IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 22-0094

LOYD FRANKLIN RANSOM, JR.,

PETITIONER,

VERSUS

GUARDIAN REHABILITATION SERVICES, INC., AND GUARDIAN ELDER CARE AT FAIRMONT, LLC,

RESPONDENTS.

APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT OF MARION COUNTY, CASE NO. CC-24-2019-C-93

PETITIONER'S OPENING BRIEF

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PETITIONER'S OPENING BRIEF

I. Assignments of Error

1. The Trial Court erred in granting Defendants' motion for summary judgment, and in denying plaintiff's motion for partial summary judgment, in that the Trial Court misinterpreted the WEST VIRGINIA BUSINESS LIABILITY PROTECTION ACT, W. VA. CODE § 61-7-14, by failing to conclude that W. VA. CODE § 61-7-14(d)(3)(B) (specifically addressing employment and termination) controlled the termination in issue, and by concluding improperly that W. VA. CODE § 61-7-14(d)(1) (generally applying to all property owners and lessees) controlled. As part of that error, the Trial Court erred by concluding that an employee's firearm must be "out of view" for an employee to have any protection from discharge, where the employee has his lawfully owned firearm locked inside his vehicle in the employer's parking lot.

2. The Trial Court erred in granting Defendants' motion for summary judgment, because, even assuming that Section 61-7-14(d)(1) of the West Virginia Business Liability Protection Act controls, requiring the firearm to be "out of view", the Trial Court misinterpreted the meaning of "out of view" and misapplied summary judgment standards, because a material issue of fact existed as to whether the firearm was "out of view".

3. The Trial Court erred in granting Defendants' motion for summary judgment as to Plaintiff's claim under *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 275 (1978), in that the Trial Court wrongly concluded that Defendants did not violate the Business Liability Protection Act, so the Trial Court concluded there could be no viable Harless claim.

II. Statement of the Case

A. Procedure

1. On May 23, 2019, Plaintiff (Petitioner in this Appeal) filed a Complaint against Defendants Guardian Rehabilitation Services, Inc., and Guardian Elder Care at Fairmont, LLC (Respondents in this Appeal), alleging two causes of action, wrongful discharge in violation of the West Virginia Business Liability Protection Act, W. Va. Code. 61-7-14 ("BLPA") and wrongful discharge under *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270 (1978) (with the substantial public policy being the violation of the BLPA) (A.R. 1). Defendants answered on August 2, 2019 (A.R. 12).[1]

1. On August 13, 2021, Defendants filed a Motion for Summary Judgment (A.R. 27) and a Memorandum of Law in Support of Motion for Summary Judgment (A.R. 30). Defendants sought summary judgment on all matters. Plaintiff's Opposition to Defendants' Motion for Summary Judgment was filed on September 16, 2021 (A.R. 86). Defendants filed a Reply Brief in Support of Defendants' Motion for Summary Judgment on September 16, 2021 (A.R. 79).

2. On September 2, 2021, Plaintiff filed a Motion for Partial Summary Judgment (A.R. 49) and Memorandum of Law in Support of Motion for Partial Summary Judgment (A.R. 53). Plaintiff sought summary judgment on liability on both causes of action, but not on damages

[1] References to the Appendix Record—the contents of which were agreed to by the parties—are set forth as "A.R. __."

(A.R. 49, 55). Defendants' Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment was filed on September 15, 2021 (A.R. 68).

3. A hearing was conducted on the cross motions for summary judgment on September 17, 2021 (A.R. 212 (transcript); 117 (docket notes); 120 (plaintiff's handouts at the hearing)).

4. The Trial Court announced at the end of the hearing that he was granting Defendants' motion for summary judgment and denying Plaintiff's motion for partial summary judgment, based on the Court siding with Defendants' interpretation of § 61-7-14 of the Business Liability Protection Act (A.R. 233). On October 8, 2021, the Trial Court entered its order granting Defendants' motion for summary judgment and denying Plaintiff's motion for partial summary judgment (A.R. 205).

5. Plaintiff appealed that decision through a notice of appeal filed with this court on November 8, 2021 (A.R. 254). Because of the difference between the name of the plaintiff below and the name of the petitioner on the notice of appeal (Franklin Ransom as plaintiff (the name he "goes by") and Loyd Franklin Ransom, Jr. on appeal (his proper legal name)), the Clerk of Court for this Court issued an Order on December 6, 2021 (A.R. 236), refusing to docket the appeal (based on the incorrect assumption that petitioner was a different person from the plaintiff below) (A.R. 254 (order refusing to docket appeal); 236 (incorrect assumption)).

6. The Clerk of Court for this Court informed undersigned counsel by phone that the December 6 Order constituted a dismissal of the appeal, and that Mr. Ransom would have to obtain an amended summary judgment order from the trial court correcting Mr. Ransom's name at the trial court; and would have to file a second notice of appeal from the amended summary judgment order (A.R. 262-263).

7. Mr. Ransom then filed a motion with the trial court on December 9, 2021 to correct his name in the Circuit Clerk file (from Franklin Ransom to Loyd Franklin Ransom, Jr.) and to amend the summary judgment order so that it reflects the corrected name (A.R. 236). The Trial Court granted that motion on January 3, 2022 (A.R. 261 (hearing transcript); 267 (docket notes); 269 (order granting motion to correct name)), and on January 10, 2022 issued the amended summary judgment order (correcting Mr. Ransom's name) that is the subject of this Appeal (A.R. 282).

8. Relief Sought: Petitioner (Plaintiff below) seeks reversal of the Trial Court's (a) summary judgment (in favor of Defendants) and (b) dismissal of this case (see Amended Order Granting Defendants' Motion for Summary Judgment and Dismissing Case from Docket, entered January 10, 2022, A.R. 282), and seeks an order instructing the Trial Court to grant the Plaintiff's motion for partial summary judgment on liability, and seeks a remand for new trial on damages. Alternatively, even if the firearm in issue had to be "out of view", Petitioner seeks an order remanding this case for new trial. Plaintiff seeks his taxable appeal costs and attorneys' fees under the BLPA.

B. Facts

9. The following is a sequence of those events which are relevant to this Appeal. The facts more important to the specific summary judgment issues will be discussed in more detail below in the discussion section of this Brief.

10. On October 1, 2018:

a. Loyd Franklin Ransom, Jr. ("Mr. Ransom") begins working at Guardian Elder Care of Fairmont, LLC ("Guardian Elder care") as a licensed Occupational Therapist Assistant in Fairmont (A.R. 103, Ransom Affidavit at 1, ¶ 2).

b. Mr. Ransom worked at the Guardian workplace in Fairmont from October 1, 2018 until he was fired on October 22, 2018 (A.R, Ransom Affidavit at 2, ¶ 5).

c. In going to work for Guardian, Mr. Ransom continued to live with his wife in Cool Ridge, WV, roughly a 3-hour drive from his job in Fairmont. Mr. Ransom

rented an apartment in Fairmont to stay during the work week (A.R. 104, Ransom Affidavit at 2, ¶¶ 6-7).

d. Mr. Ransom worked during the week for Defendants and drove home (commuted) during the weekend to be with his wife. (A.R. 104, Ransom Affidavit at 2, ¶¶ 6-7).

e. Mr. Ransom was a firearm owner and lawfully owned the rifle in issue (A.R. 105-107, Ransom Affidavit at 3, ¶ 8, at 4-5, ¶¶ 14-15).

11. On October 21, 2018 (Sunday):

a. During the weekend, Mr. Ransom had been at his home in Cool Ridge WV with his wife, and drove late Sunday to Fairmont to go to work the next day at Guardian (A.R. 1099-110, Ransom Affidavit at 7-8, ¶ 19(a)-(c)).

b. Mr. Ransom drove with his lawfully owned rifle in his red 2012 Ford Focus Hatchback, with dark tinted windows and a black interior (A.R. 107-108, Ransom Affidavit at 5-6, ¶¶ 16-18).

c. The rifle stock was collapsed (so the gun was inoperable), and the rifle was on the floorboard in the front passenger area. He also had in his car: clothing, a suitcase containing the bullets and magazine for the rifle, and other items he brought from his home in Cool Ridge to his work apartment in Fairmont. (A.R. 109-110, Ransom Affidavit at 7-8, ¶ 19(a)-(c)).

d. Mr. Ransom got to his Fairmont apartment about 10:30pm (after the 3-hour drive), and carried multiple loads of possessions from his car upstairs to his apartment, but forgot in the car the collapsed rifle (sitting on the floorboard in the front passenger area). (A.R. 105, Ransom Affidavit at 3, ¶¶ 11-12).

12. October 22, 2018 (Monday):

a. Ransom drove to work in the morning, arriving at 6:30am. (A.R. 110, Ransom Affidavit at 8, ¶ 19(d)-(g)).

b. As he started to leave his apartment, he realized he left his rifle on the floorboard in the front passenger area, and while driving to work covered the rifle with a dark jacket and a dark computer case. Mr. Ransom arrived at work at Guardian at 6:30am. There was no ammunition and magazine in the rifle and anywhere else in the car. Those items were in his apartment (A.R. 110, Ransom Affidavit at 8, ¶ 19(d)).

c. Mr. Ransom parked his locked car in an area of the parking lot at the Guardian facility where employees (not customers and residents) parked; Mr. Ransom went to work as usual (A.R. 110, Ransom Affidavit at 8, ¶ 19(e)).

d. Around noon, Guardian Elder Care Director of Rehabilitation, Kirstein Smith, told Mr. Ransom that someone saw his rifle in his car, and instructed Mr. Ransom to drive his car to his Fairmont apartment, leave the rifle at his apartment, and return to work. Ransom was fully compliant, did exactly as requested, and returned to work with his car and left his rifle at his apartment (A.R. 111, Ransom Affidavit at 9, ¶ 22).

e. Later in the day, Mr. Ransom was brought back into the management offices at Guardian and was fired by 3 employees working for Defendants: Kirsten Smith (Director of Rehabilitation at Guardian Elder Care), Beth Harris (Administrator at Guardian Elder Care), and Betsy Myers (by phone, Area Manager for Guardian Rehabilitation). Mr. Ransom was fired solely because he had a firearm in his locked car, and the Defendants' handbook completely prohibited the possession of the firearm on company property—and that company policy violated West Virginia law. (A.R. 111-112, Ransom Affidavit at 9-10, ¶¶ 22-25 (firing); A.R. 112-114, Ransom Affidavit at 10-12, ¶¶ 26-29 (handbook)).

III. Summary of Argument

13. There is no dispute in this case that Mr. Ransom was fired because he had a firearm locked in his car at work on October 22, 2018. As the summary judgment discussed in detail below demonstrates, Respondents fired Mr. Ransom because they were applying a handbook (A.R. 113-114) which made it a fireable offense to possess a firearm at work, and it didn't matter whether the firearm was hidden in a car or not. The handbook violated the Business Liability Protection Act. Mr. Ransom was fired for *possessing* a firearm (A.R. 112, ¶ 25).

14. But the Business Liability Protection Act expressly forbids an employer from terminating an employee who has a lawfully owned firearm in his locked car at work, and it doesn't matter whether the firearm is hidden or "out of view". § 61-7-14(d)(3)(B).

15. Respondents have postured in this lawsuit that they fired Mr. Ransom for having a firearm in his car in "open view", and they contend that § 61-7-14(d)(1) controls. That provisions deals with the general rights of property owners as to any invitees, so it is far less specific than § 61-7-14(d)(3)(B) which specifically addresses employment rights. The Trial Court agreed with Respondents on the statutory interpretation issue and granted summary judgment for Respondents (A.R. 282).

16. This case, this Appeal, and both motions for summary judgment, turn on the interpretation of WEST VIRGINIA BUSINESS LIABILITY PROTECTION ACT, W. VA. CODE § 61-7-14(d)(3)(B) ("the Act" or "BLPA").

a. If Plaintiff is correct that § 61-7-14(d)(3)(B) controls, Plaintiff wins on liability issues (on both causes of action: violation of the BLPA and *Harless*). This is because an employer may not fire an employee who has a firearm locked in his car in the company parking lot, and it is irrelevant as to whether the firearm was visible or "out of view".

b. If Defendants are correct that W. Va. Code § 61-7-14(d)(1) controls, then there are still disputed issues of fact that should send this case to trial. The disputed issue of fact is:

   i. Whether Mr. Ransom's rifle, locked in his car at work on the day he was fired, was "out of view" as set out in § 61-7-14(d)(1)? Only § 61-7-14(d)(1), which Defendants rely upon, requires that the firearm be "out of view" to be entitled to any protection as the firearm owner.

   ii. The summary judgment evidence was clear that Mr. Ransom covered his firearm (rifle) in his car on the day of his discharge with a jacket and computer case, so the firearm was "out of view". There is simply a disputed issue of fact on whether his firearm was out of view, because the mere fact that someone could see a firearm is not dispositive. "Out of view" does not mean completely concealed under all circumstances.

IV. Statement Regarding Oral Argument and Decision

17. This case poses important issues relating rights of employees who are firearm owners in West Virginia. The Trial Court described "tension" and "conflict" between the two provisions of the BLPA in issue. The rights of employees in West Virginia are significantly impacted by the interpretation of BLPA. When may an employee lawfully possess a firearm in a locked vehicle at work, and does that firearm have to be "out of view"? Important issues for West Virginia employees are at stake, and oral argument is requested, either under W. VA. R. APP. P. 20(a)(2) (oral argument for cases of fundamental public importance) or W. VA. R. APP. P. 19(a)(4) (oral argument for cases involving a narrow issue of law). For oral arguments under Rules 20 and 19, Petitioner respectfully submits oral argument under Rule 20 is appropriate (*see* W. VA. R. APP.

P. 19(g)(2)), followed by an opinion under W. VA. R. APP. P. 20(g)(2) or W. VA. R. APP. P. 19(g)(1).

V. Argument: Standards of Review

A. Standard of Review for Interpretation of Statutes

18. Assignments of Error 1 and 2, *see* Assignments of Error above at page 1, assert errors in interpreting the Business Liability Protection Act.

19. For matters "presenting a question of statutory interpretation, the applicable standard of review" is "de novo". *Kessel v. Monongalia Cnty. Gen. Hosp. Co.,* 220 W. Va. 602, 610, 648 S.E.2d 366, 374 (2007); accord Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

B. Standard of Review for Motion for Summary Judgment

20. Assignment of Error 2, *see* Assignments of Error above at page 1, asserts errors in applying standards for evaluating whether fact issues exist in connection with motions for summary judgment.

21. Under W. VA. R. CIV. P. 56, a motion for summary judgment "should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 59, 459 S.E.2d 329, 336 (1995); *Syllabus Point 3, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963).

22. Summary judgment is appropriate only if, "*from the totality of the evidence presented*, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." *Williams*, 194 W. Va. at 59, 459 S.E.2d at 336 (emphasis added) (*citing Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).

23. The circuit court's function at the summary judgment stage is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Williams*, 194 W. Va. at 59, 459 S.E.2d at 336 (citing Syllabus Point 1 of *Andrick v. Town of Buckhannon,* 187 W.Va. 706, 421 S.E.2d 247 (1992) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

24. The showing the plaintiff must make as to the elements of the prima facie case in order to defeat a motion for summary judgment is "de minimis." In "determining whether the plaintiff has met the de minimis initial burden of showing circumstances giving rise to an inference of discrimination, the function of the circuit court on a summary judgment motion is to determine whether the proffered admissible evidence shows circumstances that would be sufficient to permit a rational finder of fact to infer a discriminatory motive. It is not the province of the circuit court itself to decide what inferences should be drawn." *Syllabus Point 4, Hanlon v. Chambers*, 195 W. Va. 99, 106, 464 S.E.2d 741, 748 (1995).

25. The court is "required to resolve all ambiguities and draw all factual inferences in favor of the party against whom summary judgment is sought. The inferences to be drawn from the underlying affidavits, exhibits, answers to interrogatories, and depositions must be viewed in the light most favorable to the party opposing the motion." *Hanlon v. Chambers*, 195 W. Va. 99, 105, 464 S.E.2d 741, 747 (1995).

26. The Court may not "try issues of fact; a determination can only be made as to whether there are issues to be tried. To be specific, if there is any evidence in the record from any source from which a reasonable inference can be drawn in favor of the nonmoving party, summary judgment is improper." *Hanlon v. Chambers*, 195 W. Va. 99, 105, 464 S.E.2d 741, 747 (1995).

27. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves v. Sanderson*

Plumbing Prod., Inc., 530 U.S. 133, 150 (2000) (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

28. Summary judgment should be denied "even where there is no dispute as to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom." *Williams*, 194 W. Va. at 59, 459 S.E.2d at 336 (*citing Pierce v. Ford Motor Co.*, 190 F.2d 910, 915 (4th Cir.), *cert. denied,* 342 U.S. 887 (1951)).

29. Similarly, "when a party can show that demeanor evidence legally could affect the result, summary judgment should be denied." *Williams*, 194 W. Va. at 59, 459 S.E.2d at 336 (*citing Syllabus Point 3, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963)).

30. "Courts take special care when considering summary judgment in employment and discrimination cases because state of mind, intent, and motives may be crucial elements." *Williams*, 194 W. Va. at 61, 459 S.E.2d at 338.

31. "A circuit court's entry of summary judgment is reviewed de novo." *Hanlon v. Chambers*, 195 W. Va. 99, 105, 464 S.E.2d 741, 747 (1995) (*quoting Syl. pt.* 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994)).

VI. Argument: Assignments of Error and Discussion

A. Argument for Assignment of Error 1: Misinterpreting the Business Liability Protection Act by Requiring the Employee's Firearm to be "Out of View"

32. Assignment of Error 1 restated:

> The Trial Court erred in granting Defendants' motion for summary judgment, and in denying plaintiff's motion for partial summary judgment, in that the Trial Court misinterpreted the West Virginia Business Liability Protection Act, W. Va. Code § 61-7-14, by failing to conclude that W. Va. Code § 61-7-14(d)(3)(B) (specifically addressing employment and

termination) controlled the termination in issue, and by concluding improperly that W. Va. Code § 61-7-14(d)(1) (generally applying to all property owners and lessees) controlled. As part of that error, the Trial Court erred by concluding that an employee's firearm must be "out of view" for an employee to have any protection from discharge, where the employee has his lawfully owned firearm locked inside his vehicle in the employer's parking lot.

1. The Trial Court's Holding Misinterprets and Fails to Reconcile the Provisions of 61-7-14

33. At the hearing (A.R. 16) on the cross motions for summary judgment (A.R. 27, 30, 49, 53), the Trial Court's total analysis on the statutory interpretation issue, concerning whether § 61-7-14(d)(3)(B) or § 61-7-14(d)(1) controls, was this:

> There is *some tension in the statute* between subparts (1) [§ 61-7-14(d)(1)] and subpart (3) [§ 61-7-14(d)(3)(B)]. I'm going to resolve the tension in favor of the defendant. I can't believe that it's impermissible for an employer or a property owner to have the right to prohibit firearms if they are in view".

(A.R. 233 (emphasis added)).

34. The Trial Court went on to explain, in connection with a possible appeal:

> And perhaps the Supreme Court will be able to resolve these issues when it takes it up on appeal. Because I can't figure it out. But that's my impression, interpretation. And you're asking me to interpret it. That's how I'm doing it.

(A.R. 233).

35. The 5-page summary judgment order, prepared by defense counsel and signed without modification by the Trial Court, barely mentions this issue of two provisions. See Amended Order Granting Defendants' Motion for Summary Judgment and Dismissing Case From Docket (A.R. 282-287, "Summary Judgment Order")). The sum total of the Trial Court's analysis on addressing the "tension" (A.R 233) is in a single footnote. In fact, the Trial Court's summary judgment order nowhere even mentions § 61-7-14(d)(3)(B) except for footnote 2:

> Defendants have argued for application of subsection (d)(1). Plaintiff has argued for application of subsection (d)(3). *These subsections*, both

> of which apply to employees/employers, *are in conflict*. Subsection (d)(1) specifies that the firearm must be "out of view". While subsection (d)(3) does not specify that the firearm must be "out of view", the statute cannot be read to obviate subsection (d)(1) and its requirement that the firearm be "out of view". To read the statute to the contrary would lead to an absurd result.

(A.R. 284, fn.2 (emphasis added)).

36. First, the Trial Court's observation that both provisions apply to "employers/employees" is an incomplete statement that misreads the two provisions, for the following reasons:

a. For the *persons and entities on which the limitations are imposed*: § 61-7-14(d)(3)(B) addresses solely an "employer" and § 61-7-14(d)(1) addresses an "owner, lessee, or other person charged with the care, custody, and control of real property". Thus, the two subsections *apply their limitations* to 2 different *categories of persons and entities* (employers versus other types of property owners (or persons controlling property)). On the issue of who has limitations on their rights against firearms owners, § 61-7-14(d)(3)(B) is much more specific on focusing only on employers, whereas § 61-7-14(d)(1) much more generally addresses virtually all property owners (and virtually all persons/entities in control of property).

b. For the *persons who have rights concerning firearm possession*: § 61-7-14(d)(3)(B) protects only and specifically an "employee" and § 61-7-14(d)(1) protects "any customer, employee, or invitee". Thus, the two subsections *extend their protections* to 2 different *categories of persons*.

c. For the right of the protected person: § 61-7-14(d)(3)(B) addresses "condition[ing] employment" and § 61-7-14(d)(1) addresses "possessing" a firearm. Thus, the two subsections address firearms in two different *contexts* (employment versus general "possession")

37. Clearly, § 61-7-14(d)(3)(B) is the far more specific provision in addressing employment and whether an employer may fire ("condition employment") on possession of a firearm. Under the statutory interpretation principles discussed below, *see* ¶ 47 above on page 19, the Trial Court's decision misinterprets the statute because it fails to apply the more specific provision and it choses an interpretation that judicially modifies or abrogates § 61-7-14(d)(3)(B) (by holding that, notwithstanding § 61-7-14(d)(3)(B), an employer may fire an employee who satisfies all of the requirements of § 61-7-14(d)(3)(B)).

38. "In the construction of a statute[,] a court should seek to avoid any conflict in its provisions by endeavoring to reconcile every word, section, or part thereof, so that each shall be effective". *Brickstreet Mut. Ins. Co. v. Zurich Am. Ins. Co.*, 240 W. Va. 414, 424, 813 S.E.2d 67, 77 (2018).

39. The Trial Court's Summary Judgment Order (A.R. 282) violates that simple rule. The Trial Court's decision either rewrites, abrogates, or renders void § 61-7-14(d)(3)(B)). Petitioner's interpretation, in giving control to the more specific provision, does not similarly rewrite, abrogate, or render void § 61-7-14(d)(1).

40. To explain why Petitioner's position gives force and effect to *both* provision, it helps to understand § 61-7-14 on a broader level.

a. Rights of property owners: W. Va. Code § 61-7-14(b) gives property owners and persons controlling property (collectively, property owners") the right to "prohibit" the "carrying openly or concealing" a firearm on the person's property. Under W. Va. Code § 61-7-14(c), if the person with the firearm refuses to "relinquish" the firearm, or refuses to "leave" the premises, then the person may be prosecuted with a misdemeanor.

b. Rights of persons possessing a firearm: After giving property owners certain rights to eject someone from the property, the statute gives rights to either employees or visitors (invitees) to possess firearms in their locked vehicles on the premises. § 61-7-14(d) states that "notwithstanding the provisions of subsections (b) and (c)", certain types of property owners may not exclude or, very differently, fire, certain types of persons who possess firearms in their locked vehicles.

   i. (d)(1): Property owners (no mention of employers) in general may not prevent a "customer, employee, or invitee" ("invitees") from "possessing" a lawfully possessed firearm which is out of view and inside or locked to a vehicle, where the invitee is lawfully on the premises. *This is the provision relied on by the Trial Court (A.R. 284-285).*

   ii. (d)(2):: Property owners may not violate the privacy rights of an invitee by either asking the invitee whether the invitee has a firearm locked in or to the invitee's motor vehicle, or searching the invitee's motor vehicle.

   iii. (d)(3): "Employers" may not "condition employment" on

      (a) (A): Whether an employee or prospective employee "holds or does not hold" a firearm license, or

      (b) (B) An agreement with an "employee or prospective employee" prohibiting or preventing the employee from "keeping a legal

firearm inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes". *This is the provision relied on my Petitioner*.

c. Cause of action and Attorney General enforcement: § 61-7-14(e) then provides a cause of action for damages for violations of subsection (d); and § 61-7-14(f) provides for enforcement by the West Virginia Attorney General for violations of subsection (d).

41. It is important to understand that Petitioner's contention, that § 61-7-14(d)(3)(B)) control the summary judgment outcome in this case, does not mean that Petitioner's position negates or rewrites § 61-7-14(d)(1). Petitioner prevails under § 61-7-14(d)(3)(B)) under either of two theories:

a. If the provisions are in conflict: § 61-7-14(d)(3)(B)) applies, and § 61-7-14(d)(1) does not apply, because the former is the more specific provision and choosing the latter would rewrite the former. This rationale assumes there is "conflict" or "tension" (the Trial Court's words, A.R. 233, 284) between these two provisions.

b. If the provisions are not in conflict and can be reconciled: § 61-7-14(d)(3)(B)) and § 61-7-14(d)(1) *both* apply, and § 61-7-14(d)(3)(B)) still prevented the termination in issue.

42. The explanation for why § 61-7-14(d)(3)(B)) controls, where the two *provision are in conflict*, is discussed above.

43. The following analysis *reconciles* those two provisions, for the second theory by which Petitioner prevails:

a. Once Respondents received a report purportedly based on *observation*, that someone had seen a firearm in Mr. Ransom's car, Respondents had the right under § 61-7-14(d)(1), assuming the firearm was not "out of view", to ask Mr. Ransom to either adjust the firearm so it was out of view or take his firearm to his apartment.

b. In fact, that is precisely what Respondents did, they called Mr. Ransom into management's office and asked him to take his firearm home and to return to work, and that is precisely what Mr. Ransom did. He drove home, taking his firearm with him, put the firearm in his apartment, and drive back to work without the firearm in his car (A.R. 111, ¶ 21).

c. Had Mr. Ransom *refused* to either place the firearm "out of view" or take it home, Respondents would have arguably had the right, under a combination of § 61-7-14(d)(1) and § 61-7-14(b) & (c), to terminate Mr. Ransom because he was at that point openly refusing to either hide the firearm or remove it.

d. But once Mr. Ransom in fact did what his employer requested (driving the firearm home and returning without it), Mr. Ransom was in full compliance with § 61-7-14(d)(1). At that point, § 61-7-14(d)(3)(B)) prevented Respondents from terminating Mr. Ransom—he was in full compliance with § 61-7-14(d)(1), § 61-7-14(d)(3)(B), and even the company policy (which prohibited hidden possession even in a locked vehicle, A.R. 112-114, ¶¶ 26-29).

44. Thus, this analysis *reconciles* the two provisions and gives import and effect to both provisions.

2. Business Liability Protection Act: The Correct and Controlling Provision

a. The Correct Provision, § 61-7-14(d)(3)(B)

45. While Defendants did not attach it to their filed motion for summary judgment, they applied (in firing Mr. Ransom) an employee handbook dated April 1, 2017, which completely prohibited employees from having a firearm on company property, *regardless of whether it was locked in the employee's vehicle, and regardless of whether the firearm was "out of view" or in view* (A.R. 112-114, Affidavit of Frank Ransom at 10-12, ¶¶ 25-29).

46. In early 2018, West Virginia passed the "Business Liability Protection Act" which became effective on June 8, 2018. The Act amended W. VA. CODE § 61-7-14 to give employees specific rights concerning lawful possession of firearms in locked vehicles while at work (regardless of whether the firearm was concealed or "out of view"), and more generally gave *visitors* to property the right to possess firearms in vehicles as long as the firearm was "out of view".

47. The Defendants fired Mr. Ransom for possessing a lawfully owned firearm locked in his car, and that is clearly a violation of the law (A.R. 112-114, ¶¶ 24-30; Ransom Affidavit at 10-12, ¶¶ 24-30). Section 61-7-14(d)(3) states (and § 61-7-14(d)(3)(B) is the controlling subsection):

No employer may condition employment upon either:

> (A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to § 61-7-4 or § 61-7-4a of this code; or
>
> (B) an agreement with an employee or a prospective employee prohibiting that natural person from keeping a *legal* firearm *locked inside or locked to* a motor vehicle in a *parking lot* when the firearm is kept for *lawful purposes*. (emphasis added)

48. Section § 61-7-14(d)(3)(A) is included for context, and prohibits an employer from conditioning employment on whether or not an employee hold or does not hold a firearm license. Section § 61-7-14(d)(3)(B) is the critically important and controlling provision, there is no requirement that the firearm be concealed or "out of view".

49. The phrase "locked inside or locked to" a motor vehicle is a defined term, and makes it even more clear than an employee is protected regardless of whether the firearm is "out of view":

> "Locked inside or locked to" means:
>
> (A) The *vehicle is locked*; *or*
>
> (B) The firearm is in a locked trunk, glove box, or other interior compartment; *or*
>
> (C) The firearm is in a locked container securely fixed to the vehicle; *or*
>
> (D) The firearm is *secured and locked to the vehicle itself by the use of some form of attachment and lock.*

W. VA. CODE § 61-7-14(a)(6) (emphasis added).

50. Section 61-7-14(a)(6) uses "or" to make it clear that a firearm is qualified as "locked inside or locked" to the vehicle by any of the 4 means in the 4 subsections. Two of those subsections require the firearm only to be inside the "locked" "vehicle" (61-7-14(a)(6)(A)) *or* secured and locked to the vehicle" (61-7-14(a)(6)(D)). Especially the latter would allow—as is

popular in Texas—an employee to have the firearm displayed openly in the rear window of, commonly, a pick-up truck.

51. Neither § 61-7-14(d)(3)(A) (protecting employees) nor § 61-7-14(a)(6) (defining "locked inside or locked to") reference or incorporate in any way the concept of a firearm being "out of view".

52. Mr. Ransom completely qualified for protection against discharge *from employment* under § 61-7-14(d)(3)(B).

53. Mr. Ransom was the lawful owner of the firearm and lawfully purchased the firearm (A.R. 106-107, Ransom Affidavit at 4-5, ¶¶ 14-15).

54. The firearm was inside his *locked* car at the Defendants' workplace on the day that he was terminated (A.R. 106, Ransom Affidavit at 4, ¶ 14; A.R. 107, at 5, ¶ 16; A.R. 109-110, at 7-8, ¶ 10 especially 19(e) & 19(f); A.R. 111-112, at 9-10, ¶¶ 23-24).

55. That status, of being inside Mr. Ransom's locked car, clearly satisfies the requirement of a firearm being locked inside or locked to" (61-7-14(a)(6)(A)) his vehicle, because it is undisputed that Mr. Ransom's firearm was locked inside his vehicle parked in Respondents' parking lot (A.R. 108, Ransom Affidavit at 6, ¶ 18; A.R. 110, at 8, ¶ 19(e) & 19(g)).

56. Mr. Ransom owned and possessed the firearm for lawful purposes, both for hunting and for his protection when commuting between his residence in Cool Ridge, WV, to the apartment he rented solely for his employment with Defendants in Fairmont. (A.R. 105, Ransom Affidavit at 3, ¶ 8; A.R. 106-107, at 4-5, ¶ 14-15).

b. The Trial Court Relied on the Wrong Provision of the Business Liability Protection Act

57. Defendants claim that they fired Mr. Ransom for having the rifle in "plain view" so that it was not "concealed". But this Court does not need to address that issue because under §

61-7-14(d)(3)(B) it is *irrelevant* whether the firearm is "out of view"—it can even be proudly displayed on the rear window of a truck.

58. Defendants rely on a *different* provision of the same Act that is not as *specific* as the employment provision.

59. Defendants rely on § 61-7-14(d)(1) (emphasis added): "No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from *possessing* any legally owned firearm, when the firearm is:

a. (A) Lawfully possessed;
b. (B) *Out of view*;
c. (C) Locked inside or locked to a motor vehicle in a parking lot; and
d. (D) When the customer, employee, or invitee is lawfully allowed to be present in that area."

60. That is a more *general* provision of the same Act applying more broadly to owners, lessees, or other persons in control of real property, and permits the person to *eject the person with the firearm from the property* if the firearm is not "out of view".

3. Simple Statutory Interpretation Principles Control

61. But the more specific provision (§ 61-7-14(d)(3)) quoted above more *specifically* deals with the *employment relationship*, and there is no requirement that the firearm be concealed when it is on company property. The firearm does not have to be "out of view".

62. This table shows the two provisions in question side by side, starting on the left with the more specific provision addressing the employment relationship (emphasis added):

§ 61-7-14(d)(3)(B), ***specifically*** dealing with ***employers***, relied upon by Petitioner	§ 61-7-14(d)(1), ***generally*** dealing with ***property owners***, relied on by Respondents
"No employer may condition employment upon . . . (B) an agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes." Definition of "locked inside or locked to" (§ 61-7-14(a)(6)): (A) The *vehicle is locked*; *or* (B) The firearm is in a locked trunk, glove box, or other interior compartment; *or* (C) The firearm is in a locked container securely fixed to the vehicle; *or* (D) The firearm is *secured and locked to the vehicle itself by the use of some form of attachment and lock.*	"No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is: (A) Lawfully possessed; (B) Out of view; (C) Locked inside or locked to a motor vehicle in a parking lot; and (D) When the customer, employee, or invitee is lawfully allowed to be present in that area."

63. The interpretation and reconciliation of these two provisions is controlled by two simple statutory interpretation rules:

a. Assuming the two sections at issue arguably are inconsistent as applied to a set of facts, **the more *specific* provision controls over the more *general***. The more specific provision (§ 61-7-14(d)(3)) is the one that applies specifically *and only* to the employment relationship. It controls over the more general provision (landowners of all sorts). *See Tillis v. Wright*, 217 W. Va. 722, 728, 619 S.E.2d 235, 241 (2005) ("specific statutory language generally takes precedence over more general statutory provisions").

b. **Courts should avoid a statutory interpretation that renders language of a statute devoid of any meaning**. To adopt Defendants' position that § 61-7-14(d)(1) controls, renders § 61-7-14(d)(3) *meaningless*. Under Defendants' position, employers can in fact "condition employment upon . . . (B) an agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes." This Court in *Baker v. Bd. of Educ., Cty. of Hancock*, 207 W. Va. 513, 517, 534 S.E.2d 378, 382 (2000) held that "[i]t is always presumed that the legislature will not enact

a meaningless or useless statute." Defendants' position renders § 61-7-14(d)(3) *meaningless.*

4. The Trial Court's Decision Judicially Rewrites 61-7-14(d)(3)(B)

64. Even if the Trial Court's reliance on § 61-7-14(d)(1) does not render 61-7-14(d)(3)(B) "devoid of any meaning," it requires a judicial *rewriting* of 61-7-14(d)(3)(B). To adopt the Trial Court's rationale, § 61-7-14(d)(1) must be rewritten to *add a requirement that the firearm be "out of view".*

65. The Trial Court's decision also forcibly rewrites § 61-7-14(a)(6) (the definition of "locked inside or locked to"). Again, this section defines "locked inside or locked to" to mean *any* of the following:

> (A) *The vehicle is locked*; or
>
> (B) The firearm is in a locked trunk, glove box, or other interior compartment; or
>
> (C) The firearm is in a locked container securely fixed to the vehicle; or
>
> (D) *The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.*

W. Va. Code § 61-7-14(a)(6) (emphasis added).

66. Section 61-7-14(d)(3)(B) protects the employee who has the lawfully firearm "locked inside or locked to" his vehicle in the parking lot at work when kept for lawful purposes. Subsections 61-7-14(a)(6)(A) and (D) clearly state that a firearm can be "locked inside or locked to" a vehicle and still be "in view" or not "out of view." The Trial Court's decision (A.R. 282-287, esp. 284-285) requires a judicial deletion of § 61-7-14(a)(6)(A) and (D).

67. There is no logical basis for taking the "last resort" (see discussion in next section) of rewriting multiple parts of § 61-7-14.

5. Summary of Statutory Interpretation Issue

68. Thus, under the plain language of § 61-7-14(d)(3), Defendants were prohibited from firing Mr. Ransom for having a lawfully owned firearm locked in his car in their parking lot, and it didn't matter whether the firearm was concealed or "out of view". Furthermore, the statutory interpretation principles discussed above *mandate* an interpretation that gives priority to the more specific provision in issue, which is § 61-7-14(d)(3), and *prohibit* an interpretation that renders § 61-7-14(d)(3) void or meaningless.

69. Because it is clear that § 61-7-14(d)(3) controls and that Petitioner satisfied the requirements to be protected under it, this Court should, as to Petitioner's cause of action under the BLPA, reverse, render judgement against Respondents on their motion for summary judgment, and render judgment in favor of Petitioner on his motion for summary judgment.

B. Argument for Assignment of Error 2: Misinterpreting "Out of View" in the Business Liability Protection Act and Misapplying Summary Judgment Standards

70. Assignment of Error 2 restated:

> The Trial Court erred in granting Defendants' motion for summary judgment, because, even assuming that Section 61-7-14(d)(1) of the West Virginia Business Liability Protection Act controls, requiring the firearm to be "out of view", the Trial Court misinterpreted the meaning of "out of view" and misapplied summary judgment standards, because a material issue of fact existed as to whether the firearm was "out of view".

1. Even if § 61-7-14(d)(1) of the Act controls, There is Still an Issue Which Precluded Summary Judgment in Favor of Respondents

71. Point of Error 1 above argues that Mr. Ransom's firearm did not have to be out of view, because § 61-7-14(d)(3) does not require the firearm to be out of view.

72. But even if § 61-7-14(d)(1) controls so that the firearm must have been out of view, summary judgment in favor of respondents was improper because there was a disputed issue of material face as to whether the firearm was out of view. The Trial Court misinterpreted the

meaning of "out of view" and misapplied standards for determining whether conflicting evidence precludes summary judgment.

73. Section 61-7-14(d)(1) prohibits a property owner from taking action against the visitor (here, Mr. Ransom) for "possessing" a firearm only if the firearm is "out of view". Mr. Ransom's firearm was in fact out of view, locked in his car, and covered with a jacket and a computer case. Even if the jacket and/or the computer case had fallen off and exposed the firearm, the firearm was still out of view because of its hidden position on the floorboard of Mr. Ransom's car.

2. Mr. Ransom's Firearm Was "Out of View" (or a Fact Question Existed on that Issue)

a. Meaning of "Out of View"

74. What does it mean to say something is "out of view"? That is a substantially less demanding statement than to say something is "concealed" or "hidden". Out of view simply means something is not obviously in view. It does not mean (or require) that it is so completely "hidden' or "concealed" so that it is impossible to observe it.

75. "View" is defined as "all that can be seen from a certain point" (Merriam-Webster Dictionary, https://www.merriam-webster.com/thesaurus/view). To say that something is "out of view" simply means that it cannot be seen from a "certain point", but there is nothing about the plain meaning of the phrase that communicates that the object must be hidden, locked inside something, or *completely concealed* from all "points" of observance.

76. "Conceal", on the other hand, means "to prevent disclosure or recognition of" or "to place out of sight" (Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/conceal), which is a far more demanding requirement.

77. But Mr. Ransom satisfied even those more demanding terms. West Virginia law, in addressing "dangerous weapons", defines "concealed" as to firearms as:

> "Concealed" means *hidden from ordinary observation so as to prevent disclosure or recognition*. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the *ordinary course of events* would *not be placed on notice that the deadly weapon was being carried*. For purposes of *concealed* handgun licensees, a licensee is considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or *on the motor vehicle*.

W. Va. Code § 61-7-2(3) (emphasis added).

78. Under the West Virginia definition of "concealed", which is far more demanding than "out of view", "concealed" means hidden from "ordinary observation". It does not mean completely concealed and hidden under all circumstances.

79. Similarly, under North Dakota law, the definition of "concealed" does not even remotely require some type of absolutely hidden status:

> A firearm or dangerous weapon is concealed if it is carried in such a manner as to *not be discernible by the ordinary observation of a passerby*. There is *no requirement that there be absolute invisibility* of the firearm or dangerous weapon, merely that it not be *ordinarily discernible*.

N.D. CENT. CODE ANN. § 62.1-04-01 (West) (emphasis added).

b. Mr. Ransom's Firearm was "Out of View"

80. Mr. Ransom took reasonable and diligent steps to make sure that his rifle in his car was "out of view", and even "concealed". Regardless of whether the firearm was "completely invisible", he satisfied any reasonable definition of "out of view", so there is a disputed issue of material fact on whether the firearm was "out of view".

81. When Mr. Ransom drove from his home in Cool Ridge to Fairmont on October 21, 2018, the day before he was fired, he disassembled the rifle, removing the magazine and bullets; he collapsed the stock, he placed the rifle in the secluded position of the passenger-side floorboard,

and he completely covered the rifle with clothes (A.R. 105, Ransom Affidavit at 3, ¶ 11). He got to his apartment very late, at 10:30pm, and took the luggage containing the bullets and magazine upstairs to his apartment, removed the clothing covering the rifle, but forgot the rifle in his car (A.R. 105-106, Ransom Affidavit at 3-4, ¶ 12).

82. Driving to work very early on the morning of October 22, 2018, Mr. Ransom drove his red 2012 Ford Focus hatchback, with black interior and dark tinted windows (A.R. 107-108, Ransom Affidavit at 5-6, ¶ 16-17 (with photographs of the exterior and interview of the car). As Mr. Ransom drove to work, he realized he had forgotten about his rifle (lacking bullets and magazine) with the stock collapsed (A.R. 109-110, Ransom Affidavit at 7-8, ¶ 19(a) & 19(b) & 19(c)).

83. As Mr. Ransom pulled out of his apartment parking space, he wanted to get to work very early (A.R. 110, Ransom Affidavit at 8, ¶ 19(d)), so he chose to continue his drive to work by covering his rifle that was still sitting, with stock collapsed and no bullets & magazine, in the driver-side floorboard, leaning against the passenger door but not protruding high enough to be visible through the passenger window (A.R. 109, Ransom Affidavit at 7, ¶ 19(d)). He covered his rifle covering the base of the rifle with a dark jacket and he covered the barrel of the rifle with a dark computer case, completely covering the rifle (A.R. 110, Ransom Affidavit at 8, ¶ 19(d)).

84. Mr. Ransom pulled his car into an employee parking space at work at Guardian in Fairmont, out of view of visitors and patients. He did not disrupt the coverings over his rifle, and exited his car through his driver door, locked his car, and went into work (A.R. 110, Ransom Affidavit at 8, ¶ 19(e)). Mr. Ransom had concealed his rifle so that it was "out of view", which as is discussed above, does not require "absolute invisibility" under the law. After Mr. Ransom was fired, he recreated how his rifle was in his car the day he was fired, under both bright and dark light conditions, and with him walking near the car (about 2 feet and 6 feet away), and he could

not see the rifle in his car (keeping in mind he had a black interior, the windows were tinted, and the jacket and computer case were all dark). And he could not see the rifle even with the covering removed (A.R. 110-111, Ransom Affidavit at 8-9, ¶ 19(f)-(g)). Mr. Ransom states that the only way he can imagine someone seeing his rifle under those circumstances (where he concealed it) was if they had their faces pressed against his car window, looking in (A.R. 111, Ransom Affidavit at 9, ¶ 19(g)).

c. Mr. Ransom Was Fired For *Possessing* a Firearm

85. On those facts, which are not contradicted by Defendants, there is a disputed issue of fact precluding summary judgment-whether the firearm was "out of view" as required by the property owner section of the Act, § 61-7-14(d)(1), on which Defendants rely.

86. There are additional facts which create a fact question on whether the firearm was "out of view". Defendants did not tell Mr. Ransom that the rifle was in "plain view" or in any "view" (A.R. 111-112, Ransom Affidavit at 9-10, ¶¶ 21-24). Mr. Ransom was told that he was fired for violating a policy by possessing a rifle on company premises (A.R. 112, Ransom Affidavit at 10, ¶¶ 24-25).

d. Respondent's Handbook Made *Possession* of a Firearm a Disciplinable Offense and Violated the Business Liability Protection Act

87. Indeed, Defendant's employee handbook was ***prepared on April 1, 2017*** and prohibited employee possession of any weapon and firearm on company property, regardless of whether the weapon was concealed or "out of view" (A.R. 112-114, Ransom Affidavit at 10-12, ¶¶ 26-28).

88. The Defendants' handbook simply ignored the important changes in the law under the Business Liability Protection Act which became ***effective on June 8, 2018***. The Act amended W. VA. CODE § 61-7-14 to give employees specific rights concerning lawful possession of firearms

in locked vehicles while at work (regardless of whether the firearm was concealed or "out of view"), and more generally gave *visitors* to property the right to possess firearms in vehicles as long as the firearm was "out of view". Defendants simply never bothered to change their handbook and policies which predated the important changes in favor of owners of firearms.

89. The Defendants' handbook and their failure to follow the new law supports the proposition that Mr. Ransom's firearm was "out of view" because, to Defendants, they and their policy simply didn't care whether the firearm was out of view or hidden. They only cared if the employee possessed a firearm on company premises, and they fired Mr. Ransom for that, not over the claim that the firearm was in "plain view".

e. Respondents May Have Learned About Mr. Ransom's Firearm Through Discussions, Not Observation

90. One set of additional facts also supports the proposition that Mr. Ransom's firearm was concealed and out of view: other employees for Defendants knew Mr. Ransom owned firearms, and may have discussed it at work. While Mr. Ransom was working for the Defendants, he had a flat tire and the Defendants' two maintenance employees helped Mr. Ransom with the flat tire (A.R. 114, Ransom Affidavit at 12, ¶ 31). There was a brief discussion of firearms, and one of the maintenance employees told Mr. Ransom that he was interested in selling a firearm (*Id.*).

91. That discussion could have led to someone "reporting" Mr. Ransom for possessing a firearm, regardless of whether anyone *saw* his firearm. It could have also caused an employee to aggressively look through Mr. Ransom's car window to see if Mr. Ransom had a firearm in his car. As Mr. Ransom stated, his firearm was well enough hidden in his car that the only way someone could have seen his rifle was to put their face against Mr. Ransom's car window (A.R. 110-111, Ransom Affidavit at 8-9, ¶¶ 9(g)).

92. Importantly, the BUSINESS LIABILITY PROTECTION ACT prohibits property owners and employers from questioning (verbally or in writing) employees about the presence or absence of firearms locked inside of cars in parking lots, and also prohibits them from conducting searches of the vehicle. W. VA. CODE § 61-7-14(d)(2)(A) & (B). Anyone pressing their face against Mr. Ransom's car is doing something tantamount to a search prohibited by the Act.

f. Respondents' Purported Summary Judgment Evidence on the Visibility of the Firearm Was Insubstantial

93. For so critical an issue—whether the firearm was "out of view"—the Respondents' evidence was insubstantial and inadequate to support summary judgment.

94. Respondents relied on only two items of evidence: an interrogatory answer signed only by Respondents' counsel, and a few passages from Mr. Ransom's deposition (A.R. 33, 46, 41-42).

95. Respondent's, for their memorandum of law (A.R. 30) supporting their motion for summary judgment (A.R. 27), attached their unsworn interrogatory answers that were signed only by their counsel (A.R. 43-47). Respondents attached only selected pages of their interrogatory answers (pages 1, 3-5, 10), but the full answers, which are not in the record, also did not contain any verification signed by the parties.

96. Respondents' nonverified interrogatory answers, signed only by counsel and not the Respondents, identified a single witness for interrogatory 2, asking for "persons with knowledge of relevant facts":

> Mark DeBarr, address unknown, former Business Office Manager, reported firearm in open view in Plaintiff's vehicle on workplace property"

(A.R. 46).

97. Under Rule 56 for motions for summary judgment: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." W. VA. R. CIV. P. 56(e).

98. Respondents' unsworn interrogatory answers (not signed by the party, and signed only by counsel), violated W. Va. R. Civ. P. 33(b)(1) & (2), requiring that the interrogatory answers be in writing "under oath" and "signed by the person making them". Respondents' interrogatory answers (A.R. 43-47) were not under oath and were not signed by the parties. The answers therefore constituted inadmissible hearsay, were not admissible as required by Rule 56(e), and were inadmissible for being in violation of Rule 33(b)(1) & (2). Petitioner objected to the defective interrogatory answers as procedurally defective, unsworn, and inadmissible hearsay (A.R. 225-226).

99. Respondents' only other purported evidence on the issue of whether the firearm was "out of view" was a set of misleading references to Petitioner's deposition (A.R. 4-5). As is explained above in the section "b. Mr. Ransom's Firearm was 'Out of View'", Mr. Ransom went to substantial lengths to cover and conceal his collapsed, bulletless firearm in his car.

100. In the deposition passages Respondents relied upon (A.R. 33-34 (Memorandum); 41-42 (Ransom deposition excerpts attached to Memorandum); and 123-124 (handout at summary judgment hearing)), Mr. Ransom stressed that he "covered" his firearm (a collapsed rifle) with a jacket and computer cover (A.R. 123, 42), and said it was "*possible*" that something "might have slid off" (A.R. 124, 42 (emphasis added)). He also said he later tried to stand outside of his car to recreate the situation and could not see the rifle from 2 and 6 feet away from his car (A.R. 124, 42). Mr. Ransom testified at his deposition that someone in the work parking lot "should not have

been able to see unless they had their face up against the window and were looking in" (A.R. 41, transcript page 36/14-20).

101. Mr. Ransom in his summary judgment affidavit (A.R. 103), explained that in his deposition he said it was "possible" that the coverings for his rifle might have "slid off", but he didn't think that occurred, because, among other things, he completely covered the rifle:

> 19(e): As I drove to the parking lot at the Guardian workplace very early on October 22, 2018, around 6:30am, I parked and exited my car on the driver side. I did not open the passenger door. I did not disrupt in any way the covering of the rifle using my jacket and computer case. I parked my locked car in an area of the parking lot at the facility where employees (not customers and residents) parked. So, as I left my car, my rifle was completely covered inside my car. I locked my car and went into work. My car was continuously locked that day, and I did not do anything to reposition the rifle until I was told by Guardian Director of Rehabilitation, Kirstein Smith, that someone had seen my rifle in my car, and she asked me to take my rifle home, which I immediately did.
>
> 19(f): I said during my deposition in this lawsuit that it is "possible" that the laptop cover had slid off the barrel of my rifle. If someone actually saw any part of my rifle uncovered, that is the only possibility I can imagine. But I do not believe that the laptop cover slipped off, and I believe that my rifle was completely concealed in my locked car on October 22. This is because I personally completely covered my rifle with the combination of my dark jacket and my dark computer cover; the concealed rifle was in my car with a black interior and tinted windows, the rifle with the collapsed stock was sitting on the passenger floorboard leaning against the passenger door without protruding into the view of the window, and I did nothing to disrupt the concealment of the rifle during that day until I drove it to my apartment at Ms. Smith's request. (A.R. 110; 125).

102. Mr. Ransom also explained in his affidavit, in more detail that he was asked to explain in his deposition, how he could not see the rifle in his car when he later tried to recreate the situation after his termination:

> 19(g): After I was fired, I tried to recreate the position of my rifle in my car to see for myself whether it had been visible that day. I positioned my rifle in the same way it had been positioned in my car in the Guardian parking lot on October 22, 2018. I parked the car in the sunlight and the shade. I walked all around my car, looking in the windows to see if I could see my rifle. I stood very close, from different distances, such as about two feet and six feet away from my car window, and I could not see my rifle inside my car. Between the

> dark interior, the tinted windows, the firearm learning against the lower part of the passenger door, and the covering I applied, I could not see the firearm. **Even with the covering (jacket and computer case) removed, I could not see my rifle.** I believe the only way someone could have seen my rifle was if they literally had their face pressed against my car window, and were looking in, but even then they would have only seen an object covered by the jacket and computer case. (A.R. 110-111; 125).

103. Thus, there was no significant evidence that the rifle was "in view" or that the concealing covers had come off the rifle. Mr. Ransom acknowledged at his deposition only that it was "possible" the covering slid off, but explained, both at his deposition (A.R. 40-42) and his summary judgment affidavit (A.R. 110-11), that he didn't think that happened and that he could not later see his rifle *even with the covering removed* (A.R. 111 "Even with the covering (jacket and computer case) removed, I could not see my rifle.").

104. In conclusion, even if Defendants are correct that § 61-7-14(d)(1) controls and required Mr. Ransom's firearm to be "out of view", there are material issues of fact which preclude summary judgment.

3. Summary of "Out of View" Issue

105. Because there was a disputed material fact as to whether Petitioner's firearm was out of view, this Court, even if it concludes § 61-7-14(d)(1) controls, should reverse the Trial Court's decision granting Respondents' motion for summary judgment, and should remand for new trial.

C. Argument for Assignment of Error 3: Error in Granting Summary Judgment on Ransom's *Harless* Claim

106. Assignment of Error 3 restated:

> The Trial Court erred in granting Defendants' motion for summary judgment as to Plaintiff's claim under *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 275 (1978), in that the Trial Court wrongly concluded that Defendants did not violate the Business Liability Protection Act, so the Trial Court concluded there could be no viable Harless claim.

107. Respondents' motion for summary judgment did not argue that, if the BLPA was violated, such a violation would not constitute a substantial public policy to support a *Harless* claim. Instead, Respondents simply argued that, because Respondents purportedly did not violate the BLPA, there could not be a *Harless* claim (A.R. 34). Defendants did not present to the Trial Court any argument that that a violation of the BLPA could not support a claim under *Harless*.

108. The Trial Court, consistent with Respondents' motion for summary judgment, did not address the issue of whether a violation of the BLPA could constitute a violation of a substantial public policy so as to support a *Harless* claim (A.R. 286, ¶¶ 29-30). The Trial Court simply held that, since it found no violation of the BLPA to have occurred, there could not be any violation of the *Harless* doctrine (*Id.*).

109. Only Plaintiff's partial motion for summary judgment raised the issue of whether a violation of the BLPA could constitute a *Harless* violation (A.R. 49, ¶ 1(b)(ii)); A.R. 60-61, ¶¶ 23-26).

110. With the Trial Court's summary judgment order not addressing the issue of whether a BLPA violation could support a *Harless* claim, that issue is arguably not before this Court, and a remand in Petitioner's favor on Assignments of Error 1 or 2 would put this "*Harless* issue" back before the Trial Court for eventual decision.

111. The following analysis addresses the issue, should this Court decide the issue is ripe for appellate decision.

112. The only issue for Mr. Ransom's claim for wrongful discharge under the *Harless* doctrine, is whether the BUSINESS LIABILITY PROTECTION ACT, § 61-7-14, establishes a substantial public policy in West Virginia. The point of the 2018 amendments was to *limit* employers and property owners rights to fire and exclude lawful firearm owners under certain circumstances, with the core of the prohibitions in § 61-7-14(d) being to recognize the important public interests in

allowing the general public to protect themselves through lawful possession of firearms in a wide range of settings, including employment (§ 61-7-14(d)(3)) and virtually any setting where someone is lawfully on someone else's property (§ 61-7-14(d)(1)).

113. To allow an employer to fire an employee in violation of § 61-7-14(d)(3) is to thwart the right to own firearms for the general population in West Virginia.

114. That damage to public safety is reflected in what happened to Mr. Ransom. He accepted a job at Guardian with a 3-hour drive from his residence to the work location in Fairmont (A.R. 104, ¶ 6) His wife lived in their residence in Cool Ridge, and Mr. Ransom rented an apartment in Fairmont so he could work for Defendants and support his family. In light of the 3-hour drive time and the separate residence he had to maintain in Fairmont, he understandably took a firearm with him to his Fairmont apartment (A.R. 104, ¶ 7).

115. Accordingly, Defendants' conduct violated the substantial public policy recognized in the BUSINESS LIABILITY PROTECTION ACT, § 61-7-14, so Mr. Ransom is also entitled to judgment on the liability issue on his *Harless* cause of action as well. That substantial public policy operated to protect the firearm rights of all West Virginia employees, and all visitors or invites of virtually any other property.

116. Mr. Ransom's *Harless* cause of action fits within the category of *Harless* claims where an employee is terminated for exercising an important right, such as the right of self-defense at issue in *Feliciano v. 7-Eleven, Inc.*, 210 W. Va. 740, 750, 559 S.E.2d 713, 723 (2001). *Feliciano* stands for the proposition that the right of employees to protect themselves is an important public interest, and a substantial public policy.

117. Furthermore, this Court *Wiggins v. Eastern Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987) relied significantly, in holding violations of mine safety laws implicated a substantial public interest, that relatively limited statutory remedial schemes to protect employees

argue in favor of looking to the *Harless* doctrine to provide employees with a meaningful remedy. While the Trial Court did not address the issue, Respondents argued that the damages available for violations of the BLPA are limited (A.R. 35-36). Such an alleged limitation on remedies under the BLPA can and should be relied upon in holding that a *Harless* claim may be based on the substantial public policy in issue in the BLPA.

118. Accordingly, Defendants' conduct violated the substantial public policy recognized in the BUSINESS LIABILITY PROTECTION ACT, § 61-7-14, so Mr. Ransom is also entitled to judgment on the liability issue on that *Harless* cause of action as well. If Respondents' violated the BLPA (Assignment of Error 1), and where the *Harless* claim is based on the same facts, judgment should be entered in favor of Mr. Ransom on his *Harless* cause of action.

VII. Conclusion

119. The Circuit Court's order granting default judgment should be reversed, and this matter should be remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2022, true and accurate copies of the foregoing Petitioner's Brief were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

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