposed for a crime that may justify a severe sentence for an adult who should understand the risks, but not in the case of sentencing a juvenile who lacks the ability to understand the risks. *Graham*, 560 U.S. at 62.

2. A national shift in the applicability of the felony murder rule for adults deserves this Court's attention in assessing whether a state's severe life sentence should be automatically imposed on a juvenile who did not intend to kill.

This Court may consider objective indicia of a national consensus regarding felony murder in determining whether an automatic life sentence for a juvenile convicted of an unintentional homicide is cruel and/or unusual punishment by today's standards of decency. *Graham*, 560 U.S. at 62.

Current legislation in 25 states demonstrates a shift towards eliminating, limiting, or amending felony murder doctrines so as not to automatically result in first-degree murder convictions or automatic life sentences.

Hawaii has eliminated the felony murder rule completely.[4]

[4] HAW. REV. STAT. § 707-701 (1976).

Various states have downgraded the severity of the offense or the sentence for juvenile offenders. *See* Colorado[5], New York[6], Oregon[7], Pennsylvania[8], Florida[9], and North Carolina[10].

[5] COLO. REV. STAT. § 18-3-103(b) (2021) (second-degree murder); § 18-1.3-407(2)(a)(I) (juveniles may not serve more than 7 years if they complete youthful offender program).

[6] N.Y. PENAL LAW § 125.25 (McKinney 2019) (second-degree murder); § 70.05 (juveniles who commit felony murder shall have a minimum term of 5 years and a maximum of life, with the sentencing court to determine the appropriate sentence).

[7] OR. REV. STAT. § 163.115 (2020) (second-degree murder); § 144.397 (2019) (juveniles who commit felony murder shall be eligible for parole after 15 years of imprisonment, but nothing is intended to prevent the juvenile from being released prior to serving 15 years of imprisonment).

[8] 18 PA. CONS. STAT. ANN. § 2502(b) (West 1978) (second-degree murder); § 1102.1(2012) (juveniles 15 years or older who commit second-degree murder shall be given a sentence of 30 years to life).

[9] FLA. STAT. ANN. §§ 775.082(b); 921.1401 (West 2014) (juvenile convicted of felony murder may not be sentenced to life imprisonment until a sentencing court considers *Miller*-type factors); § 921.1402(2)(a) (if life imprisonment is imposed, juvenile will automatically be entitled to a review of his sentence after 25 years).

[10] N.C. GEN. STAT. ANN. § 15A-1340.19B (West 2012) (for a minor, "[i]f the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.").

Several states have downgraded the severity of the offense for all offenders. *See* Minnesota[11], Missouri[12], Wisconsin[13], and Alaska[14].

A number of states now require independent mental states to be proven other than the implied malice from the commission of the underlying offense. *See* Delaware[15], Iowa[16],

[11] MINN. STAT. ANN. § 609.19 (West 2015) (second-degree murder with a sentence of not more than 40 years).

[12] MO. ANN. STAT. § 565.021 (West 2018) (second-degree murder); 558.011 (2021) (with term sentence not less than 10 years and not more than 30 years, or life imprisonment).

[13] WIS. STAT. ANN. §§ 940.03 (West 1987) (punishable by imprisonment not to exceed 15 years in excess of the maximum term of imprisonment provided by law for the underlying crime).

[14] ALASKA STAT. § 11.41.110 (a)(3) (2019) (second-degree murder with definite term of 15 to 99 years).

[15] DEL. CODE ANN. tit. 11, § 636(a)(2) (2013) (recklessly caused death required).

[16] IOWA. CODE ANN. §§ 707.1.; 707.2 (West 2013); *State v. Ramirez*, 616 N.W.2d 587, 592 (2000) (abrogated on other grounds) (malice aforethought required).

Kentucky[17], Michigan[18], Massachusetts[19], New Hampshire[20], New Mexico[21], and Vermont[22].

[17] KY. REV. STAT. ANN. § 507.020 (West 1974); *Bennett v. Com*., 978 S.W.2d 322 (Ky. 1998) (specific intent or wantonness with extreme indifference required).

[18] *People v. Aaron & People v. Thompson & People v. Wright*, 299 N.W.2d 304 (Mich. 1980) (actual malice required).

[19] *Commonwealth v. Brown*, 81 N.E.3d 1173 (Mass. 2017) (intent or actual malice required).

[20] N.H. REV. STAT. ANN. §§ 630:1, 630:1-b (2019) (knowingly caused death required).

[21] *State v. Marquez*, 376 P.3d 815, 820 (N.M 2016) (intent to kill or knowledge that acts create a strong probability of death or great bodily harm required).

[22] VT. STAT. ANN. tit. 13, § 2301 (2018); *State v. Bacon*, 163 Vt. 279, 291 (1995) (wanton disregard for human life required).

Numerous states have limited the felony murder rule to the actual perpetrators of the homicide. *See* California[23], Maine[24], Connecticut[25], New Jersey[26], New York[27], North Dakota[28], Oregon[29], Washington[30], and Colorado[31].

Harris recognizes that the Maryland General Assembly recently failed to enact legislation directed at ameliorating some of the harsh consequences that come to juveniles convicted of felony murder. However, as history has taught, the failure of the legislature to act does not necessarily mean that that the statute is constitutional. *Accord Carter*, 461 Md. at 324 (This Court in *Lomax v. Warden*, 356 Md. 569, 581 (1999) relied upon the General Assembly's failure to set forth required factors in the parole scheme to assume that the procedure was not broken, when it actually was.).

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[23] CAL. PENAL CODE § 1170-95 (West 2022) (limited to those who actually killed and who acted with intent to kill or who were major participants in underlying felony and acted with reckless indifference and anyone else can petition to vacate their conviction and be re-sentenced).

[24] ME. REV. STAT. tit. 17, §202 (2020) (affirmative defense that the defendant did not commit the homicidal act).

[25] CONN. GEN. STAT. ANN. § 53a-54c (2012) (same).

[26] N.J. STAT. ANN. § 2C:11-3a(3) (West 2013) (same).

[27] N.Y. PENAL LAW § 125.25 (McKinney 2019) (same).

[28] N.D. CENT. CODE § 12.1-16-01 (same).

[29] OR. REV. STAT. § 163.115 (West 2020) (same).

[30] WASH. REV. CODE ANN. § 9A.32.030(1)(c)(i) (West 1990) (same).

[31] COLO. REV. STAT. § 18-3-103(b)(2021) (same)

D. Maryland's Statutory Schemes for First-Degree Felony Murder Allowed Juveniles to Proceed in Adult Court as Though They Were Not Children.

1. 16-Year-Olds are Treated as Adults if Charged with and Convicted of First-Degree Murder.

A child who is 16 or 17-years-old at the time the offense is committed, who is charged with a crime carrying a sentence of life imprisonment, shall be prosecuted as an adult. *See* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03(d)(1) (West 2018). There is no statutory mechanism for judicial reevaluation of a 16 or 17-year-old charged with a crime carrying a sentence of life imprisonment, if the crime is first-degree murder. *See* MD. CODE ANN., CRIM. PROC. § 4-202(c)(2) (West 2021).

The clear intent of these statutes is to remove the considerations of the characteristics of youth for juveniles accused of the most serious crimes carrying the State's harshest sentences, and therefore, to limit the range of sentencing options to the same penalties that could be imposed on an adult offender.

The Supreme Court has recognized the flaws in state statutory charging schemes just like Maryland's that automatically discount consideration of a juvenile's youth merely because of the seriousness of the crime, which therefore ultimately impacts the constitutionality of the sentence. *See Graham*, 560 U.S. at 67; *Miller*, 567 U.S. at 486-88. Moreover, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Miller*, 567 U.S. at 473-74 (citing *Graham* at 76).

Maryland's statutory scheme also failed to account for Harris's youth at the time of his sentencing hearing. Any conviction for murder carries a mandatory minimum sentence of life imprisonment. *See* MD. CODE ANN., CRIM. LAW § 2-201(b) (West 2020). This was

true whether the offender was an adult or a juvenile. This is still true whether murder is premeditated or unintentional.

2. The lack of a process that sets forth statutory criteria for the exercise of discretion by decision-makers in cases involving harsh sentences for juvenile offenders has previously been deemed unconstitutional by this Court.

In *Carter v. State*, this Court was asked to decide whether Maryland's parole scheme for juvenile offenders serving life sentences was constitutional under the Eighth Amendment. 461 Md. at 295. For decades, the Governor was given discretion to grant or deny a juvenile offender's request for parole "without reference to any criteria related to the demonstrated maturity or rehabilitation of the inmate" *id*. at 341; and "without any reference to standards." *Id*. at 316 (internal citation omitted).

The *Carter* Court determined that the Eighth Amendment cases for juveniles require a "process that complies with *Graham* and *Miller*" and that the "process must have criteria for the exercise of the discretion of the decision makers." *Id*. at 317.

Maryland's unconstitutional parole scheme was only saved by the issuance of a 2018 Executive Order which "attempt[ed] to bridge the gap between the unfettered discretion…given to the Governor…and the requirements of the Eighth Amendment as to juvenile offenders." *Id*. at 343. The 2018 Executive Order provided the standards that were previously missing from the parole statute, namely, that the Governor must consider factors expressly addressing youth and its attendant circumstances, *id.* at 321-22, thereby bringing the sentences of the juvenile offenders "into compliance with the Constitution and once again legal[.]" *Id*. at 344.

Like the parole scheme prior to the 2018 Executive Order, Maryland's sentencing scheme contains no guideposts for a sentencing court's consideration of a juvenile's youth and its hallmark features.

In another similar context, the lack of statutory criteria for the exercise of discretion by a sentencing judge, would have made Maryland's death penalty statutes violative of the constitution as well. While the Supreme Court death penalty cases permitted wide discretion for sentencers who based their decisions on "three *general* methods of guiding the discretion vested in the sentencing authority;" Maryland's death penalty statute required stricter procedures to be followed before a death sentence could be deemed constitutional. *See Tichnell v. State*, 287 Md. 695, 728-29 (1980) (emphasis added). Maryland's statute enumerated 18 factors that had to be considered to sufficiently "guide[] and focus[] the (sentencing authority's) objective consideration of the particularized circumstances of the individual offense and the individual offender before it can impose a sentence of death." *Id*. at 723 (internal citations omitted).

Maryland's history of providing greater procedural protections to effectuate substantive guarantees, continues to demonstrate the need for individualized consideration of specific factors in juvenile sentencing hearings.

3. Statutes passed subsequent to Harris's sentencing hearing highlight the constitutional infirmities that previously existed when decision-makers were not given standards to guide them in sentencing a juvenile offender.

First, the General Assembly enacted Criminal Procedure Article § 6-235 "Minor convicted as an adult" which went into effect October 1, 2021. MD. CODE ANN., CRIM. PROC. § 6-235 (West 2021). (App. 14). This is a clear response to the principle that

juveniles are not to proceed as though they are not children when being sentenced to a state's harshest penalties.

Not only did the General Assembly ban life without parole for all juvenile homicide offenders, *see* C.P. § 6-235(2); but the General Assembly also directed sentencing courts to consider the fact that when "sentencing a minor convicted as an adult," the sentencing court "may impose a sentence less than the minimum term required under law." C.P. § 6-235(1).[32] (App. 14).

With the abolition of life without parole for juvenile homicide offenders, consideration of youth becomes necessary "to separate those juveniles who may be sentenced to life…from those who may not" for the most heinous offenses, such as a premeditated specific intent to kill murder. *Montgomery v. Louisiana*, 577 U.S. 190, 209-10 (2016).

Second, the General Assembly enacted Criminal Procedure Article § 8-110 "Minor convicted as an adult; procedure to reduce duration of sentence" which went into effect October 1, 2021. MD. CODE ANN., CRIM. PROC. § 8-110 (West 2021). (App. 15). This statute permits any minor convicted as an adult, and sentenced before October 1, 2021, to file a motion for a reduction in sentence after the juvenile has served 20 years for the offense. C.P. § 8-110(a). (App. 15). At a hearing on the motion, the court "shall consider"

[32] Harris does not believe that C.P. § 6-235 cures the constitutional infirmities because the statute fails to list the factors that should be considered by the sentencing judge in deciding how to exercise its discretion to depart below minimum terms required under law. *Cf. Carter*, 461 Md. at 344 (It was the factors outlined and required to be considered that brought the parole scheme for juvenile offenders "into compliance with the Constitution and once again legal[.]").

a host of enumerated factors relating to the offender's youth and attendant circumstances, in determining whether to reduce the duration of the sentence. *See* C.P. § 8-110(d)(1)-(11). (App. 16).

The enactment of these two statutes demonstrates the General Assembly's attempt to remedy the inherent infirmities that could result in disproportionately harsh sentences being imposed upon juveniles convicted as adults without consideration of youth and its attendant circumstances.

E. The Constitutions Demand Limitations to Ensure that a Juvenile Offender's Harsh Life Sentence for an Unintentional Homicide is Not Grossly Disproportionate at the Time the Sentence is Imposed.

1. Federal Constitutional Requirements.

The Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions[,]" a guarantee that "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned' to both the offender and the offense." *Miller*, 567 U.S. at 469 (internal citations omitted). "The concept of proportionality is central to the Eighth Amendment." *Graham*, 560 U.S. at 59. (App. 3).

The *Miller* opinion announced a substantive categorical ban of mandatory life-without-parole sentences for juveniles, and a procedural limitation that life-without-parole could only be imposed upon a juvenile who is deemed "incorrigible" after the sentencer "follow[s] a certain process" involving consideration of a juvenile offender's youth and its hallmark features. *Miller*, 567 U.S. at 470, 477-78,483.

The *Miller* Court outlined factors to be considered at an individualized sentencing hearing before a sentencing court can impose "a State's harshest penalties." *Miller*, 567 U.S. at 477. These factors include: (1) chronological age; (2) immaturity; (3) impetuosity; (4) failure to appreciate risks and consequences; (5) family and home environment; (6) extent of participation in the conduct; (7) the way familial and peer pressures may have affected the juvenile; (8) inability or incapacity to help his defense; and (9) potential for rehabilitation. *Id*.

Consideration of the "*Miller*" factors, was discerned as a "procedural component" of *Miller's* holding which was "necessary to implement [its] substantive guarantee" in order "to separate those juveniles who may be sentenced to life without parole from those who may not." *Montgomery*, 577 U.S. at 209-10.

Although *Miller* and *Montgomery* were evaluating the constitutionality of a sentence of life without parole for a juvenile homicide offender, their opinions did not alter the foundational principle that "sentencing an offender who was under 18 at the time of the crime raises special constitutional considerations." *Jones*, 141 S. Ct. at 1314. *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.'" *Id*. at 1320 (internal citation omitted).

2. Maryland's Constitutional Requirements.

The protections of Article 25 of the Maryland Declaration of Rights are broader than their federal counterpart. (App. 10). *Accord Carter*, 461 Md. at 308 n.6 (citing *Thomas v.*

State, 333 Md. 84, 103 n.5 (1993); *see generally* Dan A. Friedman, The Maryland State Constitution; A Reference Guide (2006) at pp. 24-25, 36).

This view is supported by "the disjunctive phrasing" of "cruel *or* unusual punishment inflicted, by the Courts of Law" found in Article 25 of the Maryland Declaration of rights, compared to "the conjunctive phrasing" of "cruel *and* unusual punishments inflicted" found in the Eighth Amendment of the U.S. Constitution. *See Thomas* 333 Md. at 103 n.5 (internal citations omitted). *See also Harmelin*, 501 U.S. at 966-67. (App. 3, 10).

Maryland's use of the disjunctive phrasing was not accidental. The Eighth Amendment's language was ratified in 1791. *Jones*, 141 S. Ct. at 1314. Article 25's language was ratified in 1867. Also ratified in 1867 was Article 16 of the same Declaration of Rights. Notably, Article 16 uses the conjunctive phrasing of "cruel *and* unusual…penalties." (App. 6). Clearly the framers intended to provide different meaning to the different phrases, and that is because the stated purposes of the two articles are different.

Article 16 prohibits the making of "Law[s] to inflict cruel and unusual pains and penalties;" and is "directed toward legislative action." *Thomas*, 333 Md. at 92. (App. 6). Article 25, prohibits "cruel or unusual punishment inflicted, by the Courts of Law"; and is "directed at action by the courts." 333 Md. at 92. (App. 10).

The General Assembly's design of a first-degree murder statute that calls for a mandatory minimum life sentence for all offenders in adult court may not be "cruel and unusual" for adults pursuant to Article 16. However, it is often the case "that a sentencing

rule permissible for adults may not be so for children." *Miller*, 567 U.S. at 480-81; *see also Carter*, 461 Md. at 308. Therefore, Article 25 serves to restrict the imposition of a *general* punishment for a *general* offender who commits an enumerated offense. Article 25 requires the courts to assess whether the imposition of a *specific* sentence is neither cruel, nor unusual, based upon the *specific* offender and the *specific* facts of the offense. *See Stewart*, 368 Md. at 34; *Thomas,* 333 Md. at 96-97.

Where the Legislature governs broadly over the general adult public, the courts must fashion a proportionate sentence for a specific offender for a specific offense. Thus, the need for differing language in Articles 16 and 25 becomes evident, especially in the context of sentencing a juvenile in adult court.

In *Leidig v. State*, 475 Md. 181, 235-36 (2021), this Court recently explained that in numerous instances it has declined to read a Maryland constitutional provision in lockstep with its federal constitutional counterpart where such a divergence is necessary and appropriate to give full effect to the rights afforded under Maryland law.

Therefore, it is imperative that this Court use the tools given to it by Article 25 and the pronouncements made in *Jones v. Mississippi*, regarding the states' prerogatives to implement their own procedural safeguards to effectuate substantive guarantees under their own constitutions and criminal procedure laws. *See Jones*, 141 S. Ct. at 1315 n.2; *id.* at 1321; *id*. at 1323.

F. The Proper Procedural Safeguards for Maryland Sentencing Courts to Employ When Sentencing a Juvenile Convicted as an Adult of Felony Murder Involve Consideration of Specific "*Miller*-type" Factors.

This Court should now determine that the necessary process to effectuate substantive constitutional guarantees according to the Maryland Constitution, when sentencing a juvenile convicted as an adult of an unintentional homicide to the State's harsh penalty of life imprisonment, requires consideration of specific *Miller* factors, 567 U.S. at 477, that have been adopted in other Maryland statutes and regulations. *See* C.P. § 8-110(d)(1)-(11); COMAR 12.08.01.18A(3); (4)(a)-(g); (5)(a)-(m). (App. 16, 19).

The consideration of the qualities of youth is a prophylactic measure to protect against the disproportionate deprivation of liberty of a juvenile.

Graham, *Miller*, and *Montgomery* are replete with language that the proper actor to consider the qualities of youth is the "*sentencer*". *See, Graham*, 560 U.S. at 72; *Miller*, 567 U.S. at 474; *id.* at 477; *Montgomery*, 577 U.S. at 206-07.

This is especially important at a post-C.P. § 6-235 sentencing hearing. If a court is no longer constrained by a mandatory minimum, how is the sentencing court to exercise its discretion to depart below the mandatory minimum for a juvenile, without acting arbitrarily, unless it is guided by enumerated *Miller*-type factors at the time of sentencing?

G. As applied, Harris's automatic life sentence for felony murder is unconstitutional, and the sentencing court did not properly consider youth and its attendant circumstances.

1. The binding Maryland precedent at the time of Harris's sentencing hearing instructed that sentencing courts were not required to take youth and its attendant circumstances into account when sentencing a juvenile homicide offender to Life.

Just three months prior to the August 21, 2019 sentencing hearing in Harris's case, the Court of Special Appeals created binding precedent on the sentencing courts when it held in a reported opinion that a "*defendant was not entitled to an individualized sentencing process that would have taken into account defendant's youth and attendant circumstances*" for the crime of first-degree murder committed by a juvenile. *Hartless v. State*, 241 Md. App. 77 (2019) (emphasis added).

Moreover, Maryland's statutes at the time of Harris's sentencing did not authorize a sentencing court to depart below a mandatory minimum life sentence. Also, at the time, life without parole served as the most severe punishment for a juvenile homicide offender.

The sentencing court made clear that it was sentencing Harris for the conviction of felony murder, and not for premeditated murder. (E. 369). Thus, where the State was not seeking life without parole for felony murder, the sentencing court may have viewed a life sentence with parole eligibility as the next appropriate sentence for a first-degree murder.

Further, the probation officer simply "recommended that the court impose a period of incarceration in this case that falls within the guideline range that is listed in the attached Maryland Sentencing Guidelines." (E. 426). Yet, Maryland's sentencing scheme made no distinction between Harris being a juvenile and Harris being an adult, or Harris committing

premeditated murder versus Harris committing felony murder. The guidelines for all people convicted in adult court of first-degree murder are Life to Life. (E. 333).

Moreover, despite the wealth of information contained in *Roper*, *Graham*, *Miller*, and *Montgomery*, defense counsel admittedly "d[id]n't know what's in the mind of a 16-year-old…[he] d[id]n't know what's operating in the mind of a 16-year-old with regard to anything[.]" (E. 368); "[he] d[id]n't know what's going on in the mind of a 16-year-old in the way they see things[.]" (E. 373).

Therefore, while the sentencing court may have been told Harris's age at the time of the offense, he was not presented the information on youth and its hallmark features in a meaningful way.

The sentencing court merely ruled as follows:

> The jury returned verdicts on three counts, burglary in the first degree; first-degree felony murder, and theft having a value between $1500 and $25,000. The verdicts are guilty on those three offenses, and that is what he is here to be sentenced on.
>
> Having considered the presentence investigation, the victim impact, the Defendant's prior record, the arguments of counsel, the allocution, the appropriate sentence that I'm going to impose having all factors having been considered is the following:
>
> With regard to the first-degree burglary, 20 years to the Division of Corrections; with regard to the first-degree felony murder, it will be life to the Division of Corrections; with regard to the theft between $1500 and $25,000, that would be five years to the Division of Corrections.
>
> (E. 399).

Saying that it considered "all factors" does not cover the *Miller*-type factors when no Maryland statute required consideration of those factors, *Hartless* expressly told the

court it did not have to consider those factors, and defense counsel never made mention of them.

2. What should have been considered was the following:

a. *Youth is more than a number.*

Harris was sixteen years and four months old at the time of this offense. (E. 167-68). The sentencing court may have known Harris's age, but "youth is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuousness[,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient." *Miller*, 567 U.S. at 476.

b. *Peer pressure exacerbates adolescent deficiencies.*

Harris's willingness to act as an accomplice in an "inherently dangerous" felony reflects the impulsiveness, failure to exercise good judgment, and inability to accurately assess risks that the Supreme Court has recognized are common and therefore does not support the presumption that his participation in those felonies reflects a malicious intent to kill. *See Miller*, 567 U.S. at 471; *see also Roper*, 543 U.S. at 569.

Harris's sentence ignores the fact that the presence of peers or high arousal settings can actually exacerbate adolescent deficiencies in decision-making, risk appraisal, self-control and impulsivity. *Miller*, 567 U.S. 460; *Graham*, 560 U.S. 48; *Roper*, 543 U.S. 551. Harris had been pursued relentlessly by his friend Ward even though Harris did not wish to be involved because he suspected the boys were up to no good. (E. 187-93, 405). Harris eventually acquiesced and got into the Jeep even though he "was skeptical" and "did not

feel comfortable." (E. 193-94, 198). Harris remained inside of the Jeep while his friends were committing the burglaries inside.

At Linwen Way, Harris told Ward, "Let's go back this time, because I don't feel safe around here." (E. 216). When juveniles are pressured by their peers to participate in a criminal act, they may do so out of a misplaced concern about fitting in, even if they do not condone or want to participate in the criminal activity. *See* Jacob T.N. Young & Frank Weerman, *Delinquency as a Consequence of Misperception: Overestimation of Friends' Delinquent Behavior and Mechanisms of Social Influence*, 60 S. PROBS. 334, 337 (2013) (internal citation omitted). Harris's susceptibility to peer pressure and exposure to deviant peers should have been a major consideration for sentencing purposes.

c. *Decreased dependency on parental influence leads to increased dependency on peer influence.*

[redacted]

Though Harris's family and home environment were listed in the pre-sentence report and discussed at the hearing, they were not identified in relation to how they impact a juvenile's behavior. *Roper*, 543 U.S. at 569. Thus, the sentencing court did not adequately consider Harris's "decreased dependency on parental influence and increased dependency on peer influence." *See* Alison Burton, *A Commonsense Conclusion: Creating A Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 HARV. C.R.-C.L. L. REV. 169, 186-87 (2017) (internal citation omitted).

d. *Children have diminished judgment*.

Harris attempted to escape from Officer Caprio because he was a scared black teenager facing a white officer in an unknown area of an unknown county. The officer not only trained her weapon at Harris's head, but she actually pulled the trigger. He put his head down and he did not know what to do. He "just wanted to go home" – an expression of emotion clearly evidencing a reaction by a scared youth who found himself alone facing a terrifying situation. (E. 177).

e. *Penological justifications for harsh sentences become diminished.*

The prosecutor acknowledged at sentencing that Harris did not have "specific intent," "premeditation" or a "deliberate and conscious" plan to kill Officer Caprio, and that this was not a traditional first-degree murder case. (E. 398). Yet the sentencing court did not distinguish why Harris was deserving of a life sentence for a murder that was not premeditated.

f. *Children can be reformed.*

The sentencing court did not consider the possibility of rehabilitating Harris over the course of his life as he matured into adulthood, and whether a life sentence was appropriate for an adolescent who had not finished developing at the time the offense was committed. *Miller*, 567 U.S. at 478.

In order to be compliant with the directives of *Miller* and *Graham*, as well as the State and Federal Constitutions, a sentencing court must determine whether the "distinctive attributes" of juvenile offenders convicted of felony murder "diminish the penological justifications for imposing" an automatic sentence of life imprisonment. *Miller*, 567 U.S. at 472. This requires not just a consideration of "age" but a consideration of specified factors that will give meaning to the substantive guarantees that the constitutions require.

SUMMARY AND CONCLUSION

Until the Legislature decides to amend the manslaughter by vehicle statute, Harris is entitled to the benefit of this Court's prior interpretations of the statute: the manslaughter by vehicle statute preempts *all* unintended homicides committed by motor vehicle. Thus, this Court must vacate Harris's conviction for first-degree felony murder that resulted from the unintended death by the operation of a motor vehicle, and order a remand for re-sentencing on the remaining burglary and theft offenses.

If this Court does not vacate Harris's felony murder conviction, this Court should find that Harris's sentence is unconstitutional under the federal and/or Maryland constitutions. This Court should remand for a resentencing hearing with instructions to consider the specific "*Miller*-type" factors referenced herein and instructions that youth

matters at sentencing because children are constitutionally different from adults for purposes of sentencing, especially when they commit an unintentional homicide.

Respectfully submitted,

/s/ Megan E. Coleman
Megan E. Coleman

Counsel for Petitioner

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

I hereby certify that Petitioner's Opening Brief contains 12,896 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that two copies of Petitioner's Opening Brief and Record Extract were mailed, postage prepaid, this 3rd day of January, 2022 to: Office of the Attorney General, Criminal Appeals Division, 200 St. Paul Place, Baltimore, Maryland 21202;

I further certify that a copy was also delivered *via* MDEC.

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CERTIFICATE OF COMPLIANCE WITH RULE 20-201

I hereby certify that I have complied with Rule 20-201 regarding redacting restricted information.

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U.S.C.A. Const. Amend. V

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

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a o2 ochus n1 uss kchlhaus kuU2U o2 c0 Uuss 2 o2 St2U n1 GuR uU R2ss uU n1 1uko 2k2go ouo o2 Tnco lu0 guUU gna o2 U11hkh2ak0 n1 o2 2.hS2ak2 on UUouha u kna.hkohna

N2 chto n1 ochus 0 c0 n1 uss hUU2U n1 1uko ha kh.hs gcnk22ShatU ha o2 U2.2cus TncoU n1 GuR ha ohU ouo2 R2c2 o2 u ha knaocn.2cU0 2k22SU o2 Ul n1 Uuss 2 ha.hnsus0 gc2U2c.2S

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WkoU k cuoh1h2S rn. WkoU k cuoh1h2S rn. WkoU k cuoh1h2S rn. WkoU k cuoh1h2S rn. WkoU cuoh1h2S rn. WkoU k cuoh1h2S rn. WkoU k cuoh1h2S rn. WkoU k cuoh1h2S rn.

rno2U n1 2khUhnaU

TnaUohoohna 2ksucuohna n1 htoU Wco TrN TG e N Wco
Tcc2ao Rho uss s2thUsuohna 1cnl o2 2tsuc 2UUhna n1 o2 2a2cus WUU2ls0 uaS 2l2ct2ak0 2112koh.2 s2thUsuohna 1cnl o2 ehcUo g2khus 2UUhna nl2 Uouoo2 U2kohnaU lu0 2 lnc2 kcc2ao U22 kc2ShoU 1nc S2ouhsU

©20Th0 ommsTnT2R esR2 su tnr.NnmR
esm0TcTlTcsm su tnr.NnmR oRsaT2R i. esmg2mTcsm su USGv
W2kNnrnTcsm su 1cT0

tW esm0TcTlTcsm W2kNnrnTcsm su 1cT0 orT

orTckN2 Wl2 arsk200

elrr2mTm200

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0hv m0hhetg ceNTtovecg ot ce.trUec oa 2rN iraeg irRetTv ot .to.etTvg RsT Rv T2e WscnmehT oa 2rN .eetNg ot Rv T2e k0S o

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oTeN oa erNrohN

ohNTrTsTrohg ei0t0Troh oa rn2TNg tT1 g © k ©g tT1
sttehT SrT2 0ii ienrNi0Troh atom T2e ensi0t eNNroh oa T2e ehet0i NNemRiv 0hc emetnehv eaaeTrUe ienrNi0Troh atom T2e rtNT .er0i eNNroh1 ome NT0TsTe NeTrohN m0v Re mote sttehTg Nee tecrTN aot ceT0riN1

©20Th0 ommsTnT2R esR2 su tnr.NnmR
esm0TcTlTcsm su tnr.NnmR oRsaT2R i. esmg2mTcsm su USGv
W2kNnrnTcsm su 1cT0

tW esm0TcTlTcsm W2kNnrnTcsm su 1cT0 orT

orTckN2 k200cg2 incN nmR ucm20 krl2N sr lml0lnN almc02mT

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©20T homhssnRh e0nu tr.2T NtT Tt eh chlrnchai Ntc homhssnRh gnNhs nUStshai Ntc mcrhu tc rNrsr0u SrNns2UhNT nNgu
vtrcTs tg W0k1

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vtNsTnTrTntNi hmu0c0TntN tg n.2Tsi cT1 i v© vW ©i cT1
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erclcmnN arsi2Rgr2US2u0 G omms0v
WcTN2 k1 WrcnN nmR 2mT2micm US2u0 G omms0v
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t esR2 erclcmnN arsi2Rgr2 k-

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GvW gsu hg.2mt s mtn0tnit ltmm 0osn 0ot ghnhgUg 0trg rtkUhrtR UnRtr lsT1 snR

GW gsu n20 hg.2mt s mtn0tnit 2c lhct hg.rhm2ngtn0 Th0o2U0 0ot .2mmhhlh0u 2c .sr2lt 2r rtltsmt

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aiTN2 gU eriSimnN enl020
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Noaahms hg NahoN0S T2trUm0uS hm U0Nstsos0 aRm0usNS s20 Thoms nRe nhUtgeS m0UoT0S hm lRTRs0 s20 N0us0u
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geUSNsr Gr vnSs2c 0ghm0 ThuNtU0mtu. R nhsthu ouU0m s2tN or0S s20 Thoms N2Rrr tuotm0 tg R ltTstn hm ltTstnN m0a tN am0N0usc g hu0 tN am0N0usS s20 Thoms N2Rrr Rrrhi s20 ltTstn hm ltTstnN m0am0N0usRstl0 sh v0 20RmU RN Rrrhi0U hm ltTstnN m0am0N0usRstl0 tN uhs am0N0us RuU s20 TRN0 tN hu0 tu i2tT2 s20m0 iRN R ltTstnS s20 Thoms N2Rrr tuotm sshmu0e hu s20 m0ThmU m0.RmUtu. Rue oNstgtTRsthu ghm s20 ltTstn hm ltTstnN m0am0N0usRstl0 uhs v0tu. am0N0usS RN mtntuRr mhT0Uom0 mstTr0S -k 0c g uh oNstgtTRsthu tN RNN0ms0U hm s20 Thoms tN uhs NRstNgt0U ve Ru RNN0ms0U s20 Thoms nRe ahNsahu0 s20 20Rmtu.c

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v.Sgg .oWo.onedW00 hU0SmtntuRr mhT0Uom0 mstTr0S -S i2tT2 RrrhiN s20 Thoms sh lRTRs0 R oU.n0usS nhUtge R N0us0uT0S hm .mRus R u0i smtRr ghm Ru tuUtltUoRr ThultTs0U hg amhNstsosthu tgS i20u s20 Tmtn0 iRN Thnntss0US s20 RTstu. ouU0m Uom0NN TRoN0U ve s20 RTs hg Ruhs20m Thnntss0U tmtntuRr mhT0Uom0 mstTr0S -S s20 amh2tvtsthu R.RtuNs 2onRu smRggtTGtu.c W00mtuRr mhT0Uom0 mstTr0S -1c m0.RmUtu. Ru RaartTRsthu sh nhUtge R nRuURshme ntutnon N0us0uT0 tnahN0U ghm T0msRtu Umo. hgg0uN0N amthm sh Tshv0m S S RuU ghm amhT0Uom0N m0rRstu. s20m0shc

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