Circuit Court for Montgomery County
Case No. 136324C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2650

September Term, 2019

JUDITH KOENICK

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Friedman,

JJ.

Opinion by Kehoe, J.
Concurring and Dissenting Opinion by
Friedman, J.

Filed: April 11, 2022

After a jury trial in the Circuit Court for Montgomery County, Judith Koenick was convicted of one count of harassing the Montgomery County Public Schools and two counts of hindering school bus drivers while they were engaged in the performance of their official duties. Ms. Koenick raises two contentions on appeal, which we have reworded:

> 1. Is the Board of Education of Montgomery County a "person" for purposes of Md. Code, Crim. Law § 3-803?
>
> 2. Did the trial court err by denying Ms. Koenick's motion to sever the charges against her into separate trials?[1]

We will reverse the convictions.

BACKGROUND

When the incidents occurred that gave rise to the criminal charges against her, Ms. Koenick was seventy-seven years old and a life-long resident of the Rock Creek Park neighborhood of Chevy Chase. Her home is located about one-tenth of a mile from the Rock Creek Forest Elementary School, a Montgomery County public school.

---

[1] In her brief, Ms. Koenick articulates the issues as follows:

> I. Did the circuit court err by not dismissing the harassment charges against the appellant because the Maryland criminal code does not define a government agency as a "person" that can [be] the victim of harassment?
>
> II. Did the circuit court err by not severing the charges, charged in the information, since the evidence used at the appellants trial was not admissible as to all counts charged in the information?

(Formatting altered.)

One of the witnesses at the trial was Rosa Mensah, the school's vice principal. She testified that, in 2019, the school offered programs for 773 students ranging from pre-school through the fifth grade, including a variety of programs for pre-school educational programs, pre-kindergarten programs, and students with autism. She explained why the timely arrival and departure of the twenty school buses that served the school was necessary to accommodate the health and welfare of students, especially students who are medically fragile, or who, because of age or other reasons "still have toileting needs." Even when the buses ran on time, Ms. Mensah testified, some students did not arrive at home until 5:30 or 6 p.m.

It was the State's theory at trial that Ms. Koenick embarked upon a course of conduct designed to disrupt the operations of the school beginning at some point in April of 2019.[2] On May 17, 2019, Rosa Mensah, the vice principal of the school, told Ms. Koenick that she was no longer welcome at the school because she was obstructing the passage of school buses on their way to the school to pick up children. On June 7, 2019, Ms. Koenick impeded access to the school grounds during a school festival by giving popsicles to children as they entered the school grounds. Someone from the school called the police, and Montgomery County police officers came and arrested Ms. Koenick.

[2] In their briefs, neither party points to anything in the record that provides insight as to the source of Ms. Koenick's animus against the school.

Eventually, the State filed an information against Ms. Koenick charging her with a total of twenty-one criminal offenses. Prior to trial, the State dismissed six of the counts as duplicative. This left the following:

> one count of second-degree assault of a Montgomery County police officer (Md. Code, Crim. Law § 3-203);
>
> one count of harassment of the Montgomery County Public Schools (Crim. Law § 3-803);
>
> one count of attempted indecent exposure (Crim. Law § 11-107);
>
> three counts of obstructing the free passage of another in a public place (Crim. Law § 10-201(c)(1));
>
> three counts of disturbing the public peace (Crim. Law § 10-201(c)(2));
>
> one count of failing to obey a reasonable and lawful order of a law enforcement officer (Crim. Law § 10-201(c)(3)); and
>
> five counts of obstructing a school bus driver in the performance of the bus driver's duties (Educ. § 26-104).[3]

Ms. Koenick elected a jury trial which took place in January 2020. At the close of the State's case, she moved for a judgment of acquittal as to all counts. The trial court granted the motion as to two of the disturbing the public peace counts, two of the obstructing the

[3] Educ. § 26-104 states in pertinent part:

> (a) In this section, "school bus driver" means the driver of a school vehicle as defined in § 11-154 of the Transportation Article while employed by or under contract with a local school system.
>
> (b) A person may not obstruct, hinder, or interfere with a school bus driver while the school bus driver is engaged in the performance of the school bus driver's official duties.

* * *

free passage of another in a public place counts, the attempted indecent exposure count, the failure to obey a police officer's reasonable order count, and two of the school bus driver obstruction counts. The remaining counts were submitted to the jury, which returned verdicts of guilty on the harassment count and two of the school bus driver obstruction counts and verdicts of not guilty on all remaining counts.

In addition to imposing fines totaling $2,500, the trial court sentenced Ms. Koenick to two consecutive one-year terms of incarceration for the school bus driver obstruction charges, with all but ninety days suspended, and a suspended term of incarceration for ninety days for harassing the Montgomery County Public Schools. The court also imposed a three-year period of probation. The court denied Ms. Koenick's motion pursuant to Md. Rule 4-349 for permission to post bond in order to stay execution of her sentence pending appeal. Ms. Koenick then filed a motion to modify her sentence in light of the Covid-19 pandemic. The court granted the motion and ordered that her 90-day sentence be served through home detention.

ANALYSIS

1. The Harassment Conviction

Prior to trial, Ms. Koenick filed a motion to dismiss the harassment charge against her on the grounds that Crim. Law § 3-803 does not prohibit harassment of State agencies such as Montgomery County Public Schools. The State opposed the motion and the circuit court denied it. Ms. Koenick raises the same contention on appeal.

Crim. Law § 3-803 states in pertinent part (emphasis added):

> (a) A *person* may not follow *another* in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the *other*:
>
> (1) with the intent to harass, alarm, or annoy the *other*;
>
> (2) after receiving a reasonable warning or request to stop by or on behalf of the *other*; and
>
> (3) without a legal purpose.
>
> (b) This section does not apply to a peaceable activity intended to express a political view or provide information to others.

* * *

Ms. Koenick asserts that the terms "other" and "another" in § 3-803 refer to "persons." The State agrees and we agree as well.[4] From this premise, Ms. Koenick argues that it has long been the law of Maryland that "the term 'person' in a statute does not include the State and its agencies and instrumentalities [but that] the State and its agencies and instrumentalities may fall within the purview of the term 'person' where such an intention

[4] In its brief, and citing Antonin Scalia & Bryan Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 144–46 (2012), the State asserts that this interpretation of Crim. Law § 3-803 is supported by application of the "last-antecedent canon of statutory interpretation."

We are satisfied that the plain language of the statute supports the conclusion that "other" and "another" refer to "persons" without recourse to the last-antecedent rule. *See McCree v. State*, 441 Md. 4, 21 n.5 (2014) (recognizing the last-antecedent rule as a canon of construction but cautioning that "statutory interpretation should not be guided simply by the application of fixed and immutable canons or rules" (cleaned up)); *Azam v. Carroll Independent Fuel*, 240 Md. App. 1, 19 (2019) (characterizing the last-antecedent rule as a "justifiably neglected and generally disdained grammatical relic").

is manifest." (Quoting *Unnamed Physician v. Comm'n on Med. Discipline*, 285 Md. 1, 12, (1979)). More recent iterations of this principle of statutory interpretation include *Fraternal Order of Police v. Montgomery County*, 446 Md. 490, 521–22 (2016), and *WSSC v. Phillips*, 413 Md. 606, 622 (2010).

The State disagrees with Ms. Koenick's reasoning. It presents two arguments as to why the "Montgomery County Public Schools"—which is the way that the victim of Ms. Koenick's alleged harassment was identified at trial—is a "person" for the purposes of Crim. Law § 3-803. The State's analysis begins with the definition of "person" contained in Crim. Law § 1-101(h), which states in pertinent part:

> "Person" means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.
>
> * * *

The State argues that:

> For the purpose of harassment, the definition of "person" is capacious. Rather than being a litany of limitation, Section 1-101(h) lists successively broader examples of what it means to be a person—from a corporeal "individual," to any form of business association (including "sole proprietorship, partnership, firm, association, corporation"), and on to any "other entity." In this context, the term "other entity" is not one of limitation, but rather inclusion of persons not otherwise expressly identified but obviously partaking of the set's intrinsic qualities— namely, legal personhood.
>
> Indeed, even outside the context of a successively broadening litany, Black's Law Dictionary recognizes that the term "entity" is, on its own, broad enough to denote an "organization (such as a business or a governmental unit) that has a legal identity apart from its members or owners." *Entity*, BLACK'S LAW DICTIONARY [673] (11th ed. 2019). The presumed point of using general

> words, like entity, is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions.

(Some quotation marks and a citation omitted.)

Elaborating on this theme, the State acknowledges that there is no shortage of Maryland cases that state that county boards of education are State agencies. The State focuses on *WSSC v. Phillips*, 413 Md. 606, 622 (2010). The State characterizes *Phillips* and similar cases as "animated by concerns for sovereign immunity and protection of the State's resources against civil lawsuits." The State continues:

> This concern and the interpretative perspective it spawns are simply not present here. The "Montgomery County Public Schools," as nominally alleged in the charging document, are a corporate body by and through their board of education. Md. Code Ann., Educ. § 3-104(a). . . . All county boards of education are bodies "politic and corporate," with perpetual existence and the power to sue and be sued, among others. *Id*. As a result, neither *Phillips*, the concern for sovereign immunity, nor the interpretative canon generally excluding governmental entities from the definition of "person" applies in this case.

Finally, the State points to Educ. § 3-104, which states that a local board of education is a "body politic and corporate," as a separate basis for its contention that the Montgomery County Public Schools "qualify as persons who can be the object of harassment for the purpose of Crim. Law § 3-803."

The State's contentions are unpersuasive. Our analysis begins with a summary of the appropriate standard of review:

When courts interpret a statute, "[o]ur chief objective is to ascertain the General Assembly's purpose and intent when it enacted the statute." *Berry v. Queen*, 469 Md. 674,

687 (2020). In so doing, we "assume that the legislature's intent is expressed in the statutory language and thus our statutory interpretation focuses primarily on the language of the statute to determine the purpose and intent of the General Assembly." *Id*. (quoting *Brown v. State*, 454 Md. 546, 550–51 (2017)). We undertake this through:

> an examination of the statutory text in context, a review of legislative history to confirm conclusions or resolve questions from that examination, and a consideration of the consequences of alternative readings. Text is the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for ambiguity. Legislative purpose, either apparent from the text or gathered from external sources, often informs, if not controls, our reading of the statute. An examination of interpretive consequences, either as a comparison of the results of each proffered construction, or as a principle of avoidance of an absurd or unreasonable reading, grounds the court's interpretation in reality.

Blue v. Prince George's County, 434 Md. 681, 689 (2013) (quoting *Town of Oxford v. Koste*, 204 Md. App. 578, 585–86 (2012), *aff'd*, 431 Md. 14 (2013)). Additionally, "the modern tendency of [Maryland appellate courts] is to continue the analysis of the statute beyond the plain meaning to examine extrinsic sources of legislative intent in order to check our reading of a statute's plain language through examining the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments." *Berry*, 469 Md. at 688 (cleaned up).

With one exception that is not relevant to the issues raised in this appeal,[5] the current versions of Crim. Law §§ 1-101(h) and 3-803 were enacted by 2002 Maryland Laws ch. 26. Chapter 26 repealed former Article 27 and replaced it with the Criminal Law Article as part of Maryland's code revision process. The Court of Appeals has explained that:

> Code revision is a periodic process by which statutory law is re-organized and restated with the goal of making it more accessible and understandable to those who must abide by it. Changes made in code revision are presumed to make clear the existing meaning of the statutory law rather than to change its meaning. This Court has long emphasized that a change in a statute as part of a general recodification will ordinarily not be deemed to modify the law unless the change is such that the intention of the Legislature to modify the law is unmistakable.

Smith v. Wakefield, 462 Md. 713, 726 (2019) (cleaned up).[6]

---

[5] In 2011, the penalty provision of Crim. Law § 3-803 was amended to provide for enhanced penalties for subsequent offenders. *See* 2011 Maryland laws ch. 342.

[6] Because the purpose of recodification is to clarify existing statutes and not to modify their substance, we note that Crim. Law § 3-803's statutory predecessor was codified as Maryland Code, (1957, 1996 Repl. Vol., 2000 Cum. Supp.), Article 27, § 123. The statute read as follows:

> (a) In this section "course of conduct" means a persistent pattern of conduct, composed of a series of acts over a period of time, that evidences a continuity of purpose.
>
> (b) This section does not apply to any peaceable activity intended to express political views or provide information to others.
>
> (c) A person may not follow another person in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys another person:
>
> (1) With intent to harass, alarm, or annoy the other person;

As we have noted, it is the State's position that the definition of "person" in Crim. Law § 101(h) is "capacious" because the language of the statute "lists successively broader examples of what it means to be a person—from a corporeal 'individual,' to any form of business association (including 'sole proprietorship, partnership, firm, association, corporation'), and on to any 'other entity.'" The State asserts that in the context of § 101(h), the term "other entity" is inclusive, embracing "persons . . . not otherwise expressly identified but obviously partaking of the set's intrinsic qualities—namely, legal personhood." Put in different terms, this part of the State's argument boils down to the proposition that the statutory definition of "person" should include those entities that possess the quality of "legal personhood."

We cannot argue with the notion that those with legal personhood should be treated as persons but this entirely circular reasoning doesn't assist us in deciding whether a local board of education is a person for the purposes of Crim. Law § 3-803. Fortunately, the

---

> (2) After reasonable warning or request to desist by or on behalf of the other person; and
>
> (3) Without a legal purpose.
>
> (d) A person who violates this section is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding $500 or imprisonment for not more than 90 days or both.

Galloway v. State, 365 Md. 599, 608–09 (2001).

answer to this question is not hard to find. In its commentary on Crim. Law § 101(h), the Code Revision Committee advised the General Assembly that:

> The definition of "person" in this subsection does not include a governmental entity or unit. The Court of Appeals of Maryland has held consistently that the word "person" in a statute does not include the State, its units, or subdivisions unless an intention to include these entities is made manifest by the legislature. *See*, *e.g.*, *Unnamed Physician v. Commission on Medical Discipline*, 285 Md. 1, 12–14 (1979).

This principle was first articulated by the Court of Appeals in *Huffman v. State Roads Commission*, 152 Md. 566, 584 (1927), and has been reiterated on numerous occasions in the intervening 95 years. *See*, *e.g.*, *Fraternal Order of Police v. Montgomery County*, 446 Md. 490, 521–22 (2016); *WSSC v. Phillips*, 413 Md. 606, 622 (2010) (collecting cases).

Consistent with the general principle articulated in the cases cited in the preceding paragraph, the Court of Appeals has made it clear that local boards of education are state agencies. *See, e.g., Beka Industries v. Worcester County Bd. of Educ*., 419 Md. 194, 210 (2011) (noting "the overwhelming support in our case law for the notion that county boards of education are legally State agencies"); *Bd. of Educ. for Baltimore County v. Zimmer-Reubert*, 409 Md. 200, 236 (2009) ("We have long considered county school boards to be State agencies rather than independent, local bodies."); *Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ.,* 358 Md. 129, 135–36 (2000) ("Although in terms of their composition, jurisdiction, funding, and focus, [county boards of education] clearly have a local flavor, the county school boards have consistently been regarded as State, rather than county, agencies." (Internal citations omitted)); *Bd. of Educ. v. P.G. County Educators'*

Ass'n, 309 Md. 85, 95 n.3 (1987) ("County boards of education are, of course, state agencies and not agencies of the county governments.").

Based on the plain language of the statute, we conclude that Crim. Law § 3-803 does not "make manifest" an intent by the General Assembly to extend the meaning of "person" to include local boards of education.[7]

The State's alternative argument is that the Montgomery County Board of Education should be treated as a corporation, and therefore a "person," because Educ. § 1-104 states

[7] In her brief, Ms. Koenick points to Crim. Law § 3-1001 as an example of legislative intent to extend the meaning of "person" to include government agencies. The statute states in pertinent part:

> (b) A person may not knowingly threaten to commit or threaten to cause to be committed a crime of violence, as defined in § 14-101 of this article, that would place five or more people at substantial risk of death or serious physical injury, as defined in § 3-201 of this title, if the threat were carried out.
>
> (c)(1) A person who violates this section is guilty of the misdemeanor of making a threat of mass violence and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $10,000 or both.
>
> (2) In addition to the penalties provided in paragraph (1) of this subsection, a court shall order a person convicted under this section to reimburse the *appropriate unit of federal, State, or local government or other person* for any expenses and losses incurred in responding to the unlawful threat unless the court states on the record the reasons why reimbursement would be inappropriate.

(Emphasis added.)

that a local board of education is a "body politic and corporate." This argument is unpersuasive.

More than a century ago, the Court of Appeals considered the meaning of the term "body politic and corporate" in *Bd. of County School Comm'rs of Worcester County v. Goldsborough*, 90 Md. 193, 203–04 (1899). Writing for the Court and addressing the meaning of "body politic and corporate" in a statutory predecessor to Educ. § 1-104, Chief Judge McSherry explained:

> The primary purpose of the legislature [in enacting the statute] was to create boards,—bodies corporate,—and through and by these agencies the business of the school system was designed to be conducted. . . . It is the board that shall meet for the transaction of business, and the business to be transacted is the business of the body corporate. *The individuals who compose the board are called in the statute "members" of the board, and in that capacity, and in that capacity alone*, are they competent to act at all. And so on throughout the whole of article 77, wherever power is given or duties are prescribed, it is declared that they are given, not to commissioners, but to the board,—the body politic and corporate. . . . *It is obvious, then, that the individuals who are school commissioners have, as individuals, no authority; but because they are school commissioners they become members of a board, and that board, as a corporate entity,* exercises the power and performs the duties described in the statute.

(Emphasis added.)

In other words, the phrase "body politic and corporate" in Educ. § 1-104 does not imbue boards of education with "personhood"; instead, the phrase makes it clear that the authority granted by the General Assembly to the members of a local board of education can only be exercised collectively.

The concept that organizations such as local school boards, despite their "politic and corporate" capacities, are distinct from corporations organized for business purposes is consistent with long-standing Maryland law. For example, Chief Judge Brune explained that the concept of a "public corporation . . . created for political purposes, with political powers, to be exercised for purposes connected with the public good [and therefor an] instrument of the government, subject to the control of the legislature" was "deeply imbedded in Maryland law." Herbert M. Brune, Jr. MARYLAND CORPORATION LAW AND PRACTICE 4–5 (Rev. ed. 1953).[8]

In conclusion, we hold that the Montgomery County Public Schools is not a "person" for the purposes of Crim. Law § 3-803. The circuit court erred when it denied Ms. Koenick's motion to dismiss the harassment count.

2. Joinder and Severance

Prior to trial, Ms. Koenick moved to sever all charges involving what "the police officers actually witnessed themselves" from the remaining charges for purposes of trial and that those charges "be moved to another date." The trial court denied the motion. The court explained:

[8] Chief Judge Brune's analysis was consistent with other scholars of the period. *See, e.g.* Henry H. Ingersoll, HANDBOOK OF THE LAW OF PUBLIC CORPORATIONS 5–7 (1904) (distinguishing between "private corporations" which were "profit-making," and "quasi-public corporations" which "perform public functions, engage in public service, or exercise any sovereign power").

> So Ms. Koenick is charged with harassment, a course of conduct, which alleges, between May 17th and June 17th [sic], 2019, she engaged in a course of conduct against the public schools.
>
> And so while she was arrested on June 7th, the Court will note two things: one, the statement of charges and the statement of probable cause includes harassment, a course of conduct; two the State has the ability, after investigation, to charge, via information, as they did in this case, additional counts.
>
> So for these reasons, the Court's going to deny your motion to sever.

To this Court, Ms. Koenick argues that the school bus driver obstruction convictions must be reversed because "the evidence [as to what occurred] on June 7, 2019 and used to prove the allegations [relating to the events that occurred on] June 7, 2019 was not relevant to anything that allegedly happened on June 5, 2019." The significance of the dates is that the school bus driver obstruction charges were based on events that occurred on June 5, while the remainder of the charges pertained to what occurred on June 7, the day that Ms. Koenick distributed popsicles at the elementary school's summer festival.

In her brief and at oral argument, Ms. Koenick asserts that if we conclude that the harassment conviction was defective, then we must reverse the school bus driver obstruction convictions and remand this case for further proceedings on those charges. In response, the State presents two arguments. We have already addressed the first, which is that the "harassment charge was not legally defective." The State's second argument is that the information "alleged a course of conduct encompassing both June 5 and June 7, 2019, thus rendering all evidence related to those days directly relevant." The State is wrong.

An extremely useful summary of the Maryland law of severance and joinder is this Court's opinion in *Wieland v. State*, 101 Md. App. 1 (1994). In that case, the defendant brandished a handgun and threatened a clerk at a convenience store at 2:30 a.m. About thirty minutes later, the defendant shot his brother at his residence, which was located a short distance away. 101 Md. App. at 4–7. Prior to trial, the defendant moved to sever the charges arising out of the incident at the convenience store from the charges related to the shooting and the trial court denied the motion. *Id.* at 10. In reversing the convictions, we explained that "in a jury case at least, whenever evidence on separate charges would not be mutually admissible, severance, if timely requested, is absolutely mandated as a matter of law." *Id.* at 10 (citing *McKnight v. State*, 280 Md. 604, 612 (1977)).

Returning to the present case, it is clear to us that evidence relating to Ms. Koenick's alleged assault of a police officer on June 7th at a police station in Rockville would not have been admissible in a separate trial on the charges that she hindered school bus operators on June 5th on a street in Chevy Chase. Just as in *Wieland*, severance "was absolutely mandated as a matter of law." The trial court erred in denying Ms. Koenick's motion for severance.

CONCLUSION

For the reasons that we have explained, the harassment conviction fails as a matter of law. The only defect that Ms. Koenick asserts as to the convictions for violating Educ. § 26-104 on June 5th is that the trial court should have granted her motion to sever the June

5th charges from the charges that arose out of the events that occurred on June 9th. We agree with her on the severance issue; Ms. Koenick has not asserted that the evidence presented to support the Educ.§ 26-104 convictions was insufficient.[9]

THE JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE REVERSED.

COSTS TO BE PAID BY MONTGOMERY COUNTY.

[9] As a general rule, when an appellate court reverses a conviction, the State is permitted to retry a defendant unless the prior conviction was reversed on grounds of insufficient evidence. *See, e.g., Benton v. State,* 224 Md. App. 612, 629 (2015) (citing, among other cases, *United States v. DiFrancesco*, 449 U.S. 117, 130 (1980); and *Ware v. State*, 360 Md. 650, 708–09 (2000)).

Circuit Court for Montgomery County
Case No. 136324C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2650

September Term, 2019

JUDITH KOENICK

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Friedman,

JJ.

Concurring and Dissenting Opinion by
Friedman, J.

Filed: April 11, 2022

Maybe weird cases make for weird law.

There are many unusual, mysterious, and weird elements to this case. The briefs submitted to this Court don't disclose why Ms. Koenick doesn't like school buses. The briefs don't disclose how she selected her methods of protest, which included both the distribution of popsicles and, apparently, trying to expose herself.[10] The briefs don't disclose why the distribution of popsicles was considered a form of protest or, weirder still, why the distribution of popsicles "had several parents in tears." The briefs don't disclose why the State's Attorney for Montgomery County chose to bring criminal charges (rather than seeking other methods of preventing Ms. Koenick's protest). And they don't disclose why the Attorney General of Maryland, with an obvious mistake on Issue #2 (the severance issue), didn't confess error, thereby avoiding, or at least minimizing the risk, of the majority's decision on Issue #1.

The Maryland Code is long and complex. It deals with complex issues, spanning the range from Agriculture to Transportation. And, within that Code, the State of Maryland, its agents, employees, and officials, play a variety of roles. Given all those roles, in all of those contexts, it does not seem necessary or sensible to say that the State is never included within the definition of a "person." And from that, I suggest that it does not seem either necessary or sensible to arrive at the determination that the Montgomery County Public

[10] I hasten to note that the trial court dismissed the charge of attempted indecent exposure in violation of CR § 11-107. Slip Op. at 3-4.

Schools are statutorily prohibited from being the victim of harassment by MD. CODE, CRIM. LAW ("CR") § 3-803:

- *First*, I note that the statute doesn't quite define the potential realm of victims of harassment as a "person." Rather, that conclusion is implied by the statute's use of the term "another" or "other." Slip Op. at 5. Although the majority accepts the parties' agreement that this necessarily means "another person," slip op. at 5-6, I would not. I think that the General Assembly's choice not to repeat the word "person" as the victim is at least suggestive that it meant to broaden the class of potential victims of harassment to anybody except the perpetrator of the harassment. That is, to my reading, the only person or entity that the alleged harasser cannot be charged with harassing is the harasser, him-, her-, or itself.

- *Second*, even if I was to conclude that CR § 3-803 limits the potential victims of harassment to "persons," I would not accept the majority's conclusion that school boards are not "persons." I read CR § 1-101(h) to be sufficiently broad to include the State as a potential entity that can be the victim of harassment. I read it thus because it is written thus. CR § 3-803 ("'Person' means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity"). I read it thus because local school boards are specifically defined by the Maryland Code as juridical bodies. *See* MD. CODE, EDUC. § 3-104(a) ("Each county board [of education] is a body politic and corporate …"). And I read it thus despite the code revisor's note on which the majority relies. Slip Op. at 11. In my view, the code revisor's note merely reports what we already know, that there are cases in which the appellate courts have held that there are statutes in which it is unreasonable to include the State within the definition of "person."

- *Third*, I think the facts of this case make clear why it is and should be illegal to harass a local school board. Despite the lack of details, we do know that Ms. Koenick's protest wasn't against a specific school bus, or against a specific school bus driver. Her protest wasn't against a specific teacher or specific administrator. That, at least, seems obvious from the limited facts available. And she harassed (as the State's Attorney alleged, and the jury unanimously found beyond a reasonable doubt) the school system. Of course, the State's Attorney could have changed the indictment and, as separate counts of the indictment, brought separate charges of harassment for each individual bus driver, individual teacher,

> and individual administrator she harassed. But I see no point in this, especially, as here, where those individuals were not harassed in their individual capacities but as representatives of the local school board.

As I said at the beginning, this is a weird case. Thankfully, nobody was really harmed, nobody was really at risk of harm, and we can wonder about the weird facts of this weird case. But my concern is that we have made weird law for the next case. I, therefore, dissent in part and concur in part. I dissent from the majority's decision in Issue #1 to reverse Ms. Koenick's conviction on the harassment count. I concur because I agree with the majority as to Issue #2, that severance of the harassment count from the two obstruction counts was necessary. I would, therefore, vacate the harassment conviction and remand for two separate new trials.