# Amicus Curiarum

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# SUPREME COURT OF MARYLAND

*Isiah A. Hollins v. State of Maryland*, No. 5, September Term 2024, filed December 23, 2024. Opinion by Killough, J.

https://www.mdcourts.gov/data/opinions/coa/2024/5a24.pdf

JURY INSTRUCTIONS – SUFFICIENCY OF EVIDENCE

JURY INSTRUCTIONS BASED ON INFERENCES – CIRCUIT COURT'S DISCRETION

**Facts**:

The Petitioner, Isiah Hollins, was charged with attempted first-degree murder and related assault charges. These charges arose from an altercation between Hollins and Alexander Alvarenga at a McDonald's restaurant in Rockville, where both parties worked. During the fight, Hollins stabbed Alvarenga with a small knife.

At trial, Hollins argued self-defense. He wanted to show that Alvarenga had a propensity for violence, and therefore, was the initial aggressor. At the charging conference, Hollins requested a special jury instruction about Alvarenga's propensity for violence citing Alvarenga's two prior assaults, as well as three or four other unrelated fights in the record. The trial court instructed the jury on both perfect and imperfect self-defense, but denied Hollins's special jury instruction regarding Alvarenga's propensity for violence because it was a non-pattern instruction.

The jury acquitted Hollins of attempted first-degree murder and first-degree assault but convicted him of second-degree assault. The court sentenced Hollins to ten years' imprisonment, with two years suspended, and five years of probation upon release.

On appeal, Hollins argued that the trial court erred in denying his request for a special jury instruction because it was not a pattern instruction. A divided panel of the Appellate Court of Maryland affirmed Hollins's conviction. The Appellate Court agreed with Hollins that the circuit court's rationale for denying the requested instruction was incorrect. Nevertheless, the

majority affirmed the conviction, holding that Hollins failed to produce sufficient evidence to generate the special jury instruction as to the victim's alleged propensity for violence.

The Supreme Court of Maryland granted Hollins's petition for writ of *certiorari* to answer whether the Appellate Court of Maryland erroneously applied a sufficiency of the evidence standard instead of the "some evidence" standard when it upheld the denial of Petitioner's request for a non-pattern jury instruction regarding the alleged victim's propensity for violence.

**Held**: Reversed.

The Supreme Court reversed the judgment of the Appellate Court; case remanded to the Circuit Court for Montgomery County for a new trial.

Under Maryland law, trial courts have an obligation to exercise judicial discretion when considering whether to give a proposed instruction to the jury, including proposed instructions that are not Maryland Pattern Jury Instructions. A trial court's refusal to consider such an instruction solely because it is not a pattern instruction constitutes an abuse of discretion. See *Gunning v. State*, 347 Md. 332, 351 (1997). Trial judges must exercise its discretion based on the unique circumstances of each case and may not adopt a blanket policy of rejecting non-pattern instructions. *Id*.

A trial judge's obligation to exercise its discretion extends to proposed jury instructions that require the jury to make inferences based on the facts of a case. Although a trial judge is required to give instructions on the applicable law, the judge is not required to give an inferential instruction even if the evidence generates the requested instruction. *See Patterson v. State*, 356 Md. 677, 684-85 (1999). Instead, the trial judge must consider whether to give the instruction in the exercise of the judge's discretion.

In this case the defendant was charged with attempted first-degree murder and related assault charges and was asserting self-defense. The defendant requested a non-pattern jury instruction that the victim had a character trait for violence and that the jury could, therefore, infer that the victim was the initial aggressor. The trial court refused to give the requested jury instruction on the basis that it was not a pattern jury instruction. The Court held that the trial court abused its discretion in refusing to consider the requested jury instruction on that basis. Undertaking a de novo review of the evidence, the Court held that there was "some evidence" generated that the victim had a character trait for violence and that the jury could, therefore, reasonably infer that he was the initial aggressor. The Court explained that the "some evidence" standard, articulated in *Dykes v. State*, 319 Md. 206, 216-17 (1990), is a low threshold, requiring no more than minimal evidence that, if believed, would allow a rational juror to conclude that the defense's theory applies. This standard is not strict and may be satisfied even when the evidence is slight or contradicted by opposing testimony. At the retrial of this case, if some evidence is introduced

concerning the victim's propensity for violence, it is up to the trial judge, in the exercise of its discretion, to determine whether to give the proposed jury instruction.

# APPELLATE COURT OF MARYLAND

*Michael Esposito v. State of Maryland*, No. 1148, September Term 2023, filed December 23, 2024. Opinion by Tang, J.

https://www.courts.state.md.us/data/opinions/cosa/2024/1148s23.pdf

CRIMINAL LAW – EVIDENCE – RES GESTAE – RES GESTAE; EXCITED UTTERANCES – ACTS AND STATEMENTS OF PERSON INJURED – IN GENERAL

**Facts**:

Following a bench trial in the Circuit Court for Anne Arundel County, Michael Esposito, the appellant, was convicted of involuntary manslaughter in the death of his grandmother, with whom he lived. One of the issues was whether a text message sent by the grandmother to her daughter after the appellant had pushed her was admissible under the excited utterance exception to the hearsay rule.

**Held**: Affirmed.

To make a statement admissible as an excited utterance, the proponent of the evidence must satisfy three requirements. "First, the proponent must establish that an exciting or startling event occurred, and that the declarant had personal knowledge of that event." *Curtis v. State*, 259 Md. App. 283, 315 (2023). Second, the statement sought to be admitted must "relate[] to the underlying startling event." *Id*. at 316. Third, the proponent must establish that the statement was spontaneous, meaning "that the declarant was still under the stress of the startling event at the time the statement was made and that the statement was not the product of reflective thought." *Id*. at 317.

Cell phone text message sent by the grandmother to her daughter—"Angela, I need you to call right away. Michael has hurt me."—was admissible. While the first sentence of the message was not hearsay (it was a command), the second sentence identifying her assailant was hearsay as it was being offered for the truth of the matter asserted, i.e., that the appellant had hurt the grandmother. However, the statement was admissible under the excited utterance exception to the hearsay rule.

The evidence demonstrated that the grandmother was still under the stress of the startling event when she texted her daughter. The grandmother sent the message at most eleven minutes after she was assaulted, and she was crying when she spoke to her daughter and son on the phone, minutes after she sent the message.

The sentences and punctuation in the text message did not compromise the spontaneity requirement. The tone and manner of the message, particularly when the grandmother expressed that she "need[ed]" her daughter to call her "right away," conveyed a sense of urgency and reinforced that the grandmother was under the stress or excitement of the startling event at the time she sent the text message. Md. Rule 5-803(b)(2).

*Nathan Joseph Johnson v. State of Maryland*, No. 1330, September Term 2024, filed December 30, 2024. Opinion by Nazarian, J.

https://www.courts.state.md.us/data/opinions/cosa/2024/1330s23.pdf

CRIMINAL LAW – SENTENCING – RESTITUTION

**Facts**:

On November 3, 2016, Nathan Johnson obtained heroin from a co-worker and agreed to sell a portion to his friend and fellow addict, Brendon Roe. Later that evening, Mr. Roe took the drugs he purchased from Mr. Johnson and died shortly after from "Acryfentanyl and Heroin Intoxication." When questioned by the police, Mr. Johnson denied selling drugs to Mr. Roe. He said he stopped by Mr. Roe's house to collect money that Mr. Roe owed him, and that Mr. Roe kept the money and planned to purchase drugs from another individual that night. The police, however, found that this alternative story did not hold up when they reviewed Mr. Roe's cell phone records.

Mr. Johnson was charged with voluntary manslaughter, reckless endangerment, possession with intent to distribute heroin, possession with intent to distribute acryfentanyl, possession of heroin, and possession of acryfentanyl. The Circuit Court for Queen Anne's County held a bench trial and found Mr. Johnson guilty on all counts. As part of his sentence, the court issued a Probation/Supervision Order stating that Mr. Johnson would serve five years of probation on release. In addition to the standard probation conditions, the court ordered Mr. Johnson to pay restitution in the amount of $8,750, the cost of Mr. Roe's funeral, to Mr. Roe's parents.

Mr. Johnson filed a timely appeal. In *Johnson v. State*, 245 Md. App. 46 (2020), the Appellate Court reversed Mr. Johnson's involuntary manslaughter conviction and affirmed the remaining convictions. The State filed, and the Court denied, a Motion to Reconsider and Remand for Sentencing. The Supreme Court granted the State's writ of certiorari. After oral argument, and without affirming or reversing, the Supreme Court remanded the case to the Appellate Court with instructions to issue a clarifying opinion as to why it denied the State's motion for reconsideration. The Appellate Court issued a clarifying opinion, *Johnson v. State*, 248 Md. App. 348 (2020), after which the Supreme Court dismissed the petition for writ of *certiorari* as improvidently granted. *See State v. Johnson*, 471 Md. 429 (2020 (*per curiam*). The case returned to the circuit court, where the court vacated Mr. Johnson's involuntary manslaughter conviction and corresponding sentence.

On June 8, 2023, the Department of Public Safety and Correctional Services ("DPSCS") filed a Payment Violation Report notifying the circuit court that Mr. Johnson had failed to pay charges imposed as a condition of his probation, including the $8,750 for Mr. Roe's funeral expenses.

Mr. Johnson filed a Motion for Appropriate Relief, asking the circuit court to vacate the restitution order as an illegal sentence. The circuit court denied Mr. Johnson's motion and Mr. Johnson filed a timely appeal.

**Held**: Reversed.

The Appellate Court concluded that, under Md. Code (2001, 2018 Repl. Vol.), § 11-603(a)(2) of the Criminal Procedure Article, a trial court may only order restitution as part of a sentence or as a condition of probation if the victim's losses were the direct result of the defendant's criminal conduct. After reviewing relevant case law, the Court concluded that a victim's losses are not the direct result of a defendant's conduct if an unnecessary, intervening event occurs that separates the defendant's conduct from the victim's ultimate injury.

Based on this interpretation, the Appellate Court held that Mr. Roe's fatal overdose was not the "direct result" of Mr. Johnson's conduct of selling drugs to Mr. Roe because Mr. Roe's act of taking the drugs was as an intervening event, and a sentence of restitution to cover Mr. Roe's funeral costs is an illegal sentence.

*In the Matter of the Chesapeake Bay Foundation, Inc., et al.*, No. 1434, September Term 2023, filed December 23, 2024. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1434s23.pdf

STATE OF MARYLAND GROUNDWATER DISCHARGE PERMIT – TREATED WASTEWATER – EFFLUENT LIMITATIONS – NET-ZERO DISCHARGE OF NUTRIENTS – FUNCTIONAL EQUIVALENT OF DISCHARGE TO SURFACE WATERS – USE OF RECLAIMED WATER AS ALTERNATIVE TO DISCHARGE OF WASTEWATER EFFLUENT INTO SURFACE WATERS OF THE STATE

**Facts**:

The Council of the town of Trappe, Maryland ("the Town") and the Trappe East Holdings Business Trust ("the Trust") filed an application with the Maryland Department of the Environment ("the Department") for a groundwater discharge permit for sanitary waste from the proposed Trappe East Wastewater Facility ("the Facility") that they owned and intended to operate. The Facility, which would employ enhanced nutrient removal, was to serve a new residential development in the Town. The permit was sought to allow the Facility to dispose of effluent by way of spray irrigation to land pursuant to a nutrient management plan.

Public notices of the draft permit were issued, a public hearing was held, and a response to public comments was issued. The Department issued a state discharge permit. Thereafter, additional public notice and comment occurred, and the Department issued a revised state discharge permit. The Chesapeake Bay Foundation and several individuals sought judicial review in the Circuit Court for Talbot County. They argued, among other things, that the Department failed to comply with state and federal laws pertaining to water quality and failed to provide substantial evidence that the vegetative cover in the spray fields would take up one hundred percent of the nitrogen and phosphorus in the effluent so that there would be a net-zero discharge of those nutrients. The circuit court affirmed the Department's decision to issue the permit.

**Held**: Affirmed.

The Appellate Court of Maryland rejected appellants' argument that the discharge of pollutants from the spray irrigation system qualified as the functional equivalent of a direct surface water discharge or a point source into navigable waters and, thereby, fell under the authority of the federal Clean Water Act. The Department considered factors set forth in *County of Maui, Hawaii v. Hawaii Wildlife Fund*, 590 U.S. 165 (2020), and concluded that the spray irrigation

was not the functional equivalent of a direct discharge of pollutants to a United States water body due to physical attenuation, dilution, and distance to navigable waters. The Court held that the Department's determination was reasonable and supported by substantial evidence.

The Court also rejected appellants' argument that the operation of the Facility and the execution of the required nutrient management plan would result in one hundred percent uptake or zero net discharge of nutrients to adjacent surface waters. The Court held that the Department's determination that the measures included in the permit and the nutrient management plan would achieve the assurance of complete uptake of nitrogen and phosphorus from the effluent, as required by § 9-1110 of the Environment Article of the Maryland Code, was supported by substantial evidence and was well within the Department's discretion.

*Maryland Department of Health v. Suzanne Best*, No. 1279, September Term 2023, filed December 30, 2024. Opinion by Ripken, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1279s23.pdf

LABOR AND EMPLOYMENT – WHISTLEBLOWER PROTECTIONS – WORKPLACE RETALIATION

**Facts**:

In September of 2016, Suzanne Best ("Best") began working for Clifton T. Perkins Hospital Home ("Perkins") as an Assistant Director of Nursing ("ADON").

In early 2017, Best made an anonymous complaint to Maryland Department of Health's ("MDH") Office of the Inspector General concerning what Best suspected were illegal hiring practices at Perkins. Best complained that her direct supervisor was hiring nurses from that supervisor's former place of employment—Levindale—who lacked essential experience for the type of care required for Perkins' patients, and who were being paid more than the other nursing staff at Perkins. In response to Best's complaint, an audit of Perkins' hiring practices was conducted in the spring of 2017. Best testified at trial that following the audit, she understood that her direct supervisor and the CEO of Perkins were to stop hiring people from Levindale.

Subsequently, in April of 2017, Best was required to attend a meeting with the CEO and the HR Director for Perkins. At the meeting, the CEO informed Best that he had attempted to terminate Best but learned that he could not because she was not an 'at-will' employee. As such, Best could only be terminated 'for cause' through progressive discipline, which the CEO stated he was going to do.

In June of 2017, the CEO of Perkins was promoted to Chief of Hospital Administration overseeing all MDH Psychiatric Hospitals, where he supervised all State hospital CEOs and oversaw reassignments between the facilities.

In January of 2019, Best was informed that she was given a "temporary re-assignment" to Spring Grove. There was no mention of any performance issue as justification for the involuntary transfer, and Best had not been progressively disciplined as the former CEO of Perkins previously intimated. No information was shared with Best on how long the involuntary transfer would last, or what was required of Best to return to her position as an ADON at Perkins, despite her repeated inquiries on such topic. Best did not want to work at Spring Grove because in her view, the employees were "less competent"; Spring Grove is a very old and not well-maintained facility; and positions at Spring Grove held less prestige than positions at Perkins.

After beginning in her new role at Spring Grove, Best met with her supervisor at that location, who informed Best that her involuntary transfer had to do with a "Nigerian conflict" between tribe members of employees at Spring Grove. Best learned that the ADONs at Spring Grove were from different Nigerian tribes and had cultural conflicts which caused them to struggle to work together. She was told that one ADON "had a stronghold across the hospital system" and the prominence of the Yoruba tribe "made it a little bit challenging for some of the ADONs to get things done because of the [] tribal loyalties." The other ADON was given Best's position at Perkins and received a pay raise, despite the fact of that person's pattern of disciplinary issues at Spring Grove.

In December of 2020, Best sued MDH in the Circuit Court for Baltimore County, claiming retaliation and race-based discrimination under both Title VII of the Civil Rights Act of 1964 and Title 20 of the Maryland State Government Article. A trial was held in June of 2023. Without distinction between Title VII and Title 20, the jury was asked to consider MDH's involuntary transfer of Best from Perkins to Spring Grove. The jury was asked to decide whether MDH retaliated against Best, and whether MDH discriminated against Best on the basis of race.

During trial, MDH moved for judgment as a matter of law at three proper points. The circuit court denied each of the motions and the case was submitted to the jury. The jury found MDH liable to Best on both the retaliation and the race-based discrimination claims, awarding Best $300,000 in damages—$288,000 for emotional distress and $12,000 for medical expenses. MDH moved for judgment notwithstanding the verdict ("JNOV"), or in the alternative, for a new trial. In August of 2023, the circuit court denied MDH's motion. MDH noted this timely appeal.

**Held**: Reversed in part and affirmed in part.

The Appellate Court began by reviewing the requirements for both retaliation and race-based discrimination claims. The Appellate Court noted that to prove a retaliation claim, a complainant must establish (1) engagement in a protected activity; (2) adverse action against the complainant by the employer; and (3) the protected activity was causally connected to the employer's adverse action. One manner of achieving the first element is by raising a complaint that opposes an unlawful employment practice; this complaint must be on the base of race or some other protected status or class.

The Appellate Court then determined, based on an in-depth review of the record, that the record did not contain any legally relevant and competent evidence, in the form of either records or testimony, however slight, from which the jury could rationally find that the complaint was on the basis of race or another protected class. The Appellate Court also determined that there was no evidence that MDH could have or should have known that Best's complaints were on the basis of race. The Appellate Court therefore reversed the circuit court's denial of JNOV as to Best's retaliation claim.

Next, the Appellate Court affirmed the circuit court's denial of JNOV as to Best's race-based discrimination claims. The Court applied the United States Supreme Court's recent decision in *Muldrow v. City of St. Louis, Missouri*. *Muldrow* resolved a circuit split between the federal appellate courts regarding the extent to which a transfer or reassignment can form the basis of an adverse employment action. Prior to *Muldrow*, the Fourth Circuit applied a standard that for a transfer or reassignment to be an adverse employment action, the plaintiff was required to show that the transfer or reassignment had a significant detrimental effect, such as an economic loss. *Muldrow* abrogated Fourth Circuit precedent that required a "significant harm," and held that all a transferee must show is "some harm" respecting an identifiable term or condition of employment.

The Appellate Court of Maryland then applied the four-pronged *McDonnell Douglas* burden-shifting framework for analyzing a prima facie circumstantial case of discrimination. The Court determined that Best presented legally sufficient evidence such that a rational juror could find that she was (1) a member of a protected class; (2) she satisfactorily performed her job; (3) her involuntary transfer to Spring Grove was an adverse employment action; and (4) that she was treated differently than similarly situated employees outside the protected class. For prong three, the Court applied the new standard from *Muldrow* and determined that Best provided legally sufficient evidence, such that a reasonable juror could find that MDH's involuntary transfer of Best was an adverse employment action. The Court found that Best presented legally sufficient evidence of numerous changes to the terms and conditions of her employment, many of which were directly analogous to *Muldrow*.

The Appellate Court remanded the case for a new trial as to damages against MDH, as there was no distinction between the retaliation and race-based discrimination damages.

# ATTORNEY DISCIPLINE

**REINSTATEMENTS**

By Order of the Supreme Court of Maryland

SUSAN MYRA GELLER KIRWAN

has been replaced on the register of attorneys permitted to practice law in this State as of December 19, 2024.

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By Order of the Supreme Court of Maryland

STEVEN MARC ASSARAF

has been replaced on the register of attorneys permitted to practice law in this State as of December 19, 2024.

**DISBARMENTS/SUSPENSIONS**

By an Order of the Supreme Court of Maryland dated December 19, 2024, the following attorney has been placed on disability inactive status by consent:

JAMES MASON LOOTS

*

By an Order of the Supreme Court of Maryland dated December 23, 2024, the following attorney has been disbarred by consent:

JAMEL R. FRANKLIN

*

# JUDICIAL APPOINTMENTS

*

On October 25, 2024, the Governor announced the appointment of **Catherine H. McQueen** to the Circuit Court for Montgomery County. Judge McQueen was sworn in on December 3, 2024, and fills the vacancy created by the retirement of the Hon. Cheryl A. McCally.

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On December 18, 2024, the Governor reappointed the **Hon. Ginina A. Jackson-Stevenson** to the Circuit Court for Anne Arundel County. Judge Jackson-Stevenson was sworn in on December 18, 2024, and fills the vacancy created by the retirement of the Hon. Alison L. Asti.

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On November 27, 2024, the Governor announced the appointment of **Marnell Allan Cooper** to the District Court for Baltimore City. Judge Cooper was sworn in on December 20, 2024, and fills the vacancy created by the resignation of the Hon. Kevin M. Wilson.

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In the General Election held November 5, 2024, **Thomas F. Casey** was elected to the Circuit Court for Anne Arundel County. Judge Casey was sworn in on December 30, 2024.

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# UNREPORTED OPINIONS

The full text of Appellate Court unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

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