

IN THE SUPREME COURT OF MARYLAND

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SEPTEMBER TERM, 2024

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NO. 7

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MOIRA E. AKERS,

Petitioner,

v.

STATE OF MARYLAND

Respondent.

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BRIEF OF AMICUS CURIAE PREGNANCY JUSTICE

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

STATEMENT OF THE CASE ..... 1

STATEMENT OF THE FACTS ..... 1

STATEMENT OF INTEREST OF THE AMICUS CURIAE ..... 1

STANDARD OF REVIEW ..... 2

QUESTION PRESENTED..... 3

INTRODUCTION ..... 3

ARGUMENT..... 4

I. THE LOWER COURTS ERRED IN FINDING MOIRA AKERS’ ABORTION  
CONTEMPLATION AND ABSTENTION FROM PRENATAL CARE RELEVANT  
EVIDENCE OF MURDEROUS INTENT TOWARDS HER NEWBORN.....4

    A. Ms. Akers’ Internet Searches Regarding Pregnancy Termination and Her  
    Abstention from Prenatal Health Care are Irrelevant to Proving Post-Natal  
    Harms. ....5

        1. Fetal Personhood Principles Cannot Stand in For Evidentiary Relevance.....6

    B. By Conflating Actions During Pregnancy With Post-birth Intent, the Lower  
    Courts’ Decision Invites Widespread Pregnancy Criminalization. .... 11

II. THE STATE’S RELIANCE ON INTERNET SEARCHES AND LACK OF  
PRENATAL CARE TO PROVE INTENT IS ROOTED IN DANGEROUS,  
GENDERED, UNFAIRLY PREJUDICIAL STEREOTYPES OF PREGNANT  
WOMEN. .... 14

    A. The State’s reliance on Ms. Akers’ prenatal conduct is imbued with harmful  
    stereotypes about pregnancy and motherhood. .... 15

    B. Gendered stereotypes undergird the State’s theory that stillbirths are inherently  
    suspect or uncommon. .... 20

CONCLUSION..... 21

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112 .....22

CERTIFICATE OF SERVICE .....22

PERTINENT AUTHORITY .....23

APPENDIX: JURY INSTRUCTIONS .....30

## TABLE OF AUTHORITIES

### CASES

<i>Akers v. State</i> , No. 0925, 2024 WL 338958 (Md. Ct. Spec. App. Jan. 30, 2024), <i>cert. granted</i> , 487 Md. 195, 316 A.3d 518 (2024) .....	3, 9, 17, 19
<i>Azizova v. Suleymanov</i> , 243 Md. App. 340, 373 (Md. Ct. Spec. App. 2019) .....	18
<i>B.S. v. State</i> , 966 N.E.2d 619, 622-25 (Ind. Ct. App. 2012); .....	11
<i>Brooks v. State</i> , 439 Md. 698, 708 (2014) .....	2
<i>Burning Tree Club, Inc. v. Bainum</i> , 305 Md. 53, 64 (1985) .....	15
<i>Bynum v. State</i> , 546 S.W.3d 533, 543 (Ark. Ct. App. 2018).....	18, 19
<i>Commonwealth v. Pugh</i> , 969 N.E.2d 672, 677 (Mass. 2012).....	11
<i>Consol. Waste Indus., Inc. v. Standard Equip. Co.</i> , 421 Md. 210, 220 (2011) .....	5
<i>Crawford v. United States</i> , 212 U.S. 183, 196 (1909) .....	19
<i>DeLeon v. State</i> , 407 Md. 16, 20 (2008).....	2
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022),.....	6
<i>Ex parte Hicks</i> , 153 So. 3d 53, 55 (Ala. 2014).....	11
<i>Giffin v. Crane</i> , 351 Md. 133, 155 (1998) .....	18
<i>Kandel v. White</i> , 339 Md. 432 (1995).....	10, 12
<i>Kilmon v. State</i> , 394 Md. 168 (2006).....	10
<i>LePage v. Ctr. for Reprod. Med., P.C.</i> , No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024) .....	7
<i>Mines v. State</i> , 208 Md. App. 280, 291–92 (2012), <i>cert. denied</i> , 430 Md. 34 (2013) .....	2
<i>People v. Jorgensen</i> , 41 N.E.3d 778,779-80 (N.Y. 2015).....	11
<i>State v. Simms</i> , 420 Md. 705 .....	4
<i>Stephenson v. State</i> , 31 So.3d 847, 851 (Fla. 2010).....	18
<i>Williams v. State</i> , 457 Md. 551, 564 (2018).....	5

### STATUTES

Ala. Code § 13A-6-1(3).....	8
Ark. Code Ann. § 5-1-102(13)(B)(i)(a) .....	8
Ga. Code Ann. § 1-2-1 .....	7
Kan. Stat. Ann. § 65-6732 .....	7
La. Stat. Ann. § 40:1061.1 .....	7
Md. Code Ann., Crim. Law § 2-103 .....	8
Md. Code Ann., Crim. Law § 2-207 .....	8
Md. Code Ann., Health Gen. § 20-209.....	8
Mo. Rev. Stat. § 1.205 .....	7
Okla. Stat. Ann. tit. 21, § 691 .....	9
Tenn. Code Ann. § 39-13-214.....	9
Utah Code Ann. § 76-5-201 .....	9

## OTHER AUTHORITIES

Abigail Cutler, et al., “ <i>I Just Don’t Know</i> ”: <i>An Exploration of Women’s Ambivalence about a New Pregnancy</i> , 28 WOMEN’S HEALTH ISSUES 75, 75-76 (2018) .....	5
Abortion is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates, GUTTMACHER INST. (Oct. 19, 2017), <a href="https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates">https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates</a> .....	17
<i>About Fetal Deaths, 2005-2022</i> , CTR. DISEASE CONTROL & PREVENTION, <a href="http://wonder.cdc.gov/fetal-deaths-current.html">http://wonder.cdc.gov/fetal-deaths-current.html</a> .....	20
Christina Brigrance et al., <i>Nowhere to Go: Maternity Care Deserts Across the U.S.</i> (Report No. 3). MARCH OF DIMES 5 (2022), <a href="https://www.marchofdimes.org/research/maternity-care-deserts-report.aspx">https://www.marchofdimes.org/research/maternity-care-deserts-report.aspx</a> (finding that 2 million women of childbearing age live in maternity care deserts and 4.7 million live with limited maternity care access .....	17
<i>Data and Statistics on Stillbirth</i> , CTR. DISEASE CONTROL & PREVENTION (May 15, 2024), <a href="https://www.cdc.gov/stillbirth/data-research/index.html">https://www.cdc.gov/stillbirth/data-research/index.html</a> .....	20
Dawn E. Johnsen, <i>The Creation of Fetal Rights: Conflicts with Women’s Constitutional Rights to Liberty, Privacy, and Equal Protection</i> , 95 YALE L.J. 599, 625 (1986). .....	19
Farah Stockman, <i>Manslaughter Charge Dropped Against Alabama Woman Who Was Shot While Pregnant</i> , N.Y. TIMES (July 3, 2019), <a href="https://www.nytimes.com/2019/07/03/us/charges-dropped-alabama-woman-pregnant.html">https://www.nytimes.com/2019/07/03/us/charges-dropped-alabama-woman-pregnant.html</a> .....	11
<i>Fetal Death Records Data Summary</i> , , CTR. DISEASE CONTROL & PREVENTION, <a href="https://wonder.cdc.gov/wonder/help/fetal-deaths.html#">https://wonder.cdc.gov/wonder/help/fetal-deaths.html#</a> . .....	20
George K. Behlmer, <i>Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England</i> , 34 J. HIST. MED. & ALLIED SCI. 403, 410 (1979).....	13
Inside Edition, <i>Woman Keeps Pregnancy a Secret From Her Family</i> , YOUTUBE (Aug. 24, 2022), <a href="https://www.youtube.com/watch?v=hXUY4CXtG4o">https://www.youtube.com/watch?v=hXUY4CXtG4o</a> ).....	5
Jazmin Fontenote et al., <i>Where You Live Matters: Maternity Care Deserts and the Crisis of Access and Equity in Maryland</i> , MARCH OF DIMES (2023).....	16
Kate Zernike, <i>Is a Fetus a Person? An Anti-Abortion Strategy Says Yes</i> , N.Y. TIMES (Aug. 21, 2022), <a href="https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html">https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html</a> ....	6
Kevin Hayes, <i>Did Christine Taylor Take Abortion into Her Own Hands?</i> , CBS News (Mar. 2, 2010), <a href="http://www.cbsnews.com/news/did-christine-taylor-take-abortion-into-her-own-hands">http://www.cbsnews.com/news/did-christine-taylor-take-abortion-into-her-own-hands</a> .....	11
L. Scott, <i>Why I’m Keeping My Pregnancy a Secret From Work as Long as I Possibly Can</i> , N.Y. MAG. (Jan. 16, 2015), <a href="https://www.thecut.com/2014/12/why-im-keeping-my-pregnancy-a-secret-from-work.html">https://www.thecut.com/2014/12/why-im-keeping-my-pregnancy-a-secret-from-work.html</a> . .....	5
Lauren Rankin, <i>How an online search for abortion pills landed this woman in jail</i> , FAST COMPANY (Feb. 26, 2020). .....	13
Lynn Paltrow, <i>Constitutional Rights for the “Unborn” Would Force Women to Forfeit Theirs</i> , MS. MAG. (Apr. 15, 2021) .....	10

PEKKA SAUKKO & BERNARD KNIGHT, KNIGHT’S FORENSIC PATHOLOGY 445-46 (3rd ed. 2004); .....13

PHYSICIANS FOR HUM RTS., USE OF THE LUNG “FLOAT TEST” (HYDROSTATIC LUNG TEST): AN INACCURATE, OUTDATED, AND UNETHICAL FORENSIC PRACTICE (Oct. 2023), [https://phr.org/wp-content/uploads/2023/10/PHR\\_Floating-lung-fact-sheet\\_Oct-2023.pdf](https://phr.org/wp-content/uploads/2023/10/PHR_Floating-lung-fact-sheet_Oct-2023.pdf). .....13

Pregnancy Justice, *Fact Sheet: Arrests and Other Deprivations of Liberty of Pregnant Women, 1973-2020* (Sept. 18, 2021), [https://www.pregnancyjusticeus.org/wp-content/uploads/2021/09/FINAL\\_1600cases-Factsheet.docx.pdf](https://www.pregnancyjusticeus.org/wp-content/uploads/2021/09/FINAL_1600cases-Factsheet.docx.pdf). ..... 11

Purvaja S, Kavattur, et al. The Rise of Pregnancy Criminalization: A Pregnancy Justice Report, PREGNANCY JUST. (2023), <https://www.pregnancyjusticeus.org/rise-of-pregnancy-criminalization-report>.....12

Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, 3 HEALTH & JUST. 1, 6 (2015) .....17

Reva Siegel, The New Politics of Abortion: An Equality Analysis of Woman-Protective Abortion Restrictions, 2007 U. ILL. L. REV. 991, 1053 (2007) .....16

Ruth C. Fretts, *Etiology and Prevention of Stillbirth*, 193 AM. J. OBSTETRICS & GYNECOLOGY 1923, 1924 (March 2005).....20

Stephanie Taylor, *Dismissal of charges raises questions about doctor*, TUSCALOOSANEWS.COM (Apr. 9, 2009), <https://www.tuscaloosaneews.com/story/news/2009/04/10/dismissal-of-charges-raises-questions-about-doctor/27796497007>.....14

Susan Cha & Saba W. Masho, *Intimate Partner Violence and Utilization of Prenatal Care in the United States*, 29 J. INTERPERSONAL VIOLENCE, 911, 911-27 (2014); .....17

*When Fetuses Gain Personhood: Understanding the Impact on IVF, Contraception, Medical Treatment, Criminal Law, Child Support, and Beyond*, PREGNANCY JUST. (Aug. 17, 2022), <https://www.pregnancyjusticeus.org/resources/when-fetuses-gain-personhood-understanding-the-impact-on-ivf-contraception-medical-treatment-criminal-law-child-support-and-beyond> .....7

Who Do Fetal Homicide Laws Protect? PREGNANCY JUST. (Aug. 17, 2022) <https://www.pregnancyjusticeus.org/wp-content/uploads/2022/12/fetal-homicide-brief-with-appendix-UPDATED.pdf> .....7, 10

**RULES**

Md. R. 5–401 .....2, 4

Md. R. 5-402 .....4

Md. R. 5-403 .....2, 14

## **STATEMENT OF THE CASE**

Amicus curiae Pregnancy Justice adopts and incorporates Petitioner’s statements of the case. Amicus files this brief after obtaining the Petitioner’s and the State’s consent pursuant to Maryland Rule 8-511(a)(1).

## **STATEMENT OF THE FACTS**

Amicus adopts and incorporates the statement of facts as contained within the Petitioner's brief before the Appellate Court of Maryland, her March 18, 2024 Petition for Writ of Certiorari, her July 8, 2024 brief, her supplemental citations to the Joint Record Extract (E), and the jury instructions, provided as an appendix to Amicus’ brief (App), where appropriate.

## **STATEMENT OF INTEREST OF THE AMICUS CURIAE**

Pregnancy Justice, founded in 2001 as National Advocates for Pregnant Women, is a New York based non-profit legal organization dedicated to advocacy against the criminalization of pregnancy or pregnancy outcomes. Pregnancy Justice is dedicated to protecting the rights of pregnant women and all who can become pregnant—particularly those most at risk of state control and criminalization—through direct criminal defense, strategic legal advocacy, research, and policy work for those charged with crimes in connection with their pregnancies or pregnancy outcomes. As one of the first organizations in the nation to focus on litigating pregnancy criminalization cases, Pregnancy Justice seeks to curtail the criminalization of reproductive outcomes.

The outcome of this case will create important precedent with regard to the criminalization of pregnancy loss. As an issue of first impression, this Court will determine how fetal personhood principles inform the application of prenatal behavior to post-birth criminal intent. Given the import of the issues at the heart of this appeal to the issue of pregnancy criminalization, the outcome of this case holds great significance for pregnant women and people in Maryland and across the United States.

### **STANDARD OF REVIEW**

A trial court’s threshold determination of whether evidence is relevant is a legal conclusion reviewed *de novo*. See *DeLeon v. State*, 407 Md. 16, 20 (2008). When evidence is relevant, a reviewing court “grants wide latitude” to judges’ admissibility decisions. *Id.* at 21. While “[q]uestions of law are reviewed without according the trial judge any special deference . . . an assessment of the admissibility of relevant evidence is reviewed under an abuse of discretion standard.” *Brooks v. State*, 439 Md. 698, 708 (2014); Md. R. 5-401, 403. An appellate court “will not disturb a trial court’s evidentiary ruling unless ‘the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.’” *Mines v. State*, 208 Md. App. 280, 291–92 (2012), *cert. denied*, 430 Md. 34 (2013) (quoting *Decker v. State*, 408 Md. 631, 649 (2009) (citations omitted)). “An abuse of discretion occurs when a decision is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Id.* at 292 (quoting *Gray v. State*, 388 Md. 366, 383–84 (2005) (citations omitted)).



## QUESTION PRESENTED

Whether the use of a pregnant woman's internet searches about abortion and her abstention from prenatal care during pregnancy constitute irrelevant, unfairly prejudicial evidence in her prosecution for murdering her newborn baby?

## INTRODUCTION

All people are by nature free and independent, with natural and unalienable rights. Women do not lose those rights as a result of their pregnancies. Neither a court nor the State has the jurisdiction or authority to control a pregnant woman's right to make her own medical decisions, conduct internet searches, or do any myriad of things she unquestionably could choose to do if she were not pregnant, much less to criminalize them. Maryland law is clear: government interference in a woman's protected right to control her own body during her pregnancy is not permitted. The State's use of a pregnant woman's decisions made during pregnancy to prosecute her for the murder of her newborn child is a violation of Maryland law banning the assignment of rights to fetuses.

The Appellate Court of Maryland's ("ACM") holding that Moira Akers' lack of prenatal care and internet search history regarding abortion were evidence "of intent during [Ms. Akers'] pregnancy" to murder her baby, constitutes an error of law. *Akers v. State*, No. 0925, 2024 WL 338958, at \*12 (Md. Ct. Spec. App. Jan. 30, 2024), *cert. granted*, 487 Md. 195, 316 A.3d 518 (2024). By using her actions during pregnancy as evidence of intent to murder post-birth, the State and ACM convert Ms. Akers' jurisdiction over her own reproduction into proof of motive and preparation for murder, an abuse of discretion "removed from any center mark."

## ARGUMENT

The State and the lower courts endorsed the use of irrelevant evidence that confers personhood on Ms. Akers' fetus. This endorsement, in turn, allowed the jury to consider prejudicial stereotypes and deeply entrenched stigmas about "right" behaviors during and towards one's pregnancy to form the basis for its conviction. The admission of this irrelevant and inflammatory evidence contradicts Maryland's unequivocal statutory and constitutional rejection of fetal personhood principles and unfairly prejudiced Ms. Akers' trial. These truths underscore the need for reversal not only on behalf of Ms. Akers, but for the countless Marylanders put at risk of pregnancy outcome criminalization at one of the most devastating moments in their lives.

### **I. THE LOWER COURTS ERRED IN FINDING MOIRA AKERS' ABORTION CONTEMPLATION AND ABSTENTION FROM PRENATAL CARE RELEVANT EVIDENCE OF MURDEROUS INTENT TOWARDS HER NEWBORN.**

"Relevant evidence" as defined by Maryland Rule 5-401 is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." While trial judges have discretion in weighing relevance determinations, they "do not have discretion to admit irrelevant evidence." *State v. Simms*, 420 Md. 705, 724 (2011).

"Evidence that is not relevant is not admissible." Md. R. 5-402. Evidence *is* probative "if it tends to prove the proposition for which it is offered." *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 220 (2011) (quoting *Johnson v. State*, 332 Md. 456, 474 (1993)). Accordingly, for the evidence at issue here to be relevant, it must show that

Ms. Akers was more likely to deliberately, willfully, and with premeditation, murder her newborn because she conducted internet searches about abortion and abortifacients and did not seek out prenatal care while pregnant.<sup>1</sup> While the threshold for satisfying this relevance inquiry is low, it must still be met. *See Williams v. State*, 457 Md. 551, 564 (2018). It was not met here.

**A. Ms. Akers’ Internet Searches Regarding Pregnancy Termination and Her Abstention from Prenatal Health Care are Irrelevant to Proving Post-Natal Harms.**

The State asserts that “the facts of the case do not involve charging or punishing non-criminal behavior connected with contemplating abortion, but instead relate to the

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<sup>1</sup> The State also argues that the evidence “bore on Akers’ credibility,” (State ACM Brief at 24), “given her fictionalized account to her husband about an ectopic pregnancy, her claim that when she learned about the pregnancy it was too late to seek an abortion (contradicted by her medical records and the timing of the internet searches themselves), and the fact that there was additional evidence she had gotten abortion referrals from her doctor . . . .” State’s Answer To Petition For A Writ Of Certiorari at 17. These arguments demonstrate the trap the State sets for Ms. Akers. The State condemns her for searching for information about abortion and not acting on it while simultaneously using that same search as evidence of intent to murder. Putting the negative characterization of Ms. Akers’ actions to one side, these factors do not speak to Ms. Akers’ credibility or truthfulness. Ambivalence and prevarication about pregnancy, including ambivalence about miscarrying, “is a frequent and complex thread” in women’s lives. *See* Abigail Cutler, et al., “*I Just Don’t Know*”: *An Exploration of Women’s Ambivalence about a New Pregnancy*, 28 WOMEN’S HEALTH ISSUES 75, 75-76 (2018). Likewise, women keep their pregnancies secret from other people, even family, for many reasons, including, but not limited to, fear of miscarriage and of losing employment. Inside Edition, *Woman Keeps Pregnancy a Secret From Her Family*, YOUTUBE (Aug. 24, 2022), <https://www.youtube.com/watch?v=hXUY4CXtG4o>); J.L. Scott, *Why I’m Keeping My Pregnancy a Secret From Work as Long as I Possibly Can*, N.Y. MAG. (Jan. 16, 2015), <https://www.thecut.com/2014/12/why-im-keeping-my-pregnancy-a-secret-from-work.html>. In none of these scenarios is prevarication or non-disclosure of pregnancy tantamount to a plot to murder, and in none of these scenarios is the State’s pathologization of behavior the proper response.

murder of a person . . . .” State’s Answer to Petition for a Writ of Certiorari at 8 (hereinafter “State Answer to Cert Petition”). In truth, however, the State directly conflates the murder of a person *with* abortion contemplation. As it argued to the ACM, “[Ms. Akers] was exploring ways to terminate the pregnancy without assistance . . . because . . . she harbored negative feelings about it that were probative of her intent to kill Baby Akers if he was born alive.” *Id.* at 6. Neither Ms. Akers’ searches nor her lack of prenatal care increase the plausibility of Ms. Akers bearing murderous intent to her newborn. Affirmance of this flawed evidentiary construction by the State places women’s autonomy in the balance and erases the bar for relevance by invoking a concept of fetal personhood that has been roundly repudiated in Maryland’s civil and criminal laws.

1. *Fetal Personhood Principles Cannot Stand in For Evidentiary Relevance.*

Fetal personhood<sup>2</sup> is a legal theory that attempts to redefine a person or human being as existing from the moment of fertilization of an egg and to grant a fetus (and, in

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<sup>2</sup> While the concept of fetal personhood dates back to the 1960s and was generally seen as a fringe and radical legal theory, in subsequent decades it has gained traction through legislative expansion and judicial decisions, and has become an accelerated reality since the United States Supreme Court’s 2022 decision in *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) overturned *Roe v. Wade*. Kate Zernike, *Is a Fetus a Person? An Anti-Abortion Strategy Says Yes*, N.Y. TIMES (Aug. 21, 2022), <https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html>. Indeed, the Alabama Supreme Court’s recent decision in *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024) declared frozen embryos created through in vitro fertilization to be human children.

some cases, embryos, zygotes and blastocysts<sup>3</sup>) equal protection under the law. *When Fetuses Gain Personhood: Understanding the Impact on IVF, Contraception, Medical Treatment, Criminal Law, Child Support, and Beyond*, PREGNANCY JUST. (Aug. 17, 2022), <https://www.pregnancyjusticeus.org/resources/when-fetuses-gain-personhood-understanding-the-impact-on-ivf-contraception-medical-treatment-criminal-law-child-support-and-beyond>; *Who Do Fetal Homicide Laws Protect?* PREGNANCY JUST. (Aug. 17, 2022) <https://www.pregnancyjusticeus.org/wp-content/uploads/2022/12/fetal-homicide-brief-with-appendix-UPDATED.pdf>. When fully actualized, fetal personhood fundamentally changes the legal rights and status of pregnant people, opening the door to criminalization. Fetal personhood principles—and the decisions that enshrine them into law—endanger women’s liberty and autonomy, normalize the prosecution of prenatal

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<sup>3</sup> Several states have established fetal personhood in law or by judicial decision to apply in both criminal and civil contexts. *See e.g.*, Ga. Code Ann. § 1-2-1 (defining natural person for the purposes of Georgia’s state code as “any human being including an unborn child”, or “a member of the species *Homo sapiens* at any stage of development who is carried in the womb.”); Kan. Stat. Ann. § 65-6732 (“the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States, and decisional interpretations thereof by the United States supreme court and specific provisions to the contrary in the Kansas constitution and the Kansas Statutes.”); La. Stat. Ann. § 40:1061.1 (“The legislature does solemnly declare, find, and reaffirm the longstanding public policy of this state that every unborn child is a human being from the moment of conception and is, therefore, a legal person for purpose under the laws of this state and Constitution of Louisiana.”); Mo. Rev. Stat. § 1.205 (“the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.”).

conduct and pregnancy loss, and, as is clear in the instant case, ascribe murderous motive to acts that, but for a woman’s pregnancy, would be innocuous. It is fetal personhood that draws the line between abortion contemplation regarding a *fetus* and murderous intent towards a *living child*.

Maryland law rightly rejects this frame by refusing to treat fetuses as legal persons, instead prioritizing the rights of pregnant women. Maryland’s fetal homicide law explicitly states “[n]othing in this section shall be construed *to confer personhood or any rights on the fetus.*”<sup>4</sup> Md. Code Ann., Crim. Law § 2-103. (emphasis added). This protective scheme harshly rejects those criminal codes whose homicide laws expressly treat fetuses as persons. *Cf.* Ala. Code § 13A-6-1(3) (“PERSON. The term, when referring to the victim of a criminal homicide or assault, means a human being, including an unborn child in utero at any stage of development, regardless of viability”); Ark. Code Ann. § 5-1-102(13)(B)(i)(a) (“‘Person’ as used in capital murder, murder in the first and second degree, manslaughter, and negligent homicide statutes includes ‘unborn child in utero at any stage of development’”); Okla. Stat. Ann. tit. 21, § 691 (“As used in this section, ‘human being’ includes an unborn child”); Tenn. Code Ann. § 39-13-214 (“For

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<sup>4</sup> Maryland’s fetal manslaughter law cannot be used to criminalize an “act or failure to act of a pregnant woman with regard to her own fetus.” Md. Code Ann., Crim. Law § 2-103(f). Maryland’s laws also distinguish the murder and manslaughter of viable fetuses as distinct from the murder or manslaughter of a living person. *Cf.* Md. Code Ann., Crim. Law § 2-103 (Murder or Manslaughter of Viable Fetus); Md. Code Ann., Crim. Law § 2-207 (Manslaughter). Within the civil context, Maryland law refuses to treat fetuses as legal persons, declaring instead that “the State may not interfere with the decision of a woman to terminate a pregnancy . . . before the fetus is viable . . .” Md. Code Ann., Health Gen. § 20-209(b)(1).

the purposes of this part, ‘another’ and ‘another person’ include a human embryo or fetus at any stage of gestation in utero, when any such term refers to the victim of any act made criminal by this part.”); Utah Code Ann. § 76-5-201 (criminal homicide “means an act causing the death of another human being, including an unborn child at any stage of the unborn child's development.”).

In her closing argument a trial, the prosecutor argued of Ms. Akers: “[s]he intended his death, ladies and gentlemen. She had a plan to terminate the baby.” (E 308). Relying on the State’s assertion that “somewhere in the course of her pregnancy,” Brief Of Appellee at 25, *Moira Akers v. State*, CSA-REG-0925-2022 (Oct. 4, 2023) (hereinafter, “State ACM Brief”) Ms. Akers fomented a plan for murder, the ACM held that Ms. Akers’ prenatal behavior was relevant, in part, because of her insufficiently deferential submission to public oversight of her pregnancy and a lack of prioritization of the fetus:

Appellant considered surreptitiously inducing a miscarriage while she was pregnant with the victim, the challenged evidence involved a self-induced abortion not under the direction of a medical professional, the evidence demonstrated that the child died the same day of his birth, both the pregnancy and the child’s body were hidden, and Appellant indicated she did not prepare for the child’s birth in any way. Additionally, Appellant’s *intent during her pregnancy was of central importance to the determination of the action . . . .*

*Akers*, 2024 WL 338958 at 12. (Emphasis added). Fetal personhood principles define both Ms. Akers’ credibility to the ACM as well as the State’s theory of the case, despite being expressly rejected in Maryland’s civil and criminal legal construction.

In *Kilmon v. State*, 394 Md. 168 (2006), this Court roundly rejected the application of Maryland’s reckless endangerment statute to the conduct of a pregnant woman, holding that intentional ingestion of cocaine by a pregnant woman could not form the basis for a conviction for the reckless endangerment of the later-born child.<sup>5</sup> *Id.* at 170. This rejection of fetal personhood principles affirms the actions of a pregnant woman as separate and apart from the fetus she carries; anything less would strip her rights and liberties, as has been demonstrated in the most spectacular fashion in Ms. Akers’ prosecution. See Lynn Paltrow, *Constitutional Rights for the “Unborn” Would Force Women to Forfeit Theirs*, MS. MAG. (Apr. 15, 2021) (warning that fetal personhood “fundamentally change[s] the legal rights and status” of pregnant women and elevates fetal interests above all). If a woman’s thoughts about and inactions towards her pregnancy are construed as admissible and relevant evidence of how she might treat her child once born, any person who experiences a less-than-perfect pregnancy outcome is susceptible to criminal suspicion for anything said or done during pregnancy, effectively transforming a pregnant woman’s body into a walking crime scene. This Court should reject this illegitimate departure from Maryland’s commitment to the personhood of pregnant women, and not assign personhood to their fetuses.

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<sup>5</sup> Within the civil context, this Court also refused to recognize a cause of action for the wrongful death of a nonviable fetus in *Kandel v. White*, 339 Md. 432 (1995). In *Kandel*, the Court expressed agreement with the New Hampshire Supreme Court’s reasoning that to hold otherwise would be “giving a nonviable fetus a cause of action for negligence *before it becomes a person*, in the real and usual sense of the word, by being born alive.” *Id.* at 443 (quoting *Wallace v. Wallace*, 421 A.2d 134, 136-37 (N.H. 1980)) (emphasis added).



**B. By Conflating Actions During Pregnancy With Post-birth Intent, the Lower Courts' Decision Invites Widespread Pregnancy Criminalization.**

Despite the State's characterization of Ms. Akers' prosecution as being "cabined to the highly unusual facts of this case," State Answer to Cert Petition at 2, the State's prosecution is one example among thousands of women prosecuted for actions taken (or not taken) during their pregnancies, actions warped by the State into alleged evidence of a crime.<sup>6</sup> Should this Court affirm the trial court's decision, Ms. Akers' prosecution will certainly not be cabined, but will serve as the basis for pregnancy outcome

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<sup>6</sup> Since 1973, under wildly varying circumstances, more than 1,700 people across the United States have been arrested on the basis of a pregnancy outcome for non-criminal behavior during their pregnancies. Pregnancy Justice, *Fact Sheet: Arrests and Other Deprivations of Liberty of Pregnant Women, 1973-2020* (Sept. 18, 2021), [https://www.pregnancyjusticeus.org/wp-content/uploads/2021/09/FINAL\\_1600cases-Factsheet.docx.pdf](https://www.pregnancyjusticeus.org/wp-content/uploads/2021/09/FINAL_1600cases-Factsheet.docx.pdf). From mental health crises and attempted suicide, *see B.S. v. State*, 966 N.E.2d 619, 622-25 (Ind. Ct. App. 2012); to use of a criminalized drug during pregnancy despite the birth of a healthy baby, *see Ex parte Hicks*, 153 So. 3d 53, 55 (Ala. 2014) (upholding chemical endangerment conviction, noting that the baby was "doing fine" since birth), to expressed ambivalence about pregnancy while seeking help for falling down a flight of stairs, *see Kevin Hayes, Did Christine Taylor Take Abortion into Her Own Hands?*, CBS News (Mar. 2, 2010), <http://www.cbsnews.com/news/did-christine-taylor-take-abortion-into-her-own-hands> (woman arrested for attempted feticide after falling down stairs while pregnant), to a precipitous birth at home that ended in a stillbirth, *see Commonwealth v. Pugh*, 969 N.E.2d 672, 677 (Mass. 2012) (reversing manslaughter conviction for breech delivery that ended in stillbirth), to not wearing a seatbelt, *see People v. Jorgensen*, 41 N.E.3d 778, 779-80 (N.Y. 2015) (overturning a manslaughter conviction based in part on allegation that pregnancy loss occurred because the woman was not wearing a seatbelt when she was pregnant and got into a car accident), to being shot while pregnant, *see Farah Stockman, Manslaughter Charge Dropped Against Alabama Woman Who Was Shot While Pregnant*, N.Y. TIMES (July 3, 2019), <https://www.nytimes.com/2019/07/03/us/charges-dropped-alabama-woman-pregnant.html> (woman charged with manslaughter after the death of her fetus after she was shot in the stomach by a coworker during an altercation).

criminalization in Maryland and buttress the expansion of fetal personhood based pregnancy criminalization across the United States.

In *Kilmon*, this Court considered the ramifications of permitting the State to prosecute people on the basis of their conduct while pregnant and rightly determined that, if that position “were to prevail, there would seem to be no clear basis for categorically excluding any [prenatal] activities from the ambit of [criminal liability]; criminal liability would depend almost entirely on how aggressive, inventive, and persuasive any particular prosecutor might be.” *Kilmon*, 394 Md.at 178. While not expressly articulating the fetal personhood principles at play, the *Kilmon* court understood the floodgates that would open if women could be held criminally liable, or suspect, for every action that potentially posed a risk to their pregnancy:

[E]verything from becoming (or remaining) pregnant with knowledge that the child likely will have a genetic disorder that may cause serious disability or death, to the continued use of legal drugs that are contraindicated during pregnancy, to consuming alcoholic beverages to excess, to smoking, to not maintaining a proper and sufficient diet, to *avoiding proper and available prenatal medical care*, to failing to wear a seat belt while driving, to violating other traffic laws in ways that create a substantial risk of producing or exacerbating personal injury to her child, to exercising too much or too little, indeed to engaging in virtually any injury-prone activity that, should an injury occur, might reasonably be expected to endanger the life or safety of the child.

*Id.* at 177-78. (Emphasis added). The *Kilmon* Court’s concern is a reality in much of the country, where pregnancy criminalization has been on the rise. Purvaja S, Kavattur, et al. *The Rise of Pregnancy Criminalization: A Pregnancy Justice Report*, PREGNANCY JUST. (2023), <https://www.pregnancyjusticeus.org/rise-of-pregnancy-criminalization-report>.

People experience pregnancy in the complex social contexts of their lives, and pregnancy criminalization—which punishes people for accidents, mental health crises, and the decisions they make to survive—ignores this and the humanity of women.

By way of example, in a case with facts eerily similar to Ms. Akers', Latice Fisher, who experienced a stillbirth, was indicted for second degree murder after prosecutors argued her internet searches for abortion pills showed evidence of intent of murder. *See* Lauren Rankin, *How an online search for abortion pills landed this woman in jail*, FAST COMPANY (Feb. 26, 2020). As occurred here, the prosecution relied on the unsound lung float test<sup>7</sup> to claim Ms. Fisher's neonate had been born alive.

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<sup>7</sup> The State asserts that the hydrostatic lung test (“HLT”) “even if controversial . . . is a reliable screening tool.” State ACM Brief at 16. Nothing could be farther from the truth. The HLT is a forensic test first used in 17th century criminal trials to determine whether a neonate was born alive. *See* George K. Behlmer, *Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England*, 34 J. HIST. MED. & ALLIED SCI. 403, 410 (1979). The State's claim that Ms. Akers' baby was born alive was based largely on HLT evidentiary results challenged at trial by experts who provided alternate reasons—widely acknowledged by practitioners—for why air may have been found in the stillborn's lungs. (E 336-42). Context is critical here as the test is almost exclusively used to justify criminalization of out-of-hospital pregnancy losses and has been decried as inaccurate by medical examiners, scientists, and even the authors of the Knight's Forensic Pathology textbook. Pekka Saukko & Bernard Knight, KNIGHT'S FORENSIC PATHOLOGY 445-46 (3rd ed. 2004); *see also* Physicians for Hum Rts., *Use of the Lung “Float Test” (Hydrostatic Lung Test): An Inaccurate, Outdated, and Unethical Forensic Practice* (Oct. 2023), [https://phr.org/wp-content/uploads/2023/10/PHR\\_Floating-lung-fact-sheet\\_Oct-2023.pdf](https://phr.org/wp-content/uploads/2023/10/PHR_Floating-lung-fact-sheet_Oct-2023.pdf). As Knight's authors put it:

The test was suspect even in 1900 and requires no detailed discussion, because it is now known to have no value. The lungs of the live-born, even those who have been known to live for days may sink . . . and those which float are not necessarily those of live-born infants. . . . It is therefore pointless to apply the hydrostatic test, which will impair the material for other and more important investigations.

Due in large part to concerns about the validity of the lung float test, the state ultimately dropped the charges. *Id.* Should the State prevail here, prosecutors—armed only with questionable forensic science and evidence of a pregnant woman’s actions deemed insufficiently deferential to a fetus—will be empowered to pursue unjustifiable criminal convictions that tear apart families and leave broken communities in their wake.

**II. THE STATE’S RELIANCE ON INTERNET SEARCHES AND LACK OF PRENATAL CARE TO PROVE INTENT IS ROOTED IN DANGEROUS, GENDERED, UNFAIRLY PREJUDICIAL STEREOTYPES OF PREGNANT WOMEN.**

Maryland Rule 5-403 serves as a check on the admission of minimally relevant evidence that obfuscates more than it clarifies. Serious factual gaps remain in this case around motive that the State has filled with irrelevant, unfairly prejudicial, gender-based stereotypes and insinuations. Even if Ms. Akers’ internet searches or prenatal care were relevant, which they are not, those evidentiary facts are substantially outweighed by the danger of unfair prejudice which could have impermissibly inflamed the passions of the jurors; jurors who concluded Ms. Akers was guilty of murder because of abortion contemplation and health care choices made during her pregnancy. This evidence is certainly not relevant, but it should have also been inadmissible given its harmful and prejudicial effects. The introduction of this evidence, the State’s arguments around it, and

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Saukko & Knight at 445-46. The test was been responsible for at least one charge ultimately dismissed as wrongful. Stephanie Taylor, *Dismissal of charges raises questions about doctor*, TUSCALOOSANEWS.COM (Apr. 9, 2009), <https://www.tuscaloosaneews.com/story/news/2009/04/10/dismissal-of-charges-raises-questions-about-doctor/27796497007>.

the State's prosecution of Ms. Akers as a whole, subjugates women not only in its embrace of fetal personhood, but also by perpetuating prejudicial sex stereotypes about pregnancy, abortion, and stillbirths that diminish the possibility of a fair trial.

**A. The State's reliance on Ms. Akers' prenatal conduct is imbued with harmful stereotypes about pregnancy and motherhood.**

Decades ago, this Court acknowledged that "the subordinate status of women in our society has for all too many years been firmly entrenched in our legal system." *Burning Tree Club, Inc. v. Bainum*, 305 Md. 53, 64 (1985). The State's prosecution of Ms. Akers and the trial court's admission of irrelevant and unduly prejudicial evidence against her shows that this reality remains a truth and this Court's concerns are far from resolved. The State's theory that Ms. Akers' choices to forgo prenatal care and contemplate abortion during her pregnancy are relevant evidence of intent to murder breathes new life into the centuries-old belief that women who veer from their "destined course" as mothers are deviant and suspect.

The prosecution's closing arguments are rife with insinuations that Ms. Akers' moral failings began with her contemplation of abortion and that the logical end point to her searches was murder; indeed, the prosecutor informed the jury that Ms. Akers' baby's "only imperfection was being born to a mother who didn't want him. She never intended for him to leave that second floor of that house alive." (E 369). The trial court's relevancy determination and the jury's later reliance on that evidence thus necessarily required engagement with the assumption that a woman's failure to approach pregnancy in a particular, prescribed manner is evidence of criminality.

Such misogynistic stereotypes are rooted in tired social beliefs about how pregnant women ought to behave; beliefs that have long been deployed to subordinate and oppress women. In the late nineteenth century, for example, advocates for the criminalization of abortion argued that a woman who chose to terminate her pregnancy was “shrink[ing] from the pains and responsibilities of maternity.” Reva Siegel, *The New Politics of Abortion: An Equality Analysis of Woman-Protective Abortion Restrictions*, 2007 U. ILL. L. REV. 991, 1053 (2007) (citations omitted). The conclusion that the evidence about Ms. Akers’ lack of prenatal care could lead to an inference she intended to cause the death of her child once born is similarly prejudicial. Implicit in this inference is the assumption that women who fail to receive “adequate” prenatal care are motivated by a desire to harm their future child.

The State’s suggestion that these behaviors are abnormal is also empirically incorrect, further underscoring the prejudicial and subordinating function of the evidence at issue. There is nothing inherently suspect or deviant about abstaining from prenatal care or contemplating abortion; all behaviors the trial and appellate courts deemed relevant to assessing Ms. Akers’ criminal intent. In reality, 16.5% of pregnant people in Maryland receive no or “inadequate” prenatal care, for any number of entirely non-criminal reasons. See Jazmin Fontenote et al., *Where You Live Matters: Maternity Care Deserts and the Crisis of Access and Equity in Maryland*, MARCH OF DIMES (2023). Forgoing prenatal care reflects the pressing reality of a pregnant woman’s lived circumstances, not her post-birth intent.

By the Court of Appeals own admission, “women do not always receive prenatal care for a variety of reasons, including the accessibility of such care.” *Akers*, 2024 WL 338958 at \*9. This is, sadly, correct. *See* Christina Brigance et al., *Nowhere to Go: Maternity Care Deserts Across the U.S.* (Report No. 3). MARCH OF DIMES 5 (2022), <https://www.marchofdimes.org/research/maternity-care-deserts-report.aspx> (finding that 2 million women of childbearing age live in maternity care deserts and 4.7 million live with limited maternity care access). In addition to accessibility issues, women may forgo prenatal care out of concerns ranging from the threat of intimate partner violence to stigma related to substance use. *See* Susan Cha & Saba W. Masho, *Intimate Partner Violence and Utilization of Prenatal Care in the United States*, 29 J. INTERPERSONAL VIOLENCE, 911, 911-27 (2014); Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, 3 HEALTH & JUST. 1, 6 (2015) (finding that many women avoid prenatal care because of substance use stigma). Abortion seeking is also common, with nearly one in four women having undergone the procedure by age 45. *Abortion is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates*, GUTTMACHER INST. (Oct. 19, 2017), <https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates>. Indeed, “[i]n this case . . . not only is there no permissible relevance to the mother’s consideration of abortion to the legal issues at hand, but its only arguable relevance makes its admission all the more inappropriate: it is apparently the thought that a person who considers abortion is more likely to have killed the child not aborted.” *Stephenson v. State*, 31 So.3d 847, 851 (Fla. 2010).

The State also maintains their position on the relevancy of the evidence despite consistent rebukes by Maryland courts of the sex stereotypes at the heart of their argument. Maryland courts’ repudiation of sex stereotyping around pregnancy and parenting comes through most clearly in child custody disputes where courts have, on multiple occasions, rejected custody determinations based on stereotypical notions of what “type of women” make “good mothers.” *See, e.g., Azizova v. Suleymanov*, 243 Md. App. 340, 373 (Md. Ct. Spec. App. 2019) (holding that the trial court judge’s “assumption that a youthful parent, especially a woman, must ‘sow her wild oats’ in derogation of any ability to meaningfully contribute to her child is not supported by any of the evidence in this record.”); *Giffin v. Crane*, 351 Md. 133, 155 (1998) (rejecting the trial court’s determination that “respondent necessarily would be a better custodian solely because she has a female hand . . .”).

Because these Victorian ideas about pregnancy and motherhood persist, nearly any evidence regarding a woman’s attitude toward her own pregnancy that deviates from a “norm,” including abortion contemplation and lack of prenatal care, creates unfair prejudice in the minds of a jury. *See Bynum v. State*, 546 S.W.3d 533, 543 (Ark. Ct. App. 2018) (holding that defendant was “clearly prejudiced” by use of evidence of abortion history).<sup>8</sup> Evidence about abortion care or behavior during pregnancy is particularly

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<sup>8</sup> The Court of Appeals attempts to distinguish *Bynum* from Ms. Akers’ case by claiming *Bynum* only concerned evidence of the defendant’s *prior* abortions “unrelated to the facts which precipitated the litigation.” *Akers*, 2024 WL 338958 at \*10. Of importance here is that the *Bynum* court held *even if* the evidence of prior abortions were relevant its “probative value was substantially outweighed by the danger of unfair prejudice.”



prone to being unfairly prejudicial because the risks associated with pregnancy are commonly misperceived and the power to prevent such risks is misapplied to the pregnant woman. In the face of this heavy socialization pressure, it would not “be ‘unreasonable’ for a pregnant woman, faced with the prospect of post-natal civil liability according to community standards of propriety, to assume that the only safe course of behavior is to lie prone for nine months.” Dawn E. Johnsen, *The Creation of Fetal Rights: Conflicts with Women’s Constitutional Rights to Liberty, Privacy, and Equal Protection*, 95 YALE L.J. 599, 625 (1986). Indeed, those community standards of propriety were certainly at play here; Ms. Akers’ jury was told that “in evaluating the evidence,” that they should “consider it in light of [their] own experiences,” and could “draw any reasonable conclusion from the evidence that [they] believe to be justified by common sense and [their] own experiences.” (App 8). Within the context of abortion contemplation, as with many socially formed beliefs, reasonable conclusions are deeply influenced by social context. *See Crawford v. United States*, 212 U.S. 183, 196 (1909) (emphasis added) (noting “the general tendency” of people to “look somewhat more favorably” on a party they feel relationship with, “*though perhaps frequently unconsciously*.”). The presentation of these substantially stereotyped, flawed, and inflammatory issues to the jury demands reversal.

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*Bynum*, 546 S.W.3d at 542. Abortion’s poison pill effect, even when there is only contemplation of it, similarly creates the possibility of unfair prejudice.

**B. Gendered stereotypes undergird the State’s theory that stillbirths are inherently suspect or uncommon.**

The introduction of stereotyped, irrelevant, and prejudicial evidence occurs against the backdrop of a prosecution whose entire theory of harm rests on the false notion that pregnancy loss is always already suspect when, in fact, pregnancy loss is a tragic, but, unfortunately, common phenomena.

Approximately 1 in every 175 births are stillbirths. *Data and Statistics on Stillbirth*, CTR. DISEASE CONTROL & PREVENTION (May 15, 2024), <https://www.cdc.gov/stillbirth/data-research/index.html>. In 2018, the year Ms. Akers experienced her stillbirth, 22,459 pregnancies in the United States ended in stillbirths, including 497 in Maryland.<sup>9</sup> *About Fetal Deaths, 2005-2022*, CTR. DISEASE CONTROL & PREVENTION, <http://wonder.cdc.gov/fetal-deaths-current.html>. These statistics belie the notion that a live birth is a guaranteed outcome of a woman’s pregnancy. Many of the risk factors for perinatal loss are beyond a pregnant woman’s control. Ruth C. Fretts, *Etiology and Prevention of Stillbirth*, 193 AM. J. OBSTETRICS & GYNECOLOGY 1923, 1924 (March 2005). Even when one identifiable factor associated with elevated risk of such a loss is present, the complex interaction with other factors makes it extremely difficult to discern how and why the individual loss occurred. Prosecuting a pregnant woman because she has experienced perinatal loss is not only wrong as a matter of social policy, it is highly likely to be wrong as a matter of fact.

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<sup>9</sup> Stillbirths in this data set are defined as fetal deaths after 20 weeks gestation. *Fetal Death Records Data Summary*, CTR. DISEASE CONTROL & PREVENTION, <https://wonder.cdc.gov/wonder/help/fetal-deaths.html#>.

## CONCLUSION

For the forgoing reasons, Amicus curiae respectfully urge this Court to reverse the ACM's judgment and remand this case to the Circuit Court for Howard County for a new trial.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5,965 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on August 6, 2024, the foregoing Brief of Amicus Curiae in Support of Petitioner was served via the MDEC File and Serve Module, which sent electronic notification of filing to all persons entitled to service, listed below. The Brief was sent separately by electronic means to the below counsel with their prior consent in lieu of two paper copies:

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## **PERTINENT AUTHORITY**

### **Annotated Code of Maryland**

#### **Md. Code Ann., Health-Gen., § 20-209 Abortion Intervention; regulations; liability.**

- (a) In this section, “viable” means that stage when, in the best clinical judgment of the qualified provider based on the particular facts of the case before the qualified provider, there is a reasonable likelihood of the fetus’s sustained survival outside the womb.
- (b) Except as otherwise provided in this subtitle, the State may not interfere with the decision of a woman to terminate a pregnancy:
  - (1) Before the fetus is viable; or
  - (2) At any time during the woman’s pregnancy, if:
    - (i) The termination procedure is necessary to protect the life or health of the woman; or
    - (ii) The fetus is affected by genetic defect or serious deformity or abnormality.
- (c) The Department may adopt regulations that:
  - (1) Are both necessary and the least intrusive method to protect the life or health of the woman; and
  - (2) Are not inconsistent with established clinical practice.
- (d) The qualified provider is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion under this section made in good faith and in the qualified provider’s best clinical judgment in accordance with accepted standards of clinical practice.

#### **Md. Code Ann., Crim. Law § 2-103 Murder or Manslaughter of Viable Fetus**

- (a) For purposes of a prosecution under this title, “viable” has the meaning stated in § 20–209 of the Health – General Article.
- (b) Except as provided in subsections (d) through (f) of this section, a prosecution may be instituted for murder or manslaughter of a viable fetus.
- (c) A person prosecuted for murder or manslaughter as provided in subsection (b) of this section must have:
  - (1) intended to cause the death of the viable fetus;
  - (2) intended to cause serious physical injury to the viable fetus; or
  - (3) wantonly or recklessly disregarded the likelihood that the person’s actions would cause the death of or serious physical injury to the viable fetus.
- (d) Nothing in this section applies to or infringes on a woman’s right to terminate a pregnancy as stated in § 20–209 of the Health – General Article.

- (e) Nothing in this section subjects a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care.
- (f) Nothing in this section applies to an act or failure to act of a pregnant woman with regard to her own fetus.
- (g) Nothing in this section shall be construed to confer personhood or any rights on the fetus.

**Md. Code Ann., Crim. Law § 2-207**  
**Manslaughter**

- (a) A person who commits manslaughter is guilty of a felony and on conviction is subject to:
  - (1) imprisonment not exceeding 10 years; or
  - (2) imprisonment in a local correctional facility not exceeding 2 years or a fine not exceeding \$500 or both.
- (b) The discovery of one's spouse engaged in sexual intercourse with another does not constitute legally adequate provocation for the purpose of mitigating a killing from the crime of murder to voluntary manslaughter even though the killing was provoked by that discovery.
- (c) The discovery or perception of, or belief about, another person's race, color, national origin, sex, gender identity, or sexual orientation, whether or not accurate, does not constitute legally adequate provocation to mitigate a killing from the crime of murder to manslaughter.

## Maryland Rules

### **Rule 5-401. Definition Of “Relevant Evidence”**

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

### **Rule 5-402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

### **Rule 5-403. Exclusion Of Relevant Evidence On Grounds Of Prejudice, Confusion, Or Waste Of Time**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

## Other State Annotated Codes

### **Ga. Code Ann. § 1-2-1**

#### **Classes of Persons Generally; “Natural Person” Defined; Corporations Deemed Artificial Persons; Nature of Corporations Generally**

- a. There are two classes of persons: natural and artificial.
- b. “Natural person” means any human being including an unborn child.
- c. Corporations are artificial persons. They are creatures of the law and, except insofar as the law forbids it, they are subject to be changed, modified, or destroyed at the will of their creator.
- d. Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.
- e. As used in this Code section, the term:
  1. “Detectable human heartbeat” means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.
  2. “Unborn child” means a member of the species *Homo sapiens* at any stage of development who is carried in the womb.

**Kan. Stat. Ann. § 65-6732**  
**Legislative declaration that life begins at fertilization**

- (a) The legislature hereby finds and declares the following:
- (1) The life of each human being begins at fertilization;
  - (2) unborn children have interests in life, health and well-being that should be protected; and
  - (3) the parents of unborn children have protectable interests in the life, health and well-being of the unborn children of such parents.
- (b) On and after July 1, 2013, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States, and decisional interpretations thereof by the United States supreme court and specific provisions to the contrary in the Kansas constitution and the Kansas Statutes Annotated.
- (c) As used in this section:
- (1) “Fertilization” means the fusion of a human spermatozoon with a human ovum.
  - (2) “Unborn children” or “unborn child” shall include all unborn children or the offspring of human beings from the moment of fertilization until birth at every stage of biological development.
- (d) Nothing in this section shall be construed as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

**La. Stat. Ann. § 40:1061.1**  
**Legislative intent; construction of abortion provisions law regulating abortion**

- A.
- (1) It is the intention of the Legislature of Louisiana to regulate, prohibit, or restrict abortion to the fullest extent permitted by the decisions of the Supreme Court of the United States. The legislature does solemnly declare, find, and reaffirm the longstanding public policy of this state that every unborn child is a human being from the moment of conception and is, therefore, a legal person for purposes under the laws of this state and Constitution of Louisiana.
  - (2) The legislature further finds and declares that the longstanding policy of this state to protect the right to life of every unborn child from conception by prohibiting abortion is impermissible only because of the decisions of the Supreme Court of the United States and that, therefore, if those decisions of the Supreme Court of the United States are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the public policy of this state to prohibit abortions shall be enforced.
- B.



(1) The provisions of this Chapter that regulate the practice of abortion shall not be construed to repeal any other provision of law that restricts or prohibits abortion.

(2) The provisions of this Chapter that regulate the practice of abortion are enacted to provide for the health, safety, and welfare of women in outpatient abortion facilities until such time and to the extent that the state of Louisiana no longer regulates outpatient abortion facilities.

C. The provisions of this Chapter that regulate the practice of abortion are subject to R.S. 40:2175.10.

### **Mo. Rev. Stat. § 1.205**

#### **Life begins at conception--unborn child, defined--failure to provide prenatal care, no cause of action for**

1. The general assembly of this state finds that:

(1) The life of each human being begins at conception;

(2) Unborn children have protectable interests in life, health, and well-being;

(3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.

2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.

3. As used in this section, the term “unborn children” or “unborn child” shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.

4. Nothing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

### **Ala. Code § 13A-6-1(3)(a)**

#### **Definitions**

(a) As used in Article 1 and Article 2, the following terms shall have the meanings ascribed to them by this section:

(1) **CRIMINAL HOMICIDE.** Murder, manslaughter, or criminally negligent homicide.

(2) **HOMICIDE.** A person commits criminal homicide if he intentionally, knowingly, recklessly or with criminal negligence causes the death of another person.

(3) PERSON. The term, when referring to the victim of a criminal homicide or assault, means a human being, including an unborn child in utero at any stage of development, regardless of viability.

**Ark. Code Ann. § 5-1-102(13)(B)**  
**Definitions**

As used in the Arkansas Criminal Code:...

(B)

(i)

(a) As used in §§ 5-10-101 — 5-10-105, “person” also includes an unborn child in utero at any stage of development.

(b) “Unborn child” means offspring of human beings from conception until birth.

(ii) This subdivision (13)(B) does not apply to:

(a) An act that causes the death of an unborn child in utero if the act was committed during a legal abortion to which the woman consented, including an abortion performed to remove an ectopic pregnancy or other nonviable pregnancy when the embryo is not going to develop further;

(b) An act that is committed pursuant to a usual and customary standard of medical practice during diagnostic testing or therapeutic treatment;

(c) An act that is committed in the course of medical research, experimental medicine, or an act deemed necessary to save the life or preserve the health of the woman;

(d) Assisted reproduction technology activity, procedure, or treatment; or

(e) An act occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization.

(iii) Nothing in this subdivision (13)(B) shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero;

**Okla. Stat. Ann. tit. 21, § 691**  
**Homicide defined**

A. Homicide is the killing of one human being by another.

B. As used in this section, “human being” includes an unborn child, as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

C. Homicide shall not include:

1. Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; or

2. Acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

D. Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

**Tenn. Code Ann. § 39-13-214**

**“Another” and “Another Person” to Include Fetus of a Human Being**

- a. For the purposes of this part, “another” and “another person” include a human embryo or fetus at any stage of gestation in utero, when any such term refers to the victim of any act made criminal by this part.
- b. Nothing in this section shall be construed to amend § 39-15-201, or §§ 39-15-203 — 39-15-205 and 39-15-207.
- c. Nothing in subsection (a) shall apply to any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant, or to any lawful medical or surgical procedure to which a pregnant woman consents, performed by a health care professional who is licensed to perform such procedure.

**Utah Code Ann. § 76-5-201(1)**

**Criminal homicide -- Designations of offenses -- Exceptions -- Application of consensual altercation defense.**

(1)

- (a) As used in this section:
  - (i) "Abortion" means the same as that term is defined in Section 76-7-301.
  - (ii) "Criminal homicide" means an act causing the death of another human being, including an unborn child at any stage of the unborn child's development.
- (b) The terms defined in Section 76-1-101.5 apply to this section.

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

STATE OF MARYLAND,

v.

Criminal Docket

Case No.: C-13-CR-19-000367

MOIRA AKERS,

Defendant

---

OFFICIAL TRANSCRIPT OF PROCEEDINGS  
Criminal Jury Trial (Day 8)

Ellicott City, Maryland

Wednesday, April 27, 2022

BEFORE:

THE HONORABLE TIMOTHY J. MCCRONE, JUDGE

APPEARANCES:

For the State:

MARY MURPHY, ESQUIRE

JENNIFER RITTER, ESQUIRE

For the Defendant:

DEBRA SALTZ, ESQUIRE

YVEKA PIERRE, ESQUIRE

Transcribed from digital recording by:

Lisa Lodati

Official Court Reporter

Howard County Circuit Court

9250 Judicial Way

Ellicott City, Maryland 21043

(410) 313-3417

T A B L E O F C O N T E N T S

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Call of Proceedings 4

WITNESSES

For the State:                 Direct          Cross          Redirect          Recross  
(None)

For the Defendant:     Direct          Cross          Redirect          Recross  
(None)

EXHIBITS

<u>For the State:</u>	<u>Marked</u>	<u>Admitted</u>
Exhibit No. 56(a) (Annotated Page from Autopsy)	--	9
Exhibit No. 64(a) (Ann. Photo of Abdominal Area)	--	9
Exhibit No. 65(a) (Ann. Photo of Chest Cavity)	--	10
Exhibit No. 66(a) (Ann. Photo of Lungs Floating)	--	10
Exhibit No. 67(a) (Ann. Photo of Lungs Floating)	--	10
Exhibit No. 68(a) (Ann. Photo of Umbilical Cord)	--	10
Exhibit No. 70(a) (Ann. Photo of Placenta)	--	11
Exhibit No. 71(a) (Ann. Photo of Placenta)	--	11

EXHIBITS (Cont'd)

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For the Defendant:

(None)

CLOSING ARGUMENTS:	PAGE:
By Ms. Murphy	27
By Ms. Pierre	50
REBUTTAL CLOSING:	
By Jenn Ritter	90
VERDICT	117
JURY POLLED	118
VERDICT HARKENED	119
POST-TRIAL RIGHTS	122

1 State's Exhibit  
2 Number 70(a) was  
3 admitted into evidence.

4 MS. RITTER: And Seventy-one(a).

5 MS. SALTZ: No objection.

6 THE COURT: It's admitted.

7 State's Exhibit  
8 Number 71(a) was  
9 admitted into evidence.

10 MS. RITTER: Thank you.

11 THE COURT: Are we ready for the jury then?

12 MS. SALTZ: Yes, Your Honor.

13 MS. MURPHY: Yes, Your Honor. Your Honor, if I may  
14 just approach the evidence bench and look through there for a  
15 moment while we're getting the jury?

16 MS. PIERRE: May we approach as well?

17 THE COURT: Sure.

18 MS. PIERRE: Thank you.

19 \*\*\*

20 (At this time, the jury enters the courtroom.)

21 THE BAILIFF: The jury is present, Your Honor.

22 THE COURT: Thank you, Phyllis.

23 \*\*\*

24 JURY INSTRUCTIONS

25 Members of the jury, the time has come to explain the

1 law that applies to this case. Now, I apologize, I'm going to  
2 have to read to you at some length. These have to be given  
3 verbatim and I haven't memorized them verbatim. So, I  
4 apologize but I have to read them to you.

5 Ladies and gentlemen, before you go back for your  
6 deliberations or when you go back for your deliberations,  
7 you'll have two copies of these instructions that you can use  
8 as a reference tool. Any effect and the extent to which you  
9 feel it necessary to take notes, but you're welcome, obviously,  
10 to take notes.

11 The instructions that I give about the law are  
12 binding upon you. In other words, you must apply the law as I  
13 explain it in arriving at your verdict. On the other hand, any  
14 comments that I may have made or may make about the facts are  
15 not binding upon you and are advisory only. You are the ones  
16 to decide the facts and apply the law to those facts.

18 Ladies and gentlemen, the verdict must be the  
19 considered judgment of each of you. In order to reach a  
20 verdict, all of you must agree. In other words, your verdict  
21 must be unanimous. You must consult with one another and  
22 deliberate with a view to reaching an agreement if you can do so  
23 without violence to your individual judgment. Each of you must  
24 decide the case for yourself but do so only after an impartial  
25 consideration of the evidence with your fellow jurors. During



1 deliberations, do not hesitate to reexamine your own views. You  
2 should change your opinion if convinced you are wrong, but do  
3 not surrender your honest belief as to the weight or effect of  
4 the evidence only because of the opinion of your fellow jurors  
5 or for the mere purpose of reaching a verdict.

6 Ladies and gentlemen, the defendant is presumed to be  
7 innocent of the charges. This presumption remains throughout  
8 every stage of the trial and is not overcome unless you are  
9 convinced beyond a reasonable doubt that the defendant is  
10 guilty.

11 The State has the burden of proving the guilt of the  
12 defendant beyond a reasonable doubt. This means that the State  
13 has the burden of proving, beyond a reasonable doubt, each and  
14 every element of the crimes charged. The elements of a crime  
15 are the component parts of the crime about which I will  
16 instruct you shortly. This burden remains on the State  
17 throughout the trial. The defendant is not required to prove  
18 her innocence. However, the State is not required to prove  
19 guilt beyond all possible doubt or to a mathematical certainty.  
20 Nor is the State required to negate every conceivable  
21 circumstance of innocence.

22 Ladies and gentlemen, a reasonable doubt is a doubt  
23 founded upon reason. Proof beyond a reasonable doubt requires  
24 such proof as would convince you of the truth of a fact to the  
25

1 extent that you would be willing to act upon such belief  
2 without reservation in an important matter in your own business  
3 or personal affairs. If you are not satisfied of the  
4 defendant's guilt to that extent for each and every element of  
5 a crime charged, then reasonable doubt exists, and the  
6 defendant must be found not guilty of that crime.

7 Ladies and gentlemen, your verdict must represent the  
8 considered judgment of each juror and must be unanimous. In  
9 other words, all twelve of you must agree.

10 You must consider and decide this case fairly and  
11 impartially. You are to perform this duty without bias or  
12 prejudice as to any party. You should not be swayed by  
13 sympathy, prejudice, or public opinion.

14 During your deliberations, you must decide this case  
15 based only on the evidence that you and your fellow jurors heard  
16 together in the courtroom.

17 You must not do any outside research or investigation.  
18 Do not use any outside sources such as books, electronic devices,  
19 computers, or phones to do research about this case even if you  
20 believe the information would be helpful.

21 While you are deliberating, you cannot have in the  
22 jury room any computers, cell phones, or other electronic  
23 devices and you must not communicate with anyone outside the  
24  
25

1 jury room. If there are breaks in deliberations, I may allow  
2 you to communicate with your family or friends, but do not  
3 communicate about the case or your deliberations. And one  
4 exception to that, ladies and gentlemen, we do have a court  
5 laptop that I'm sure Counsel will not object to you having back  
6 there to the extent it might be necessary to look at certain  
7 exhibits.

8 MS. RITTER: I don't think there are any electronic  
9 -- oh, for the statements, yes. So, no objection.

10 THE COURT: In making your decision, you must  
11 consider the evidence in this case; that is,  
12

13 (1) testimony from the witness stand; and

14 (2) physical evidence or exhibits admitted into  
15 evidence; and

16 (3) the stipulations of the parties.

17 In evaluating the evidence, you should consider it in  
18 light of your own experiences. You may draw any reasonable  
19 conclusion from the evidence that you believe to be justified by  
20 common sense and your own experiences.  
21

22 The following things are not evidence and you should  
23 not give them any weight or consideration:

24 (1) any testimony that I struck or told you to disregard  
25 and any exhibits that I struck or did not admit

1           into evidence; and

2                   (2) questions that the witnesses were not permitted to  
3           answer and objections of the lawyers.

4                   When I did not permit the witness to answer a  
5           question, you must not speculate as to the possible answer. If  
6           after an answer was given, I ordered that the answer be  
7           stricken, you must disregard both the question and the answer.

8                   During the trial, I may have commented on the  
9           evidence or asked a question of a witness. I don't believe I  
10          did but if I did, you should not draw any conclusion about my  
11          views of the case or of any witness from my comments or my  
12          questions.

13  
14                   Ladies and gentlemen, opening statements and closing  
15          arguments of the lawyers are not evidence. They are intended  
16          only to help you to understand the evidence and to apply the  
17          law. Therefore, if your memory of the evidence differs from  
18          anything the lawyers or I may say, you must rely upon your own  
19          memory of the evidence.

20                   Ladies and gentlemen, there are two types of  
21          evidence, direct and circumstantial. An example of direct  
22          evidence that it is raining is when you look out of the  
23          courthouse window and see that it is raining. An example of  
24          circumstantial evidence that it is raining is when you see  
25

1 someone come into the courthouse with a raincoat and umbrella  
2 that are dripping water.

3           The law makes no distinction between the weight to be  
4 given to either direct or circumstantial evidence. No greater  
5 degree of certainty is required of circumstantial evidence than  
6 of direct evidence.

7           In reaching a verdict, you should weigh all of the  
8 evidence presented, whether direct or circumstantial. You may  
9 not convict the defendant unless you find that the evidence,  
10 when considered as a whole, establishes her guilt beyond a  
11 reasonable doubt.

12           Ladies and gentlemen, you are the sole judge of  
13 whether a witness should be believed. In making this decision,  
14 you may apply your own common sense and life experiences.

15           In deciding whether a witness should be believed, you  
16 should carefully consider all the testimony and evidence, as well  
17 as whether the witness's testimony was affected by other factors.  
18 You should consider such factors as:

19  
20           (1) the witness's behavior on the stand and manner  
21 of testifying;

22           (2) whether the witness appeared to be telling the  
23 truth;

24           (3) the witness's opportunity to see or hear the  
25

1 things about which testimony was given;

2 (4) the accuracy of the witness's memory;

3 (5) whether the witness has a motive not to tell the  
4 truth;

5 (6) whether the witness has an interest in the  
6 outcome of the case;

7 (7) whether the witness's testimony was consistent;

8 (8) whether other evidence that you believe  
9 supported or contradicted the witness's testimony;

10 (9) whether and the extent to which the witness's  
11 testimony in court differed from the statements made by the  
12 witness on any previous occasion; and

13 (10) whether the witness has a bias or prejudice.

14 You are the sole judge of whether a witness should be  
15 believed. You need not believe any witness, even if the  
16 testimony is uncontradicted. You may believe all, part, or  
17 none of the testimony of any witness.  
18

19  
20 Ladies and gentlemen, an expert is a witness who has  
21 knowledge, skill, experience, education, or special training in  
22 a given field and therefore is permitted to express opinions in  
23 that field. You should consider an expert's testimony together  
24 with all the other evidence. In weighing the opinion portion of  
25 an expert's testimony, in addition to the factors that are

1 relevant to any witness's credibility, you should consider the  
2 expert's knowledge, skill, experience, training or education, as  
3 well as the expert's knowledge of the subject matter about which  
4 the expert is expressing an opinion. You should give expert  
5 testimony the weight and value you believe it should have. You  
6 are not required to accept an expert's testimony, even if it is  
7 uncontradicted. As with any other witness, you may believe all,  
8 part, or none of the testimony of any expert.

9 Ladies and gentlemen, the defendant has an absolute  
10 constitutional right not to testify. The fact that the  
11 defendant did not testify must not be held against the defendant  
12 and must not be considered by you in any way or even discussed  
13 by you.

14 Ladies and gentlemen, you have heard evidence that the  
15 defendant made a statement to the police about the crime  
16 charged. The State must prove beyond a reasonable doubt that  
17 the statement was voluntarily made. A voluntary statement is  
18 one that under all circumstances was given freely.

19 In deciding whether the statement was voluntary,  
20 consider all of the circumstances surrounding the statement,  
21 including:  
22

- 23 (1) the conversations, if any, between the police  
24 and the defendant;  
25

1 (2) whether the defendant was advised of her rights;

2 (3) the length of time that the defendant was  
3 questioned;

4 (4) who was present;

5 (5) the mental and physical condition of the  
6 defendant;

7 (6) whether the defendant was subjected to force or  
8 threats of force by the police;

9 (7) the age, background, experience, education,  
10 character, and intelligence of the defendant;

11 (8) any other circumstance or circumstances  
12 surrounding the taking of the statement.  
13

14 If you find beyond a reasonable doubt that the  
15 statement was voluntary, give it such weight as you believe it  
16 deserves. If you do not find beyond a reasonable doubt that  
17 the statement was voluntary, you must disregard it.  
18

19 Ladies and gentlemen, you have heard that the  
20 defendant concealed evidence in this case. Concealment or  
21 destruction of evidence is not enough by itself to establish  
22 guilt but may be considered as evidence of guilty. Concealment  
23 or destruction of evidence may be motivated by a variety of  
24 factors some of which are fully consistent with innocence. You  
25 must first decide whether the defendant concealed evidence in



1 this case. If you find that the defendant concealed evidence in  
2 this case, you must decide whether that conduct shows a  
3 consciousness of guilt.

4 Ladies and gentlemen, intent is a state of mind and  
5 ordinarily cannot be proven directly because there is no way of  
6 looking into a person's mind. Therefore, a defendant's intent  
7 may be shown by surrounding circumstances. In determining the  
8 defendant's intent, you may consider the defendant's acts and  
9 statements, as well as the surrounding circumstances. Further,  
10 you may, but are not required to, infer that a person  
11 ordinarily intends the natural and probable consequences of her  
12 acts and/or omissions.

13 Ladies and gentlemen, motive is not an element of the  
14 crime charged and need not be proven. However, you may  
15 consider the motive or lack of motive as a circumstance in this  
16 case. Presence of motive may be evidence of guilt. Absence of  
17 motive may suggest innocence. You should give the presence or  
18 absence of motive the weight you believe it deserves.

19 Ladies and gentlemen, the defendant is charged with  
20 the crime of child abuse in the first degree. In order to  
21 convict the defendant of first-degree crime of child abuse, the  
22 State must prove:  
23

24 (1) That the baby was born alive.

25 (2) That the defendant caused physical injury to Baby

1 Akers as a result of cruel or inhumane treatment or a  
2 malicious act.

3 (3) That at the time of the conduct, Baby Akers was  
4 under eighteen years of age.

5 (4) At the time of the conduct, the defendant was a  
6 parent of Baby Akers.

7 (5) That as a result of the defendant's conduct,  
8 Baby Akers health or welfare was harmed or threatened.

9 (6) That the defendant's conduct resulted in Baby  
10 Akers death.

11 The failure to obtain medical assistance for a child  
12 may constitute cruel or inhumane treatment. Under Maryland  
13 Law, parents are required to obtain necessary medical care for  
14 their minor children.

15 Ladies and gentlemen, the defendant is charged with  
16 first-degree murder. First-degree murder is the intentional  
17 killing of another person with willfulness, deliberation, and  
18 premeditation. In order to convict the defendant of first-  
19 degree murder, the State must prove:  
20

21 (1) that Baby Akers was born alive;

22 (2) that the defendant caused the death of Baby Akers;

23 and  
24

25 (3) that the killing was willful, deliberate, and

premeditated.

1  
2 Willful means that the defendant actually intended to  
3 kill Baby Akers.

4 Deliberate means that the defendant was conscious of  
5 the intent to kill.

6 Premeditated means that the defendant thought about  
7 the killing and that there was enough time before the killing,  
8 though it may only have been brief, for the defendant to  
9 consider the decision whether or not to kill and enough time to  
10 weigh the reasons for and against the choice. The premeditated  
11 intent to kill must be formed before the killing.  
12

13 The defendant is also charged with second-degree  
14 murder. Second-degree murder is the killing of another person  
15 with either the intent to kill or the intent to inflict such  
16 serious bodily harm that death would be the likely result.  
17 Second degree murder does not require premeditation or  
18 deliberation. In order to convict the defendant of second-  
19 degree murder, the State must prove:

20 (1) that Baby Akers was born alive;

21 (2) that the defendant caused the death of Baby  
22 Akers; and

23 (3) that the defendant engaged in the deadly conduct  
24 either with the intent to kill or with the intent to  
25

1 inflict such serious bodily harm that death would be the  
2 likely result.

3 Ladies and gentlemen, the defendant is also charged  
4 with second-degree murder, extreme disregard for human life.  
5 Second-degree murder is the killing of another person while  
6 acting with an extreme disregard for human life. In order to  
7 convict the defendant of second-degree murder, the State must  
8 prove:

9 (1) that Baby Akers was born alive;

10 (2) that the defendant caused the death of Baby  
11 Akers;

12 (3) that the defendant's conduct created a very high  
13 degree of risk to the life of Baby Akers; and

14 (4) that the defendant, conscious of such risk,  
15 acted with extreme disregard of the life-endangering  
16 consequences.  
17

18 Ladies and gentlemen, the defendant is also charged  
19 with the crime of involuntary manslaughter, grossly negligent  
20 act. Again, the defendant is charged with involuntary  
21 manslaughter. In order to convict the defendant of involuntary  
22 manslaughter, the State must prove:

23 (1) that Baby Akers was born alive;

24 (2) that the defendant acted in a grossly negligent  
25

1 manner; and

2 (3) that this grossly negligent conduct caused the  
3 death of Baby Akers.

4 Grossly negligent means that the defendant, while  
5 aware of the risk, acted in a manner that created a high risk  
6 to, and showed a reckless disregard for, human life.

7 Ladies and gentlemen, under the Maryland Health  
8 General Article, Section 4-201, live birth means the complete  
9 expulsion or extraction of a product of human conception from  
10 the mother, regardless of the period of gestation, if, after  
11 the expulsion or extraction, it breathes or shows any other  
12 evidence of life, such as heartbeat, pulsation of the umbilical  
13 cord, or definite movement of voluntary muscle, whether or not  
14 the umbilical cord is cut or the placenta is attached.  
15

16 Also, ladies and gentlemen fetal death is defined  
17 under the Health General Article in Section 4-301, fetal death  
18 means death of a product of human conception, before its  
19 complete expulsion or extraction from the mother, regardless of  
20 the duration of the pregnancy, as indicated by the fact that,  
21 after the expulsion or extraction, the fetus does not breathe  
22 or show any other evidence of life, such as heartbeat,  
23 pulsation of the umbilical cord, or definite movement of  
24 voluntary muscle.  
25