Circuit Court for Prince George's County
Case No. CT-191181-X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 559

September Term, 2022

ERNEST L. STANLEY

v.

STATE OF MARYLAND

Reed,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: February 9, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Ernest L. Stanley, appellant, a Lieutenant in the City of Bowie Police Department, was found guilty, following a bench trial in the Circuit Court for Prince George's County, of misconduct in office.[1] After the court imposed a suspended sentence, Lieutenant Stanley noted this timely appeal, in which he presents two claims for our review:

> 1. Did the trial court err in denying Defendant's Motion for Judgment of Acquittal where no predicate offense existed to support the charge of Malfeasance?
>
> 2. Did the trial court err in denying Defendant's Motion for Judgment of Acquittal where no evidence was presented as to corrupt intent?

We hold that the first claim is not preserved and that neither claim has merit. Consequently, we affirm the judgment.

BACKGROUND

In the evening of August 8, 2018, Lieutenant Stanley conducted a traffic stop of a black 2017 Nissan Sentra driven by Ramon Abass after observing that vehicle driving at high speed and running a red light. When Mr. Abass subsequently drove away, Stanley fired three shots at his fleeing car, which contained, in addition to Mr. Abass, a female passenger.

Other details surrounding the traffic stop were disputed by the parties. The principal point of contention was precisely what happened at the moment Lieutenant Stanley discharged his service weapon. The State alleged that Lieutenant Stanley fired at Mr. Abass's car as he was driving away, and thus, the use of deadly force was not justified

[1] It appears nearly certain that, as a consequence of Lieutenant Stanley's conviction in this case, he will no longer be permitted to serve as a law enforcement officer.

because, at that time, Lieutenant Stanley was not in danger. Lieutenant Stanley, on the other hand, maintained that his arm was still inside Mr. Abass's car as it began to drive off and that he fired his weapon because he feared for his life.

Following an investigation by the Prince George's County Police Department, an indictment was returned, by the Grand Jury for Prince George's County, charging Lieutenant Stanley with a single count of misconduct in office. The indictment alleged that Lieutenant Stanley "on or about the 8th day of August, 2018, in Prince George's County, Maryland, did, while acting as a public official to wit: a Bowie City Police Officer, engage in corrupt behavior by doing an unlawful act for recklessly endangering lives by firing his service weapon at a fleeing car with no objectively imminent threat of harm[.]" Lieutenant Stanley waived his right to a jury trial,[2] and a two-day bench trial was held in late 2021.

The State called four witnesses: Lieutenant John Knott of the City of Bowie Police Department; Detective Alexander Gonzalez of the Prince George's County Police Department; Thomas Brucia, a civilian crime scene investigator who works for the Prince George's County Police Department; and Corporal Diderot Alerte of the Prince George's County Police Department, the State's expert in police tactics and use of force.

[2] The only indication in the record is a hearing sheet, dated November 8, 2021, which states, "Defendant waives jury trial." No issue has been raised in this appeal concerning the validity of that waiver (indeed, Lieutenant Stanley did not incur the expense of having the November 8, 2021, hearing transcribed), and we presume it complied with Maryland Rule 4-246. *See*, *e.g.*, *Skok v. State*, 361 Md. 52, 78 (2000) (observing that "a presumption of regularity attaches to" a criminal proceeding).

Lieutenant Stanley testified on his own behalf, and the defense called its own expert on use of force and defensive tactics, Paul Mazzei, a former law enforcement officer with extensive experience in training police officers.

Lieutenant Knott testified that, on the evening in question, he heard Lieutenant Stanley over a police radio requesting "a warrant check on an individual" whom he had detained during a traffic stop. Lieutenant Knott recognized the name of that person, Ramon Abass, as someone "known to either carry drugs and/or weapons or be with people who are armed." Lieutenant Knott alerted Lieutenant Stanley to his belief concerning Mr. Abass because he thought it was "important" that Lieutenant Stanley know that Mr. Abass "may be armed."[3]

Shortly thereafter, when Lieutenant Stanley broadcast that there had been a "departmental shooting," Lieutenant Knott responded to the scene. According to Lieutenant Knott, Lieutenant Stanley stated that, in attempting to remove Mr. Abass from his vehicle, Lieutenant Stanley reached his left hand inside, through the open driver's side window, and tried to open the door. When Mr. Abass sped away, Lieutenant Stanley "was struck in the arm and fired" three shots.

Detective Gonzalez conducted "a thorough investigation" of the incident, parallel to the investigation being conducted by the Internal Affairs Division, to ascertain whether Mr. Abass had "committed a crime during the course of events that took place." As part

[3] An audio recording of police radio broadcasts from that evening was admitted into evidence and was consistent with Lieutenant Knott's testimony.

of that investigation, Detective Gonzalez interviewed Lieutenant Stanley a "couple days after" the incident. A transcript of that interview was admitted into evidence, and a portion of it relating Lieutenant Stanley's version of events was read in open court. Because Lieutenant Stanley sought medical treatment within an hour after the incident, Detective Gonzalez subpoenaed the medical records, which stated, among other things:

> Patient was on-duty as a Bowie Police Officer. States he reached into driver's window to unlock door. Driver rolled up window and drove away with the officer's hand still in window. Felt slight pain shooting to hand but this was resolved. **Patient did not fall.** Denies neck pain, back pain, head injury or any other injuries.

(Emphasis added.)

Mr. Brucia, accepted as an expert "in the field of bullet trajectory and shooting incident reconstruction," responded to the scene of the shooting while it "was still daylight." He recovered three shell casings and Lieutenant Stanley's service weapon, which he submitted for forensic analysis. The following day, he located Mr. Abass's car and performed a "complete search of the vehicle for any items of evidence that might be there," including "any bullets that may have struck the vehicle during the incident." Mr. Brucia determined that one bullet had struck Mr. Abass's car in the left rear bumper, approximately thirteen inches above "the level of the roadway." He further concluded that the bullet was traveling downward at approximately a six-degree angle, "going from the left side of the vehicle towards the right side of the vehicle, from the back of the vehicle towards the front of the vehicle." From this, he inferred that Lieutenant Stanley could have been "25 to 30 feet maximum from the rear of the vehicle" when he fired that shot, although Mr. Brucia emphasized that this was just an estimate.

Corporal Alerte, the State's expert on use of force, testified that Lieutenant Stanley had not been justified in discharging his weapon that evening, declaring:

> Based on what I've heard today, his arm was struck by the car. When he put it inside the car, his arm was struck. His body -- at no point in time [was] there any mention of [his] body being hit or dragged by the car.
>
> So based on what I've heard, the car hit him, the car continued going. So at that point in time, there was no longer a threat of physical bodily injury or death to Lieutenant Stanley at that time.

Therefore, concluded Corporal Alerte, a reasonable police officer would not have "used that force in that situation."

Prior to presenting its case, the defense moved for judgment of acquittal, contending that reckless endangerment should have been charged in the indictment but was not, therefore requiring judgment of acquittal,[4] and further contending that the evidence was insufficient to prove that Lieutenant Stanley had acted with corrupt purpose. The court reserved ruling on the motion, and the defense then presented its case.

Lieutenant Stanley testified that he initiated the traffic stop because Mr. Abass "was recklessly operating [his] vehicle." After he checked Mr. Abass's driver's license and registration and determined that there were no outstanding warrants, but having been apprised by Lieutenant Knott that Mr. Abass was "known to carry firearms," Lieutenant

[4] Defense counsel further contended that "the Court can't consider the alleged unlawful act because while misconduct in office is subject to a two-year limitations period under Courts and Judicial Proceedings, and was, in fact, charged within that period, reckless endangerment is subject to a one-year statute of limitations" and "was not charged within the relevant limitations period."

Stanley returned to Mr. Abass's car and, while assuming a defensive posture, asked him to step outside. Mr. Abass declined to do so.

Lieutenant Stanley attempted to open the driver's side door of Mr. Abass's car, using the outside door handle, but the door was locked. Then, according to Lieutenant Stanley, Mr. Abass took his hands off the steering wheel, turned to his right, and reached toward the console with both hands while "he maintained eye contact with" Lieutenant Stanley.[5] Lieutenant Stanley reached his left hand "deep" inside the car and attempted to open the door using the inside handle. His right hand was "gripped on" his service weapon. Then, according to Lieutenant Stanley, the engine of Mr. Abass's car roared, and Lieutenant Stanley felt the weight of the car against him. When Lieutenant Stanley "felt the vehicle lean towards" him, he "started to lose [his] balance" and "held on to the inside" of the car. Between the time "that the engine roared and [he] started feeling the movement," Lieutenant Stanley "began the process of withdrawing [his] firearm." According to Lieutenant Stanley, he fired three shots, and while he did so, his "left arm was still holding on to the inside of the vehicle, and [his] feet were rapidly moving trying to catch so [he] didn't go down." He acknowledged, however, that at no time did he fall.

Mr. Mazzei opined, among other things, that Lieutenant Stanley's decision to discharge his weapon was objectively reasonable under the circumstances. Specifically, Mr. Mazzei declared that "in that circumstance it would be reasonable [for Lieutenant

[5] Lieutenant Stanley stated that, at that moment, he "was in fear for [his] life" because he could not see Mr. Abass's hands.

Stanley] to fear being pulled under the rear tire and being run over and possibly dragged," which could have resulted in "serious bodily harm or death."

After closing argument by the parties, the court recessed. Upon reconvening the following morning, the court denied the defense motion for judgment of acquittal and announced its verdict, expressly discounting Lieutenant Stanley's testimony and declaring:

> THE COURT: So the Court would find that I don't believe that Mr. Abass tried to run over Lieutenant Stanley. I don't find that testimony credible. To make it clear, I find the testimony of Lieutenant Stanley completely uncredible. I don't believe the testimony that his arm was in the car as it was moving and the engine is being floored. I don't believe, because he said Mr. Abass looked him in the eye all that time, and he's firing a weapon as the car was speeding away.
>
> [Prosecutor] referenced, Where are the bullets at the car? If he's firing, nobody has ever said that anybody in the car was hit. The only bullet in it one may have found was apparently fragments lodged in the spare tire.
>
> So once again, I tried to visualize. Because everything was so rapidly occurring as Lieutenant Stanley stated. He's rapidly moving his feet. Don't know what rapidly moving his feet is. Because either the car is dragging him or he's running. And he's running backwards at the same time with a speeding car and firing – and pulling and firing his weapon at the same time? That's more than not credible.
>
> So since there were demonstrations off the witness stand throughout his testimony, where is the demonstration as to how his feet were moving? I think that's what the State was trying to get to, whether he was skipping. But I don't know whether that would be skipping. He had to be running awful fast for a car that's being floored or he had to be then dragged by the vehicle.
>
> And apparently, he indicated that he was moving his feet rapidly. The State then asked another question on cross. Well, did you fall? The initial response was, Not at that time. Well, what time did you fall? Oh, I didn't fall. He didn't fall. He didn't fall, he didn't skip, he was not being dragged by the car. So I don't know, other than one conclusion, his arm was never in the car.

The court continued:

> As I stated, I don't find the defendant's testimony credible at all as to his life was in danger. I don't find the defendant's testimony credible that he had his hand or arm inside the window of the vehicle as the vehicle was being floored and speeding away.
>
> I don't find the defendant's testimony credible that he's rapidly moving his feet, going backwards, and firing -- and pulling and firing his weapon at the same time. And firing, as he said, … at Mr. Abass, while he was flooring the car. I don't find credible that the car was at an angle and it created a risk of him.
>
> What the Court believes, the defendant, as he calmly stated, called on the radio, Mr. Abass left the scene. He was ticked off at him that he left the scene so he started firing. And he fired at a moving vehicle. And as everyone told the Court, you don't fire at a moving vehicle.

Accordingly, the court found Lieutenant Stanley guilty of misconduct in office. The court sentenced Lieutenant Stanley to one year of incarceration, all suspended, and one year of unsupervised probation. Lieutenant Stanley then noted this timely appeal.

DISCUSSION

Standard of Review

Because this is an appeal from a judgment entered following a bench trial, our review is governed by Maryland Rule 8-131(c), which provides:

> **(c) Action tried without a jury. —** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Brown v. State*, 234 Md. App. 145, 152

(2017) (quotation marks and citation omitted). We review the trial court's legal conclusions, however, without deference. *State v. Neger*, 427 Md. 582, 595 (2012).

I. Whether the State was Required to Charge the Underlying Crime When Charging Misconduct in Office Based on Malfeasance/Commission of a Crime

Parties' Contentions

Lieutenant Stanley contends that "because the crime of Misconduct in Office (Malfeasance) requires proof of the commission of an illegal act while acting under color of law," but no predicate offense was charged, the trial court should have granted his motion for judgment of acquittal. In support of this contention, Lieutenant Stanley directs us to *Sequeira v. State*, 250 Md. App. 161 (2021), and its analysis of uncharged predicate offenses. According to Lieutenant Stanley, we should read *Sequeira* to stand for the proposition that "a defendant accused of a crime that requires proof of a predicate offense (i.e., Use of a handgun in the commission of a crime of violence or Misconduct in Office of the Malfeasance variety) cannot be convicted based on the consideration of an uncharged offense." Lieutenant Stanley then concludes that, because he "was not charged with the offense of Reckless Endangerment, and therefore could not be convicted of the same, the trial court erred in denying his Motion for Judgment of Acquittal."

The State counters that the "common law offense of misconduct in office does not require, as an essential element, an accompanying conviction for a predicate crime." For example, the State points out that, in *Mohler v. State*, 120 Md. 325, 328 (1913), the Court

of Appeals (now the Supreme Court of Maryland[6]) rejected a duplicity challenge to an indictment, where the defendant had been charged with a single count of misconduct in office, although the indictment averred "distinct and separate [predicate] offenses[.]" The Court reasoned that those offenses "were only recitals of the means taken by [the defendant] to accomplish the end" and that, "[c]onsidered as a whole, they constitute but one transaction[.]" *Id.*

Moreover, according to the State, "accepting [Lieutenant] Stanley's position would lead to absurd consequences because the misdemeanor of misconduct in office is subject to a different statute of limitations period than most other misdemeanors, including the misdemeanor offense of reckless endangerment."[7]

Analysis

Waiver

Initially, we note that Maryland Rule 4-252(a)(2) requires that a "defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense" must be "raised by motion in conformity with this Rule and if not so

[6] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules, or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

[7] In addition, the State takes issue with Lieutenant Stanley's interpretation of *Sequeira*. We shall discuss that case in the Analysis section *infra*.

raised [is] waived unless the court, for good cause shown, orders otherwise[.]" In the present case, Lieutenant Stanley filed "Omnibus Pre-Trial Defense Motions," including an allegation that the indictment is "defective." Trial initially was scheduled February 20, 2020, but the circuit court granted a defense motion for a continuance, and trial was postponed until April 6, 2020. Meanwhile, the COVID pandemic broke out in March of that year, leading to additional postponements that stretched into most of 2021.

A status hearing was held August 17, 2020, during which the defense withdrew its preliminary motions. The claim that the State was required to charge reckless endangerment, in a separate count of the indictment, subsequently was raised at trial in a motion for judgment of acquittal.

The single-count indictment in this case alleged that Lieutenant Stanley "on or about the 8th day of August, 2018, in Prince George's County, Maryland, did, while acting as a public official to wit: a Bowie City Police Officer, engage in corrupt behavior by doing an unlawful act for recklessly endangering lives by firing his service weapon at a fleeing car with no objectively imminent threat of harm[.]" There is no doubt that the indictment averred the elements of the common-law crime of misconduct in office: "corrupt behavior"; "by a public official"; "in the exercise of his or her office or while acting under color of his or her office." *Koushall v. State*, 479 Md. 124, 154 (2022) ("*Koushall II*") (quotation marks and citation omitted) (cleaned up), *aff'g* 249 Md App. 717 (2021) ("*Koushall I*"). Therefore, the indictment conferred subject matter jurisdiction on the circuit court, and we conclude that Lieutenant Stanley's claim, that the State was required to charge, in a separate count, the underlying crime of reckless endangerment, was waived

because ultimately it was not raised in a preliminary motion. *See State v. Chaney*, 304 Md. 21, 27 (1985) (holding that where "there may have been defects in the indictment which might have subjected it to dismissal upon timely pretrial motion," the trial "court's jurisdiction over the offense charged" was not implicated, and therefore, the claim was waived).

Because, however, the State did not raise waiver in its brief, and both parties have briefed the merits of the claim, we shall exercise our discretion to address it and conclude, as an alternative holding, that it fails on its merits. Md. Rule 8-131(a).

Merits of the Claim

The "corrupt behavior" element of misconduct in office may be established in three different ways: nonfeasance, misfeasance, and malfeasance. *Koushall II*, 479 Md. at 154-55. Nonfeasance is "'omitting to do an act which is required by the duties of the office'"; misfeasance is "'doing … an act otherwise lawful in a wrongful manner'"; and malfeasance is "'doing … an act which is wrongful in itself[,]'" *id.* at 154-55 (quoting *Duncan v. State*, 282 Md. 385, 387 (1978)), or in other words, "'doing … an act which a person ought not to do at all.'" *Pinheiro v. State*, 244 Md. App. 703, 721 (quoting *Sewell v. State*, 239 Md. App 571, 602 (2018)), *cert. denied*, 468 Md. 555 (2020).

Those three ways of establishing the corrupt behavior element of misconduct in office, however, are not themselves alternative elements but rather, "describe three types

of acts or omissions that may satisfy the **unitary element of corrupt behavior**."[8] *Koushall II*, 479 Md. at 155 (emphasis added). *See also State v. Carter*, 200 Md. 255, 267 (1952) ("[w]hether this is called malfeasance or misfeasance or nonfeasance, it is a clear charge of misconduct in office, and it is the only charge contained in the indictment").

"The distinctions between nonfeasance, malfeasance and misfeasance are not always clear in the cases that develop."[9] *Sewell*, 239 Md. App at 604. Consequently,

[8] *Koushall* addressed whether second-degree assault and misconduct in office merge under the required evidence test and concluded that they do not. *Koushall II*, 479 Md. at 159. Underpinning this analysis was whether nonfeasance, misfeasance, and malfeasance are alternative elements of the offense. In concluding that they are not, the Supreme Court of Maryland distinguished misconduct in office from offenses defined under multi-purpose criminal statutes, which are treated, for merger purposes, as separate statutes. *Id.* at 159-61.

[9] For example, the defendant in *Mincher v. State*, 66 Md. 227 (1886), was an official in charge of voter registration in a ward in Baltimore City. *Id.* at 230. Mincher was convicted of violating a statute, which made it a misdemeanor to "'do any act which is by this Act forbidden to be by him done, or shall omit to do any act which is by this Act required to be by him done.'" *Id.* at 231 (quoting 1882 Md. Laws, ch. 22, sec. 34, at 57). Among Mincher's duties was to maintain lists of newly registered voters as well as voters who had been stricken from the rolls, and he was charged with publishing a false list of such voters. *Id.* at 231-32.

We observed that, arguably, Mincher "committed misfeasance because his act (publishing a voter registration list) was within the scope of his authority." *Sewell*, 239 Md. App. at 604. But alternatively, because Mincher's duty to publish the names of registered voters was ministerial, rather than discretionary, "his decision to willfully omit from the list the names of some registered voters was beyond the scope of his authority and was, therefore, malfeasance." *Id.*

Here, too, arguably, Lieutenant Stanley conceivably could have been charged with misfeasance because his act (discharging his service weapon) is, at least under some circumstances, within the scope of his authority. The gravamen of the allegation against him was that he exceeded the scope of his authority under the circumstances of this case, and he was therefore charged with malfeasance. (A key distinction between *Mincher* and

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"courts have held that 'any discrepancy between [a defendant's] conviction based on malfeasance or misfeasance is moot if the State proved that [the defendant] acted willfully, fraudulently, or corruptly[.]'" *Koushall I*, 249 Md. App. at 732 (quoting *Pinheiro*, 244 Md. App. at 723).

In a case of malfeasance, "the conduct in question falls outside of the official's discretion and authority, and, if done willfully, is corrupt on its face." *Sewell*, 239 Md. App at 604. "The fact-finder can therefore infer the element of corruption without direct evidence of the official's intent to act corruptly because 'wil[l]fulness and bad intent' are 'necessary or probable accompaniments' of malfeasance." *Id.* (quoting *Carter*, 200 Md. at 263).

Nor is it entirely clear that the wrongful act required to prove the "corrupt behavior" element of misconduct in office by malfeasance must itself be a crime. The Supreme Court of Maryland has noted that the "three behavioral modalities commonly associated with misconduct in office, malfeasance, misfeasance, and nonfeasance, are three of many different terms used to define the broad element of 'corrupt behavior[]'" and that "there are numerous acts or omissions that constitute 'corrupt behavior[.]'" *Koushall II*, 479 Md. at 160-61. Undoubtedly, some of those acts or omissions are not necessarily, themselves, crimes. But even were we to assume that the wrongful act to sustain an allegation of misconduct in office by malfeasance must itself be a crime, we conclude, for several

this case, which has no bearing on the outcome, is that Mincher was acting in a ministerial capacity, whereas Lieutenant Stanley was acting in a discretionary capacity.)

reasons, that it need not be charged in a separate count of a charging document alleging misconduct in office on that basis.

First, we observe that (and as Lieutenant Stanley himself acknowledges), there is no Maryland authority so holding. Furthermore, even where an *element* of a (compound) crime is itself, a separate crime, it is not a universal rule that an underlying offense must itself be charged along with the compound offense. *See*, *e.g.*, *Price v. State*, 405 Md. 10, 38 (2008) (Harrell, J., concurring) (declaring that a defendant "could be convicted of possessing a handgun with a nexus to drug trafficking without being charged and tried for drug trafficking"); *Sequeira*, *supra*, 250 Md. App. at 190 (observing that the statute prohibiting use of a firearm in the commission of a felony or crime of violence "does not say that the person in question must be convicted of committing the felony/crime of violence to be found guilty"); *id.* at 191 (stating that "a defendant charged with a compound crime need not be charged with the predicate crime at all").[10] That principle applies doubly where, as here, the underlying conduct to sustain a charge of misconduct in office may not even be a crime (for example, in cases of nonfeasance and misfeasance).

Furthermore, we find persuasive the State's observation that, were we to adopt Lieutenant Stanley's assertion that misconduct in office based on malfeasance requires that

[10] In support, we cited *Ford v. State*, 274 Md. 546, 551 (1975) (declaring that "an individual on trial for the [use of a firearm] charge does not necessarily need to have been separately accused of the commission of a felony or crime of violence in an additional count or indictment before he can be charged with or convicted of the [use of a firearm crime]"), *overruled on other grounds*, *Price v. State*, 405 Md. 10 (2008); and Judge Harrell's concurring opinion in *Price*. *Sequeira*, 250 Md. App. at 190-91.

the State also separately charge an underlying crime, we would effectively nullify the legislative intent in enacting the two-year statute of limitations for misconduct in office, whenever the underlying crime is itself a misdemeanor, such as reckless endangerment, subject to the one-year statute of limitations. We explain.

In *Duncan*, *supra*, 282 Md. 385, the Supreme Court of Maryland held that a prosecution of a Baltimore County Police officer for misconduct in office based on malfeasance was barred by limitations because the indictment was filed eighteen months after the offense had been committed. *Id.* at 394-95. At that time, the statute of limitations provided:

> Except as provided by this section, a prosecution for a misdemeanor not made punishable by confinement in the penitentiary by statute shall be instituted within one year after the offense was committed.

Md. Code (1974), Courts & Judicial Proceedings Article ("CJ"), § 5-106(a).[11] Misconduct in office, a common law misdemeanor, was then subject to the one-year limitations period.[12] *Duncan*, 282 Md. at 387-88. The Supreme Court rendered its decision on April 10, 1978. *Id.* at 385.

One month later, the General Assembly amended CJ § 5-106 so that there was (and is) a two-year limitations period for instituting a prosecution for official misconduct. 1978

[11] The Court observed that "[t]he exceptions designated in the section" were inapplicable in the case before it. *Duncan*, 282 Md. at 388 n.3.

[12] When the statute of limitations began to run in that case depended on the averments in the indictment and specifically, whether they charged a continuing offense. The Court held that they did not. *Duncan*, 282 Md. at 388-94.

Md. Laws, ch. 445, at 1596-97 (enacting 1978 SB 249) (approved May 16, 1978, effective July 1, 1978). Section 5-106(f) now provides:

> (f) A prosecution for the commission of or the attempt to commit a misdemeanor constituting: (1) a criminal offense under the Maryland Public Ethics Law [State Government Article, § 15-101 et seq.]; or (2) criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer of the State, or of an agency of the State, or of a political subdivision of the State, or of a bicounty or multicounty agency in the State shall be instituted within 2 years after the offense was committed.

When we consider how quickly the legislature responded to the Supreme Court's decision in *Duncan*; when, in addition, we consider that nonfeasance, misfeasance, and malfeasance all "describe … acts or omissions that may satisfy the unitary element of corrupt behavior," *Koushall II*, 479 Md. at 155; and finally, when we consider that a number of misdemeanors, which could underlay a charge of misconduct in office based upon malfeasance, are subject to a one-year limitations period,[13] we conclude that the legislature could not have intended that in cases of misconduct in office based upon malfeasance (but only in such cases), the State would be required to charge, in a separate count of a charging document, an underlying crime.[14]

[13] As the State points out, in addition to reckless endangerment, other misdemeanors subject to the one-year limitations period include assault in the second degree, extortion of property having a value less than $1,000, and extortion by false accusation. To that we could add others, for example, theft of property having a value of at least $100 but less than $1,500, obstruction of justice, and making a false statement to a public official concerning a crime or hazard with the intent to trigger an investigation or other official action.

[14] In passing, we note that Lieutenant Stanley's reliance on *Sequeira* is misplaced. The issue in that case was

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II. Whether Reckless Endangerment Can Support a Conviction of Misconduct in Office Based on Malfeasance/Commission of a Crime

Parties' Contentions

Lieutenant Stanley further contends that, even were we to assume that the State was not required to charge him, in a separate count, with a predicate offense, the particular predicate offense in this case cannot support a conviction of misconduct in office. According to Lieutenant Stanley, the mens rea of reckless endangerment and misconduct in office "are mutually exclusive." He asserts that the mens rea for reckless endangerment, that a defendant consciously disregard a substantial risk to another, is insufficient as a

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> whether, when a multicount indictment identifies particular victims in the counts charging predicate crimes, the defendant may be convicted of use of a firearm not in the commission of those charged predicate crimes but in the commission of uncharged predicate crimes against other victims in the same incident.

Sequeira, 250 Md. App. at 167. We held that the answer to that question was "No," declaring that

> **when a predicate crime has been charged** based on an incident in which a firearm was used in committing the crime, the use of a firearm crime tied to that predicate crime is not a free agent that can attach to whatever uncharged predicate crime might happen to be proven at trial. The predicate crime and associated use of a firearm crime are linked.

Id. at 193 (emphasis added).

We note that in *Sequeira*, a predicate crime was separately charged, unlike in this case. We agree with the State that *Sequeira* was concerned with the adequacy of notice provided to a defendant by a charging document and not the legal sufficiency of the evidence. *Sequeira* does not require that a predicate offense be separately charged, *id.* at 190-91, and it does not support Lieutenant Stanley's argument in this case.

matter of law to establish the mens rea of misconduct in office, that a defendant act willfully, fraudulently, or corruptly.

The State counters with several reasons why, it maintains, we should reject Lieutenant Stanley's contention. According to the State, the elements of reckless endangerment, which are the reckless creation of a substantial risk of injury or death to another and the conscious disregard of that risk, "are sufficiently 'willful'" to support a finding of misconduct in office by malfeasance rather than a mere error of judgment. And furthermore, according to the State, Lieutenant Stanley's "categorical suggestion" that reckless endangerment "can *never* support" an inference of corrupt behavior is overbroad and, moreover, ignores the circuit court's factual findings in this case.

Analysis

The parties stipulated that "Officer Stanley was acting in his capacity as a sworn police officer at the time of the incident." Thus, the only contested issue is whether the evidence was sufficient to establish the "corrupt behavior" element of misconduct in office, that is, whether Lieutenant Stanley acted "willfully, fraudulently, or corruptly." *Koushall I*, 249 Md. App. at 732.

Here, even were we to assume, for the sake of argument, that reckless endangerment may not, in every case, support a conclusion that a defendant acted willfully or intentionally, when we consider the circuit court's factual findings in this case, we hold that there was sufficient evidence to sustain the court's conclusion that Lieutenant Stanley acted in an objectively unreasonable manner when he intentionally discharged his service weapon in the direction of a moving vehicle and that he therefore "acted willfully,

fraudulently, or corruptly[.]" *Koushall I*, 249 Md. App. at 732. The circuit court not only expressly disbelieved Lieutenant Stanley's version of events, but it further found, among other things, that Lieutenant Stanley "was ticked off at" Mr. Abass for leaving the scene "so he started firing"; that Lieutenant Stanley "fired at a moving vehicle"; that Lieutenant Stanley thereby "created a risk of death, of serious physical injury to [Mr.] Abass, to the female rider in the vehicle, and to the residents in that residential community"; and that "no reasonable police officer" would have done what Lieutenant Stanley did that evening. Furthermore, the State presented expert testimony that Lieutenant Stanley's actions that evening were objectively unreasonable, which was sufficient on its face to support the court's finding.[15]

We would further note, in passing, that it is far from clear, as Lieutenant Stanley appears to suggest, that a reckless act categorically cannot supply the predicate to sustain a conviction of misconduct in office. Convictions of several more serious crimes, including assault in the second degree and assault in the first degree through the use of a firearm, may be sustained (although not in all instances) on a finding of recklessness, as is true always for reckless endangerment. *See*, *e.g.*, *State v. Frazier*, 469 Md. 627, 643 n.13 (2020) (citing Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 4:01 (Second Degree Assault) (Maryland State Bar Ass'n 2012, 2022 Repl. Pages)); MPJI-Cr 4:04.1A (First

[15] We note that the Supreme Court of Maryland has stated that "the State is not 'required to present expert testimony on the reasonableness of an officer's use of force'" and that "'[T]he fact finder, not an expert witness, is the arbiter of the reasonableness of force used by a police officer to effect an arrest.'" *Koushall II*, 479 Md. at 153 (quoting *Koushall I*, 249 Md. App. at 731).

Degree Assault)[16]; *Duckworth v. State*, 323 Md. 532, 542 (1991) (observing that "the act of pointing a firearm at a nearby human being, without being certain that the weapon will not discharge, generally is sufficiently reckless to support" a battery conviction "where the [unintended] discharge of the weapon result[s] in a wounding short of death"). Lieutenant Stanley does not (indeed cannot) contend that assault is not a proper predicate offense to support a conviction of misconduct in office based upon malfeasance. *See*, *e.g.*, *Koushall II*, 479 Md. at 155-56; *Riley v. State*, 227 Md. App. 249, 264 & n.7, *cert. denied*, 448 Md. 726 (2016).[17]

Nor is it required that a predicate crime underlying a conviction of misconduct in office be a specific intent crime, as Lieutenant Stanley suggests in his brief. For example, second-degree assault and first-degree assault based upon use of a firearm, like reckless

[16] The pattern instruction for first-degree assault states in part:

> In order to convict the defendant of first degree assault, the State must prove all of the elements of second degree assault and also must prove that:
>
> (1) the defendant used a firearm to commit assault[.]

See also Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 3-202(a)(2) (proscribing "an assault with a firearm" without reference to specific intent). (In 2020, this statute was amended, 2020 Md. Laws, ch. 120, and the relevant provision is now codified without substantive change at CL § 3-202(b)(2).)

[17] We recognize that the assaults in *Koushall* and *Riley* appeared to be intentional. We do not believe, however, that when a police officer unreasonably fires his service weapon at a fleeing suspect, his culpability should turn on whether his shot(s) struck the victim. *See State v. Lore*, 484 A.2d 1259, 1261 (N.J. Super. Ct. App. Div. 1984) (upholding a conviction of official misconduct where the accused police officer fired at a fleeing suspect and "the bullet went through his hair") (cited approvingly in *Riley*).

endangerment, are general intent crimes. *Johnson v. State*, 223 Md. App. 128, 147, *cert. denied*, 445 Md. 6 (2015); MPJI-Cr 4:04.1A. In conclusion, we agree with the State that Lieutenant Stanley's actions were sufficiently willful so as to distinguish them "'from mere error of judgment.'" *Leopold v. State*, 216 Md. App. 586, 605 (2014) (quoting *Chester v. State*, 32 Md. App. 593, 606, *cert. denied*, 278 Md. 718 (1976)).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.