

**District of Columbia  
Court of Appeals**



**No. 14-CF-1074**

BERNARD J. FLEMING,

Appellant,

v.

**CF1-1328-14**

UNITED STATES,

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, Thompson,  
Beckwith, Easterly, and McLeese, Associate Judges.

**ORDER**

(FILED — March 19, 2020)

The en banc court issued its opinion in this case on January 30, 2020. *Fleming v. United States*, No. 14-CF-1074, 2020 WL 488651 (D.C. Jan. 30, 2020) (en banc). Appellant Fleming has filed an emergency motion to amend the opinion, and the Public Defender Service as amicus curiae has filed a memorandum in support of the motion. Mr. Fleming's motion raises the concern that the model instruction at p. \*9 of the court's opinion, and the illustration at p. \*7 of the court's opinion, could be misinterpreted as implying that the court intended to eliminate the general requirement of concurrence between a defendant's mens rea and actus reus.

It is hereby ORDERED that the motion is denied. The model instruction and the illustration in the opinion are directed solely at the issue of causation. They are not intended to address the distinct general requirement, noted at p. \*10 of the court's opinion, of concurrence between the mens rea and the actus reus of an offense.

Judges Beckwith and Easterly point to the analysis of these issues in Judge Easterly's opinion concurring in the judgment. 2020 WL 488651, at \*13.

**PER CURIAM**