



Supreme Court of Maryland

Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

Gregory Hilton,
Clerk

(410) 260-1500

Instructions for Filing a Petition for Writ of Certiorari After You Have Appealed to the Appellate Court of Maryland

If you have appealed a circuit court judgment to the Appellate Court of Maryland, you can seek further appellate review in the Supreme Court of Maryland by filing a *petition for writ of certiorari* with the Clerk of the Supreme Court of Maryland. Filing your *petition for writ of certiorari* with the clerk of the circuit court is not the correct procedure; it must be filed in the Supreme Court.

A “*petition for writ of certiorari*” is a request to the Supreme Court asking it to review the case. The Supreme Court does not have to grant your request.

Here is the process you should follow to file your petition for writ of certiorari:

1. Timing. Your petition must be filed with the Supreme Court no later than 30 days after the Appellate Court issues the opinion in your case or 15 days after the Appellate Court issues its mandate from its decision, whichever is later.
2. Form.
 - A. If you are representing yourself, you may either file an informal or a formal petition.
 - B. An **informal petition** must contain all of the information required by [Rule 8-303\(b\)\(1\)](#), but you do not have to file any documents with the petition. You must include a signed certificate of service reflecting service on all parties or their attorneys. See 3.C. below.

Attached is an informal petition format approved by the Supreme Court.

C. If you file a **formal petition**, it must fully comply with Rule 8-303 including having:

- i. A history of the case including case numbers, the name of the court, the name of the judge, and the dates any judgments were entered on the docket, and the other information required by [Rule 8-303\(b\)\(1\)](#).
- ii. Your signature, your address, your telephone number, and your email address, if you have one.

For formal petitions, you must also include:

- i. A copy of the circuit court docket entries showing the judgment. You can obtain this from the circuit court clerk.
- ii. A copy of the opinion or order you are appealing.
- iii. A signed certificate of service reflecting the date and manner of service on the opposing party or their attorney if they have one. (See 3.C. below).

Attached is a sample formal petition that was filed in another case.

3. Filing and Service.

- A. Your petition must be filed with the Clerk of the Supreme Court of Maryland. The address is shown above. You can mail the petition, hand deliver it, or, if you are a registered user, you can electronically file it through the MDEC system. Emailed petitions are not accepted. If you mail the petition, you need to remember that it must be mailed early enough so that it arrives at the Court before the filing deadline. (See 1. above).

- B. With your petition you must also pay the \$61.00 filing fee for the petition or include a fee waiver request with your petition. Filing a fee waiver request does not guarantee that it will be granted, and you still may be required to pay the \$61.00 fee if the waiver is denied by the Court.
- C. In addition to filing the petition with the Clerk, you must also serve it on the opposing party or their attorney, if they have one. If your petition does not have a signed certificate of service, it will be rejected. A sample certificate of service is shown below.

This guide is based upon section 12-307 of the Courts and Judicial Proceedings of the Maryland Code and it is based upon Maryland Rules 8-302 and 8-303. You should review [Rules 8-302 and 8-303](#) for the complete procedure for filing your *petition for writ of certiorari*.

* * *

Sample certificate of service.

<u>Certificate of Service</u> I certify that on _____ (date), I served a complete copy of this petition for writ of certiorari on all parties by _____ (manner of service – U.S. Mail or hand-delivery) to the following persons (including addresses): <div style="text-align: center; margin-top: 20px;">_____ Signature</div>
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INFORMAL PETITION FORMAT

IN THE SUPREME COURT OF MARYLAND

_____. v. _____
Petitioner Respondent

Petition No. _____, September Term, _____ (to be filled in by the Clerk)

INFORMAL PETITION FOR WRIT OF CERTIORARI
(REQUEST FOR REVIEW BY THE SUPREME COURT)

In most cases, you do not have an automatic right to review of your case by the Supreme Court of Maryland. You can submit a request to the Supreme Court to review your case. The Court will then decide whether to grant your request. The request you file is called a “petition for writ of certiorari.” Maryland Rule 8-303 lists the information you must include in your request. If you are not represented by a lawyer, you may file an “informal” petition for writ of certiorari using this form. You must still meet the deadlines found in Maryland Rule 8-302. The Maryland Rules that apply to the process of filing your petition are available [HERE](#).

File the fully completed form and your filing fee (\$61.00) with the Clerk of the Supreme Court. If you cannot afford the filing fee, you may file a fee waiver request. There are three ways to file and pay:

(1) Mail it with your check to:

Supreme Court of Maryland
361 Rowe Boulevard
Annapolis, Maryland 21401;

(2) Hand-deliver the form with a check or cash to the address shown above; or

(3) File the form using MDEC, the e-filing system used by the Maryland courts. You must be a registered user of MDEC to file online.



(1) List case numbers in each of the courts where your case has been heard to date (if any):

District Court:

Case Name: _____

Case Number: _____

Circuit Court:

Case Name: _____

Case Number: _____

Appellate Court of Maryland:

Case Name: _____

Case Number: _____

(2) Has this case been decided by the Appellate Court of Maryland?

☐ Yes or ☐ No.

(3) If the case is or was pending in the Appellate Court, were briefs filed?

☐ Yes or ☐ No.

If briefs haven't been filed yet, what date are they due? _____.

(4) Did the judgment or decision of the circuit court resolve the entire case with respect to all of the parties?

☐ Yes or ☐ No.

(5) What is the date of the circuit court's judgment or decision? _____.

(6) What is the date of the Appellate Court's decision, if any? _____.

(7) What issues would you like the Supreme Court to review? Please use the section below to state the issues you would like the Supreme Court to consider. If you need more room, you may attach a separate document up to 15 pages long.

In your statement be sure to:

- Identify the legal issues you want the court to consider.
- Identify the information from the record that relates to those issues. This is also called the supporting facts.
- State why the court should rule in your favor on each of those issues. This is your legal argument.
- State why a review of those issues by the Supreme Court is desirable and in the public interest.
- Cite relevant case law, statutes, rules, or other authorities to support your argument.

You may also attach relevant documents from the record.

Note: This form has space for three issues, but you may list more.

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– PLEASE GO TO THE NEXT PAGE)**

Issue 1:

Supporting facts and argument:

Issue 2:

Supporting facts and argument:

Issue 3:

Supporting facts and argument:

(8) If you haven't already done so, please explain why a review of the issues you identified above is desirable and in the public interest:

(9) If you did not include citations to appropriate legal authority in the discussion of the issues you identified above, you may list or describe that authority here:

Date: _____

Signature

Name (Printed)

Address

CERTIFICATE OF SERVICE

I certify that on _____ (date) I served a complete copy of this Informal
Petition for Writ of Certiorari on all parties by mailing it to:

Name

Name

Address

Address

Signature

Please note: If the Certificate of Service is not completed, this filing will not be accepted. If you do not serve the other party or parties in this case, this filing may be stricken, and this petition may be dismissed.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
– PLEASE GO TO THE NEXT PAGE)**

**IF YOU ARE AN INCARCERATED INDIVIDUAL IN A
CORRECTIONAL FACILITY, FILL OUT THIS CERTIFICATE**

CERTIFICATE OF FILING (Md. Rule 1-322)

I, _____ (name), certify that

(1) I am involuntarily confined in _____ (name of facility);

(2) I have no direct access to the U.S. Postal Service or to a permitted means of electronically filing the attached pleading or paper;

(3) on _____ (date) at approximately _____ (time)

☐ I personally deposited the attached pleading or paper for mailing in a receptacle designated by the facility for outgoing mail;

or

☐ I personally delivered it to an employee of the facility authorized by the facility to collect outgoing mail; and

(4) the item was in mailable form and had the correct postage on it.

I solemnly affirm this _____ day of _____ 20____, under the penalty of perjury and upon personal knowledge that the foregoing statements are true.

Signature

SAMPLE FORMAL PETITION FORMAT

██████████,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

IN THE

COURT OF APPEALS

OF MARYLAND

September Term 2020

Petition Docket No. **368**

PETITION FOR *WRIT OF CERTIORARI*

Petitioner, ██████████, by counsel, moves pursuant to Md. Rule 8-301 for this Court to issue a *writ of certiorari* to review the Court of Special Appeals' ("CSA") decision, and states for cause as follows:

INTRODUCTION

This case presents an issue of critical public importance that merits this Court's consideration. Specifically, this case presents the opportunity to clarify the circumstances under which a trial judge may find a manifest necessity and declare a mistrial over defense objection when the trial judge bases that determination of manifest necessity in part on its erroneous belief that the juror stated that she could *not* be fair and impartial, when the juror actually stated she could be fair and impartial. While the Court of Special Appeals recognized that the trial judge may have "misspoken" or "misapprehended [the juror's] response," ██████████ v. *State*, ___ Md. App. ___, No. 2444, Sept. Term 2019, at *9 (October 1, 2020), this error was central to the circuit court's decision to declare a mistrial. This case presents an important opportunity to clarify when a trial judge's

mistake regarding something as fundamental as a juror's own comments about her ability to fair and impartial constitutes reversible error.

This case also presents an opportunity to clarify whether a trial judge – who did not *voir dire* the entire jury - may rely on the comments of a single juror who was not the foreperson and who did not purport to speak on behalf of the jury to determine that a jury was in fact “genuinely deadlocked” as opposed to at a temporary impasse in deliberations. The juror expressed her opinion as to the likelihood of reaching a unanimous verdict after only one day of deliberations, the juror's comments appeared to reference the status of deliberations from the night before, and the only other juror subject to *voir dire* on this issue indicated that further deliberations were likely to yield a unanimous verdict as to all counts.

This case presents an excellent vehicle to clarify these important questions. Put simply, granting this writ is both desirable and in the public interest.

STATEMENT OF FACTS

On April 1, 2019, a jury trial commenced in the Circuit Court for Prince George's County on common law murder and other charges. On April 4, 2019, the jury began deliberations, and it did receive the pattern instruction on the “Jury's Duty to Deliberate.” (T. 4/4/19, at 38-39).

On April 5, 2019, the Court brought out Juror No. 25 to *voir dire* her about several complaints that she brought to the trial judge's attention.¹ The complaints included,

¹ These complaints are set forth in more detail on pages seven to nine of appellant's brief in the CSA.

among other things, that she “felt threatened” when another juror wanted to “demonstrate” how a key disputed act potentially did or did not occur, (T. 4/5/19, at 7), she was “feeling bullied by the jury . . . to think in line with them.” (T. 4/5/19, at 8), and another juror stated during deliberations that the defendant’s grandmother “put her house up to get a lawyer” for the defendant yet she indicated “[i]t didn’t change my opinion.” (T. 4/5/19, at 6-7).

The prosecutor inquired whether Juror No. 25 could be “fair and impartial” regardless of whether it was true that appellant’s grandmother “put up money” to pay defense counsel:

[PROSECUTOR]: *Can you be fair and impartial in evaluating the evidence regardless of the fact that you've heard potentially, regardless of whether it's true, that the Defendant's grandmother put up money for his defense?*

THE COURT: I'm sorry. What was your response?

[JUROR No.25]: *Yes.*

THE COURT: That you can ignore the speculation about payment of the defense attorney and make a decision solely on the evidence presented and nothing else.

[JUROR No.25]: *I don't know. I'm going to be honest with you now. I really don't know.*

THE COURT: You earlier indicated that you did not believe that further deliberations could produce a unanimous verdict. Is that your position as to every count?

[JUROR No.25]: Yes.

(T. 4/5/19, at 14-15).

Apparently misremembering the juror's statements, the prosecutor then incorrectly stated that Juror No. 25 "did indicate that she can't -- not sure if she can be fair," and the Court latched onto to this inaccurate statement, which irreparable tainted the remaining discussions:

MR. CUBERO: I understand. And, actually, as well, if the Court is going to make that finding, she did indicate that she can't -- not sure if she can be fair at this point. I think that's even more important than --

THE COURT: She did. Thank you. Thank you for pointing that out. She also did indicate that.

(T. 4/5/19, at 18).

The prosecutor reiterated again – incorrectly - that Juror No. 25 expressed “that she cannot be fair and impartial”:

[PROSECUTOR]: Fundamentally, I guess, there are two separate tracks. There's the unable to come to a unanimous verdict, and the juror's expression that she cannot be fair and impartial. That, I think, at this point is more significant. As to any other potential jury misconduct, that would require further voir dire.

THE COURT: And despite juror No. 25's representation that she cannot be fair and impartial at this juncture, it's the Defense's request that we proceed with further deliberations.

[DEFENSE COUNSEL]: Yes, sir.

(T. 4/5/19, at 19) (emphasis added).

The circuit court brought out Jury No. 43 to inquire into the matters raised by Juror No. 25. Juror No. 43 confirmed that she did not receive any information on how defense counsel may have been paid. (T. 4/5/19, at 20). She further indicated that further deliberations could lead to a unanimous verdict. (T. 4/5/19, at 21).

The prosecutor argued for a mistrial, again not accurately stating Juror No. 25's comments, stating that "juror No. 25 indicated that she does not know that she can be fair and impartial" and "that's sort of the definition of manifest necessity." (T. 4/5/19, at 23-24).

Defense counsel responded, but the Court interrupted defense counsel again incorrectly imputing a statement that Juror No. 25 did not state:

THE COURT: No, no. [Defense counsel], that's not the point that we're focusing on now. **We're focusing on juror No. 25's declaration that she cannot be fair and impartial.**

(T. 4/5/19, at 24) (emphasis added).

Without conducting an individualized or group *voir dire* of the remaining ten jurors and without issuing any curative instructions to individual jurors or the entire jury panel, the Court declared a mistrial over the defense objection:

THE COURT: All right. Thank you for your time and patience this morning. Certainly, we've had a series of unique and fairly complicated legal issues that have arisen during the course of last night and this morning. After a lengthy discussion of those issues, the Defense has strongly advocated for the Court to direct the jury to continue their deliberations.

What's giving the Court pause specifically are the **revelations by a particular juror that she can no longer be fair and impartial** as a result of a myriad of things, including the tenor and culture that is been developed during the course of the deliberations thus far. While the Defense says that it is really his objection that's potentially being waived by his desire to proceed forward irrespective of what that juror has articulated to the Court, assuming, arguendo, that the jury was able to reach a unanimous verdict, **I still don't see how we can put credence into that verdict if a juror has articulated that she cannot be fair and impartial.**

Let's say I was somehow to get past that hurdle. *We also have and the Court has good-faith belief that the jury has extensively considered matters*

that we all agree were inappropriate, not put into evidence, and should not be considered by them in any way, whatsoever, regarding financial issues. So those two things coupled together really leaves me to believe that this is an inappropriate and tainted jury process. When I say "jury process," I'm talking about the deliberations. They have morphed into something that there's no way that we can say a productive and appropriate verdict is going to be reached when, number one, *we have a juror who's expressly said*, I feel intimidated, uncomfortable, and I cannot proceed because *I cannot be fair and impartial*, coupled with we know for -- I can't say for a fact, but I have great credence in her articulation regarding some of the things they discussed, which was wholly inappropriate and should have never been considered by the jury in any way, whatsoever. Based on those things, the Court finds manifest necessity to declare a mistrial over the Defendant's objection.

(T. 4/5/19, at. 25-27).

The circuit court denied appellant's Motion to Dismiss Indictment. (R. 103); (T. 2/7/20, at 18-19). The circuit court's docket from the judiciary's website is attached as **Exhibit A**.

On February 11, 2020, appellant noted an interlocutory appeal to the CSA. On October 1, 2020, the CSA issued a reported decision in [REDACTED] v. *State*, ___ Md. App. ___, No. 2444, Sept. Term 2019 (October 1, 2020), which affirmed, the circuit court's judgment. The opinion is attached as **Exhibit B**. On November 5, 2020, the CSA issued the mandate.

Petitioner files this timely Petition for *Writ of Certiorari*.

QUESTIONS PRESENTED

Petitioner presents the following question for this Court's consideration:

Where the Court of Special Appeals recognized that the trial judge may "have misspoken" or "misapprehended" a juror's statements regarding whether the juror could be fair and impartial and the trial judge relied on the statements of a single juror regarding the likelihood of reaching a

unanimous verdict, did the Court of Special Appeals err when affirmed the circuit court's order and concluded that the jury was "hopelessly deadlocked"?

The answer to this question is clearly, "yes."

REASONS FOR GRANTING THE WRIT

- I. **This Court should grant this writ to clarify the circumstances when a trial judge can find a manifest necessity based in part on its erroneous belief that the judge mistakenly believed a juror stated that she could *not* be fair and impartial, when the juror actually stated she could be fair and impartial.**

This Court should grant this writ to clarify the circumstances under which a trial judge may find a manifest necessity and declare a mistrial over defense objection when the trial judge bases that determination of manifest necessity in part on its erroneous belief that the judge mistakenly believed a juror stated that she could *not* be fair and impartial, when the juror actually stated she could be fair and impartial.

"[A] fundamental tenet underlying the practice of trial by jury is that each juror, as far as possible, be impartial and unbiased." *Dingle v. State*, 361 Md. 1, 9 (2000).

Notwithstanding this "fundamental tenant," the CSA opinion states, "[i]n obsessing over the fact that Judge Pearson may, *at one point*,^[2] have misspoken himself, the appellant overlooks the overriding bigger picture." [REDACTED], slip op., at 9. The CSA further stated "the judge may have misapprehended Juror No. 25's response as to her ability to be fair and impartial, but perhaps he did not." *Id.*

² By appellant's count, the trial judge misattributed the jury's statement not one time, but five times, including in its actual ruling declaring a mistrial. *See* (T. 4/5/19, at 18, 19, 24, 26, 27).

- a. A high degree of necessity for a mistrial did not exist because the circuit court based its determination of manifest necessity in part on its erroneous belief that Juror No. 25 stated that she could not be fair and impartial, which was inaccurate.

“[T]he prosecutor must demonstrate that there is ‘a high degree of necessity before concluding that the mistrial is appropriate.’” *Hubbard v. State*, 395 Md. 73, 92 (2006).

This “high degree” of necessity is lacking here because the circuit court erred when its decision that manifest necessity existed was predicated on its mistaken belief that Juror No. 25 had stated she could not be fair and impartial. This was not accurate. To be sure, Juror No. 25 expressly stated she could be fair and impartial:

[PROSECUTOR]: *Can you be fair and impartial in evaluating the evidence regardless of the fact that you've heard potentially, regardless of whether it's true, that the Defendant's grandmother put up money for his defense?*

THE COURT: I'm sorry. What was your response?

[JUROR No.25]: *Yes.*

THE COURT: That you can ignore the speculation about payment of the defense attorney and make a decision solely on the evidence presented and nothing else.

[JUROR No.25]: *I don't know. I'm going to be honest with you now. I really don't know.*

(T. 4/5/19, at 14-15) (emphasis added).

The circuit court inaccurately described Juror No. 25's response multiple times, including in his ruling declaring a mistrial, which indicated he mistakenly believed that Juror No. 25 had expressly stated she could not be fair and impartial or that she was not sure she could be fair. *See* (T. 4/5/19, at 18) (in response to the prosecutor inaccurately

stating “she did indicate that she can't -- not sure if she can be fair at this point,” the Court responded, “She did. Thank you. Thank you for pointing that out. She also did indicate that.”); (T. 4/5/19, at 19) (“And despite juror No. 25's representation that she cannot be fair and impartial at this juncture, it's the Defense's request that we proceed with further deliberations.”); (T. 4/5/19, at 24) (“We're focusing on juror No. 25's declaration that she cannot be fair and impartial.”); (T. 4/5/19, at 26) (“What's giving the Court pause specifically are the revelations by a particular juror that she can no longer be fair and impartial . . .”); (T. 4/5/19, at 26) (“I still don't see how we can put credence into that verdict if a juror has articulated that she cannot be fair and impartial.”); (T. 4/5/19, at 27) (“we have a juror who's expressly said, I feel intimidated, uncomfortable, and I cannot proceed because I cannot be fair and impartial”). These statements indicate that the circuit court incorrectly believed that Juror No. 25 expressly stated she was unable of being fair and impartial when she had stated to the contrary.

Here, there was not a “high degree” of necessity for a mistrial. The circuit court mistaken belief as to Juror No. 25’s statements were central to its decision to grant a mistrial, and this error irreparably tainted the circuit court’s ultimate decision to grant a mistrial. The circuit court erred when it declared a mistrial and based its determination that manifest necessity existed on his mistaken belief of “juror No. 25's declaration that she cannot be fair and impartial.” (T. 4/5/19, at 24).³

³ While it is true that Juror No. 25 stated “I don’t know” whether she could ignore speculation about the source of payment for defense counsel, this clearly did not constitute a manifest necessity because the court failed to explore reasonable alternatives to address this peripheral issue such as a curative instruction. *See Owens-Illinois, Inc. v.*

b. A single juror's comment was insufficient to conclude the jury was genuinely deadlocked on the morning of April 5, 2019.

This Court should clarify the circumstances upon which an appellate court can rely upon the statement of a single juror who was not the foreperson and whose view was disputed by the other juror questioned to determine that genuine deadlock exists. The CSA relied on Juror No. 25's statement that she "'did not believe that further deliberation could produce a unanimous verdict.'" [REDACTED], slip op., at *9. Notwithstanding defense counsel's argument at trial that "[i]t wasn't the jury that sent us a note that said they can't reach a verdict," and "until we hear from the jury that they can't reach a verdict, I think they get to keep deliberating." (T. 4/5/19, at 18-19). Juror No. 43 indicated that further deliberations were likely to yield a unanimous verdict as to all counts. (T. 4/5/19, at 21).

This Court should clarify the circumstances that a single juror's comments are sufficient to establish that jury is "genuinely deadlocked" as opposed to at a mere impasse, especially when it appears the juror's comments related to the prior day's deliberations as opposed to the actual current state of deliberations on the morning of April 5, 2019. Indeed, the prosecutor did not want the entire jury subject to voir dire on the likelihood of reaching a unanimous verdict "because they haven't expressed to us of their own volition that they are deadlocked." (T. 4/5/19, at 23).

Cook, 148 Md. App. 457, 476 (2002) ("when curative instructions are given, it is generally presumed that the jury can and will follow them"). Additionally, earlier in *voir dire*, Juror No. 25 stated "[i]t didn't change my opinion" when another juror had purportedly stated during deliberations that the defendant's grandmother supposedly "put her house up to get a lawyer." (T. 4/5/19, at 6-7) (emphasis added).

A genuinely deadlocked jury has been described as “‘more than an impasse; it invokes a moment where, if deliberations were to continue, ‘there exists a significant risk that a verdict may result from pressures inherent in the situation rather than the considered judgment of all the jurors.’” *State v. Hart*, 449 Md. 246, 277 (2016) (citation omitted). Similarly, it has been described as a “complete standstill”:

Deadlock is a “condition or situation in which it is impossible to proceed or act; a complete standstill.” 4 Oxford English Dictionary 290 (2d ed. 1989). Disagreement among jurors is perfectly normal and does not come close to approaching the “imperious necessity” we have required for their discharge.

Renico v. Lett, 559 U.S. 766, 788 (2010) (Stevens, J. dissenting).

In *United States v. Horn*, 583 F.2d 1124, 1125 (10th Cir. 1978), the Tenth Circuit concluded that there was no “manifest necessity” for a mistrial based on juror deadlock when, following a two day trial, the trial court granted a *sua sponte* mistrial after more than five hours of deliberations (three and a half hours on the first day of deliberations and one hour and forty minutes the following morning) and after emphasizing the jury’s duty to deliberate. In reversing the trial court, the Tenth Circuit emphasized both how the foreperson’s perspective may not reflect the entire jury’s view and how the break in deliberations overnight may have changed the status:

In the case at bar there is a complete lack of evidence that the jury was in disagreement at the time that the mistrial was granted. It is true that the night before mistrial was declared the jury had sent in a note saying that it was unable to agree. What the situation was the next morning when they returned, and after the *Allen* charge was given, we do not know, because there was no inquiry as to what the situation was. Had the court, following the one-hour plus deliberation, called the jurors back into court and made an inquiry as to their progress, and had it asked whether they were close to a verdict, or, if deadlocked, whether all members of the jury agreed that this

was the situation, then there would have been a good basis for arguing that manifest necessity existed.

* * *

Also, the sending of the note by the foreman the night before fails to establish manifest necessity the next morning following an hour plus of deliberation, because the state of jury deliberation is not unchanging. When we consider also that the trial court acted *Sua sponte* following relatively short (in time) deliberations, we are unable to uphold the decision granting the mistrial.

Id. at 1129.

In *United States v. Razmilovic*, 507 F.3d 130, 139 (2d Cir. 2007), the Second Circuit concluded that the trial judge abused his discretion in granting a mistrial because “[t]he single piece of evidence in the record that supports the trial judge's conclusion is the twenty-nine-word note from the jury that it was ‘at a deadlock’ and had ‘exhausted all [its] options.’”

In *U. S. ex rel. Webb v. Court of Common Pleas of Philadelphia Cty.*, 516 F.2d 1034, 1036, 1044 (3d Cir. 1975), the Third Court reversed the judgment of the district court because the trial court erred when it declared a mistrial after “approximately six and one-half hours” of deliberations based on juror deadlock. The Third Circuit reasoned as follows:

“[T]he trial judge directed his interrogatories solely to the jury foreman, and so far as the record reveals, the foreman, alone, indicated a response. The other members of the panel were in the box at this time, and it would concededly have been possible for another juror who disagreed with the foreman's assessment of the jury's status to make his opinion known to the court. However, unanimous consent cannot be inferred from a silent record.

Id. at 1043-44.

Juror No. 25's other statements were also insufficient to support a mistrial because they merely reflect discord in deliberations. Although Juror No. 25 did complain that she "felt threatened" when another juror wanted to demonstrate how a key act did or did not occur, (T. 4/5/19, at 7), she felt "bullied by the jury . . . to think in line with them," (T. 4/5/19, at 8), and a juror purportedly stated to Juror No. 25 that "I hope your family never gets charged" with a crime and "would have to come to court," which she claimed caused her to have fear for herself and her family, (T. 4/5/19, at 9-10), these statements did not warrant a mistrial. It appears the circuit court believed Juror No. 25 subjectively viewed these events this way but the trial judge qualified her subjective perception by stating "I'm not saying that that's the culture that's developed in there." (T. 4/5/19, at 17). "There is no requirement that a jury arrive at a verdict without discord." *Bethea v. Commonwealth*, 809 S.E.2d 684, 694 n.12 (Va. Ct. App. 2018). *Cf. Shotikare v. United States*, 779 A.2d 335, 342, 347 (D.C. 2001) (affirming denial of motion for a mistrial after a juror was removed from deliberations after the trial judge found a juror made credible threats of physical violence against other jurors, which eventually resulted in a verdict).

Here, the record does not reflect that the jury was genuinely deadlocked on the morning of April 5, 2019 when the judge declared a mistrial. The jury had deliberated a relatively short time in a complicated case. Given that it appears Juror No. 25 was brought out for *voir dire* first thing on April 5, 2019, it appears any statements from Juror No. 25 related to deliberations were from the day before leaving an open question whether the evening break caused a shift in opinions. The record also reflects that


deliberations the day before occurred in the context of a hot jury room, which appears to have made deliberations more challenging on April 4, 2019. *See* (T. 4/4/19, at 42); (T. 4/5/19, at 9). Moreover, the trial judge did not *voir dire* the entire jury. Put simply, there was an insufficient basis to conclude the jury was genuinely deadlocked on the morning of April 5, 2019.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a *Writ of Certiorari*.

Respectfully submitted,

By:



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Counsel for Petitioner

Font: Times New Roman 13

CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH MD. RULE 8-112

This Petition for Writ of Certiorari contains 3,878 words, excluding the caption, the signature block, the font description, and the certificate of service. This Petition complies with the font, spacing, and type size requirements stated in Rule 8-112.


Matthew M. Bryant

CERTIFICATE OF SERVICE

I HEREBY certify that on November 19, 2020, two copies of this Petitioner were sent via first class mail to:

Benjamin A. Harris
Deputy Division Chief
Office of the Attorney General
Criminal Appeals Division
200 Saint Paul Place
Baltimore, Maryland 21202



Matthew M. Bryant

EXHIBIT A

Circuit Court of Maryland

[Go Back Now](#)**Case Information**

Court System: Circuit Court for Prince George's County - Criminal System
Case Number: CT171198B
Case Description: [REDACTED]
Case Type: Criminal Appeal
Filing Date: 08/29/2017
Case Status: Inactive

Defendant/Respondent Information

Party Type: Defendant **Party No.:** 1
Name: [REDACTED]
Address: 3227 Chester Groove Road
City: Upper Malboro **State:** MD **Zip Code:** 20774

Attorney Information

Name: David M Simpson
Attorney Type: Attorney
Address: 6404 Ivy Lane
City: Greenbelt **State:** MD **Zip Code:** 20770
Name: Rajita M Andrews
Attorney Type: Attorney
Address: 100 S Washington Street
City: Rockville **State:** MD **Zip Code:** 20850

Other Party Information

Party Type: Interpreter **Party No.:** 18
Name: Spanish Interpreter
Party Type: Victim Witness Coordinator **Party No.:** 16
Name: JoAnne Douglas

Court Scheduling Information

Event Type: Hicks Date
Event Date: 03/06/2018 **Start Time:** 09:00:00
Result: Good Cause **Result Date:** 01/11/2018

Event Type: Initial Arraignment
Event Date: 09/22/2017 **Start Time:** 10:00:00
Result: Initial Arraignment Moot **Result Date:** 09/07/2017

Event Type: Trial - Carry Over
Event Date: 04/05/2019 **Start Time:** 09:00:00
Result: Mistrial **Result Date:** 04/05/2019

Event Type: Status Hear Specially Assign
Event Date: 12/15/2017 **Start Time:** 09:00:00
Result: Assign Status Held in Chambers **Result Date:** 12/15/2017

Event Type: Status Hear Specially Assign
Event Date: 10/08/2020 **Start Time:** 09:00:00
Result: Assign Status Held in Chambers **Result Date:** 10/08/2020

Event Type: Bond Hearing
Event Date: 04/25/2019 **Start Time:** 09:00:00

Result: Bond Hearing Cont in Court **Result Date:** 04/25/2019

Event Type: Bond Hearing

Event Date: 03/30/2018 **Start Time:** 09:00:00

Result: Bond Hearing Held **Result Date:** 03/30/2018

Event Type: Bond Hearing

Event Date: 04/26/2019 **Start Time:** 09:30:00

Result: Bond Hearing Held **Result Date:** 04/26/2019

Event Type: Bond Hearing

Event Date: 01/31/2018 **Start Time:** 09:30:00

Result: Bond Hearing Moot **Result Date:** 01/31/2018

Event Type: Hearing

Event Date: 02/14/2018 **Start Time:** 09:30:00

Result: Hearing Held **Result Date:** 02/14/2018

Event Type: Hearing

Event Date: 02/07/2020 **Start Time:** 09:30:00

Result: Hearing Held **Result Date:** 02/07/2020

Event Type: Hearing

Event Date: 02/16/2018 **Start Time:** 09:00:00

Result: Hearing Moot **Result Date:** 02/14/2018

Event Type: Motions Hear Specially Assign

Event Date: 01/11/2018 **Start Time:** 09:00:00

Result: Assigned Motions Cont/In Court **Result Date:** 01/11/2018

Event Type: Motions Hear Specially Assign

Event Date: 04/26/2018 **Start Time:** 09:00:00

Result: Assigned Motions Cont Prior Ct **Result Date:** 02/14/2018

Event Type: Motions Hear Specially Assign

Event Date: 06/25/2018 **Start Time:** 09:00:00

Result: Assigned Motions Cont Prior Ct **Result Date:** 06/11/2018

Event Type: Motions Hear Specially Assign

Event Date: 11/05/2018 **Start Time:** 09:00:00

Result: Assigned Motions Cont Prior Ct **Result Date:** 10/24/2018

Event Type: Motions Hear Specially Assign

Event Date: 04/01/2019 **Start Time:** 09:00:00

Result: Assigned Motions Held **Result Date:** 04/01/2019

Event Type: Status Conference

Event Date: 09/11/2020 **Start Time:** 09:00:00

Result: Status Conf Continued Prior Ct **Result Date:** 09/02/2020

Event Type: Trial Specially Assigned

Event Date: 02/06/2018 **Start Time:** 09:00:00

Result: Trial Continued/In Court **Result Date:** 01/11/2018

Event Type: Trial Specially Assigned

Event Date: 05/08/2018 **Start Time:** 09:00:00

Result: Trial Continued/Prior To **Result Date:** 02/14/2018

Event Type: Trial Specially Assigned

Event Date: 06/25/2018 **Start Time:** 09:00:00

Result: Trial Continued/Prior To **Result Date:** 06/11/2018

Event Type: Trial Specially Assigned

Event Date: 11/05/2018 **Start Time:** 09:00:00

Result: Trial Continued/Prior To **Result Date:** 10/24/2018

Event Type: **Trial Specially Assigned**
Event Date: **11/18/2019** Start Time: **09:00:00**
Result: **Trial Continued/Prior To** Result Date: **10/21/2019**

Event Type: **Trial Specially Assigned**
Event Date: **04/01/2019** Start Time: **09:00:00**
Result: **Jury Trial Held** Result Date: **04/01/2019**

Event Type: **Trial - Carry Over**
Event Date: **04/02/2019** Start Time: **09:00:00**
Result: **Jury Trial Held** Result Date: **04/02/2019**

Event Type: **Trial - Carry Over**
Event Date: **04/03/2019** Start Time: **09:00:00**
Result: **Jury Trial Held** Result Date: **04/03/2019**

Event Type: **Trial - Carry Over**
Event Date: **04/04/2019** Start Time: **09:00:00**
Result: **Jury Trial Held** Result Date: **04/04/2019**

Event Type: **Trial - Carry Over**
Event Date: **04/05/2019** Start Time: **09:00:00**
Result: **Jury Trial Last Day Held** Result Date: **04/05/2019**

Event Type: **Trial - Carry Over**
Event Date: **02/07/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **01/11/2018**

Event Type: **Trial - Carry Over**
Event Date: **02/08/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **01/11/2018**

Event Type: **Trial - Carry Over**
Event Date: **05/09/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **02/14/2018**

Event Type: **Trial - Carry Over**
Event Date: **05/10/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **02/14/2018**

Event Type: **Trial - Carry Over**
Event Date: **06/26/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **06/11/2018**

Event Type: **Trial - Carry Over**
Event Date: **06/27/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **06/11/2018**

Event Type: **Trial - Carry Over**
Event Date: **11/07/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **10/24/2018**

Event Type: **Trial - Carry Over**
Event Date: **11/08/2018** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **10/24/2018**

Event Type: **Trial - Carry Over**
Event Date: **11/19/2019** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **10/21/2019**

Event Type: **Trial - Carry Over**
Event Date: **11/20/2019** Start Time: **09:00:00**
Result: **Trial Moot** Result Date: **10/21/2019**

Event Type: **Trial Specially Assigned**

Event Date: 03/03/2020 Start Time: 09:00:00
 Result: Trial Moot Result Date: 02/24/2020

Event Type: Trial - Carry Over
 Event Date: 03/04/2020 Start Time: 09:00:00
 Result: Trial Moot Result Date: 02/24/2020

Event Type: Trial - Carry Over
 Event Date: 03/05/2020 Start Time: 09:00:00
 Result: Trial Moot Result Date: 02/24/2020

Event Type: Status Conference
 Event Date: 12/04/2020 Start Time: 09:00:00
 Result: Result Date:

Event Type: Trial Specially Assigned
 Event Date: 09/13/2021 Start Time: 09:00:00
 Result: Result Date:

Event Type: Trial - Carry Over
 Event Date: 09/15/2021 Start Time: 09:00:00
 Result: Result Date:

Event Type: Trial - Carry Over
 Event Date: 09/16/2021 Start Time: 09:00:00
 Result: Result Date:

Event Type: Trial - Carry Over
 Event Date: 09/14/2021 Start Time: 09:00:00
 Result: Result Date:

Charge and Disposition Information

(Each Charge is listed separately. The disposition is listed below the Charge)

Charge No: 1
 Charge: Murder 1st Degree
 Charge Code: CL005
 Offense Date: 07/18/2017
 Arrest Tracking No: 171001534734
Disposition
 Disposition: Judgment Acquittal Disposition Date: 04/03/2019

Charge No: 2
 Charge: Robbery W/DW
 Charge Code: 3-403
 Offense Date: 07/18/2017
 Arrest Tracking No: 171001534734
Disposition
 Disposition: Mistrial Disposition Date: 04/03/2019

Charge No: 3
 Charge: Con: Armed Robbery
 Charge Code: CL056
 Offense Date: 07/18/2017
 Arrest Tracking No: 171001534734
Disposition
 Disposition: Mistrial Disposition Date: 04/03/2019

Charge No: 4
 Charge: Use Handgun/Crime Of Viol/Comm
 Charge Code: 4-204
 Offense Date: 07/18/2017

Arrest Tracking No: 171001534734

DispositionDisposition: **Mistrial** Disposition Date: 04/03/2019

Charge No: 5

Charge: **Use Handgun/Crime Of Viol/Comm**

Charge Code: 4-204

Offense Date: 07/18/2017

Arrest Tracking No: 171001534734

DispositionDisposition: **Mistrial** Disposition Date: 04/03/2019**Dockets***(Each Document listed. Documents are listed in Document No./Sequence No. order)*

Date: 08/29/2017

Document Name: **Indictment Grand Jury Ref PD**Docket Text: **Upon Presentment of Indictment it is ordered by Judge Anderson ; Mr. D. Engelbretson, reporter, that the defendant is referred to the Public Defender, filed, 652**

Date: 08/29/2017

Document Name: **Presentment and Indictment for**Docket Text: **Counts:(1)Common Law Murder, (2)Armed Robbery, (3)Conspiracy To Commit Armed Robbery, (4)Use Of Firearm In A Crime Of Violence, (5)Use Of A Firearm In Commission Of A Felony, fld, 652**

Date: 09/01/2017

Document Name: **Sum w/cpy Indct Gvn Sherf Fd**

Docket Text: 652

Date: 09/07/2017

Document Name: **Motion Filed**Docket Text: **For Release of Grand Jury Transcripts, fld, 622**

Date: 09/07/2017

Document Name: **Letter from Sao, filed.**Docket Text: **Letter from JoAnne Douglas to Sydney J. Harrison. fld344**

Date: 09/07/2017

Document Name: **Mot Discovery & Inspection, fd**

Docket Text: 625

Date: 09/07/2017

Document Name: **Demand for Speedy Trial Fd**

Docket Text: 574

Date: 09/07/2017

Document Name: **Waive Juvenile Ct (MotReqPet)**

Docket Text: 574

Date: 09/07/2017

Document Name: **Motion Sever Defendants**

Docket Text: 652

Date: 09/07/2017

Document Name: **Motion to Suppress Evidence**

Docket Text: 652

Date: 09/14/2017

Document Name: **Order of Court, filed**Docket Text: **Order of court dated 9/12/17, Judge Rattal; Ordered, that the Office of the State's Attorney for Prince George's County is hereby directed to prepare and to release to counsel for the**

defendant, all Grand Jury transcripts of witnesses relative to the defendant in the above-captioned matter. cc sao. 498

Date: 09/14/2017

Document Name: Order of Court, filed

Docket Text: Order of court dated 9/12/17, Judge Rattal; Ordered, that the Department of Juvenile Services conduct an investigation and make a written report to this Honorable Court as to whether the Defendant, Darius Tarik Johnson, is still amendable to the rehabilitative and corrective process of the Juvenile Court, and that it be further Ordered, that the investigation report be available by the motions date which will be set by the assignment office in this matter. cc sao. 498

Date: 09/15/2017

Document Name: Motion to Amend Indictment, fd

Docket Text: 574

Date: 09/21/2017

Document Name: Order of Court, filed

Docket Text: Order of Court, 9/20/17; granted Jd Pearson Order that the State's Motion is granted, and the True Bill is hereby Amended fld; 633 cc SAO, Frank Denison, David M. Simpson

Date: 09/07/2017

Document Name: Initial Arraignment Moot

Docket Text: 652

Date: 09/02/2017

Document Name: Statement of Charges Fd

Docket Text: 670

Date: 09/02/2017

Document Name: Commitment Pending Hearing

Docket Text: Without bail (0% acceptable), 8/30/2017, fld, 670

Date: 10/05/2017

Document Name: Crime Victim Notification Form

Docket Text: Fld, lmc, 283. sealed.

Date: 12/04/2017

Document Name: Memorandum, filed

Docket Text: Criminal Injuries Compensation Board, fld, 620

Date: 12/13/2017

Document Name: Request for Discovery

Docket Text: State's Request for Discovery, fld, #681

Date: 12/13/2017

Document Name: Notice of Intent Self Auth...

Docket Text: Notice of Intent to Offer Self-Authenticating Record of regularly conducted business activity, fld, #681

Date: 12/13/2017

Document Name: States Required Disclosure

Docket Text: 620

Date: 12/13/2017

Document Name: Not of Expert Witness Fd

Docket Text: 473

Date: 12/13/2017

Document Name: Not of Expert Witness Fd

Docket Text: 473

Date: 12/15/2017

Document Name: Assign Status Held in Chambers

Docket Text:

Date:	12/15/2017
Document Name:	Adult Daily Sheet, Filed
Docket Text:	632TUM Status hearing Held. Judge Alves; CS-M3414
Date:	12/28/2017
Document Name:	Answer to Request for Disc, Fd
Docket Text:	
Date:	01/11/2018
Document Name:	Assigned Motions Cont/In Court
Docket Text:	^554^ DNA Evaluation Not Completed
Date:	01/11/2018
Document Name:	Trial Continued/In Court
Docket Text:	
Date:	01/11/2018
Document Name:	Trial Moot
Docket Text:	
Date:	01/11/2018
Document Name:	Trial Moot
Docket Text:	
Date:	01/11/2018
Document Name:	Good Cause
Docket Text:	
Date:	01/11/2018
Document Name:	Adult Daily Sheet, Filed
Docket Text:	KB608 Judge Pearson; CS-D2026 State continuance- DNA Results pending Reset to 4/26/18 at 9am for Motions before Judge Alves and 5/8/18-5/10/18 at 9am for Trial before Judge Alves Court finds good cause to continue the case beyond the 180 day requirement of MD Rule 4-271
Date:	01/22/2018
Document Name:	Motion to Set Bond
Docket Text:	Motion to set a Bond Hearing filed by Defense Atty, sent to Jd Rattal (1/22/18) fld;633
Date:	01/31/2018
Document Name:	Bond Hearing Moot
Docket Text:	Taken out of assignment
Date:	01/31/2018
Document Name:	Adult Daily Sheet, Filed
Docket Text:	449/JGC Judge Pearson; CS D2026 Matters to be taken out of assignment case to proceed in due course.
Date:	02/02/2018
Document Name:	Order of Court, filed
Docket Text:	Order of court dated 1/30/18, Judge Pearson; Ordered, that the above-captioned matter be set for hearing on 31 day of January, 2018. cc David M. Simpson and sao. 498
Date:	02/08/2018
Document Name:	Motion for Continuance, fd
Docket Text:	Sent to Judge Dawson. 498
Date:	02/13/2018
Document Name:	Motion to Set Bond
Docket Text:	fld.363
Date:	02/14/2018
Document Name:	Hearing Held
Docket Text:	

Date:	02/14/2018
Document Name	Hearing Moot
Docket Text:	

Date:	02/14/2018
Document Name	Assigned Motions Cont Prior Ct
Docket Text:	^097^ Courts Continuance

Date	02/14/2018
Document Name:	Trial Continued/Prior To
Docket Text:	

Date	02/14/2018
Document Name:	Trial Moot
Docket Text:	

Date:	02/14/2018
Document Name:	Trial Moot
Docket Text:	

Date:	02/14/2018
Document Name:	Adult Daily Sheet, Filed
Docket Text:	556bnm Judge Pearson; CS D2026 Court's continuance Reset to 6/25/18 6/27/18 at 9am for Trial before Judge Dawson

Date:	02/22/2018
Document Name:	Notice of Intent Self Auth...
Docket Text:	Notice of Intent to Offer Self-Authenticating Record of regularly conducted business activity

Date:	02/21/2018
Document Name	Order of Court, filed
Docket Text:	Order of Court,, 2/15/18, Ordered by Judge Tillerson-Adams Ordered, the above case (s) have been specially assigned to you for trial and all proceedings except Hicks waiver and continuances beyone Hicks date., fld, 574 cc: SAO, Defense, Calendar Management

Date:	03/08/2018
Document Name:	Letter, filed.
Docket Text:	From Criminal Injuries Compensation Board, fld, 574

Date:	03/30/2018
Document Name:	Bond Hearing Held
Docket Text:	

Date:	03/30/2018
Document Name	Adult Daily Sheet, Filed
Docket Text	673JJ Hearing on Defendant's Motion to Set Bond Hearing Judge Dawson; CS-D2019 Motion - Denied

Date	06/05/2018
Document Name:	Wrt of Hab Corps/Testificandum
Docket Text	Faxed and mailed certified copy to Records for witness to come to Court on 6-25-18 thru 6-29 18, Returnable to Thomas J.S. Waxter Children's Center, fld ,652

Date:	06/08/2018
Document Name:	Motion for Continuance, fd
Docket Text	Sent to Judge Dawson. 498

Date:	06/12/2018
Document Name:	Order of Court, filed
Docket Text:	Order of Court, June 11, 2018, Ordered by Judge Dawson ORDERED, that the trial in the above-captioned matter be and hereby is continued until November 5, 7, and 8th, 2018, fld,

622 cc: SAO, Defense, Calendar Management

Date: 06/15/2018
Document Name: Motion Filed
Docket Text: Motion to set a bond hearing fd 339

Date: 06/11/2018
Document Name: Assigned Motions Cont Prior Ct
Docket Text: ^909^ Non Articulated Reason

Date: 06/11/2018
Document Name: Trial Continued/Prior To
Docket Text: ^909^ Non Articulated Reason

Date: 06/11/2018
Document Name: Trial Moot
Docket Text:

Date: 06/11/2018
Document Name: Trial Moot
Docket Text:

Date: 06/21/2018
Document Name: Order of Court, filed
Docket Text: Order of Court, 6/20/18, Ordered by Judge Dawson ORDERED, that motion to set bond hearing is moot, hearing held on 3/30/18, fld, 710 cc: SAO, Defense

Date: 06/27/2018
Document Name: Request for Hearing
Docket Text: Motion to Set a Bond Hearing, fld, 354

Date: 07/02/2018
Document Name: Order of Court, filed
Docket Text: Order of Court, Ordered by Judge Dawson ORDERED, for Motion to Set Bond is DENIED, Bond Hearing was held on 3/30/18 fld, 710 cc: SAO, Defense Copies mailed by Judge Dawson Chambers

Date: 10/24/2018
Document Name: Motion for Continuance, fd
Docket Text: Sent to Judge Dawson. 498

Date: 10/24/2018
Document Name: Assigned Motions Cont Prior Ct
Docket Text: ^809^ Other

Date: 10/24/2018
Document Name: Trial Continued/Prior To
Docket Text: ^809^ Other

Date: 10/24/2018
Document Name: Trial Moot
Docket Text:

Date: 10/24/2018
Document Name: Trial Moot
Docket Text:

Date: 10/26/2018
Document Name: Order of Court, filed
Docket Text: Order of Court, 10/24/18, Ordered by Judge Pearson ORDERED, that Trial is hereby Continued until April 1,2019 in the above captioned matter. ,fld,710 cc: SAO, Defense, Calendar Management

Date: 04/01/2019
Document Name: Assigned Motions Held

Docket Text:**Date:** 04/01/2019**Document Name:** Jury Trial Held**Docket Text:** ^001^ First Day of Multi Day Trial**Date:** 04/02/2019**Document Name:** Jury Trial Held**Docket Text:** ^002^ Continuation of Multi Day Trial**Date:** 04/03/2019**Document Name:** Jury Trial Held**Docket Text:** ^002^ Continuation of Multi Day Trial**Date:** 04/04/2019**Document Name:** Jury Trial Held**Docket Text:** ^002^ Continuation of Multi Day Trial**Date:** 04/05/2019**Document Name:** Jury Trial Last Day Held**Docket Text:****Date:** 04/05/2019**Document Name:** Mistrial**Docket Text:****Date:** 04/01/2019**Document Name:** Adult Daily Sheet, Filed**Docket Text:**

617A(KA) Proposed Voir Dire, filed. Jury Examined on Voir Dire. Trial by Jury- Jury Sworn Judge Pearson; Ms. Miller Reporter. Defendant's Motion in Limine to Preclude Testimony of Defendant's Alias- Denied. Defendant's Motion in Limine to Preclude Testimony of Cell Phone Destruction- Moot. Defendant's Motion in Limine to Preclude Testimony of Text Messages- Denied. Witness/Exhibit List, filed. Court Recessed at 4:24 pm. Trial to resume 4-2-2019 at 9:00am before Judge Pearson. Kyla Nettleton to be transported as an essential witness in CT171198B at 9:00am.

Date: 04/02/2019**Document Name:** Adult Daily Sheet, Filed**Docket Text:**

617A(KA) Trial resumed at 9:25am. Judge Pearson; Ms. Miller Reporter. Witness/ Exhibit List, filed. Jury Note, filed. Court recessed at 4:05pm. Trial to resume 4-3-2019 at 9:30am before Judge Pearson. Defendant to be transported and dressed for trial. Kyla Nettleton to be transported as an essential witness in CT171198B at 9:00am.

Date: 04/03/2019**Document Name:** Adult Daily Sheet, Filed**Docket Text:**

617A(KA) Trial resumed at 9:50am. Judge Pearson; Ms. Miller Reporter. Witness/ Exhibit List, filed. At the close of the State's case, Motion for Judgment of Acquittal- Granted as to Count 1- First Degree Premeditated Murder and Denied as to First Degree Felony Murder and Second Degree Murder. At the conclusion of the entire case, Motion for Judgment of Acquittal as to all remaining counts- Denied. Jury Note, filed. Trial recessed at 4:45pm and to resume at 9:00am on 4-4-2019. Defendant to be transported and dressed for trial.

Date: 04/04/2019**Document Name:** Adult Daily Sheet, Filed**Docket Text:**

617A(KA) Trial resumed at 9:30am. Judge Pearson; Ms. Miller Reporter. Juror #15 (Badge# 23055275) is hereby excused from any further proceedings in this case. Alternate Juror #45 (Badge# 22937430) is hereby seated. Jury notes, filed. Trial recessed at 5:45pm and to resume at 9:00am for deliberations only on 4-5-2019.

Date: 04/05/2019**Document Name:** Adult Daily Sheet, Filed**Docket Text:**

617A(KA) Trial resumed at 10:15am. Judge Pearson; Ms. Alonzo Reporter. Court declares Mistrial due to manifest necessity. All prospective jurors are excused from any further deliberations in this case. All exhibits returned as designated by the court. Reset for trial on 11-18-2019 at 9:00am before Judge Pearson.

Date: 04/10/2019

Document Name: Request for Hearing

Docket Text: Motion To Set A Bond Hearing, fld, 574

Date: 04/24/2019

Document Name: Order of Court, filed

Docket Text: Order of Court, 4/17/2019, Ordered by Judge Rattal ORDERED, that the above captioned matter be set for hearing on April 25,2019 Before Judge Pearson. fld,710 cc: SAO, Defense

Date: 04/25/2019

Document Name: Bond Hearing Cont in Court

Docket Text: ^712^ State's Attorney not prepared

Date: 04/26/2019

Document Name: Bond Hearing Held

Docket Text:

Date: 04/26/2019

Document Name: Adult Daily Sheet, Filed

Docket Text: KB608 Hearing on Defendants motion to set bond Judge Pearson; Mr. Williams Reporter Motion-Granted Bond Set at Level 4 Pre-Trial Release Defendant shall not leave the Resident unless for Medical Emergency or for Court Proceedings or unless to speak with Counsel Defendant must enroll in a GED Program Pending Final Resolutions of this Case

Date: 04/25/2019

Document Name: Adult Daily Sheet, Filed

Docket Text: KB608 Judge Pearson; NO reporter State continunace- granted State to notify Victim family reset to 4/26/19 at 9:30am for bond hearing before Judge Pearson

Date: 05/03/2019

Document Name: Conditions of Release, fd

Docket Text: 739

Date: 08/23/2019

Document Name: Motion for Appropriate Relief

Docket Text: to attend funeral, fld, 670

Date: 08/23/2019

Document Name: Order of Court, filed

Docket Text: Order of Court, 8/23/2019, Ordered by Judge Pearson ORDERED, that the prince Georges County Home Detention Program is directed to allow the defendant to attend his grandmothers funeral serices on Saturday August 24, 2019 beginning at 4:00pm and ending at approximately 6:00pm allowing him time to travel to and from in the above captioned matter. fld,710 cc; SAO, Defense

Date: 10/09/2019

Document Name: Letter, filed.

Docket Text: Letter from Official Court Reporters referencing the cost for the request for transcripts, Fld: 696

Date: 10/21/2019

Document Name: Motion for Continuance, fd

Docket Text: Sent to Judge Pearson. 498

Date: 10/21/2019

Document Name: Trial Continued/Prior To

Docket Text: ^812^ Defense Counsel recently entered. Insufficient time to prepare.

Date: 10/21/2019

Document Name: Trial Moot

Docket Text:

Date: 10/21/2019

Document Name: Trial Moot

Docket Text:

Date:	10/22/2019
Document Name:	Order of Court, filed
Docket Text:	Order of Court, October 21, 2109, Ordered by Judge Pearson ORDERED, that the trial is hereby continued until March 03, 2020 to March 05, 2020 in the above captioned matter. fld, 739 cc: SAO, Defense, Calendar Management
<hr/>	
Date:	12/27/2019
Document Name:	Affidavit of Service, fd
Docket Text:	fd,#692
<hr/>	
Date:	01/15/2020
Document Name:	Motion Filed
Docket Text:	Conditional Motion For Stay Of Case Pending Interlocutory Appeal On Double Jeopardy Grounds. fld.363
<hr/>	
Date:	01/15/2020
Document Name:	Motion to Dismiss
Docket Text:	Motion To Dismiss Indictment On Double Jeopardy Grounds And Hearing Request. fld.363
<hr/>	
Date:	01/31/2020
Document Name:	Opposition to Def/Mot/Dism
Docket Text:	Opposition To Defendant's Motion To Dismiss Indictment On Double Jeopardy Grounds fld 680
<hr/>	
Date:	02/07/2020
Document Name:	Hearing Held
Docket Text:	
<hr/>	
Date:	02/07/2020
Document Name:	Adult Daily Sheet, Filed
Docket Text:	615rf Hearing on Defendant's Motion to Dismiss Indictment on Double Jeopardy Grounds and Conditional Motion of Stay of Case Pending Interlocutory Appeal on Double Jeopardy Grounds. Judge Pearson; CS-D2026. Motion- Denied. Case to proceed in due course.
<hr/>	
Date:	02/11/2020
Document Name:	Notice of Appeal, filed
Docket Text:	notice of appeal filed by counsel for defendant paid 121.00 receipt 58325 date 2/13/2020 DUE TO COSA 4/11/2020 mz e2/12/2020
<hr/>	
Date:	02/13/2020
Document Name:	Transcript, filed
Docket Text:	Transcript Received: Date of Proceedings: 02-07-2020 w/ cost sheet fd//hmv e.02-14-2010
<hr/>	
Date:	02/27/2020
Document Name:	Order fr Ct of Special Appeals
Docket Text:	No. 2444, Sept 2019 it is this 24th day of January, 2020, by the Court of Special Appeals, ORDERED that the Motion to Stay is granted; and it is further ORDERED that the appellant's trial in the Circuit Court for Prince George's County is stayed pending appeal; and it is further ORDERED that the appeal is scheduled in the June 2020 session of this Court; and it is further ORDERED that the appellant's brief shall be filed on or before March 30, 2020; and it is further ORDERED that the appellee's brief shall be filed on or before April 29, 2020. mz e2/27/2020
<hr/>	
Date:	02/24/2020
Document Name:	Trial Moot
Docket Text:	Ordered that the Motiion for Stay is granted. Trial is stayed pending a decision by this Court on the merits of the appeal
<hr/>	
Date:	02/24/2020
Document Name:	Trial Moot
Docket Text:	Ordered that the Motion for Stay is granted. Trial is stayed pending a decision by this Court

of the merits of the appeal

Date: 02/24/2020
Document Name: Trial Moot
Docket Text: Ordered that the Motion for Stay is granted. Trial is stayed pending a decision by this Court on the merits of the appeal.

Date: 03/04/2020
Document Name: Transcript Order, filed.
Docket Text: transcript Order for 04/01/2019, 04/02/2019, 04/03/2019, 04/04/2019 proceedings fd/hmv e.03 05 2020

Date: 03/05/2020
Document Name: Line of Appearance, fd
Docket Text: entered on behalf of the victim, fld, 670

Date: 03/04/2020
Document Name: Letter, filed.
Docket Text: letter from court reporter regarding payment for transcripts. mz e3/6/2020

Date: 03/12/2020
Document Name: Transcript Order, filed.
Docket Text: Transcript Order for 04/05/2019 proceeding fd/hmv e.03-13-2020

Date: 03/17/2020
Document Name: Transcript Order, filed.
Docket Text: copy:Transcript Order for 04/05/2019 proceeding fd/hmv

Date: 04/06/2020
Document Name: Transcript, filed
Docket Text: transcript filed for proceeding dated 4/5/2019 w/ cost sheet and copy for OPD and AG mz e4/6/2020

Date: 04/16/2020
Document Name: Rec Transmitted Court of Speci
Docket Text: record transmitted to COSA 1 volume, 2 transcripts cert mail no 7018 1130 0001 0522 5976 mz e4/16/2020

Date: 04/27/2020
Document Name: Return Receipt
Docket Text: green card returned from COSA, signed for 4/20/2020 mz e4/27/2020

Date: 04/30/2020
Document Name: Transcript, filed
Docket Text: Transcripts received for 04/01/2019, 04/02/2019, 04/03/2019, 04/04/2019 proceedings w.cost sheet fd/hmv e.05-05-2020

Date: 05/18/2020
Document Name: Order fr Court of Appeals, Fd
Docket Text: No. 2444 Upon consideration of the appellant's Unopposed Motion to Supplement the Record. it is this 12th day of May 2020, by the Court of Special Appeals, ORDERED, that the Clerk of the Circuit Court for Prince George's County is directed to transmit to this Court, forthwith the transcripts of the proceedings held on April 1, 2019, April 2, 2019, April 3, 2019, and April 4, 2019 in the case of State of Maryland vs. Darius Johnso, Cir. Ct. No. CT171198B, and that upon receipt in this Court, the record in this appeal shall be corrected by the inclusion of the same. fd/hmv e.05-19-2020

Date: 05/19/2020
Document Name: Rec Transmitted Court of Speci
Docket Text: Records Transmitted To Court of Special appeals Supplement of Transcripts 04-01-19, 04-02-19, 04-03-19, 04-04-19 Cert. Mail #7004 1160 0006 6931 6019 fd/hmv e.05-19-2020

Date: 06/04/2020

Document Name Return Receipt
Docket Text: Green Card Returned for supplement fd/hmv e.06-09-2020

Date 09/02/2020
Document Name: Status Conf Continued Prior Ct
Docket Text: ^551^ On Appeal

Date 09/11/2020
Document Name: Return Notice of Hearing fd
Docket Text: #575

Date 10/08/2020
Document Name: Assign Status Held in Chambers
Docket Text:

Date: 10/08/2020
Document Name: Adult Daily Sheet, Filed
Docket Text: 598mh Status Hearing held. Judge Pearson; K. Blyden Reporter Reset for trial on 9/13 9/17/2021 before Judge Pearson.

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

EXHIBIT B

██████████ v. State, No. 2444 of the 2019 Term, Opinion by Moylan, J.

HEADNOTES:

**DECLARATION OF MISTRIAL – A RETRIAL FOLLOWING A MISTRIAL; A
DOUBLE JEOPARDY PROBLEM – THE MANIFEST NECESSITY EXCEPTION
– STANDARD OF APPELLATE REVIEW – MANIFEST NECESSITY IN THIS
CASE – A DYSFUNCTIONAL JURY – THE DECLARATION OF MISTRIAL –
FAIRNESS AND IMPARTIALITY DO NOT GUARANTEE UNANIMITY – A
TREACHEROUS ALTERNATIVE**

Circuit Court for Prince George's County
Case No. CT 171198B

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2444

September Term, 2019

[REDACTED]

V.

STATE OF MARYLAND

Leahy,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: October 1, 2020

On April 1, 2019, the appellant, [REDACTED] went on trial before a jury, presided over by Judge Michael R. Pearson, in the Circuit Court of Prince George's County. He was being tried on the five counts of 1) murder, 2) armed robbery, 3) conspiracy to commit armed robbery, 4) the use of a firearm in the commission of a crime of violence, and 5) the use of a firearm in the commission of a felony.

At the end of the third day of trial, April 3, 2019, the State rested and the defense also rested without calling any witnesses. On the morning of April 4, 2019, the fourth day of trial, the jury began its deliberations at 10:14 a.m. Without having reached a verdict, the jury was excused for the day at 5:44 p.m. The jury resumed its deliberations on the morning of April 5, 2019, the fifth day of trial and the second day of jury deliberations. At a significantly later time on April 5, 2019, Judge Pearson found it necessary to declare a mistrial because of his belief that the jury would unlikely be able to reach a unanimous verdict. A more detailed narration of the events leading up to the declaration of a mistrial will be presented infra.

A Retrial Following A Mistrial; A Double Jeopardy Problem

Following the mistrial, the charges against the appellant, of course, remained pending. On January 15, 2020, the appellant filed a Motion to Dismiss Indictment on Double Jeopardy Grounds. A hearing was held on that motion on February 7, 2020, before Judge Pearson. With respect to the controlling Double Jeopardy law, there is no dispute. Ordinarily, once a defendant is placed in jeopardy, he has the right to have the trial completed by the tribunal that had been first empaneled to hear it. If a mistrial is declared over the defendant's objection, a retrial is presumptively forbidden by the Double Jeopardy

Clause. Arizona v. Washington, 434 U.S. 497, 503-505, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978).

The Manifest Necessity Exception

There is, however, a notable exception to that provision. “At times the valued rights of a defendant to have his trial completed by the particular tribunal summoned to sit in judgment on him may be subordinated to the public interest—when there is an imperious necessity to do so.” Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 10 L.Ed.2d 100 (1963). See also United States v. Jorn, 400 U.S. 470, 485, 91 S.Ct. 547, 27 L.Ed.2d 543 (1971). The presence or absence of imperious or manifest necessity for the mistrial is, indeed, the only issue before us in this case. The law in this case is not in dispute.

In denying the appellant’s motion to dismiss the charges against him on Double Jeopardy grounds, Judge Pearson reasserted his belief that there had been a manifest necessity for the declaration of a mistrial in the appellant’s case.

It’s still my perception that there was manifest necessity for the granting of a mistrial because there was no viable alternative at that point that would continue deliberations with the assurance that all 12 jurors would be fair and impartial in their assessment of the evidence.

(Emphasis supplied.)

Standard Of Appellate Review

That is, indeed, the only issue before us. Was there a manifest necessity for Judge Pearson’s declaration for a mistrial? As we now return to our deferred narration of the jury’s problems in this case, it is important to keep in mind the controlling standard of

appellate review. In State v. Fennell, 431 Md. 500, 516, 66 A.3d 630 (2013), the Court of Appeals was clear.

The decision to declare a mistrial is an exercise of the trial judge's discretion and is entitled to great deference by a reviewing court. A genuinely deadlocked jury is considered the prototypical example of a manifest necessity for a mistrial.

(Emphasis supplied.) See also Simmons v. State, 436 Md. 202, 212, 81 A.3d 383 (2013).

Manifest Necessity In This Case

The jury in this case retired to begin its deliberations on April 4, 2019 at 10:14 a.m. The jury immediately revealed itself to be a very communicative one. At 11:20 a.m., it submitted the question, "Can a person be guilty even if that person was not the shooter, did not shoot the murdered person?" Judge Pearson directed the jury to refer to the written jury instructions, of which it had been given a copy.

At 1:39 p.m., the jury sent the very promising news that, "We are very close to a decision." The note included the question: "Please provide detailed guidance on why the defense and prosecution can ask how we voted if we have to return a unanimous decision?" The jurors were somehow troubled about having to commit themselves. Judge Pearson provided a written response to that query.

The first sign of more significant trouble appeared at 3:07 p.m. A jury note suggested that the jury as a whole might be having a problem with one individual juror.

What can we do if one person does not comprehend the verdict sheet or the binding nature of the instructions?

(Emphasis supplied.)

At that point, Judge Pearson decided to give the jury the Allen charge. He did so over the State's objection. He firmly added, moreover, "I am only giving this one time." He then charged the jury.

THE COURT: In light of the most recent communication from the jury I have one additional instruction that I would like to read to you. The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous. You must consider and consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment. Each of you must decide this case for yourself but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations, do not hesitate to re-examine your own views. You should change your opinion if convinced you are wrong but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict. And with this additional instruction along with the other instructions that I have already given you in writing, I am going to ask that you review all of it, and you continue with your deliberations. Thank you.

(Emphasis supplied.)

At 3:50 p.m., the jury submitted another question, "Please define first-degree felony murder." Judge Pearson again referred the jury to the written jury instruction. The first sense of significant trouble arose at 5:33 p.m. The court received a note from an individual juror asking the following:

Can I speak with you about our decision on the verdict because one of the jurors has admitted to all the jurors of a past verdict she made on another trial with a not guilty verdict. Then found out later her decision was a mistake.

The court did not respond to that inquiry at that time. The jury was released for the day at 5:44 p.m.

A Dysfunctional Jury

Before the jury reconvened on the morning of April 5, 2019, Judge Pearson had received two ex parte communications from Juror No. 25. When the whole jury reconvened, the judge explained:

Over the course of the evening break, the Court received a voicemail message from Juror No. 25 expressing that Juror No. 25 wanted to speak to the Court about ‘some things’ that were going on during deliberations. This morning the Court has received another note directly from Juror No. 25 identifying eight separate issues that that juror would like the Court to address.

(Emphasis supplied.)

While the rest of the jury remained in the jury room, Juror No. 25 was brought into the courtroom and questioned by Judge Pearson. Juror No. 25’s complaint indicated that the jury was split 11-1, with Juror No. 25 apparently as the lone juror holding out for a conviction. The juror complained, “I felt that at one time all 11 of them were coming at me.” That juror also pointed out that information that had never been introduced into evidence had been referred to and argued in the course of the jury deliberations. That information was that the appellant’s grandmother had “put her house up to get a lawyer” for the appellant. The purpose for that information ostensibly was to indicate how strongly the grandmother believed in the appellant’s innocence. Juror No. 25 also indicated that she “felt threatened” when another juror wanted to “demonstrate” how a key disputed act in the evidence did or did not occur. The proposed demonstration referred to the disputed issue of whether the appellant had hit the victim in the head with a gun. Juror No. 25 had told the other juror, “Don’t demonstrate nothing on me.”

Juror No. 25 stated that she was “feeling bullied by the jury... to think in line with them. I am constantly being asked why I can’t understand the law as they see it.” She added, “They was reading it out loud,” apparently referring to the jury instructions. Juror No. 25 explained that at one point, Juror No. 43 was attempting to persuade her to compromise when Juror No. 25 got up and moved from the conference table to “over against the wall” where she put her feet up and closed her eyes. Judge Pearson sought an explanation.

THE COURT: So, are you saying that at one point during the proceedings you refused to continue to deliberate?

JUROR NO. 25: No. I was deliberating, but every time I say something I was attacked. “You don’t understand the law. You don’t understand what you’re reading. Let me read it to you. Maybe you just have an issue today about understanding stuff.”

(Emphasis supplied.)

The inquiry went on.

THE COURT: So are you saying that at some point yesterday you stopped deliberating?

JUROR NO. 25: Yeah. They did, too. They was talking about what they going to do whenever when they got ready. And then one -- the lady with the bald head with the glasses -- don’t know what her number is -- she started talking about something else, and then 43 went back, “Well, maybe if I read it out loud, maybe she can understand what I’m reading.”

(Emphasis supplied.)

The Assistant State’s Attorney finally asked Juror No. 25 whether she believed she could render a fair and impartial verdict. Her final position was that she did not believe that further deliberations could produce a unanimous jury verdict.

THE STATE: Can you be fair and impartial in evaluating the evidence regardless of the fact that you've heard potentially, regardless of whether it's true, that the Defendant's grandmother put up money for his defense?

THE COURT: I'm sorry. What was your response?

JUROR NO. 25: Yes.

THE COURT: That you can ignore the speculation about payment of the defense attorney and make a decision solely on the evidence presented and nothing else.

JUROR NO. 25: I don't know. I'm going to be honest with you now. I really don't know.

THE COURT: You earlier indicated that you did not believe that further deliberations could produce a unanimous verdict. Is that your position as to every count?

JUROR NO. 25: Yes.

(Emphasis supplied.)

Even if at one point, she said that she could be “fair and impartial,” she definitely did not believe that the jury could reach a unanimous verdict. When the State then proposed that Juror No. 43 be questioned about the information that she had passed on to the jury notwithstanding the fact that it had not been introduced into evidence, Judge Pearson gave an initial insight into the court's thinking.

THE COURT: However in the macro, big-picture level, it's been indicated by Juror No. 25 that she does not believe further deliberations are likely to yield a unanimous verdict as to any count. She also indicated that at some point during deliberations yesterday she shut down completely. She also indicated that she felt bullied and physically threatened and uncomfortable during the course of the deliberations. I found her perceptions to be credible. I'm not saying that that's the culture that's developed in there, but she genuinely believes – the Court believes she genuinely believes those things.

(Emphasis supplied.)

The Declaration Of Mistrial

In the last analysis, Judge Pearson concluded that there was a manifest necessity to declare a mistrial.

THE COURT: All right. Thank you for your time and patience this morning. Certainly, we've had a series of unique and fairly complicated legal issues that have arisen during the course of last night and this morning. After a lengthy discussion of those issues, the Defense has strongly advocated for the Court to direct the jury to continue their deliberations.

What's giving the Court pause specifically are the revelations by a particular juror that she can no longer be fair and impartial as a result of a myriad of things, including the tenor and culture that has been developed during the course of the deliberations thus far. While the Defense says that it is really his objections that's potentially being waived by his desire to proceed forward irrespective of what that juror has articulated to the Court, assuming, arguendo, that the jury was able to reach a unanimous verdict, I still don't see how we can put credence into that verdict if a juror has articulated that she cannot be fair and impartial.

Let's say I was somehow to get past that hurdle. We also have and the Court has good-faith belief that the jury has extensively considered matters that we all agree were inappropriate, not put into evidence, and should not be considered by them in any way, whatsoever, regarding financial issues. So those two things coupled together really leaves me to believe that this is an inappropriate and tainted jury process. When I say "jury process," I'm talking about the deliberations. They have morphed into something that there's no way that we can say a productive and appropriate verdict is going to be reached when, number one, we have a juror who's expressly said, I feel intimidated, uncomfortable, and I cannot proceed because I cannot be fair and impartial, coupled with we know for -- I can't say for a fact, but I have great credence in her articulation regarding some of the things they discussed, which was wholly inappropriate and should have never been considered by the jury in any way, whatsoever. Based on those things, the Court finds manifest necessity to declare a mistrial over the Defendant's objection.

(Emphasis supplied.)

Judge Pearson concluded that this jury was terminally dysfunctional. It was clear to him, as it is clear to us, that this jury was hopelessly broken. In microscopically examining the court's interrogation of Juror No. 25, however, the appellant makes the mistake of looking at the inquiry in microcosm rather than in macrocosm. In obsessing over the fact that Judge Pearson may, at one point, have misspoken himself, the appellant overlooks the overriding bigger picture.

Fairness And Impartiality Do Not Guarantee Unanimity

To be sure, the judge may have misapprehended Juror No. 25's response as to her ability to be fair and impartial, but perhaps he did not. When the Assistant State Attorney asked the question, Juror No. 25 said, "Yes." She could be fair and impartial. When the judge asked if that was the fact, however, the juror's words were, "I don't know. I'm going to be honest with you now. I really don't know." You could easily read this total response as not being an ironclad certainty in one direction or the other.

In any event, the overriding question was whether the jury could reach a unanimous verdict. On that issue, Juror No. 25 said unequivocally that she "did not believe that further deliberation could produce a unanimous verdict." With respect to being fair and impartial, inferentially what Juror No. 25 was saying was, "Of course, I can be fair and impartial. I have consistently been fair and impartial from the very beginning. It is those 11 other jurors who cannot be fair and impartial and they refuse to respect my right to my fair and impartial judgment just because they do not agree with it." Two "fair and impartial" jury conclusions may honestly disagree with each other. Fairness and impartiality do not guarantee unanimity. Juror No. 25 may well have been implying that it was her steadfast resolve to

remain fair and impartial that guaranteed that there would never be a unanimous verdict. She would never surrender to an unfair and partial result, even for the sake of unanimity.

This juror, while steadfastly holding out for her own belief, felt threatened and intimidated by 11 others who disagreed with her. Judge Pearson found that her fears in this regard were genuine and sincere. Had deliberation resumed, the likelihood is not that Juror No. 25 would have been persuaded to agree with the 11 others. The risk, rather, was that she might have been intimidated into a coerced unanimity. That is not a result that anyone should have sought. That would be a result more grievous than a mistrial.

A Treacherous Alternative

A suggested alternative to a mistrial argued for by the appellant was that Judge Pearson should have proposed to the parties the possibility that they could agree to disqualify Juror No. 25 and agree to a verdict by the other 11 jurors. That proposal flies against every principle embodied in the concept of unanimous verdicts. Jurors are encouraged to stick with their honestly held beliefs even at the cost of deadlocking a jury. In this case, the disqualified juror would have been the lone holdout for a conviction. The State would have been denied a fair trial. One can only imagine the legitimate uproar if the disqualified juror had been the lone juror holding out for an acquittal. To achieve unanimity by disqualifying the holdout juror? The very Magna Charta would be in jeopardy.

In suggesting that Judge Pearson had alternatives to the mistrial that he might have explored, the appellant ignores the Supreme Court's wisdom in Blueford v. Arkansas, 566 U.S. 599, 609, 132 S.Ct. 2044, 182 L.Ed.2d 936 (2012), in pointing out that it has "never required a trial court, before declaring a mistrial because of a hung jury, to consider any

particular means of breaking the impasse.” See also State v. Fennell, 431 Md. 500, 517, 66 A.3d 630 (2013).

In the last analysis, Judge Pearson, after a thorough examination of the circumstances, came to the conclusion that the jury was hopelessly deadlocked. His decision that there was a manifest necessity to declare a mistrial was a decision entrusted to his discretion. As we review his exercise of discretion, we bear in mind the words of Chief Judge Wilner for this Court in North v. North, 102 Md.App. 1, 14, 648 A.2d 1025 (1994):

There is a certain commonality in all of these definitions, to the extent that they express the notion that a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

(Emphasis supplied.)

We do not find that Judge Pearson’s decision in this case was “beyond the fringe of what [this Court] deems minimally acceptable.” We hold that he did not abuse his discretion.

**JUDGMENT AFFIRMED; COSTS TO
BE PAID BY THE APPELLANT.**