Circuit Court for Baltimore City
Case No. 116208023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 892

September Term, 2017

DARROW COADY, JR.

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: March 28, 2018+

Tried by a jury in the Circuit Court for Baltimore City, appellant, Darrow Coady, Jr., was convicted of involuntary manslaughter, first-degree child abuse resulting in death, second-degree child abuse, and reckless endangerment.[1] The trial court sentenced him to 20 years in prison for child abuse resulting in death, eight years suspended, two concurrent sentences of six years in prison for second-degree child abuse and involuntary manslaughter, and a concurrent sentence of one year in prison for reckless endangerment. Coady thereafter timely noted this appeal, asking us to consider the following questions:

> 1. Did the trial court err by refusing to allow the defense to cross-examine Jasmine Fletcher about her uncontrollable anger?
>
> 2. Did the trial court err in admitting autopsy photos?
>
> 3. Is the evidence sufficient to sustain the convictions?
>
> 4. Did the trial court err in imposing separate sentences for child abuse resulting in death, child abuse in the second degree, involuntary manslaughter, and reckless endangerment?

Because the State concedes, and we agree, that Coady's sentence for the conviction of second-degree child abuse should merge into the sentence for child abuse resulting in death, and his sentence for the conviction of reckless endangerment should merge into the sentence for involuntary manslaughter, we vacate the sentences imposed for those two convictions. For the reasons that follow, we otherwise affirm the judgments of the trial court.

[1] The trial court granted Coady's motion for judgment of acquittal as to the crime of second-degree assault, and the jury acquitted him of second-degree murder.

(Continued)

FACTS AND LEGAL PROCEEDINGS

Darrow Coady, III, the son of Coady and Jasmine Fletcher, was born prematurely, at 25 weeks' gestation on October 10, 2015, weighing one pound, five ounces.[2] When Darrow was discharged from the hospital in January 2016, he and Fletcher lived with Fletcher's father. Because of his under-developed lungs, Darrow required the administration of oxygen, which Fletcher was trained to do. On April 1, 2016, Fletcher and Darrow moved in with Coady at 5611 Sinclair Lane, apartment 1, Baltimore City.

According to the reluctant testimony of Fletcher, who was still involved romantically with Coady at the time of trial, she was a stay-at-home mom and primary caretaker for Darrow, while Cody worked. On June 27, 2016, Coady woke her at approximately 6:00 a.m. to say he was going to the bank to check whether his paycheck had been deposited, as they had no food in the apartment and could not purchase any until he received his pay. When Coady returned home approximately 30 minutes later, Fletcher checked on Darrow and her four-year-old brother, Jammarie Ivey, who were sleeping in the living room, after which she and Coady went back to sleep.

Fletcher woke again at 10:00 a.m. She went to check on Darrow, while Coady went into the kitchen to prepare the baby's bottles. Fletcher found Darrow on his stomach, unconscious. She "freaked out" and called for Coady, who came running, picked Darrow up, and started CPR on the floor. Fletcher noticed a little blood and a bruise on Darrow's

[2] For the sake of clarity, we will refer to appellant as "Coady" and his son as "Darrow."

nose, but said it had been there the night before and such skin conditions were normal for Darrow.

Fletcher called 911, telling the operator that Darrow was moving and making noises.[3] She denied any prior knowledge of injury to the child, although she said Darrow had rolled off her bed sometime prior to June 27, 2016.

Paramedics, who had been dispatched to the apartment in response to a call for a child in cardiac arrest, arrived at approximately 10:15 a.m. Despite their administration of CPR and advanced life support procedures, the child, later identified as Darrow, was not breathing, did not have a pulse, and did not respond to any stimuli.

The paramedics observed a laceration to the child's nose, along with bruising and drying blood down the right side of his neck and his shoulder. The child was very cold and "mottled," meaning his skin was "blotchy and discolored," and his jaw was clenched. When paramedics removed his clothes, they observed bruising and a deformity on the right side of his chest wall, which could have been an indicator of broken ribs.

Darrow was transported to the Johns Hopkins Pediatric Trauma Center, where he was pronounced dead at 11:04 a.m. At the time he was pronounced dead, his body temperature was 84.6 degrees.

The police arrived at the apartment after the paramedics and interviewed Coady and Fletcher.[4] Execution of a search warrant recovered crib bedding with suspected blood and

[3] The 911 call was played for the jury and transcribed on the record.

[4] Baltimore City Police Department Officer Corey Gillespie's body camera video of the interview was played for the jury and entered into evidence.

vomit on it. Upon notification that Darrow had been pronounced dead, Officer Gillespie prepared to transport Coady and Fletcher to the homicide unit.

Detective Richard Purtell took Coady's statement, after Coady waived his Miranda rights. In his video statement, which was shown to the jury and transcribed on the record, Coady initially told Purtell that Darrow had been making noises when he left the apartment at 6:00 a.m. He said he fed and changed the baby at approximately 7:00 a.m. and put him back in his crib. Only after Fletcher told him Darrow was not breathing at approximately 10:30 a.m., did he realize that the baby was not moving. It was then Coady began CPR and called 911. He said that Darrow "started coming back to life" after the administration of CPR. Coady denied any hits, drops, injuries, or traumas to Darrow.

When Purtell advised him that Darrow had suffered a skull fracture, Coady changed his story to say that he had put Darrow "down on the ground kind of hard" to perform CPR. Purtell made it clear that he did not believe that story, so Coady changed it again to say that Fletcher had made a mistake and dropped the baby head first on the floor a few nights before his death.

Coady claimed to have taken Darrow to the hospital after the fall, but said the doctors took no x-rays of the child, instead declaring he was fine. Purtell advised Coady that the hospital would have notified the police of a baby who had been dropped on his head, after which Coady changed his story again to say he and Fletcher had not taken the baby to the hospital because they thought he was okay.

Finally, Coady said he dropped the baby at approximately 10:30 the morning of his death. With no money, he and Fletcher had not eaten in three days, and, as a diabetic, he

was shaky and weak, which caused him to drop the baby. He insisted that Darrow was "still fine" after the fall. Coady was charged in relation to Darrow's death the next day, following the child's autopsy.[5]

After reviewing Coady's interview with Purtell, Detective Yost notified Fletcher of Darrow's death.[6] She reacted in a manner consistent with a mother learning of the death of her child, which is to say, distraught. As follow-up to the investigation into Coady, Yost tried to reach Fletcher a "bunch of times," without success because she did not want to talk to him.

At the close of the State's case-in-chief, the court granted Coady's motion for judgment of acquittal on the charge of second-degree assault but denied the motion with

[5] Dr. Donna Vicenti, an Assistant Medical Examiner at the Office of the Chief Medical Examiner, performed Darrow's autopsy and prepared the autopsy report. Her external examination revealed scrapes on his face in various stages of healing, a torn frenulum, a bruise on the back of his scalp, a scrape on the bridge of his nose, a fresh abrasion on the tip of his nose, scabs on his chest, back, scalp, right forearm, and right ankle.

Internal examination revealed healing rib fractures unlikely to have been caused by CPR and a large area (5" by 3") of hemorrhage on the back of Darrow's scalp, which extended into the fibrous tissue that covers the skull, along with a skull fracture and bleeding brain injury under the fracture.

With a reasonable degree of medical certainty, Vicenti opined that the brain injuries were caused by blunt force trauma to the head within 24 hours of Darrow's death. The brain injuries were unlikely to have been caused by a "short fall," that is, from standing height. The rib fractures were caused by "some sort of trauma" within 10 to 14 days of his death. The baby also suffered from pneumonia at the time of his death, which may have been associated with the rib fractures. Vicenti listed the cause of death as multiple injuries, the manner of death a homicide.

[6] Yost's given name is not mentioned in the transcripts.

regard to the remaining charges. Coady did not present any evidence, and the court denied his renewed motion for judgment of acquittal at the close of the entire case.

DISCUSSION

I.

Coady first argues that the trial court erred in refusing to permit him to cross-examine Fletcher about her alleged "uncontrollable anger," one episode of which led to a referral to Child Protective Services for anger management. In his view, the evidence was relevant and more probative than prejudicial, because Fletcher was the only other adult present when Darrow suffered his injuries, and evidence of her anger issues could cast her as the person who abused Darrow, rather than Coady.

Prior to the start of trial, the State moved in *limine* to exclude evidence of Fletcher's "prior bad acts" of anger toward Coady, which it averred was irrelevant to the charged crimes. The State argued that, pursuant to *Sessoms v. State*, 357 Md. 274 (2000), in the absence of a showing of ill will, a defendant cannot use a third party's bad acts unless it completely exonerates the defendant, which was not applicable to this matter. The trial court ruled it would hold the motion under advisement, until such time as the subject matter of the motion made it necessary for the court to reach a decision.

Thereafter, during her cross-examination of Fletcher regarding Darrow's time spent in the neo-natal intensive care unit following his premature birth, defense counsel asked, "Did there come a time where Child Protective Services had to become involved with the case?" The prosecutor objected, and during a bench conference, defense counsel proffered

that "it's basically for a personality trait that she's going to say that she has uncontrolled anger and had to be referred to anger management by CPS."

When the court questioned how it was material to what the jury had to decide, counsel answered, "Because Ms. Fletcher was also in control of this baby and I have a right to cross examine her about a character that she has, that she has uncontrolled anger and she will admit that she is the aggressor on assaultive behavior." The court pointed out, however, that Fletcher had demonstrated no aggressive behavior toward Darrow or any other child; rather, the CPS referral related to an alleged argument between Fletcher and Coady while they were in the hospital with Darrow. Finding that "that really doesn't point the finger" and "merely established that she may have had an instant or two when she and the Defendant were angry or aggressive toward each other," the court ruled in favor of the State's objection. The court also instructed the jury that defense counsel's question had been stricken.

The court's exclusion of evidence of Fletcher's uncontrollable anger, based on a specific argument she had with Coady, does not implicate Rule 5-404(b), the exclusionary rule relating to prior bad acts, as that subsection generally "does not apply to crimes, wrongs, or acts committed by anyone other than the defendant." *Sessoms*, 357 Md. at 281. In his brief, Coady agrees, arguing that "the sole barriers to admission of other crimes evidence pertaining to a person other than the defendant are the same basic requirements which apply to evidence in general, *i.e.*, that it be relevant under Rule 5-401 and that its probative value not be substantially outweighed by the danger of unfair prejudice under

Rule 5-403." He contends that the evidence of Fletcher's anger and aggressive personality was relevant and not unduly prejudicial. We disagree.

Relevant evidence is evidence having the "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would have been without the evidence." Md. Rule 5-401. Relevant evidence is admissible, under Rule 5-402, subject to the court's exercise of discretion to exclude it under Rule 5-403, "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The determination of whether evidence is relevant is a matter of law, to be reviewed by an appellate court *de novo*. *DeLeon v. State*, 407 Md. 16, 20 (2008).

We agree with the trial court's finding that a particular act of aggression between Fletcher and Coady is irrelevant to the jury's determination of who harmed Darrow. An incident between the two adults does not make it more or less probable that Fletcher would abuse her own baby. As the trial court pointed out, no evidence had been presented of any aggressive behavior Fletcher had exhibited toward Darrow, or any child, and evidence of an altercation between Fletcher and Coady established only that they fought between themselves. It was not relevant to the issues to be decided by the jury, and the trial court therefore correctly excluded the evidence. In addition, to the extent that Coady wanted to use evidence of Fletcher's character, it was inadmissible under Rule 5-404(a).

II.

Coady next contends that the trial court erred in admitting, over objection, autopsy photos of Darrow. In his view, the several photos, which he characterizes as "extremely

gruesome," were cumulative, prejudicial, of no special relevance, and served to "inflame the passions of the jury." In addition, he claims, the photos were unnecessary to prove Darrow's injuries, as those injuries were described in detail by Vicenti and not contested at trial.

During the State's direct examination of Vicenti, defense counsel objected to the admission into evidence of Darrow's autopsy photos. The following colloquy took place during a bench conference:

> [DEFENSE COUNSEL]: And that is part of my objection. We've already had enough dead baby pictures. And some of the graphic nature of these pictures is inflammatory and prejudicial.
>
> THE COURT: Let me put it this way. I don't necessarily believe in a great deal of duplication, but this and this one and this one and this one and this one and this one, none of them are duplicitous [sic]. So I will overrule your objection.
>
> [DEFENSE COUNSEL]: But I'm also objecting because of their inflammatory nature as prejudicial.
>
> THE COURT: I understand. In every homicide of a serious injury case we have pictures of the injury—when the autopsy is admitted, they tend to be—oh no, they don't intend to be. They are inflammatory, but I'm still going to have to overrule your objection.
>
> [DEFENSE COUNSEL]: Particularly in this case with the age of the child.
>
> THE COURT: I understand, but I'm going to overrule. The only two or three I think will be different from what the jury would normally see are the ones of the exposed skull, but I'm going to let them in anyway. All right.

As with any evidence, the general rule regarding the admission of photographs is that

> 'their prejudicial effect must not substantially outweigh their probative value. The balancing of probative value against prejudicial effect is committed to

> the sound discretion of the trial judge. The trial court's decision will not be disturbed unless "plainly arbitrary,". . . because the trial judge is in the best position to make this assessment.
>
> Photographs must also be relevant to be admissible. We have found crime scene and autopsy photographs of homicide victims to be relevant to a broad range of issues, including the type of wounds, the attacker[']s intent, and the modus operandi. . . .The relevancy determination is also committed to the trial judge's discretion.'

Ayala v. State, 174 Md. App. 647, 679-80 (2007) (quoting *State v. Broberg*, 342 Md. 544, 552 (1996)).

In *Price v. State*, 82 Md. App. 210 (1990), as here, the defendant argued that the autopsy photos "inflamed and prejudiced the jury" and assigned error to their admission into evidence. We pointed out, however, that we have often permitted the reception into evidence of photographs depicting the condition of the victim and the location of injuries on the deceased's body, the position of the victim's body at the murder site, and the wounds on the victim. *Id*. at 222-23 (citing *Johnson v. State*, 303 Md. 487, 502 (1985)). Autopsy photographs have also been admitted to "allow the jury to visualize the atrociousness of the crime—a circumstance of much import where the fact finder must determine the degree of murder." *Id*. (quoting *Johnson*, 303 Md. at 502).[7]

[7] Moreover, autopsy photos, as part of the medical examiner's record, are ordinarily admissible at trial, subject to the discretion of the trial court. *Johnson*, 303 Md. at 503. *See also* Md. Code (2015 Repl. Vol., 2016 Supp.), §5-311(d) of the Health-General Article (a medical examiner's record is competent evidence in any court of this State of the matters and facts contained in it; "record" means the result of an external examination of or an autopsy on a body). Vicenti testified that photographs are routinely taken during the autopsy procedure, including an "as is" photograph of the person before any medical intervention equipment is removed, an identification photo of the person's face, and any other photos the medical examiner dictates should be taken.

The question is not whether the autopsy photos are prejudicial, but whether they are *unfairly* prejudicial. *Booze v. State*, 111 Md. App. 208, 227 (1996), *rev'd on other grounds*, 347 Md. 51 (1997). Even if the photos are "'more graphic than other available evidence,'" our courts have "'seldom found an abuse of a trial judge's discretion in admitting them into evidence.'" *Roebuck v. State*, 148 Md. App. 563, 599 (2002) (quoting *Hunt v. State*, 312 Md. 494, 505 (1988)); *see also Mason v. Lynch*, 388 Md. 37, 52 (2005) ("The very few cases finding reversible error are ones where the trial courts admitted photographs which this Court held did not accurately represent the person or scene or were otherwise not properly verified.").

Applying the foregoing to the facts of this matter, we cannot say the trial court abused its discretion in permitting the autopsy photos into evidence. The photos were probative as to whether Darrow died as the result of abuse or some underlying medical issues related to his premature birth. Coady was charged with, among other things, first-degree child abuse resulting in death, and one of the elements of the crime is, of course, "abuse," defined by Md. Code (2012 Repl. Vol., 2016 Supp.), § 3–601(a)(2) of the Criminal Law Article ("CL"), as "physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act." The autopsy photographs helped Vicenti explain Darrow's injuries, and aided the jury's determination of whether there had been "cruel or inhumane treatment" or a "malicious act" under the circumstances presented.

We also conclude that the trial court did not abuse its discretion in concluding that the probative value of the photographs was not outweighed by the potential for unfair prejudice. The record shows that the court considered the photos, engaged in discussion with the parties, and ultimately decided the photos would be admitted. In doing so, the court observed that only two or three of the photos were other than what the jury would normally see in a homicide case.

Finally, the photos were not inadmissibly cumulative. As the Court of Appeals noted in *Johnson*, 303 Md. at 503-4, "all photographic evidence is in some sense cumulative. The very purpose of photographic evidence is to clarify and communicate facts to the tribunal more accurately than by mere words." Here, the trial court found that none of the photos were inadmissibly duplicative. It was within the court's discretion to make that determination.

We therefore conclude that the trial court's decision to admit the autopsy photos was a proper exercise of judicial discretion.

III.

Coady also argues that the evidence was insufficient to sustain the convictions on all counts submitted to the jury. He claims that the State failed to prove that Darrow sustained physical injury as a result of cruel or inhumane treatment or malicious acts by Coady or that Coady intentionally caused the injuries, as opposed to a tragic accident. As to the charge of reckless endangerment, he continues, the State did not prove he had engaged in conduct that created a substantial risk of death or serious physical injury to Darrow. Finally, he avers that the State did not prove that it was he who abused Darrow,

as Fletcher, the only other adult in the home at the time of Darrow's death, was equally likely to have caused the injuries.

The standard for appellate review of evidentiary sufficiency is

> whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone. Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence. This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact. Thus, the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.

Darling v. State, 232 Md. App. 430, 465, *cert. denied*, 454 Md. 655 (2017) (quotation marks and internal citations omitted; alterations in original).

Although Coady told Purtell that he had inadvertently dropped Darrow while weak and hungry, and the jury could have chosen to believe him, Vicenti testified that the eight-month-old baby had suffered numerous severe injuries, which had occurred within one to 14 days prior to his death and were inconsistent with a single accidental fall. In addition to the skull fracture, which she stated would not have been so large if it had been the result of an accidental fall from standing height, the doctor enumerated abrasions and bruises to the baby's back, face, extremities, and chest, in addition to a torn frenulum in his mouth, bleeding in his brain underlying the skull fracture, and broken ribs unrelated to any attempt at CPR. In her opinion, the injuries and the baby's death were caused by trauma, inflicted

by another. The jury was also able to view the described injuries via photographic evidence. Based on the evidence, a reasonable jury could have found that Darrow's injuries were caused by abuse (first-degree child abuse resulting in death or second-degree child abuse) or negligence that rose to the level of a wanton and reckless disregard of human life (involuntary manslaughter) or actions that created a substantial risk of injury or death (reckless endangerment).

With regard to Coady's criminal agency, Coady admitted, in his interview with Purtell, that it was he who dropped Darrow, and the jury was entitled to believe his statement, despite his conflicting claim that Fletcher had dropped the child. *See Wagner v. State*, 160 Md. App. 531, 538 (2005) ("the jury was entitled to accept all, part, or none of the State's evidence."). Moreover, the jury had viewed Coady's police interview, in which he changed his story several times, and was able to judge his credibility.

IV.

Finally, Coady argues that the required evidence test mandates that his sentences for the convictions of involuntary manslaughter, second-degree child abuse, and reckless endangerment merge into the sentence for the conviction of first-degree child abuse resulting in death because the convictions were all based on the same events. The State partially agrees, conceding that merger is appropriate with regard to second-degree child abuse into first-degree child abuse and reckless endangerment into involuntary manslaughter, but denies that the sentence for the conviction of involuntary manslaughter appropriately merges into the sentence for the conviction of first-degree child abuse resulting in death.

In sentencing Coady, the trial court imposed a 20-year sentence for the first-degree child abuse resulting in death conviction, suspending all but 12 years. Although the sentences on the lesser crimes were all imposed to run concurrently with the 20-year sentence, each was separately imposed.

"The merger of convictions for purposes of sentencing derives from the protection against double jeopardy afforded by the Fifth Amendment of the federal Constitution and by Maryland common law." *Brooks v. State*, 439 Md. 698, 737 (2014). "Merger protects a convicted defendant from multiple punishments for the same offense." *Id.* A trial court's failure to merge convictions for sentencing purposes when required to do so comprises reversible error. *Britton v. State*, 201 Md. App. 589, 598–99 (2011).

Generally, we analyze whether offenses merge under the required evidence test. *State v. Smith*, 223 Md. App. 16, 34 (2015).

> 'The required evidence test focuses upon the elements of each offense; if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter. Stated another way, the required evidence is that which is minimally necessary to secure a conviction for each [ ] offense. If each offense requires proof of a fact which the other does not, or in other words, if each offense contains an element which the other does not, there is no merger under the required evidence test even though both offenses are based upon the same act or acts. But, where only one offense requires proof of an additional fact, so that all elements of one offense are present in the other, and where both offenses are based on the same act or acts, [ ] merger follows [ ].'

Jones-Harris v. State, 179 Md. App. 72, 98 (2008) (quoting *Abeokuto v. State*, 391 Md. 289, 353 (2006)). "When a merger is required, separate

sentences are normally precluded; instead, a sentence may be imposed only for the offense having the additional element or elements." *Abeokuto,* 391 Md. at 353.

Merger may also be appropriate when a defendant is convicted of multiple offenses based on the same conduct. *See Morris v. State*, 192 Md. App. 1, 39 (2010) (noting unconstitutionality of multiple punishments for same conduct unless intended by the legislature). In conducting a merger analysis, we first determine whether the two offenses arose out of the same conduct, and, if so, then we examine whether the General Assembly intended multiple punishments. *Wiredu v. State,* 222 Md. App. 212, 220 (2015).

Criminal Law Article §3-601(d)(1)(i) proscribes second-degree child abuse: "A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor." The crime of first-degree child abuse resulting in death has the same elements, but adds the additional requirement that the abuse cause the death of the child. CL §3-601(b). It is therefore clear that the trial court should have merged the sentence for the second-degree abuse conviction into the sentence for the conviction of first-degree abuse resulting in death conviction.

Similarly, the court should have merged the sentence for the conviction of reckless endangerment into the sentence for the conviction of involuntary manslaughter. *See State v. Kanavy*, 416 Md. 1, 9–10 (2010) (wherein the Court of Appeals agreed with this Court's holding in *Williams v. State*, 100 Md. App. 468, 485 (1994), that "[a] reckless endangerment resulting in death will constitute either a grossly negligent involuntary manslaughter or a depraved-heart second-degree murder. In either event, the reckless endangerment will merge into the greater inclusive criminal homicide.").

As the State posits, however, the sentence for the conviction of involuntary manslaughter would not merge into the sentence for the conviction of first-degree child abuse resulting in death. In *Fisher v. State*, 367 Md. 218 (2001), the Court of Appeals considered a case in which a child died as a result of abuse. The defendants were convicted of second-degree murder and child abuse. *Id*. at 226.

The *Fisher* Court recognized that the General Assembly, in enacting the predecessor statute to CL§3-601(e), expressly intended to overrule the holdings in *Nightingale v. State*, 312 Md. 699 (1988), and *White v. State*, 318 Md. 740 (1990), which had applied the rule of lenity to merge multiple sentences imposed in child abuse cases. 367 Md. at 242. Section 3-601(e) now provides that a sentence for a child abuse crime "may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section."

In addition, the *Fisher* Court explained that the purpose clause of Chapter 604 of the Acts of 1990 "declares that the Legislature intended to allow the imposition of multiple sentences 'if a conviction is entered against an individual for murder, rape, sexual offense, any sex crime, or any crime of physical violence, and a conviction is also entered for child abuse.'" *Id*. The Court added that the "philosophy underlying [now §3-601] is articulated in a letter from an Assistant Attorney General to the Chairman of the House Judiciary Committee urging adoption of the bill that enacted [now §3-601]. In part the letter reads:

> '**Child abuse and the underlying crimes involve separate societal evils.** The underlying crime is one of violence against a member of society. Child abuse is a breach of custodial or familial trust. The two crimes should be punished separately and the person who violates both laws should be exposed to a greater possible penalty.'"

Id. at 242-3 (emphasis in original).

We therefore find no error in the imposition of separate sentences for Coady's convictions of first-degree child abuse resulting in death and involuntary manslaughter.

SENTENCES FOR SECOND-DEGREE CHILD ABUSE AND RECKLESS ENDANGERMENT VACATED; JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED; COSTS ASSESSED TO APPELLANT.