

OCT 04 2023

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No. 23-5745

IN THE  
SUPREME COURT OF THE UNITED STATES

Zephrynn Hammond,

Petitioner

vs.

The University of Vermont Medical Center,

Respondent

On Petition for a Writ of Certiorari to

The Vermont Supreme Court of Appeals

for the Second Circuit

**PETITION FOR A WRIT OF CERTIORARI**

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**ORIGINAL**

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## QUESTIONS PRESENTED

1. Under organizational policy when an employee makes a complaint to anyone in a position of authority in regard to a protected characteristic, should this warrant documentation, a prompt thorough investigation, protection from the perpetrator, and dealt with in a serious professional manner? Are characteristics considered protected if some employers are continuing to treat employees less favorably when a complaint is made? When an immediate supervisor is responsible for discrimination and retaliation against an employee, should safeguards be put in place so the employee isn't subjected to any unwarranted adverse actions, especially termination?
2. During summary judgment, when applying the McDonnell Douglas burden shifting framework to analyze disparate treatment in discrimination and/or retaliation claims, since the burden of proof is relatively light for the movant at the second step when articulating a legitimate nondiscriminatory reason for the adverse action, does this reason need to be at least supported with sufficient documentation with regard to specifics rather than a list of allegations? Since the burden of proof is relatively high for the non-movant, how many and what specific types of inferences of pretext are needed to fulfill the burden of proof for the plaintiff at the third and final step of the burden shifting framework and why is this different for each claim? Should standards be put in place for the amount of evidence needed at each step of the McDonell Douglass burden shifting framework so decisions are more consistent?
3. Should the chronology of events within the record as a whole, when dates are available, be enough to evaluate whether or not discrimination and retaliation occurred in an employment claim rather than isolating each claim, the circumstances around that claim

and the evidence? Is evidence to be viewed in a light most favorable to the non-movant and all justifiable inferences to be drawn in the non-movant's favor using evidence from the record? When there are any material facts in dispute is it the responsibility of a jury to make any decisions pertaining to those facts rather than a judge?

4. When under oath, is not being truthful considered perjury and would the denial of illegal punishment suffice as evidence to discredit their credence? Is proving an employer's shifting reasons for issuing disciplinary action sufficient to discredit their credence or simply a distraction from the fact that it was issued?
5. During summary judgment when an attorney neglects to submit all of the direct or indirect evidence both parties have seen in the discovery phase, is the only option to file another lengthy, expensive lawsuit against that attorney? Is an attorney responsible for disclosing pertinent information that may affect the case and/or a client's decisions during time of service to the client? Shouldn't attorney's have a duty to inform the client of all the options they have before they withdraw from a case?

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## **OPINIONS BELOW**

The opinion of the Supreme Court of Appeals of Vermont is unpublished.

The opinion of the Vermont Superior Court is unpublished.

## **JURISDICTION**

The date on which the Vermont Supreme Court of Appeals decided this case was July 17, 2023. A copy of that decision appears at appendix A.

A timely motion for reargument to the Vermont Supreme Court of Appeals was filed on June 30, 2023. A copy of that motion appears at appendix B.

The Vermont Supreme Court of Appeals affirmed the Vermont Superior Court's motion to grant summary judgment to the defendant on June 2, 2023. A copy of that decision appears at appendix C.

The Vermont Superior Court granted summary judgment to the defendant on June 29, 2022. A copy of that decision appears at appendix D.

The State of Vermont Department of Labor decision allowing unemployment benefits on June 7, 2019. A copy of that decision appears at appendix E.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

### Title VII of the Civil Rights Act of 1964:

A landmark civil rights and labor law in the United States outlawing discrimination based on race, color, religion, sex, and national origin which prohibits employment discrimination, and an employer from retaliating against an employee who had “made a charge, testified, assisted or participated in” any charge of unlawful discrimination.

Rehabilitation Act of 1973:

Protects employees and job applicants from employment discrimination based on disability and requires reasonable accommodations to be made of any known disability.

The Civil Rights Act of 1991:

Amends several sections of Title VII to strengthen and improve Federal civil rights laws and provide for the recovery of compensatory damages in Federal sector cases of intentional discrimination.

United States Constitution Amendment VII:

Right to trial by jury.

United States Constitution Amendment XIV:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to a person within its jurisdiction the equal protection of the laws.

State of Vermont Constitution Chapter 1 Article 12:

That when any issue in fact, proper for the cognizance of a jury is joined in a court of law, the parties have a right to a trial by jury, which ought to be held sacred.

State of Vermont Constitution Chapter 2 §38:

Trials shall be by jury except where parties otherwise agree and great care ought to be taken to prevent corruption or partiality in the choice and return, or appointment of Juries.

Vermont Statute Title 21 Chapter 005 Subchapter 001 (21 V.S.A. § 304):

An employer shall provide an employee with reasonable opportunities during work periods to eat and use the toilet facilities in order to protect the health and hygiene of the employees.

Vermont Statute Title 21 Chapter 005 Subchapter 006 ((21 V.S.A. §495):

It shall be unlawful employment practice:

For any employer, employment agency, or labor organization to discriminate against an individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, crime victim status, or age or against a qualified individual with a disability.

For any employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against an employee because the employee opposed any act or practice that is prohibited by this chapter, has lodged a complaint with the attorney general, is known by the employer to be about to lodge a complaint or participate in any manner in an investigation of prohibited acts or practices.

Vermont Statute Title 21 Chapter 005 Subchapter 010 (21 V.S.A. § 507):

No employer shall take retaliatory action against an employee because the employee discloses or threatens to disclose to any person or entity any activity, policy, practice, procedure, action or failure to act of the employer or agent of the employer that the employee reasonably believes is a violation of any law or that the employee reasonably believes constitutes improper quality of patient care.

## **STATEMENT OF THE CASE WITH FACTS SUPPORTED BY THE RECORD**

I was employed at the University of Vermont Medical Center as a Senior Histologist for 17 years and the only African American in the Histology laboratory. AV2-42 and 62. My supervisor was Ms. Carpenter from 2002 to 2016 and after she retired Ms. Cortright became my supervisor from 2017 to 2019. After 17 years of service I was terminated 10 months after having made a race based complaint to Ms. Cortright regarding a coworker and lead, Ms. Mitchell. AV3-141. Having made complaints in the past to my previous supervisor Ms. Carpenter about poor treatment by Ms. Mitchell, she wouldn't allow it so put an end to it as Ms. Cortright should have. Very early into my professional career I was diagnosed with Crohn's Disease, I later suffered a work-related shoulder injury, and had plantar fasciitis in both feet upon my return after having had surgery in February of 2017. AV1-153. Due to having Crohn's disease my doctor issued me a note allowing me to take my break at a certain time which contributed immensely to how well I was able to manage my symptoms my entire career, although I wasn't permitted to do so by Ms. Cortright even after she specifically asked when I would need to take my break. AV1-318, 392 and 403. My shoulder restriction limited the amount of weight I could lift which was 15 pounds and I was accommodated by being permitted to rearrange my microtomy station which I was constantly accused of taking too long to do although it only took minutes. AV3-187. Another restriction I had was limiting the amount of time I would be permitted to stand which was for a maximum of 2 hours although I was forced to work in places that weren't accommodating and was constantly told that sitting rather than standing was considered not following protocol. AV1-203. Chronology of the final months of my employment at UVMMC better helps put the entire unwarranted avoidable injustice in perspective. AV1-396. It shows when I received the verbal warning, a poor evaluation rating, the letter of understanding, the final

written warning, all the circumstances around each, and that I never admitted to “missing” an urgent bone marrow or being a no call/no show 4/1/19 contrary to what the record now states.

My evaluation from 2017 was conducted by Ms. Cortright in August of 2017, during her first year as supervisor, and she gave me a rating of excellent just as I had received for several years prior when Ms. Carpenter was the supervisor. AV1-199 and 405. I worked extremely hard over the years for my ratings to finally reach that of excellent which is why all the negative stray criticisms fabricated by Ms. Mitchell was just that. AV2-32. Ms. Mitchell claimed that I didn’t help others when working in the areas she supervised, one being special stains, which was untrue. AV1-127 and AV2-32. Her criticisms of me were always very broad. Communication issues and absences from special stains were also criticisms made by Ms. Mitchell although at times I would have to use the bathroom more frequently than usual because her treatment aggravated my Crohn’s symptoms nearly every time I worked in close proximity to her. AV2-32. It wasn’t until the following year after I made a complaint to Ms. Cortright on 6/5/18 regarding racially motivated treatment by Ms. Mitchell when the overwhelming amount of retaliatory treatment began and became progressively worse the more I reported their unprofessional treatment. AV1-193, 393 to 394, 453 and AV3-154 to 155.

As stated previously, Ms. Mitchell was a lead that supervised 3 areas of the department including special stains, book work, and Immunohistochemistry (IHC). Ms. Cortright admitted that when we met in early June of 2018, it was regarding my concerns about Ms. Mitchell, omitting it was a complaint about racially motivated treatment. AV1-296, 394 and AV3-155. Not only that but I hadn’t worked with Ms. Mitchell in nearly a year so we did not speak about performance concerns related to Ms. Mitchell rather my concerns regarding the treatment I had received that very day. AV1-296, 394 and AV3-155. Ms. Cortright specifically told me that

Ms. Mitchell didn't have any concerns with working together when she purposely scheduled me to work with Ms. Mitchell on 6/11/18, just under 2 weeks prior to issuing the verbal warning proving that the verbal warning was unwarranted. AV1-296.

Ms. Cortright insisted that I misinterpreted her about Ms. Mitchell being racist and that she couldn't recall any conversations we had regarding the matter. AV1-152, and 278. To avoid this she should have documented the complaint and I shouldn't be held responsible for her lack of not doing so, although I did make this known to her supervisor, and two separate human resource representatives. AV1-394. When making my complaint to Ms. Cortright, I informed her I thought Ms. Mitchell's treatment was racially motivated in agreeance with her since months prior to becoming supervisor she informed me of a conversation she had had with Ms. Carpenter regarding whether or not Ms. Mitchell was possibly racist due to the way she unfavorably treated only me. AV3-141. Ms. Cortright told me to speak to Ms. Mitchell myself, essentially telling me to handle it on my own as if it wasn't a serious matter that she wasn't well aware of already. AV2-271. I spoke to Ms. Mitchell on Friday 6/8/18 having asked her why she was so mean to me and treated me differently since we hadn't worked together in quite some time. AV1-247. I recorded the entire conversation which I played for Ms. Armstrong, when we met the next month, and it started off asking her in a nonchalant way, what her deal was with me? AV2-242. Ms. Mitchell became angry and mentioned Ms. Carpenter didn't "take care of" me properly when she was supervisor. AV1-247 and AV2-236. I knew she was referring to the fact that Ms. Carpenter didn't tolerate her treating me poorly or saying horrible things about me just because she didn't like me. She resented me for this. Ms. Cortright immediately retaliated by scheduling me to work in areas of the lab supervised by Ms. Mitchell for extended periods of time which only made matters worse and thus marked the beginning of the end of my career.

AV1-296 and AV3-38. I was only to help on Ms. Mitchell's benches for a short time in the early mornings, for about an hour, which wasn't a problem until I was made to work in those areas my entire shift. This meant I had to stand nearly the entire day which was against my restrictions I had in for plantar fasciitis which limited standing to only 2 hours and Ms. Cortright was aware of but didn't care saying it would benefit my shoulder. AV1-230 and AV2-53. It was an excuse she used so it wouldn't seem as if doing so wasn't retaliatory. Ms. Cortright was just as bad as Ms. Mitchell for subjecting me to the racially motivated treatment because it was obvious I was treated differently than other coworkers, which she recognized before becoming supervisor.

AV1-204 and AV3-140 to 142. I threatened to make a complaint to those higher up in a text message to Ms. Cortright 6/7/18. Appendix F. Negative criticisms that came from Ms. Mitchell, such as needing to be receptive to constructive criticism, started to appear in my evaluations in 2004 when I began working in the areas of the lab Ms. Mitchell supervised. AV2-314. Prior to this, when I worked as a lab assistant I rarely worked with her and thus issues she seemed to have with me were nonexistent.

On 6/22/18 I was issued a verbal warning, without any warning beforehand that it was a possibility, which is the first step of the disciplinary action process. AV2-207 and AV3-14 to 15. I had never been issued a verbal warning by Ms. Cortright, but had been warned that I would receive one a year prior when she forced me to take my break at 10 AM, having disregarded a note from my doctor. AV1-318 and 403. I never received a warning resembling that of the one I received 6/16/17 prior to receiving the verbal warning 6/22/18 so I was caught off-guard which I shouldn't have been especially if I met with Ms. Cortright on several occasions prior. AV1-236. I should have never received a pre-warning because going to break at a certain time helped with keeping the timing of my medication consistent since I was taking 3 doses per day and 11 AM

was close enough to 12 PM which was when I was currently taking the second dose. This was what I had done for daylight savings biyearly and being able to ease into this is what made it work. AV1-392. Ms. Cortright never considered this and just didn't care that changing my break so drastically to 10 AM could have harmful effects. AV1-393.

The verbal warning was unwarranted since I hadn't had any long standing issues and I was never given specific examples of what I had done justifying issuance. AV1-191 and AV2-456. Ms. Cortright had just told me Ms. Mitchell hadn't any issues with me 6/11/18 but according to the verbal warning we met on several occasions to discuss performance and behavior. AV1-296. Ms. Cortright abused her position as supervisor to review all of my past performance evaluations and extract negative criticisms made by Ms. Mitchell in particular to make it seem as if her false allegations were not new, and long standing although it was said by UVMMC counsel that she hadn't reviewed them. AV2-34, 332 and 335. These allegations were false and if they were long standing, as Ms. Cortright claimed she never mentioned any of them in my evaluation of 2017. The verbal warning listed false allegations that were extremely vague without identifying any particular instances. Since dates nor any documentation didn't exist for these false allegations Ms. Cortright would refer to these instances as "times." AV1-236 to 237. She claimed that even making an "exhaustive list" of these false allegations wouldn't be of any value which defeats the purpose of having received it since I would need to show improvement based on the wrongdoing I was responsible for. AV1-192 and 203. Ms. Cortright changed the reasoning as to why I was given the verbal warning, and tried using instances that happened after the fact to justify having issued it. AV1-278 and AV3-17. I asked both Ms. Cortright then Ms. Armstrong (the first HR representative I made complaints to on 7/27/18) to view my personnel file to prove that I had never met with Ms. Cortright to discuss the false allegations listed in the

verbal warning knowing I never signed off on write-ups for these allegations because they didn't exist but was told I wasn't allowed to. AV2-238. A write-up is documentation outlining an isolated mistake or incident containing who, what, when, where, why and how that required our signature as proof that we were informed of our wrongdoings. AV2-334. I know I did in fact have write-ups for mistakes I've made throughout my career because I had to physically sign them as did Ms. Cortright when she was a tech so she very well knew this. AV2-334. As stated previously, Ms. Cortright attempted to fabricate isolated incidents to justify reasoning for the verbal warning that took place after it had been issued on 6/22/18 in an email she sent me 6/29/18. AV1-191 to 192. She attempted to accuse me of mishandling a kidney specimen the week of 6/25/18, and although I took responsibility for the Copley block the incident happened 6/23/18 the day after I was given the verbal warning. I refused to take ownership of the majority of false allegations simply because they weren't true and there weren't any write-ups, emails or any documentation proving their validity. AV1-226 to 228. It also stated that if I failed to consistently meet the expectations listed that I would receive further disciplinary action although it was unwarranted. AV3-15.

On the morning of July 27, 2018, Ms. Mitchell began harassing me regarding using an accommodation I had in place allowing me to sit when performing certain tasks, although I had been doing it this way for over a month. AV3-252, and 261. The entire conversation was made up when she reported this to Ms. Cortright so I was severely punished. AV1-203. Ms. Mitchell lied saying she saw me standing on the other side of the room labeling slides when I was in fact sitting and Ms. Cortright was aware of this accommodation although she still took part in illegally punishing me severely. AV1-244. When I was illegally punished, I was embarrassed and humiliated, I wasn't criticized in my evaluation of 2018, for sitting rather than standing as

the courts put it making it seem as if this wasn't illegal. AV1-36 and 203. I had to bring all the procedure manuals home 7/27/18 and told not to report to work the next day, which was Saturday, but to stay home to read them. AV1-203. Ms. Cortright, Ms. Mitchell and Mr. St. John got away with this although I reported the incident to everyone I made my complaints to. AV2-215, and AV2-273. Once again, having abused their power, Ms. Cortright and Ms. Mitchell changed the procedure (they went into the computer system) that they claimed I wasn't following to make it seem as if I wasn't following it since Ms. Cortright told Mr. St. John that this changed protocol existed prior to having done this. AV1-187 to 188. During Ms. Quigleys nearly 45 years of service as Charge tech she was never instructed to take manuals home to re-read them nor did she instruct anyone to do so. AV2-149 and 170.

The afternoon of 7/27/18 I called human resources and was able to meet with Ms. Armstrong, the first representative I met with. AV2-228. Contrary to Ms. Armstrong's testimony, I met with her prior to my evaluation in August, due to the illegal punishment I received by both Ms. Cortright and Mr. St. John. AV2-221. Her notes from 7/27/18 were not regarding a workplace evaluation as she claimed they were about our meeting. AV2-222. I made complaints about Ms. Cortright neglecting to put an end to the racially motivated treatment by Ms. Mitchell and the retaliation I was experiencing due to this. These instances included Ms. Cortright making me speak to Ms. Mitchell after I made a complaint about her racially motivated treatment, being placed on Ms. Mitchell's benches for longer than I should've been against my restrictions, the humiliating punishment I received for using a known accommodation, being timed when using the restroom although I had Crohn's disease (I began limiting myself to using the restroom to only twice a day so I wouldn't get in trouble although it was extremely painful), not being allowed to view my personnel file and the unwarranted corrective action I was falsely

issued, to name a few. AV2- 230 to 242. I did what I was told to do by Mr. St. John and Ms. Cortright although Ms. Armstrong never investigated my complaint as she said she would since she wrote "race" off to the side in her notes. AV2-231. It took me 12 hours Saturday 7/28/18 to read every manual while taking notes. AV1-203. I was only to be paid for 8 hours until they finally decided to pay me for the 4 hours of overtime because Mr. St. John didn't believe that it took me that long. AV1-203 and AV2-273. Ms. Cortright testified, under oath, that this illegal punishment never happened. AV2-391. Her word was believed and all the evidence I have overlooked.

On 8/16/18, just a few weeks after reporting the unprofessional conduct by Ms. Cortright and Ms. Mitchell to Ms. Armstrong, I was given a retaliatory evaluation rating. AV1-205. As mentioned previously, in 2017, Ms. Cortright had given me a rating of excellent, which was full of compliments and contained one possible criticism that could potentially happen pertaining to the areas Ms. Mitchell supervised per usual. AV1-405. The expectations from 2017 were changed for 2018 so that it would seem as if the rating I was given was warranted. It was customized to fit whichever expectations Ms. Cortright claimed I wasn't meeting. I received a rating of "meeting many expectations" which was one I received closer to when I was a first year Histologist. AV1-64 and AV2-453. I worked extremely hard for my ratings to finally reach that of excellent which is why all the negative stray criticism fabricated by Ms. Mitchell was just that as seen in my 2010 evaluation. AV2-32. Ms. Mitchell accused me of being disrespectful without saying what it was that I had done to warrant this. AV2-32. The 2018 evaluation rating was unwarranted, lacked specifics, wasn't backed by evidence supporting her false allegations and was blatantly retaliatory. AV1-203 to 205 and AV2-453 to 461. Ms. Cortright looked to Ms. Mitchell for input into my evaluation and included it although it was false. AV1-413 and

AV2-453. Again, there isn't any documentation in support of Ms. Cortrights list of false allegations. AV3-32 to 34, 36 to 38, and 40 to 41. I was not given the raise that I deserved and worked hard for since my rating was so low due to being retaliated against.

In my 2018 evaluation appeal on 8/24/18, I again made a complaint about being retaliated against due to several protected characteristics. AV1-389 to 390. AV3-32 to 34, 36 to 38, and 40 to 41. Ms. Cortright, Mr. St. John (Ms. Cortright's supervisor) and Ms. Armstrong would have been responsible for investigating this, but it was completely ignored once again without any mention in Ms. Cortright's response to my appeal. AV1-166 to 168 and AV2-189 to 191. Due to their lack of concern I was subjected to more retaliation and disciplinary action up until termination. Had someone intervened regarding this I would not have been terminated but I was left to fend for myself continuing to be subjected to retaliation in all the ways I had.

Ms. Cortright only began neglecting my accommodations in retaliation after I made my complaint 6/5/18 immediately scheduling me to work with Ms. Mitchell for the entire day rather than from 5 AM until 6 AM as discussed which is why I never made a complaint about this until I met with Ms. Armstrong as mentioned earlier. AV1-246. Ms. Cortright did remove the statement that I was unreliable for breaks because it was not true, although she continued to accuse me of this in the disciplinary action that followed up until termination. AV2-189. I was accused of not following the IHC procedure that I was illegally punished for, mind you the entire situation was fabricated by Ms. Mitchell so I would be punished for sitting rather than standing. Not following procedure was repeatedly mentioned in all the disciplinary action I was given up until termination as well although untrue. Due to using accommodations Ms. Cortright accused me of doing things my own way and against protocol. AV1-232 and AV3-23. One instance Ms. Cortright referenced as to when I didn't follow procedure was another fabrication told by Ms.

Mitchell regarding taking a shortcut not having checked special stains for glassware before mixing reagents in a vial, not the fact that I mixed a liquid and a liquid (1 ml from a pipette and 1 drop from a dropper bottle) in a small 10-15 ml vial when making DAB solution. AV1-248 and AV2-342 to 343. I was written up for this and did in fact sign off on the write-up because Ms. Mitchell wouldn't back me up admitting that she was responsible for telling me to do this in the past when glassware wasn't available in special stains. This write-up would have been placed in my personnel file, although it was never submitted by defense for good reason, which is because they would have to provide write-ups for instances that were fabricated throughout the entire disciplinary action process and I would have had to sign off on all of them proving that I was informed of these allegations. Ms. Cortright also testified that mixing these in a small vial was fatal, which is not true.

I am unsure as to which specific procedures I didn't follow and avoided since I was never honestly told of any that were true just as others didn't know either since it was simply their perception. AV2-175. Making solutions was not my favorite task but I still made them, however this was turned into making it seem as if I avoided making them which is also not true because it was part of my job when working in areas of the lab supervised by Ms. Mitchell. I was uncomfortable with every job duty supervised by Ms. Mitchell due to the fact that she disliked me, treated me poorly, and had the power to submit anything she wanted in my evaluations. AV1-382. This affected everything I did in a negative way which even prevented me from being able to train others or even give tours in these specific areas although I was fine doing so in other areas Ms. Mitchell didn't supervise. AV1-382. The bottom line is working with Ms. Mitchell was very hard for me because she was extremely mean, unprofessional, condescending, belittling, and above all treated me very differently from the way she treated others. Once I

opened up to Ms. Carpenter about this she spoke to Ms. Mitchell and prevented her from doing this as best she could but this only made Ms. Mitchell dislike me more and resent me, claiming Ms. Carpenter didn't "handle" me properly. AV2-236. I was the most productive tech in areas not supervised by Ms. Mitchell but could have been but Ms. Mitchell didn't allow me to be. AV1-381. Ms. Mitchell would say anything to make it seem as if I wasn't fit to be a tech. One example is how I loaded slides differently compared to some of the other techs. Although I was following protocol it wasn't the way a majority of the other techs did it so it was wrong and too slow. AV1-382. She would misconstrue our conversations having said that I refused to cut frozen's when that was not the case at all. I did ask Ms. Mitchell why she always had me do everyone else's work on top of my own work but never had others help me with mine, in which she would make excuses saying that those days were too busy for them to do so. It was unreal but I dealt with it by taking the high road and reporting these instances to Ms. Carpenter.

AV1-92.

I received a response to my evaluation appeal on 10/17/18, nearly 2 months after the fact. Not long after receiving Ms. Cortright's response I was issued more disciplinary action, the letter of understanding 11/20/18, in retaliation for having made several complaints regarding protected characteristics. AV3-20 to 21. This too, was unwarranted for many reasons, namely the fact that I was being accused of failing to improve on a list of instances I never received because Ms. Cortright said making a list of these incidents wouldn't be of value. AV1-207. Mr. Barker- Rowe, testified he made one to two mistakes a week and was corrected by Ms. Mitchell and Mr. Tembruell but was never given disciplinary action or written up. AV2-130 to 131. Ms. Johnson agrees that I was the only one given disciplinary action for things everyone was doing as well. AV1-184. Ms. Cortright continued to gaslight accusing me of denying her false allegations

as if they held true and I wouldn't take accountability although I was receiving disciplinary action not doing so. I did take ownership of wrongdoings, for example having misunderstood Ms. Cortright. AV3-20 to 21 and AV1-354 to 355. Ms. Cortright again claimed that we had met over 10 times regarding my performance and behavior since the verbal warning which was false since I arranged these meetings to discuss issues regarding Ms. Mitchell but they were turned around on me and made about performance and behavior every time. AV1-207 and AV3-20 to 21. In an email from Ms. Cortright 11/26/18, sent after having received the letter of understanding, she then decided to ask me about the way Ms. Mitchell treated me which is the reason why I wanted to hold a meeting in the first place. AV1-208. Instead that meeting was used to issue the letter of understanding. Again, I was never written up for these individual instances in which I questioned Ms. Cortright about, so there wasn't ever any proof of my wrongdoings. Ms. Cortright's word was always taken over my own simply because she was the supervisor. Ms. Cortright would often say 'coworkers' when referring to her own and Ms. Mitchell's criticisms, trying to make me feel as if my coworkers viewed me the way they did.

It wasn't until after I was issued the letter of understanding, the first written corrective action, on 11/20/18, that Ms. Armstrong finally decided to look into my complaints regarding discrimination and retaliation. AV2-207. She made this about performance and behavior. She opted not to do anything regarding my claims because Ms. Cortright told her that Ms. Mitchell "scrutinized" her when she was a tech years prior. AV2-227. The perpetrator was able to end the investigation into my complaints having lied to Ms. Armstrong since Ms. Mitchell "micromanaged" everyone but treated me very poorly which was entirely different. Her treatment had everything to do with her dislike she had for me and was specific to just myself which Ms. Cortright was well aware of this. On 1/9/19 I was questioned by Ms. Armstrong

regarding complaints I initially made 7/27/18 regarding Ms. Mitchell. AV2-193 to 194. This was nearly over 5 months after my initial complaint to Ms. Armstrong, nearly 7 months after my initial complaint to Ms. Cortright and nearly 4 months after I made my second complaint to both of them in my 2018 evaluation appeal. Ms. Mitchell's responses to the questions Ms. Armstrong asked her on 1/14/19 as part of the investigation didn't align with what Ms. Cortright had told me in an email on 6/11/18 having said that Ms. Mitchell wasn't concerned about working together. AV1-296, and 301 to 305. There isn't any mention of Ms. Mitchell's portrayal of my behavior in the daily notes she took of me either. AV1-246 to 248. Ms. Cortright said I found it condescending when they addressed me by my name which is not true because they wouldn't use my name when addressing me as they did others. I had to make a complaint to Ms. Armstrong so they would use my name since I was being unfairly accused of ignoring them. AV1-278, 299, and 373. I said it was condescending once when Ms. Mitchell yelled my name when my back was to her the day after she was told to use my name when addressing me. AV1-210, 304, and 373. A prime example of how Ms. Cortright has fabricated and twisted instances of their wrong doing making it seem as if I'm to blame. The questioning by Ms. Armstrong was hardly an investigation into my complaints which is why I stopped trusting that she would end everything I was going through. She waited too long to address a serious complaint simply because she never viewed it as that so therefore I suffered and was worse off after her "investigation" than I was prior.

The retaliation and very poor treatment after 1/14/19 became absolutely unbearable, unprofessional and wrong so I met with Mr. Turcott from the Employee Family and Assistance Program (I accidentally referred to EFAP as HR in the email) 1/25/19. AV1-239. Ms. Cortright discontinued allowing me come in early to make up time for appointments, I was scheduled to

work closely with Ms. Mitchell for 4-5 weeks in a row instead of 1 week like the others which was taking a toll on my feet, I was watched which was extremely intimidating to the point that it made me sick, I was made fun of, I was told I couldn't take my entire lunch break when everyone else was able to, I was lied about, I was given more corrective action and I was set up for failure to list a few things I endured. AV1-163 and 164, and AV1-232 to 234. Things were so bad I had to admit myself to the emergency department once again for chest pain, although the first time these pains arose was in November of 2018 on a scheduled day off due to the overwhelming amount of stress from work consuming my entire life. AV1-213. After meeting with EFAP they connected me with another human resources representative, Ms. Gallagher. AV2-270. Ms. Armstrong was not responsible for this and I never told her I was uncomfortable with her although I'm sure she had to have known I was slowly losing faith in her due to the continued poor treatment I received. AV2-268.

Prior to meeting with Ms. Gallagher, she had to make arrangements with Ms. Cortright to do so. This allowed Ms. Cortright to plan when she was going to issue me more corrective action. Fortunately, Ms. Gallagher and I met prior to this, for the first time on 2/20/19 when I made my complaints about everything that had happened after I made a race based complaint to Ms. Cortright 6/5/18 until that very day. AV2-270 to 273. When we met she told me that I was allowed to submit the evidence I had collected over the past 10 months but never gave me a deadline as to when she would need it. AV2-275. I originally offered to email her the evidence but decided to make a timeline of events to better outline the wrongdoing of those in charge since none of my concerns were ever addressed and things were only getting progressively worse although Ms. Cortright claims this is false. AV1-182, AV2-311, AV3-176 and 177. She simply told me that she would let me know who she was to question. AV2-273. She never emailed me

about submitting my evidence until after she ended the investigation and I was terminated.

AV1-182. Ms. Gallagher turned the investigation into one about disciplinary action rather than my complaints of a toxic work environment so my concerns were overlooked once again.

AV1-182.

I was issued more disciplinary action, the final written warning, only hours after having met with Ms. Gallagher on 3/20/19, although the disciplinary action is dated 3/19/23 which is incorrect. AV3-23 and 30. The allegations she came up with were, again, not true. AV1-232 to 234. I continued to ask Ms. Cortright for the documentation in support of her allegations that would warrant the verbal warning from 6/22/18, since she continued to say everything I did moving forward stemmed from it. Once again she ignored me so I asked Ms. Armstrong for this list. AV1-223 to 224. Ms. Armstrong then provided me with a list of false allegations compiled by Ms. Cortright from after the letter of understanding until February. AV1-223 to 224. The very few mistakes I was responsible for were not mistakes I ordinarily made but the stress, Crohn's symptoms, intimidation, watching, bullying, pain in my heels, retaliating and lying were causing me to do so and I unfairly received disciplinary action for it. AV1-232 to 234. Ms. Cortright purposely neglected to include any instances from the verbal warning to the letter of understanding because there simply weren't any which made them both unwarranted. She then claimed I was given the documentation I was asking for in support of the disciplinary action issued which wasn't true. AV3-23. She told me herself that there wasn't any value in making an exhaustive list of what she claimed I had done to warrant the verbal warning and 8 months later she told me that she provided this. AV3-18 and AV3-23.

Ms. Gallagher questioned Ms. Cortright on 3/6/19. AV1-276 to 283. Ms. Cortright lied to Ms. Gallagher as to why I was issued the verbal warning having said it was due to my tone

when I muttered "jeezum crow" to Ms. Mitchell on 7/27/18 in response to her harassment regarding an accommodation. Ms. Gallagher would have known this was a lie if she took my evidence into consideration and decided to view it. Soon after this, the investigation ended abruptly without warning and without Ms. Gallagher having viewed any of my evidence. AV2-275 and AV3-176 to 177. Asking Ms. Cortright if she said Ms. Mitchell was possibly racist doesn't count as thoroughly addressing my complaint regarding racial discrimination. AV1-152. The investigation was supposed to be about the toxic work environment due to retaliation and when I brought up racism it was soon turned into one about performance and behavior yet again disregarding my complaints. AV1-182 to 183 and AV2-270. Ms. Gallagher never asked Ms. Cortright about any of the poor treatment I received as far as being bullied because the questions were left unanswered. AV1-279. She never questioned potential witnesses such as Ms. Kerr, Mr. Barker-Rowe or Ms. Johnson as part of her investigation either. This investigation was unprofessional, one sided, and not thorough by any means. Ms. Gallagher opted not to listen to the recordings when she questioned me but said she may do so later as well as inform me as to whom she would question although this only included Ms. Cortright. AV2-273.

After Ms. Cortright was investigated by Ms. Gallagher, is when I knew that the end of my career was nearing quickly. In retaliation for being questioned by Ms. Gallagher, Ms. Cortright changed my shift, stopped responding to emails, avoided me so I rarely saw her, continued to accuse me of denying her false allegations as if they held true, and upheld the issuance of the final written warning. AV3-26. During the upcoming weeks I would have to work Monday through Friday rather than Tuesday through Saturday although this had not taken effect yet as I was still working on Saturdays accompanied with another tech to teach them how to run the entire lab independently as I had done for several years. I would soon no longer be able to work

on Saturdays, which I had been doing alone for a majority of my career which I absolutely loved because of all the work I was able to accomplish, and all the relationships I was better able to establish with pathologists and residents. AV1-163, AV3-5, 7, and 9. Taking my shift from me was something Ms. Cortright did to truly punish me especially since we had discussed working both Saturday and Sunday as well as 3 work days before the level of retaliation became crippling. AV1-163, 199, 207. It was also less time I was forced to work with Ms. Mitchell, which is another reason why she did this to me.

I appealed the final written warning 3/13/19. AV2-279 and AV3-134. However, in an email dated the very next day, 3/14/19 from Ms. Cortright to Ms. Gallagher proves Ms. Cortright had plans of terminating my employment weeks prior to doing so although she terminated me for instances she accused me of that occurred weeks later. Appendix F. In the email Ms. Cortright asked Ms. Gallagher when the investigation would be finished and falsely told her there were ongoing issues with my performance and behavior so she was planning on terminating my employment which was a lie so the investigation would end and it worked. Ms. Cortright and Mr. St. John upheld its issuance. AV3-26 and 28. Ms. Cortright upheld the warning because she was a perpetrator and she continued to punish me for not taking accountability for her false allegations which is not fair and extremely cruel. If I took accountability I would have been terminated for performance and behavior issues but because I didn't do this I was still terminated for performance and behavior proving that I was only set up for failure. AV3-26. Mr. St. John didn't take any of my complaints into consideration rather relied on a list concocted of only every negative criticism taken from past evaluations. Appendix F.

On 4/3/19 I was terminated after nearly 17 years of service having made a complaint involving racial discrimination 6/5/18. Ms. Cortright purposely ignored and avoided me the last

2 weekends of my employment having manipulated instances making them seem as if I committed wrongdoing which she said, combined with having received every level of disciplinary action warranted my termination. AV3-30. With this said each level of corrective action should have been warranted with evidence proving this starting from the verbal warning, the first step in the disciplinary action process.

I never admitted to “missing” the bone marrow specimen in the context that it was there and I disregarded it by any means rather I took it to mean that I hadn’t seen it since it wasn’t in the specimen drop off area with the other specimens I was responsible for loading on the processor. AV2-45. I was essentially blamed for not tending to a specimen that another person neglected to place in the specimen drop off area where it belonged. If it was urgent I would have been notified beforehand. Ms. Cortright referred to it as a “missed” specimen so that is how I referred to it as well when I was accused of doing so on 3/23/19. AV3-30. I was sure to email Ms. Cortright that day, 3/23/19, informing her I would be leaving early since I was not feeling well but would complete the essentials and this was directly related to Crohn’s symptoms I was experiencing. AV1-397 to 398 and AV2-55. I had in fact loaded the specimens I was responsible for which were located in the specimen drop off area although I had not seen the “missed” bone marrow specimen because it was simply not there. AV3-136. Had it been I would’ve loaded it with the specimens I did load especially if it was urgent. Never has any information regarding urgent specimens been communicated to me via telephone messages. I tried correcting myself because I did start saying I “missed” the specimen rather than I “hadn’t seen” the specimen because it wasn’t where it should’ve been. AV3-146 and 270 to 271. I also assumed the specimen I was accused of “missing” could’ve been located behind a stack of folders, that were not in the specimen drop off area as the defendant claims, but by the phone because I did

remember seeing folders but I wasn't responsible for taking care of them and I was not feeling well enough to do so. AV1-161 and AV3-137. Ms. Cortright claimed the specimen was urgent which is false and I had left bone marrow specimens in the past which was never a problem until then. AV3-258 and 271. There wasn't any delay in patient care, if there had been a bone marrow specimen because we had a process we ran specifically for the specimens that were brought to the lab after hours. AV3-258. I would have been written up for this incident since it directly involved patient care but I wasn't and was never given a surgical number or even a time that it was left in the lab, which could've been after hours. I was simply accused by Ms. Cortright. Since Ms. Cortright started avoiding me via email after being investigated by Ms. Gallagher, she purposely neglected to respond to the email I sent notifying her I wasn't well due to Crohn's symptoms. She claimed she had not seen my email which was never a problem before that weekend yet still accused me of not doing my job when she could have had another tech come in if she simply checked her email, if that was the case. AV1-396. After I made the first race based complaint to Ms. Cortright I texted her 6/7/18 that I would report her to someone above her if she was going to continue to allow Ms. Mitchell to retaliate against me. Ms. Mitchell somehow found out I made a complaint on 6/5/18 because I never spoke to her about it until 6/8/18 when I asked her why she was mean to just myself. AV1-247. At any rate, soon after this text message Ms. Mitchell then told me that I wasn't allowed to communicate with her via text message any longer although I had been contacting her that way for over a year. She decided to block my phone number. AV1-160. She specifically told me to email her which I began doing but now she was ignoring my emails so she could set me up for failure and it worked.

I never admitted that I was a no call/no show. AV1-104. I admitted that I had not shown up for work on 4/1/19 because I wasn't on the schedule to do so having been given the option by Ms. Cortright. AV3-137 to 138. I specifically told Mr. St. John that I was not a no call/no show on 4/1/19 in an email sent the morning I was terminated, not knowing I would soon be terminated, since I was apprehensive that Ms. Cortright would be honest regarding this which I was correct in assuming. AV1-160 to 161. However, Mr. St. John never looked into this to see if it held true the same way he neglected to take my other complaints into serious consideration and only acted annoyed with me. AV2-273. He knew very well of my work ethic having made positive comments in several of my past evaluations, until Ms. Cortright convinced him otherwise with all her lies. AV3-9, and 28. Again, I was never allowed to view my personnel file so I haven't any idea as to what could have possibly been put in it to make him and human resources believe that I had such outrageous performance and behavioral issues that warranted termination. I was clearly set up having been taken off Saturdays after Ms. Cortright was investigated by Ms. Gallagher earlier in the month which allowed Ms. Cortright to accuse me of being a no call/no show. AV3-30. Ms. Cortright said there were reasons as to why I was removed from working Saturdays but after being terminated it became crystal clear as to why. Just as she had the weekend prior 3/23/19, Ms. Cortright neglected to respond to the emails I sent 3/29/19 acknowledging my decision not to work for 4 hours, 4/1/19. AV1-160 to 161. She sent human resources the final email I sent her saying that it was all I sent her and it was too much of a short notice. Appendix F.

In the termination letter it stated that based on the circumstances regarding my termination that I was ineligible for rehire anywhere within UVMMC, which was absolutely wrong since I was terminated based on fabrications made by Ms. Cortright. AV3-30. When I

was terminated Ms. Cortright also informed me that she would not write me a reference (stated clearly in a recording that was produced during discovery) when that was the only professional job I had had after graduating from the University of Vermont in 2003 and had planned on retiring from.

Each level of corrective action begins stating that UVMMC's goal is to provide a healthy and safe environment for colleagues by following established policies. AV3-20, 23 and 30. The last 10 months of employment are 10 months I would never subject anyone to, not even those that were responsible for the treatment I endured. This included my supervisor Ms. Cortright, and 3 leads Ms. Mitchell, Ms. Buskey and sometimes Mr. Tembruell. AV2-90. I was treated as if I didn't have any rights, especially the right to be treated equally, and made to feel that my complaints were invalid having turned them into concerns about performance and behavior which only masked obvious malicious intent. I was closely monitored as an intimidation tactic, not taken seriously, made to feel inferior, not referred to by name, gas lit, timed when using the bathroom so I limited this to twice a day to stay out of the spotlight, given a poor retaliatory evaluation rating, invalidated, treated like an outcast, unprotected from unprofessional treatment, ignored, avoided, denied a full break, harassed, not allowed to partake in new lab procedures such as cutting biopsies, told my work was sloppy, told I was a horrible histologist, given a schedule change in retaliation for summoning a second HR representative, disliked, at risk due to Crohn's symptoms getting progressively worse, made sick, lied about, lied to, set-up for failure, disrespected, in therapy due to such poor treatment making me feel suicidal, subjected to a toxic work environment, denied a raise, slowly losing my quality of life, bullied, treated poorly, denied necessary accommodations, given every level of disciplinary action, never given any credit for running the entire lab on Saturdays independently (Ms. Cortright claimed I had all of

these behavioral issues yet allowed me to work alone on the weekends the entire time I was given disciplinary action which doesn't make sense) and terminated during this 10 month span. AV1-163, 171 to 173, 184, 188, 203, 204, 215, 232, 237, 234, 254, 280, 288, 324, 326, 333, 335, 354, 389, 397, and 408 to 410. AV2-120, 131, 311, and 454. AV3-140 to 142, 149, 151, 154, 155, 156, 158 187, and 264. If the fact that only I was treated in this fashion during the last 10 months of my career isn't viewed as discriminatory, retaliatory, and above all illegal I don't know what is? I didn't list being micromanaged simply because Ms. Mitchell did this with a majority of coworkers, but she didn't dislike or treat them poorly, lie about them, or aid in their termination as she did me which is the difference. AV1-134. Ms. Cortright was a supervisor and Ms. Mitchell, a lead that only abused their power trying to force me to quit but when I didn't give in they took matters into their own hands illegally making sure that I was terminated.

AV1-398.

To make matters worse, Ms. Cortright again punished me by informing unemployment that there had been misconduct which led to termination so I was denied when I applied right after termination. Luckily, I appealed this false allegation and was able to then receive unemployment. Appendix F. I was also replaced by a younger Caucasian female by the name of Amber Picowitz. AV2-126. I had not realized we crossed paths at Ms. Kerr's home after I was terminated until I recognized her name in Mr. Barker-Rowe's testimony upon appeal to the Vermont Supreme Court of Appeals. AV3-67 to 69.

Both the Vermont Superior Court, Judge Toor and the Vermont Supreme Court of Appeals, Associate Justice Waples agreed I made out a prima facie case and that UVMMC's legitimate nondiscriminatory reason for my termination was every level of disciplinary action I received due to performance and behavior although there wasn't any documentation of the

wrongdoings I was accused of in the record. AV1-44. These levels should include an investigatory meeting first, the verbal warning, the letter of understanding, the final written warning and termination. AV1-44 and AV2-207 to 208. Each level is interconnected to the next so one can't be issued without the other when issued fairly and according to UVMMC policy. AV2-206 to 208. There was never an investigatory meeting held with Ms. Cortright prior to issuing the verbal warning as Ms. Armstrong stated, nor was I informed in any other way that I was to be given disciplinary action. AV2-206. Both Courts also claimed that I admitted to missing an urgent bone marrow 3/23/19, and to being a no call/ no show on 4/1/19 which are also false. My testimony and evidence submitted clearly proves this.

The Vermont Superior Court stated that I didn't show any concrete "circumstances surrounding the adverse employment action [that] permitted an inference of discrimination" and discredited one of the attempts I made at making a complaint due to race and/or disabilities because I ended the sentence with a question mark. AV1-38. Regardless, it was another failed attempt to make a complaint about being treated poorly for protected characteristics which was again, never addressed until the next year after I was in contact with another human resources representative, Ms. Gallagher. If Judge Toor didn't view this as an issue that warranted being looked into, why would UVMMC? Due to this I continued to be subjected to poor treatment and was given more disciplinary action which would have never happened if my complaints were addressed. Ms. Cortright's office was located outside of the lab but she would purposely make it a point to stay in the lab and watch me from different areas, trying to intimidate me so I would be more apt to make mistakes. She solicited information from Ms. Mitchell, the other perpetrator I made several complaints about because she forced me to work in the areas supervised by Ms. Mitchell for extended periods of time so she was able to do this daily. Mr. Barker-Rowe testified

Ms. Mitchell informed him of at least 1 or 2 mistakes a week, yet was never given corrective action let alone terminated, proving that a comparator was treated more favorably than myself. AV1-134 and AV2-130. Relying on fabrications made by Ms. Mitchell is a contributing factor as to why I received disciplinary action leading to termination when I should have never been forced to work with her. Judge Toor, claimed that there is nothing beyond speculation to support my claim which shows that evidence wasn't viewed in a light most favorable to the non movant. AV1-40. Judge Toor said the relationship between Ms. Mitchell and I was strained and stressed for the both of us seemed off-base since there is nothing in the record that supports Ms. Mitchell's assertions except for stray criticisms she made herself in my yearly evaluations and the fact that Ms. Cortright backed everything Ms. Mitchell claimed. AV1-40. I was the victim that was bullied, having suffered through things I shouldn't have and was ultimately terminated, not Ms. Mitchell. None of my co-workers said that I treated Ms. Mitchell poorly as it was the other way around. I didn't have the capability and even if I had the rank to do so, I wouldn't, which is why I relied on those above me to protect me.

The Vermont Supreme Court of Appeals claimed that there must be a nondiscriminatory reason for termination in order for the defendant to prevent summary judgment which they didn't present. Again, the disciplinary action I received was only issued to myself, although based on false allegations when Mr. Barker Rowe admitted to making at least 2 mistakes per week without even a warning. This is blatant discrimination. Not only that but illegitimate due to lack of documentation proving these false allegations at every step to be true. Associate Justice Waples said the defendant consistently identified a pattern of poor communication which shows that she overlooked the fact that my name wasn't ever used by either Ms. Mitchell or Ms. Cortright so when they addressed me I wouldn't answer not knowing I was being spoken to and was accused

of ignoring both of them. Ms. Mitchell made stray criticisms in my evaluations and I testified that they were stated but I never said that they held true. AV3-7, and 96. These criticisms regarding communication and constructive criticism (it was criticism not constructive criticism) began once I was assigned to areas of the lab Ms. Mitchell supervised, nearly a year after I became a Histologist. AV2-314. Ms. Cortright looked over all of my past performance evaluations then decided to bring those criticisms back to life since she had no basis for issuing disciplinary action. This also made it seem as if these were longstanding concerns, although Ms. Cortright seemed to have skipped over 2017 as my evaluation reads nothing of what she claimed in my 2018 evaluation. With this said summary judgment was granted in the movants favor.

Similar issues arose with the disability claim. Both the Vermont Superior Court and the Vermont Supreme Court of Appeals agreed I made out a prima facie case and that UVMMC's legitimate nondiscriminatory reason for my termination was every level of disciplinary action I received due to performance and behavior. As stated above this was not legitimate nor nondiscriminatory. Both courts said I didn't have enough evidence essentially proving pretext. My mental health and health overall were declining due to the toxic work environment but I still made fewer mistakes than Mr. Barker Rowe except I was given disciplinary action and ultimately terminated while he never suffered any adverse actions. AV2-36 and 130. I was forced to neglect restrictions for my ailments but when I did use accommodations I was punished and accused of not following protocol. Being threatened that I would receive disciplinary action if I didn't go to break at a certain time, and disregarding my doctor's note was wrong.

Judge Toor claims Ms. Cortright changed the wording in my evaluation regarding sitting and standing but this isn't true nor does it list this anywhere in the evaluation. She also said it wasn't my breaks that were an issue, it was the fact that I never notified others of these breaks

which is also not true. This was taken out of my evaluation after my appeal which proved this false allegation was a lie. Judge Toor referred to an incident that never happened trying to confirm this herself having cited Ms. Cortright's false allegation regarding a kidney that I never dealt with. AV1-42, 227 and 182. Ms. Armstrong said I didn't need to find coverage every time I left the room when I told her that I was responsible for doing so when I used the bathroom or if I was going to break when I was the only one that was responsible for doing this, but I was accused of not doing so. AV1-163, AV2-241 and 242. There is evidence in the record that I had been given accommodations but some of them were not put in place and purposely disregarded immediately after my complaint having been forced to work with Ms. Mitchell for weeks at a time which required me to stand for a majority of the day. I was also illegally punished having to read all the procedure manuals for sitting rather than standing, I was warned of disciplinary action due to Ms. Cortright not allowing me to take my break at a time made clear in a note from my doctor, I was denied a full break unlike others, and when I used the bathroom I was timed unlike others. AV1-232, 392, 396, 398, 403, AV2-454, and AV3-252 to 253. This was done by both Ms. Cortright and Ms. Mitchell. I wasn't criticized in an evaluation for sitting rather than standing, I was told I wasn't following a protocol that never existed until after I was punished for it. Both Ms. Mitchell and Ms. Cortright tried to cover their wrongdoing by having the procedure completely changed in the system and one protocol manual. AV1-187 to 188. They were unable to change it in the manual I already had in my possession and I caught the discrepancy after having been forced to read every manual illegally. Ms. Cortright continued to claim I didn't follow protocol in every level of corrective action given yet never claimed which ones I truly didn't follow and never mentioned this in my 2017 evaluation. Judge Toor granted summary judgment having said the evidence I offered suggested a personality conflict. AV1-42.

Supreme court justice Waples agreed with the lower court decision and upheld the verdict. She claimed that since sitting was never mentioned in my evaluation or in any step of the disciplinary action process that it was never an issue. Again, I was told I wasn't following protocol due to utilizing the accommodations I had and Ms. Cortright was aware of it.

Lastly, both Courts agreed that I was able to present a *prima facie* case of retaliatory discrimination and that the defendant articulated a legitimate nondiscriminatory reason for termination. Again, Judge Toor claimed that my complaints regarding race and disability were investigated and it was found that race wasn't a contributing factor. AV1-42. This is incorrect because my claims weren't addressed immediately or properly. She also mentioned that my complaint in my evaluation appeal was merely a speculation rather than a complaint. Judge Toor states that there isn't any evidence as to having made a complaint to Ms. Cortright 6/5/18 although my deposition states this clearly. During my deposition I was specifically asked who I reported to first that I was being treated differently due to race and my response was to Ms. Cortright on 6/5/18, as well as the fact that I agreed that Ms. Mitchell was racist. AV3-140 to 141 and 154 to 155. My claims were not addressed and I was falsely issued the verbal warning and a letter of understanding prior to speaking to Ms. Gallagher. I was issued a final written warning after having met with Ms. Gallagher not before we met as stated by Judge Toor since some of the copies of final written warning are dated incorrectly with 2/19/19 rather than 2/20/19. AV1-43. The general complaints I had had about Ms. Mitchell and Ms. Cortright were in regards to the retaliation I was receiving, not just regarding Ms. Mitchell. The record as a whole, in chronological order, when viewed in a light most favorable to the non movant would better show the many inferences of pretext there are but summary judgment was granted to the movant one again.

Supreme Court Justice Waples is correct as to when I made the first claim for disability discrimination to both Ms. Cortright and Ms. Armstrong, however, I sent Ms. Cortright an email 6/11/18 asking her why the schedule was changed and I was now working with Ms. Mitchell when I shouldn't have been soon after making my race complaint. The verbal warning was unwarranted and based on lies regardless as to when it was issued. Justice Waples herself said there is a disagreement as to why it was issued thus making it a material issue in dispute. I went to Ms. Armstrong 7/27/18 the same day I was illegally punished for using my accommodation allowing me to sit rather than stand which is when I also made complaints about everything I endured to that point. Supreme Court Associate Justice Waples agreed with the lower court having overlooked my own testimony as well as not realizing that Ms. Armstrong was a human resources representative. She is incorrect in having stated that by the time I reported to human resources that I had received 3 levels of disciplinary action. The lower court decision was upheld by the Vermont Supreme Court of Appeals so summary judgment was affirmed.

Upon trying to find representation for both the appeal and to help with filing this writ of certiorari, it was brought to my attention that my former lawyer withheld information from me that was pertinent to decisions I could have made regarding the case. Norman Watts told me I had a very good case in the beginning based on all the evidence I presented. Overtime he became doubtful and even urged me to settle which only confused me. I opted not to because I had evidence backing up all of my claims. Little did I know that he was not going to submit all of the evidence I had that was relevant to summary judgment. One example, a text message from 6/7/18 to Ms. Cortright from myself informing her I was going to report her to those higher up if she didn't put an end to the poor treatment I began receiving the day after I made my first race based claim. Aside from my deposition, and notes taken by both human resource

representatives when I stated this to them, this was the only other evidence I had to support the fact that I made a race based complaint to Ms. Cortright prior to any disciplinary action. Upon reading the entry order from the Superior Court, I immediately asked why this text message wasn't submitted and was told by Normans Watts paralegal that the subject matter was included throughout the record and having included it would have been redundant. Norman Watts then told me that I was told not to text message my supervisor so he didn't include it which is ridiculous since I was told not to text Ms. Cortright after I sent her this text message. Having said this I knew that he didn't pay as much attention to my case as he should have so I was left to piece it together as best I could with the evidence that he had included in the record. As mentioned previously, Norman Watts neglected to submit several important pieces of evidence in support of my claims. There is so much more to this case and summary judgment didn't do justice for anyone, it simply allowed the perpetrators to move on without being held accountable for their illegal actions while I continue to suffer to this very day mentally and physically. Prior to the complaint I made 6/5/18 I was doing just fine working, managing Crohn's symptoms and most importantly living. Being confined to my home most days because I can't manage the symptoms I experience from Crohn's while having to battle with the fact that I can't financially provide for myself at this time is the ultimate punishment. The worst part about all of this is the fact that it's going to continue and my effort to try and deter UVMMC from doing this has been wrongfully denied.

When I motioned to reargue, the motion was denied, having said I failed to state the points of the briefs that were overlooked or misapprehended. Summary judgment was granted to the defendant due to lack of pretext. In my motion to reargue I listed every inference of pretext I could in the record given the word limitation. This was, once again overlooked.

## **REASONS FOR GRANTING THE PETITION**

There are many reasons as to why the Supreme Court of the United States should grant this petition. This case is a prime example of how an employee made a good faith effort following organizational policy by participating in a protected activity having reported racially motivated treatment to a direct supervisor, wasn't protected but retaliated against, and ultimately terminated 10 months having done so after 17 years of service. Every complaint fell on deaf ears to those I told that had the authority to address it, put an end to it, and essentially protect me from further unprofessional treatment and/or unwarranted disciplinary action. I filed a lawsuit hoping to seek justice through the judicial system but again, my complaints fell on deaf ears and my evidence was overlooked, misapprehended from that of the record or not submitted into the record at all. Not once have I been believed even when I made sure to take notes daily for 10 months recording every instance by the hour, recorded conversations, and have witnesses to my claims which is what truly hurts. I admitted to making mistakes I did in fact make although I wouldn't have ordinarily made them if I wasn't under such duress, but they were no different or more severe than those made by my coworkers, let alone warrant only my termination. The lawyer I hired to represent me was extremely negligent not having submitted the most crucial pieces of evidence that should have been knowing the burden of proof I needed to meet. Not even the judicial system thus far has held the perpetrators accountable partly due to summary judgment, which is also why I was unfairly denied a jury trial.

Making serious complaints regarding protected characteristics is not easy and is extremely daunting knowing that retaliation is a possibility. Although it's illegal, it happens and will continue to happen simply because rather than issue accountability to the perpetrator(s) the

victim is issued disciplinary action. There should be clear safeguards in place for those making such complaints so the fear of retaliation isn't a deterrent from doing so. Making such complaints should be taken very seriously and the employee should never be told to speak to the perpetrator themselves simply because their supervisor dislikes you.

When a supervisor involves themselves in discriminating and retaliating against an employee there should also be clear safeguards in place so they are unable to abuse their power to injure that employee's career. Having the ability to access to personnel files (past supervisor notes, past evaluations, etc.), write up employees, discipline employees, assign employees to job duties, accommodate employees, evaluate employees, deny appeals regarding disciplinary action, terminate employees and assign break times for employees are among the many powers a supervisor has which can very easily be abused in a discriminatory or retaliatory fashion.

Allegations made by a supervisor shouldn't be valid simply because they concoct a list of false allegations. If allegations are to be held as true they should be accompanied with documented evidence stating when it occurred, what the incident involved, who the incident involved, and where it occurred especially if disciplinary action is issued. Broad allegations such as "doesn't follow procedure" or "poor communication" are just that, broad allegations. An employee shouldn't be left to fend for themselves to disprove an immediate supervisor's false allegations especially if they are guilty of illegal treatment. An employee should be allowed to view their personnel files when asked and denial of such is against UVMMC policy. Although Ms. Cortright was able to deny under oath that she illegally punished me, once I proved that this was a lie Ms. Cortright was still not held accountable because Ms. Armstrong said Mr. St. John was responsible for having punished me and in the record it states the entire ordeal as having been

criticized for sitting rather than standing. I wasn't heard because Ms. Cortright is the supervisor and I was just a disposable Histologist.

Workplace investigations into complaints made by employees regarding protected characteristics should be prompt, thorough, very professional, truthful, unbiased, and taken seriously. Not doing so puts the employee at an even higher risk of suffering adverse actions rendering the employee powerless which is unfair, unethical, and illegal. Some of the illegal treatment I received was very subtle but most of it wasn't, which is why questioning coworkers was an imperative part of the investigation but was omitted in this case. Until reading their depositions I was unaware of the things that were said about me when I wasn't present at work, such as being called an urban princess which is extremely hurtful regardless as to whether or not it is viewed this way to others. I was questioned having made the complaint and both of the perpetrators, one a supervisor and the other a lead which is unacceptable. I was ganged up on as far as an investigation and the perpetrators were believed. AV1-276 to 283 and 301 to 305. Ms. Cortright said she didn't look into my concerns because I refused to have a meeting with both her and Ms. Mitchell because I didn't want to be ganged up on. AV1-279. Instead she forced me to work under Ms. Mitchell, having known she disliked me and treated me unprofessionally.

Being forced to work with one of the perpetrators was not protecting me from the treatment I made a complaint about. Due to the accommodations I had in place I should have never been placed in areas Ms. Mitchell supervised. Since I was made to speak to the perpetrator myself, I was forced to make my complaint known to her and she was then able to destroy my career with the aid of my supervisor who then became a perpetrator herself after I threatened to go above her as mentioned previously. It wasn't until I was issued the letter of understanding

when Ms. Cortright hadn't a problem with me going above her, since she already falsely issued disciplinary action.

Summary judgment is a mechanism used to prevent cases lacking merit from a jury trial which is excellent because it saves a lot of time, some money and valuable resources not having to do so. Unfortunately, cases that do have merit are denied jury trials using this mechanism which is unconstitutional. Isolating out single instances doesn't do a case such as this justice and should be viewed as a whole since chronology is one of the most important factors with every claim. It's as simple as cause and effect. I made complaints about the illegal discriminatory treatment I endured, then I was retaliated against in the most unprofessional and crippling ways, but I never stopped making complaints so the retaliation resulted in termination.

I have documented evidence in support of my arguments as the nonmovant but it was clearly overlooked. There is simply no evidence aside from my admittance of the wrongdoing I was in fact responsible for over the span of nearly 10 months and that alone would never warrant any disciplinary action. AV1-182. The 2 or 3 write ups I signed off on were not submitted simply because Ms. Cortright would have to provide write-ups for the false allegations that don't exist nor would I have signed off on false allegations. This is why they wouldn't allow me to see my personnel file or provide me with proof of wrongdoings when I asked at every step of the disciplinary action process.

When there are several issues of material fact in dispute that a jury would be responsible for deciding, judges shouldn't be allowed to make these decisions themselves in favor of the movant especially when evidence is to be viewed in the non-movant's favor. One very important example, Vermont Supreme Court Associate Justice Waples, concluded that there was disagreement as to why the verbal warning was issued. This is one of the most crucial material

facts in dispute since it is the basis of the legitimate nondiscriminatory reason for my termination. Without the verbal warning I shouldn't have been terminated as this was the basis of every level of disciplinary action I received. Since it was unwarranted I shouldn't have received the next level and so on and so forth. Rather she made the decision herself to side with the moving party without evidence of it being warranted since the decision of the lower court was affirmed. I consistently made the argument that it was unwarranted and not issued according to UVMMC protocol since I should have been warned that Ms. Cortright was contemplating issuing one for reasons she would have discussed prior to issuance.

Unfortunately, due to the negligence of my former employment attorney, Norman Watts, of Watt's Law Firm, he didn't submit all the evidence he should have and a few examples are as follows. A text message on 6/7/18 from myself to Ms. Cortright regarding my race claim and threatening to report her if she continued to allow Ms. Mitchell to mistreat me and reminding her that she initially thought Ms. Mitchell possibly be racist due to the way she treated me differently compared to my coworkers. Appendix F. An email 3/14/19 Ms. Cortright asked Ms. Gallagher when the investigation would be concluded because she lied saying she was going to terminate me for things she claimed I had recently done just so the investigation would end which worked and my evidence was never viewed nor were coworkers questioned by Ms. Gallagher. Appendix F. Not to mention I wasn't terminated until 4/3/19 which further proves Ms. Cortrights malicious intent. An email thread from 3/29/19 between myself and Ms. Cortright. Appendix F. She gave me the option to work 4/1/19 also proving I was not a no call no show which I never once admitted having said I didn't come to work 4/1/19 which is not admitting I was a no call/ no show 4/1/19. AV1-34. The very specific evidence that both Courts said was needed in support of my claims wasn't submitted which doesn't make sense. Once summary judgment was granted

to the movant, my attorney withdrew from the case and told me to contact the Vermont Bar when I asked to appeal. He never gave me any options as to what could have been done prior to appealing to the Vermont Supreme Court of Appeals and left me to fend for myself. When searching for a new attorney I was told that Norman Watt's withheld informing me of pertinent information. (Appendix F).

Overlooking, improperly deciding and misinterpreting evidence for any reason should not deny a person a trial by jury. This simply allows the problem to continue and those that are responsible are never held accountable. After becoming public about the entire ordeal, I have heard of many others that have dealt with different types of discrimination, a majority from UVMMC alone, but have not had the courage to stand up for themselves due to fear of suffering adverse actions. Some of these people decided to quit on their own due to the unbearable treatment and never sought justice. Discrimination exists and will always exist but it doesn't have to to the extent that it does. So much more can be done to help this and it starts with holding those that are guilty of doing so accountable.

This is the last attempt I have at finally being heard and the perpetrators held accountable. Now that several years have passed with my mental health slowly beginning to improve, I can better fight for myself with a lot less emotion and can clearly see that I've been fighting for myself by myself since 6/5/18. I am no longer ashamed of what I suffered through which is why I am now able to speak to others about my ordeal. I will no longer blame myself because others chose to do to me. I did my best at resolving the issue, having made a complaint to someone that should have addressed it. I never asked for any of this to reach the level it has now come to and if my termination was warranted I would not continue to put up such a taxing fight trying to seek justice the right way. I'm not falsely accusing anyone of wrongdoing, I'm making it known that

those responsible should be held accountable for their wrongdoing. I made a good faith effort using organizational policy to discontinue the poor treatment and the policy failed me. When blatantly obvious discrimination takes place to the magnitude it did to myself when working at UVMMC during the last 10 months of my employment that should be a red flag to anyone reviewing this case that something needs to change and soon. An effort made from everyone would alleviate much of the problem. Policies that UVMMC has in place for supervisors, and human resources when dealing with complaints similar to the ones I made need to be updated and enforced. Also if victims knew of what was needed to fulfill their burden of proof prior to turning to the judicial system when seeking justice that would deter some of those with cases that lack merit from filing suit to begin with. Any type of discrimination is unwarranted and for those that do not have the evidence needed to prove that it took place, I can only assume it is devastating. To be told that a life changing experience that only you experienced, which is backed by an abundance of evidence, should be thrown out is unlawful. This only adds to the problem because it allows discrimination to continue instead of holding those accountable which would more than likely deter others from doing. Change needs to begin somewhere.

I come from a family of 21 children, 19 of which were adopted so we are all different races and colors. Having older Caucasian parents both born and raised in Vermont, although my father has passed, I could always physically see the difference in skin color from a young age but I never once was made to feel any different or that I was beneath them. I don't need to be liked by anyone that simply just doesn't like me, as that is their right but I don't deserve to be treated poorly or differently. I never reciprocated the poor treatment to those that did so to me, not once. I would simply report these incidents to management.

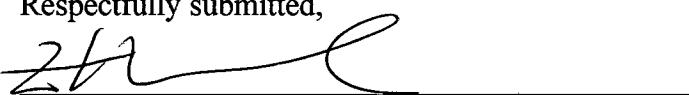
I have nieces, nephews, extended family and friends of different races and colors, some of which are African American. Since UVMMC is one of the largest employers in the state of Vermont, chances are that at least a few of them will be employed at UVMMC during some point in their lives. I would feel partially responsible if this was to happen to them or anyone else for that matter, which is one of the driving forces that allows me to continue on this uphill battle. I don't expect anyone to take my word for it, or feel any sympathy towards me because the evidence should speak for itself. I am by no means trying to destroy the reputation of one of the biggest employers in the state of Vermont, but am simply trying to hold them accountable. They are responsible for allowing such an injustice to happen to an employee that simply loved their job and wanted to do it to the best of their ability thus making a complaint when another was trying to compromise this for a reason I couldn't and wouldn't ever change, my race.

Lastly, I have faith that the Supreme Court of the United States will properly address this case as a matter of law, if chosen. After all that has happened from 6/5/18 to 7/17/23, I do not trust the state of Vermont having exhausted every avenue to no avail. I've simply been surviving one day at a time for the past 5 years and it's time that I start to live the life I deserve. I will better be able to do so knowing that I've made the ultimate attempt at trying to right this wrong.

## **CONCLUSION**

For the foregoing reasons, I kindly request that this Court issue a writ of certiorari to review the judgment of the Vermont Supreme Court of Appeals and Vermont Superior Court.

Respectfully submitted,



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Date: 10 / 4 / 23