No. 22-0207

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SANDY K. HAYES,

Plaintiff Below, Petitioner,

v.

KANAWHA VALLEY REGIONAL TRANSPORTATION AUTHORITY, a political subdivision, and JOHN DOE bus driver, an employee of KANAWHA VALLEY REGIONAL TRANSPORTATION AUTHORITY,

Defendants Below, Respondents.

From the Circuit Court of Kanawha County, West Virginia

Civil Action No. 20-C-1013

RESPONDENTS' RESPONSE TO PETITION FOR APPEAL AND CROSS-ASSIGNMENT OF ERROR

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Respondents state as follows in response to Petitioner's assignments of error.

I. The circuit court properly granted summary judgment in Respondents' favor because Respondents owed no duty as a matter of law based on the undisputed facts that petitioner signaled the bus to stop where she had numerous times before without complaint or incident, petitioner then alighted from the bus, the bus pulled away, petitioner crossed the street diagonally, and petitioner almost made it to the other side before being struck by a nonparty vehicle who fled the scene.

a. Petitioner can identify no legal authority recognizing a duty, heightened or not under these undisputed facts.

b. On-point case law from across the country demonstrates that Respondents owe Petitioner no duty under these undisputed facts.

II. The circuit court properly considered all evidence and arguments presented and properly found no duty under the undisputed circumstances.

III. Considering common sense public policy considerations, this court should not impose a duty where none has been found before.

CROSS-ASSIGNMENT OF ERROR

I. The circuit court erred in not granting summary judgment on numerous other immunity-driven grounds thoroughly briefed below.

STATEMENT OF THE CASE

Respondents clarify and supplement Petitioner's statement of the case as follows. At all times pertinent to the underlying action, Petitioner was a regular passenger on the Kanawha Valley Regional Transportation Authority (KRT) bus and took the Route 23 KRT bus once or twice a

week. Hayes Dep. Tr. 30:20, App. 2. Generally, stops in city limits are limited to designated stops, usually at street corners. Smith Test., Dep. Tr. 35–36, App. 73. Outside city limits, passengers notify bus drivers when they want to stop; these are referred to as "flag stops." Mullins Test., Dep. Tr. 15, 29, App. During a flag stop, the passenger notifies the bus driver when to stop by pulling a string or cord. Mullins Test., Dep. Tr. 32, App. 106.

As stated in Petitioner's *Brief* at 4, Petitioner pulled the string to alert the bus driver to stop on October 14, 2019; indeed, she had exited this area many times before without complaint. Hayes Dep. Tr. 45, App. 23. However, there exists no evidence in the record that Petitioner "notified the KRT bus driver (i.e., Daniel Taylor) that her apartment complex on Frame Road was approaching." *See* Pet'r's Br. 4. The record is devoid of evidence showing that Mr. Taylor knew Petitioner's ultimate destination. Petitioner cannot rely upon evidence that is not in the record to overcome Respondents' motion for summary judgment. *Hamon v. Morris*, No. 20-0841, 2021 W. Va. LEXIS 551, at *17 (Oct. 29, 2021). Moreover, Petitioner testified that she in fact did not tell the bus driver where she was going. Hayes Dep. Tr. 60:19–24, App. 26.

Contrary to Petitioner's *Brief* at 4, the bus driver did not "immediately beg[i]n accelerating the bus" once Petitioner and her friend alighted. Pet'r's Br. 4. Rather, the video shows the bus waited several seconds before departing once Petitioner and her friend alighted. Video, App. 207.

Petitioner has produced no corroborating evidence, but only her own testimony, that she and her acquaintance looked both ways before crossing. *See* Pet'r's Br. 5. Rather, KRT instructs passengers via signage on the bus—"Do not cross in front of the bus. When crossing behind bus, **wait until bus has moved far enough for you to see on-coming traffic**"—and via the KRT app—"Do not attempt to cross the street in front of the bus after exiting and **wait for traffic to clear before crossing.**" See signage (emphasis added), App. 369–370. Despite these warnings,

Petitioner did not wait to cross the street. Petitioner testified, "I don't normally wait, I just go across." Hayes Dep. Tr. 67, App. 28. On October 14, 2019, Petitioner was in a hurry to get home. *Id.* at 102.

Petitioner's companion, Mr. Stover, told Petitioner to hurry across the road. Hayes Dep. Tr. 71, App. 29. Mr. Stover was about three steps in front of Plaintiff and had made it to the other side of the road when a car operated by Taylor Jenkins hit Plaintiff. Incident Report, App. 657, 669, 671; Hayes Dep. Tr. 68, 69, App. 28, 29. Ms. Jenkins kept driving after she struck Petitioner with her car. Jenkins Dep. Tr. 15–16, App. 164. There is no evidence that the bus affected Ms. Jenkins' driving in any way. *See id.* at 18, App. 165.

Petitioner relies on her *Complaint* to aver that she suffered "severe and permanent injuries." Pet'r's Br. 5. Under West Virginia law, however, a petitioner "may not simply rest upon the mere allegations of their complaint in opposing a summary judgment motion." *Folio v. Harrison-Clarksburg Health Dep't*, 222 W. Va. 319, 324, 664 S.E.2d 541, 546 (2008).

Petitioner relies on driver testimony to establish a duty in this instance. However, drivers' opinions do not legally establish a duty or lack of duty, as explained *infra*. Plaintiff has produced no objective testimony that the stop was indeed unsafe. A map of the road where Plaintiff requested to stop indicates no curves or inadequate sight lines. See App. 921–922. Nonetheless, Petitioner ignores driver testimony suggesting no duty here. Mr. Taylor also testified, "It's not our job to see that they cross the road safely. It's their job to cross the road. It's not our job. Once they're off the bus, we're not responsible for them." Taylor Test., Dep. Tr. 30, App. 123. Mr. Mullins testified, "they're adults -- they're supposed to be adults, basically, responsible for their own safety, you know, stepping off -- once they step off the bus." Mullins Test., Dep. Tr. 47, App. 110. Another bus driver, Mr. Bailey, testified:

> Q. There's no regulation there's -- KRT doesn't make Sandy Hayes cross the street at any point. It's up to her when she crosses the street; correct?
> A. Correct.
> [objection lodged]
> Q. -- passengers that they have to cross the street at a certain period of time. It's up to them to decide when they want to cross the street?
> A. Correct.
> Q. You would agree with me that on every occasion that Sandy Hayes is crossing the street after taking the bus outside of her apartment building that the decision to cross the street is hers and hers alone?
> A. Right.

Bailey Test., Dep. Tr. 80, App. 63. Simply put, KRT drivers understand they owe no duty to passengers once they have exited the bus. While their opinions may be persuasive, drivers' opinions do not legally establish a duty or lack of duty, contrary to Plaintiff's sole reliance on the same. *See Aikens v. Debow*, 208 W. Va. 486, 491, 541 S.E.2d 576, 581 (2000) (internal quotations omitted); *see id.* at syl. pt. 5; *Jackson v. Putnam Cty. Bd. of Educ.*, 221 W. Va. 170, 175, 653 S.E.2d 632, 637 (2007). Driver opinions are not a source of legal duty.

Petitioner relies solely on the testimony of one driver, Mr. Taylor, who stated, after the fact in a deposition, that the stop was not safe. To be clear, Petitioner never elicited any testimony from Mr. Taylor to clarify whether he thought the stop was safe on October 14, 2019. A hindsight opinion does not establish an issue of fact. Moreover, it is not disputed that Petitioner requested to be dropped off in that area numerous times before, and her companion Mr. Stover was able to safely cross the road. Fatal to Petitioner's argument are not only the undisputed facts and absence of legal authority, but also common sense: Petitioner fails to address that a darker environment would naturally make it easier for pedestrians to see headlights at night.

Regarding Petitioner's *Brief* at 10, it is not disputed that Petitioner was not injured before, during, or even immediately after she alighted from the bus. As the circuit court correctly pointed

out: "This is not a case where Plaintiff was immediately injured as she alighted." App. 1128. She was injured after the bus pulled away and after she had almost crossed the road. Even assuming *arguendo* that Mr. Taylor thought the stop was unsafe on October 14, 2019, Respondents did not owe a duty, as a matter of law, once Petitioner safely alighted the bus, the bus pulled away, Petitioner crossed the road diagonally, and almost made it to the other side of the road when she was struck by Taylor Jenkins, a nonparty. Petitioner has identified no evidence showing that Petitioner's actions or Ms. Jenkins actions were or should have been foreseeable to Daniel Taylor.

SUMMARY OF ARGUMENT

It is not disputed where and how Petitioner was injured—on the other side of the road from where she requested to be let off. No West Virginia law imposes a duty on a transit authority to ensure the safety of passengers after they have exited the vehicle and traveled across the road. Case law from across the country holds that a transit authority's duty does not extend beyond the stop, and these cases cogently explain why the duty cannot and should not extend to already-alighted persons who have traveled beyond the stop. Beyond the stop, Respondents owe no duty, heightened or not.

The duty owed to passengers on the bus is not a heightened duty per the West Virginia Governmental Insurance Reform and Tort Claims Act, W. Va. Code § 29-12A-1 *et. seq.*, which governs Petitioner's claims. Petitioner's advocacy for a heightened duty does not change the outcome; summary judgment was proper whether the duty was heightened or not. Even under Petitioner's reasoning, such heightened duty applies only "when *boarding*, *riding* in and *alighting* therefrom"—not *after having already alighted and crossed the road.* Pet'r's Br. 10 (emphasis original).

Petitioner can point to no evidence showing that it was reasonably foreseeable that, after the bus pulled away, Petitioner would cross the road diagonally behind her companion, fail to heed to oncoming traffic or her partner's commands to hurry, and be struck in a hit-and-run. The undisputed facts support summary judgment.

Granting Petitioner's appeal under the undisputed facts would require Respondents to ensure persons' safety indefinitely after they alighted from a bus and left the stop. Such a holding will likely impose an unduly heavy, stifling burden on public transit operations. Naturally, such imposition would require Respondent KRT to require bus drivers to exit the bus and ensure the passenger reached his or her ultimate destination. Alternatively, such imposition would require Respondent to hire other staff to accompany already-alighted passengers to their destinations. Meanwhile, trip duration times would multiply, pick-up times would become more and more unpredictable, and a transit authority's entire operation and model would logjam. Imposing such an extended duty ignores West Virginia laws that already direct whose burden it is to watch for and yield to oncoming traffic and pedestrians. *See* W. Va. Code §§ 17C-4-1, 17C-10-3, 17C-10-4. Accordingly, public policy considerations militate against imposing the duty proposed by Petitioner.

Lastly, Respondents raised numerous other immunity-driven grounds for summary judgment below, for which summary dismissal should have been granted.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondents agree with Petitioner's statement regarding oral argument and decision.

ARGUMENT

A party is entitled to summary judgment if the evidence, or lack of evidence, "show[s] that there is no genuine issue of material fact." W. Va. R. Civ. P. 56. If the moving party shows no

genuine issue of material fact, then the moving party is entitled to judgment as a matter of law. *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Marcus v. Holley*, 217 W. Va. 508, 516, 618 S.E.2d 517, 525 (2005) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)); *State ex rel. Abraham Linc Corp. v. Bedell*, 216 W.Va. 99, 602 S.E.2d 542, 553 (2004).

"Summary judgment is appropriate where the record taken as a whole 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." Syl. pt. 4, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). Summary judgment is a device designed to effect a prompt disposition of controversies on their merits without resorting to a lengthy trial if, in essence, there is no real dispute as to salient facts or if only a question of law is involved. *Williams v. Precision Coil*, 194 W. Va. 52, 58, 459 S.E.2d 329 (1995).

It is not the Defendant's burden "to negate the elements of claims on which [plaintiff] would bear the burden at trial." *Powderidge Unit Owners Ass 'n v. Highland Props.*, Ltd, 196 W. Va. 692, 698-99, 474 S.E.2d 872, 879 (1996) (citation omitted). Rather, it is the Defendant's burden "only [to] point to the absence of evidence supporting [plaintiffs'] case." *Id.* at 699 (internal quotations and citations omitted). When a motion for summary judgment is properly supported, the burden shifts to the opposing party to demonstrate that summary judgment is not appropriate. *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 60, 459 S.E.2d 329, 337 (1995). To show that summary judgment is not appropriate, the opposing party, "must satisfy the burden of proof by offering more than a mere 'scintilla of evidence,' and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." *Id.*

To meet their burden, plaintiffs "must identify specific facts in the record and articulate the precise manner in which that evidence supports [their] claims." *Powderidge*, 196 W. Va. at 699, 474 S.E.2d at 879; *see also Precision Coil*, 194 W. Va. at 59, n. 9, 459 S.E.2d at 336, n. 9 (1995) (where the party opposing a motion for summary judgment fails to make a showing sufficient to establish the existence of an essential element of his or her case on which he or she will bear the burden of proof at trial, "Rule 56(e) mandates the entry of a summary judgment[.]"). The *Precision Coil* Court further observed that, although a trial court considering a motion for summary judgment must view inferences from the underlying facts in the light most favorable to the party opposing summary judgment, it should consider only "reasonable inferences." *Precision Coil*, 194 W. Va. at n. 10, 459 S.E.2d at n. 10. ("We need not credit purely conclusory allegations, indulge in speculation, or draw improbable inferences. Whether the inference is reasonable cannot be decided in a vacuum; it must be considered 'in light of the competing inferences' to the contrary."). "The evidence illustrating the factual controversy cannot be conjectural or problematic." *Precision Coil*, 194 W. Va. at 60, 459 S.E.2d at 337.

Here, summary judgment was especially appropriate because, as explained below, governmental immunity is involved, and the legal question of immunity must be decided at the earliest possible stage in litigation. The West Virginia Supreme Court has mandated "claims of immunities, where ripe for disposition, should be summarily decided before trial." *Hutchison v. City of Huntington*, 198 W.Va. 139, 479 S.E.2d 649 (1996) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 2815, 86 L. Ed. 2d 411 (1985)).

I. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN RESPONDENTS' FAVOR BECAUSE RESPONDENTS OWED NO DUTY AS A MATTER OF LAW BASED ON THE UNDISPUTED FACTS THAT PETITIONER SIGNALED THE BUS TO STOP WHERE SHE HAD NUMEROUS TIMES BEFORE WITHOUT COMPLAINT OR INCIDENT, PETITIONER THEN ALIGHTED FROM THE BUS, THE BUS PULLED AWAY, PETITIONER CROSSED THE STREET DIAGONALLY, AND

PETITIONER ALMOST MADE IT TO THE OTHER SIDE BEFORE BEING STRUCK BY A NONPARTY VEHICLE WHO FLED THE SCENE.

a. PETITIONER CAN IDENTIFY NO LEGAL AUTHORITY RECOGNIZING A DUTY, HEIGHTENED OR NOT, UNDER SAID UNDISPUTED FACTS

Petitioner's first two sentences in her argument § A amount to a non-sequitur. Petitioner argues that the circuit court's finding of no-duty for already-alighted persons violates a heightened duty of care. Petitioner identifies no source of any heightened duty of care owed to a person *after they've alighted from the bus and crossed the road.* Petitioner even concedes in the next sentence that the purported heightened duty "extends to when passengers are boarding, riding and alighting from a bus." Pet'r's Br. 12.

Plaintiff ignores that, under West Virginia law,

> whether there is a duty is a question of law and not a question of fact for the jury. Likewise, legal commentators agree that the determination of any question of duty . . . has been held to be an issue of law for the court rather than for the jury, to be determined by reference to the body of statutes, rules, principles, and precedents which make up the law.

Aikens v. Debow, 208 W. Va. 486, 491, 541 S.E.2d 576, 581 (2000) (internal quotations omitted); *see id.* at syl. pt. 5; *Jackson v. Putnam Cty. Bd. of Educ.*, 221 W. Va. 170, 175, 653 S.E.2d 632, 637 (2007). Here, the circuit court found as a matter of law that no duty exists to protect or ensure the safety of passengers who have alighted and travelled from the stop.

Petitioner's argument is problematic because (1) Petitioner had already alighted from the bus and traveled from her flagged-stop when she was injured and (2) Petitioner cites to no legal authority showing that Respondents owed a duty to Petitioner after she alighted from the bus and crossed the road. Petitioner's counsel agreed below that the West Virginia Supreme Court has not taken the leap to extend a common carrier's duty to passengers after they've exited a bus. Hr'g Tr. 11, 27, App. 1140, 1156.

Petitioner cites *Bennett v. Bartles*, *Kaufman v. Charleston Transit Co.*, *Isgan v. Jenkins*, *Abdulla v. Pittsburgh & Weirton Bus Co.*, and *Jones v. Perrine* for the proposition that a heightened negligence standard applies to Respondent. Pet'r's Br. 14–17. Nowhere in these cases does the Court apply any duty to persons after they have exited a bus and travelled from the stop.

Moreover, all but one of these cases were decided before this Court adopted the modified comparative fault standard in 1979. *See Bradley v. Appalachian Power Co.*, 163 W. Va. 332, 256 S.E.2d 879 (1979). The one case decided after 1979, *Jones v. Perrine*, involved a passenger who was injured immediately upon exiting a bus. The only issue presented to the Court was whether the jury instructions were accurate—not whether the taxi driver indeed owed the plaintiff a duty after the plaintiff exited the cab. Thus, *Jones* does not answer whether Respondents in this case owed Petitioner a duty after she alighted and crossed the road. *Jones* is also factually distinguishable. Unlike *Jones*, this is not a case where Plaintiff was inebriated and let out in front of an oil patch, exited the bus, and immediately was injured. Here, Plaintiff had exited where she'd requested to be let off, like she had numerous times before, and had almost completely (albeit diagonally) crossed the road before being struck. Pet'r's Test., App. 19–20, 23, 28; Video, App. 207.

Most significantly, the cases Petitioner relies on were decided before the Tort Claims Act was enacted in 1986. It is not disputed that the Tort Claims Act applies in this case; the KRT is a political subdivision as defined under the Tort Claims Act. *See* W. Va. Code § 29-12A-3(c) ("A political subdivision means . . . any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities."). Statutory immunity and liability of a political subdivision are now specifically "governed exclusively by the West Virginia Tort Claims and Insurance Reform Act."

Bowden v. Monroe Cnty. Comm'n, 232 W. Va. 47, 51, 750 S.E.2d 263, 267 (2013); *see also* W.Va. Code § 29-12A-1 *et seq*. The Act only allows liability for political subdivision in specific situations and otherwise provides immunity to political subdivisions. The Court in *Dattoli* reiterated that the Tort Claims Act exists:

> to limit liability of political subdivisions and provide immunity to political subdivisions in certain instances and to regulate the costs and coverage of insurance available to political subdivisions for such liability. W. Va. Code § 29-12A-1 (1986). Considering these purposes, there is no basis for a finding that W. Va. Code § 29-12A-4(c) reduces a plaintiff's evidentiary burden in proving the negligence of a political subdivision under the statute.

Wheeling Park Comm'n v. Dattoli, 237 W. Va. 282, 787 S.E.2d 546, 553 (2016). Under the controlling Tort Claims Act, a political subdivision can only be liable for negligence of employees. Contrary to Plaintiff's argument, the KRT does not owe a heightened duty. The Tort Claims Act does not impose any heightened duty or slight negligence standard. The West Virginia Supreme Court explained in *Dattoli*:

> The standard for liability set forth in W. Va. Code § 29-12A-4(c) is, by its plain terms, a negligence standard. . . . The statute does . . . expressly provide that the traditional elements of negligence apply in actions brought for injuries incurred on the property of political subdivisions. . . . The common meaning of the word "negligence" is well established in our law.

Wheeling Park Comm'n v. Dattoli, 237 W. Va. 275, 281–282, 787 S.E.2d 546, 552–553 (2016). Accordingly, the traditional negligence standard applies under the Tort Claims Act. Petitioner's argument for heightened duty is misplaced, and is otherwise not applicable as Petitioner was no longer a passenger on the bus when she was injured, unlike in the cases cited by Petitioner.

In a footnote, Petitioner cites to *Dotts v. Taressa*, 390 S.E.2d 568 (W. Va. 1990), which was decided after passage of the Tort Claims Act but before *Dattoli* was decided. Pet'r's Br. n. 1. Again, *Dattoli* clarified that only a traditional negligence standard applies under the Tort Claims

Act. The Court in *Dotts* cites the pre-Tort-Claims-Act elevated duty in passing to determine an insurance coverage issue. *Dotts v. Taressa J.A.*, 182 W. Va. 586, 593, 390 S.E.2d 568, 575 (1990). The Court did not determine or address whether the heightened or elevated duties for common carriers apply post-Tort Claims Act. Petitioner's reliance on *Dotts* is immaterial.

In sum, heightened duty or not, Petitioner can point to no authority to establish that a duty is owed to a passenger who has flagged a stop, alighted, and travelled from the stop, almost crossing the road before being struck in a hit-and-run. Common sense militates against such a duty. KRT drivers are responsible for making sure passengers exit the bus safely; but KRT drivers are not responsible for making sure they walk home safely; and KRT drivers are not responsible for making sure passengers cross roads safely. The circuit court's *Order* should be affirmed.

b. ON-POINT CASE LAW FROM ACROSS THE COUNTRY DEMONSTRATES THAT RESPONDENTS OWE PETITIONER NO DUTY UNDER THE UNDISPUTED FACTS

While our Supreme Court has not addressed the issue presented, courts across the country have found that common carriers owe no duties to passengers after they've exited the vehicle and travelled from the stop. While cases from other jurisdictions are not binding on this Court, the West Virginia Supreme Court recognizes that such cases are "entitled to great respect and should be regarded as persuasive authority." *State v. Blatt*, 235 W. Va. 489, 498, 774 S.E.2d 570, 579 (2015). Because West Virginia law is silent on the issue presented, the following cases are particularly instructive.

Tennessee's Eastern District Court has held:

> Tennessee does not impose a duty on common carriers to ensure that adult passengers arrive safely at their destination after exiting a vehicle. The only context where a common carrier's duty goes beyond dropping off passengers in a safe place is the relationship between school bus drivers and underage children.

White v. City of Gatlinburg, No. 3:14-CV-00505, 2016 U.S. Dist. LEXIS 70983, at *19-20, App. 92.

Louisiana's Second Circuit Court of Appeals has held:

> Once a passenger freely disembarks at his chosen destination free from harm, his status as a passenger, and the public carrier's contract to transport for hire, cease. At that point the public carrier only owes such person the duty of ordinary care -- it is under no duty to warn the former passenger of "a danger which is apparent, obvious, and known to every person in good mind and sense" . . . nor to personally transport, convey, or assist the former passenger in crossing a street or highway.

Crear v. Nat'l Fire & Marine Ins. Co., 469 So. 2d 329, 335 (La. Ct. App. 1985) (internal citations omitted), App. 801.

Missouri's Western District Court of Appeals has held:

> Once the passenger has safely alighted from the carrier and is upon the street or sidewalk, he is no longer a passenger and the carrier is no longer responsible as such. Liability, therefore, will not exist for injuries sustained by former passengers in the course of traveling from the point of debarkation to the ultimate destination because once the passenger safely alights from the carrier and is upon the street, the passenger-carrier relationship is terminated.

Behrenhausen v. All About Travel, 967 S.W.2d 213, 217 (Mo. Ct. App. 1998) (internal citations omitted), App. 811.

In a case involving an inebriated cab passenger who exited the cab and was later killed driving his own vehicle, Maine's Supreme Judicial Court held "[t]he cab driver had no further duty to became an instrument for good, that is, to act affirmatively to protect the passenger from himself after his exit." *Mastriano v. Blyer*, 2001 ME 134, 779 A.2d 951, 955 (2001), App. 820.

Illinois' Fourth District Appellate Court has held:

> To hold defendants responsible on these facts—where [plaintiff] safely exited the bus at the designated stop—would render them an absolute insurer of a passenger's safety in limitless ways. As

> defendants' duty to [plaintiff] was fully performed when she stepped off the bus and arrived safely at the bus stop, we find the trial court properly granted summary judgment in favor of defendants.

Harper v. Decatur Transit Mgmt, 2018 IL App (4th) 170146-U, ¶ 34 (2018), App. 828. More recently, Illinois' First District Court of Appeals explained, "an individual must be in the act of boarding, be upon, or be in the act of alighting from the carrier's vehicle to be considered a 'passenger' to whom the highest degree of care is owed." *Pryor v. Chi. Transit Auth.*, 2022 IL App (1st) 200895, ¶ 26.

The Supreme Court of Rhode Island has explained:

> "[a] person must be in the position of a passenger within the legal acceptance of that term before a carrier is called upon to exercise for his safety the highest degree of care and foresight consistent with the orderly conduct of its business with respect to all matters under its control."

Gereau v. Parenteau, 78 R.I. 314, 317, 82 A.2d 396, 398 (1951). A person not on a bus is not a bus passenger.

The Ohio Supreme Court held:

> It is not the duty of a conductor or motorman to warn passengers upon leaving a streetcar at a regular stop of the danger of automobile traffic in a city street, and failure to caution such passenger of approaching automobiles will not render the company liable for injuries caused by an automobile passing the car at an excessive rate of speed and striking the passenger after he had alighted from the streetcar in safety.
>
> . . .
>
> In jurisdictions outside Ohio the prevailing rule is that a common carrier has the duty to discharge a passenger at a place of safety, but after so discharging him no liability rests on the carrier for injury the passenger sustains when struck by a motor vehicle in attempting to cross a street, since the relation of carrier and passenger has ended prior to the infliction of the injuries and at a time when the passenger has become an ordinary pedestrian.
>
> . . .
>
> To hold these defendants liable here would be imposing a duty on them beyond the responsibilities of carriage.

Feldman v. Howard, 10 Ohio St. 2d 189, 192–194, 226 N.E.2d 564, 566–567 (1967), App. 1045.

In *Se. Greyhound Lines v. Woods*, an elderly woman requested to be let off, not at the usual designated stop, but closer to her home; she had been dropped off this way before. 298 Ky. 773, 774, 184 S.W.2d 93, 94 (1944), App. 1051. The driver obliged. Her son helped her alight, but as she alighted, she stepped in a rut and suffered injury. The driver had no knowledge about the rut. The court reversed judgment in favor of the carrier. Here, like in *Woods*, Plaintiff was assisted and accompanied by her companion Mr. Stover. She was let off for her convenience as she flagged the stop (pulled the cord). The driver, Daniel Taylor, did not know that Taylor Jenkins would strike Plaintiff after Plaintiff had almost crossed the road. The video does not even show what is ostensibly Taylor Jenkins' car until after Plaintiff alights and the bus begins to pull away. *See* App. 207.

The aforementioned *Woods* court listed a number of cases finding that common carriers do not owe a duty to protect passengers from being hit by traffic after they've alighted. *See Tinnell v. Louisville Ry. Co.*, 250 Ky. 245, 246, 62 S.W.2d 467, 468 (1933), App. 1059. For instance, in *Lewis*, the Oregon Supreme Court found in 1934, "[h]aving discharged the passenger in a place of safety, there could be no causal connection between that act and the injury which she suffered. She was familiar with the surrounding conditions, and the operator of the bus owed no duty to warn her of approaching automobiles." *Lewis v. Pac. Greyhound Lines, Inc.*, 147 Or. 588, 594, 34 P.2d 616, 618 (1934), App. 973. The court therefore reversed judgment in favor of the carrier.

In a Kentucky case, *Pelfrey v. Snowden*, a student exited the bus, walked to the rear of the bus, and started across the road behind it, when she was struck and injured by a car. The school bus had proceeded but a short distance before she was struck. *Pelfrey v. Snowden*, 267 Ky. 432, 433, 102 S.W.2d 352, 352 (1937), App. 1062. The court affirmed judgment in favor of the bus

driver and school, reasoning, "[t]he negligence ultimately . . . was the failure of the operator of the car which struck the plaintiff to exercise the proper degree of care, and not the negligence of the operator of the car from which the plaintiff had alighted."

As demonstrated, there is substantial, on-point case law from across the country that supports a finding of no duty here. Petitioner has identified no law with facts analogous to the case *sub judice* where any court has found a duty owed. On the other hand, Respondents have provided the Court with ample authority showing no duty in cases with facts aligned with the instant case. The Court should affirm the circuit court's grant of summary judgment.

II. THE CIRCUIT COURT PROPERLY CONSIDERED ALL EVIDENCE AND ARGUMENTS PRESENTED AND PROPERLY FOUND NO DUTY UNDER THE UNDISPUTED CIRCUMSTANCES

Petitioner avers that there are genuine issues of fact regarding the foreseeability of Petitioner's injury. Petitioner relies on one purported fact—that Mr. Taylor testified he thinks where Petitioner requested to be let off was not safe. However, this fact is immaterial and insufficient to overcome summary judgment.

First, again, Plaintiff ignores that, under West Virginia law,

> whether there is a duty is a question of law and not a question of fact for the jury. Likewise, legal commentators agree that the determination of any question of duty . . . has been held to be an issue of law for the court rather than for the jury, to be determined by reference to the body of statutes, rules, principles, and precedents which make up the law.

Aikens v. Debow, 208 W. Va. 486, 491, 541 S.E.2d 576, 581 (2000) (internal quotations omitted); *see id.* at syl. pt. 5; *Jackson v. Putnam Cty. Bd. of Educ.*, 221 W. Va. 170, 175, 653 S.E.2d 632, 637 (2007). Here, Plaintiff identifies no statute, rule, principle, or precedent that establishes Defendants owed Plaintiff a duty after she exited the bus and departed from the stop, as discussed *supra*.

In any event, Petitioner has failed to demonstrate how the alleged injury was foreseeable under the undisputed facts. Under West Virginia law,

> 12. A court's overall purpose in its consideration of foreseeability in conjunction with the duty owed is to discern in general terms whether the type of conduct at issue is sufficiently likely to result in the kind of harm experienced based on the evidence presented. If the court determines that disputed facts related to foreseeability, viewed in the light most favorable to the plaintiff, are sufficient to support foreseeability, resolution of the disputed facts is a jury question.
> . . .
>
> Essentially, the judge in cases such as the one before us has the responsibility of reviewing the evidence to see if it is sufficient for a jury to make a determination of whether or not it was foreseeable that the acts of the property owner or occupier could have under the facts of the case, disputed or not, created an unreasonable high risk of harm to the victim under the circumstances. When the facts are in dispute, the court identifies the existence of the duty conditioned upon the jury's possible evidentiary finding.

Syl. pt. 12, *Strahin v. Cleavenger*, 216 W. Va. 175, 185, 603 S.E.2d 197, 207 (2004).

Here, the circuit court properly considered the record as a whole,[1] in a light favorable to Petitioner,[2] and found as a matter of law:

> 23. The Court finds no West Virginia law that imposes a duty on common carriers to passengers after they have alighted from the bus. After extensive briefing by the parties, and consistent with persuasive authority cited by Defendants, the Court concludes that the KRT did not have a duty to Plaintiff after she flagged the stop, exited the bus, the bus pulled away, and she crossed the road diagonally and was struck by a vehicle in a hit-and-run. This is not a case where Plaintiff had complained about the stop. This is not a case where Plaintiff was immediately injured as she alighted. Plaintiff had almost crossed the road before falling victim to a hit-and-run. Plaintiff was not in danger at the stop; she was not in danger until she crossed the road without yielding. She had ample opportunity to reach a point of safety; her companion made it across the road without incident. Defendants did not know where she was going and did not control where she went or the path she took to get there.

[1] App. 1121.
[2] App. 1124.

> 24. Based upon the foregoing, Plaintiff has failed to establish that KRT owed her a duty after she exited the bus, crossed the road, was nearly to the other side of the road, and was struck by an oncoming vehicle.

App. 1127–1128. The circuit court fulfilled its role in finding no duty as a matter of law. Further, the evidence is insufficient for a jury to make a determination of whether or not Petitioner's injury was foreseeable. Petitioner does not dispute the facts as recited by the Court. Reasonable persons cannot draw differing conclusions from these facts.

In fulfilling its role, the circuit court was not required to consider evidence that is conjectural or problematic. *Precision Coil*, 194 W. Va. at 60, 459 S.E.2d at 337; *Belcher v. Wal-Mart Stores, Inc.*, 211 W. Va. 712, 721, 568 S.E.2d 19, 28 (2002); *See also Precision Coil*, 194 W.Va. at 61, 459 S.E.2d at 338 ("unsupported speculation is insufficient to defeat a summary judgment motion.") (quoting *Felty v. Graves–Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir.1987)); *Gibson v. Little Gen. Stores, Inc.*, 221 W. Va. 360, 363, 655 S.E.2d 106, 109 (2007). As this Court has explained, to show that summary judgment is not appropriate, the opposing party "must satisfy the burden of proof by offering more than a mere 'scintilla of evidence,' and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." *Precision Coil, Inc.*, 194 W. Va. at 60, 459 S.E.2d at 337. "The mere contention that issues are disputable is not sufficient to preclude summary judgment." *Conley v. Stollings*, 223 W. Va. 762, 768, 679 S.E.2d 594, 600 (2009). "Summary judgment is appropriate where the record taken as a whole 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." Syl. pt. 4, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994).

Here, Petitioner asserts that the circuit court's *Order* should be reversed based on the argument that the driver, Daniel Taylor, should not have dropped Petitioner off where she

requested to be dropped off—the same area Petitioner routinely requested to be dropped off without any complaint. Petitioner's position is problematic. Notably, Petitioner elicited no testimony that Mr. Taylor thought the stop was unsafe *on October 14, 2019*. Petitioner elicited, and can cite to, no testimony of any other driver or KRT employee characterizing Petitioner's flagged stop as unsafe. *See* App. 44–115, 175–206 (other KRT employee depositions). Petitioner elicited, and can cite to, no testimony that KRT was ever notified of this area being dangerous for a flag stop. Rather, Petitioner cites Mr. Taylor's testimony that, in hindsight, he considers the stop unsafe. *See* App. 124, 131. One driver's opinion is not a source of legal duty. *See Aikens v. Debow*, 208 W. Va. at 491, 541 S.E.2d at 581. Even assuming Mr. Taylor thought the stop was unsafe on October 14, 2019, Petitioner cannot produce evidence sufficient for a reasonable jury to find in Petitioner's favor as Mr. Taylor's subjective opinion amounts to nothing more than a mere scintilla of evidence, especially considering the breadth of undisputed evidence.

In this vein, Mr. Taylor's hindsight opinion is further problematic considering the objective, undisputed evidence, namely that Petitioner was not injured at the stop; Petitioner was injured after she travelled from the stop. Thus, whether the stop was unsafe or not is immaterial because she was not injured at the stop. Below and on appeal, Petitioner cannot show how the type of conduct at issue is sufficiently likely to result in the kind of harm alleged here. *See* syl. pt. 12, *Strahin*, 216 175, 603 S.E.2d 197. As the circuit court explained, "[t]his is not a case where Plaintiff was immediately injured as she alighted." App. 1128.

In addition, Petitioner cannot overcome summary judgment considering the undisputed facts taken as a whole. Petitioner routinely requested to be dropped off in that area, rode the bus once or twice per week, and never complained about the stop. The map of the area shows no blind spots or limited sightlines. *See* App. 921–922. And, in any event, signs on the bus clearly require

passengers to wait for a clear sight line before crossing the road. App. 369–370. Her companion made it safely across the road and told Petitioner to hurry. Contrary to Petitioner's Brief at 19, there is no evidence, and Petitioner cites to no evidence, that Mr. Taylor knew where Petitioner's ultimate destination was or the route she would take to get there. Contrary to Petitioner's Brief at 20, there is no evidence, and Petitioner cites to no evidence, that Petitioner had "only one path" to her destination. There is no evidence that Mr. Taylor knew Petitioner would fail to yield to traffic in violation of signage posted on the bus and in violation W. Va. Code § 17C-10-3. There is no evidence that Mr. Taylor knew that Ms. Jenkins would hit Petitioner and flee. The bus had already pulled away and Petitioner had walked diagonally across the road, almost making it to the other side, when she fell victim to a hit-and-run. Again, summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party. *See* syl. pt. 4, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). The instant record taken as a whole could not lead a rational trier of fact to find for the nonmoving party. Without foreseeability, there can be no duty.

Even if Petitioner could identify more than a scintilla of evidence that the location was unsafe, summary judgment in Respondents' favor is still proper. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Tolley v. Carboline Co.*, 217 W. Va. 158, 166, 617 S.E.2d 508, 516 (2005) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "Factual disputes that are irrelevant or unnecessary will not be counted." *Marcus v. Holley*, 217 W. Va. 508, 516, 618 S.E.2d 517, 525 (2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Assuming *arguendo* that the location was unsafe (despite Petitioner's routine requests to be dropped off there without complaint), Petitioner was not injured where she requested to be let off. She was injured

a distance away from the flagged stop. That Petitioner was not injured until after the bus pulled away and until she was almost across the road also cuts sharply against Petitioner's position. The danger did not exist where the bus stopped or at the time the bus stopped, the danger existed on the opposite side of road, up the road (as Plaintiff crossed diagonally) after the bus pulled away. The circuit court correctly relied on these undisputed facts, block-quoted above from the *Order*, to find that no duty existed after Petitioner alighted from the bus and crossed the road.

Petitioner's argument that Mr. Taylor's training was insufficient also does not overcome summary judgment because, no matter Mr. Taylor's training, West Virginia law does not recognize a duty owed to passengers who have alighted a bus, travelled from the stop, and almost crossed the street before being struck by a nonparty vehicle. Further, Petitioner's framing of the issue is misleading. Petitioner's argument assumes without any support that there is some requirement that Respondent KRT train its drivers on "safe places." That aside, it is undisputed that Petitioner completed his training, including training that passengers exit a bus in a safe location. Mr. Taylor testified:

> Q. Okay. Did KRT provide you any training on the instructions you're to give passengers when they exit a bus?
> A. Yes.
> Q. And what is that?
> A. To see that they can step off the bus in a safe spot. That's all. Just see that they can exit the bus in a safe spot.
> . . .
> Q. Okay. So what is the designated procedure at KRT for passengers exiting a bus?
> A. To exit the bus safely.
> Q. Is that it?
> A. That's it.
> . . .
> A. It's not our job to see that they cross the road safely. It's their job to cross the road. It's not our job. Once they're off the bus, we're not responsible for them.

App. 122, 123; *see* also training docs, App. 1065–1066. Respondent KRT does not train drivers to ensure the safety of those who have alighted and travelled beyond the stop; it is not Respondents' duty to do so under any West Virginia law and considering law from across the country. Petitioner's framing and argument also ignores that Petitioner's stop was a "flag stop," meaning Petitioner dictated where she wanted let off. Petitioner had requested, or "flagged," to stop there numerous times before without incident or complaint. Again, it is fatal to Petitioner's argument that Petitioner was not injured at the stop; she was injured after the bus pulled away, after she began to cross the road diagonally, after her companion told her to hurry, after her companion crossed the road without incident, and after she was three steps from crossing the road. Petitioner was not at the stop when she was struck by Ms. Jenkins, who kept driving after striking her.

It cannot be overlooked that, under West Virginia law, courts are to look to statutes, rules, principles, and precedents for the source of duty—not a drivers' opinions. *See Aikens v. Debow*, 208 W. Va. at 491, 541 S.E.2d at 581; *id.* at syl. pt. 5; *Keen v. Coleman*, No. 21-0144, 2022 W. Va. LEXIS 448, at *16 (May 31, 2022); *Jackson v. Putnam Cty. Bd. of Educ.*, 221 W. Va. 170, 175, 653 S.E.2d 632, 637 (2007). Thus, even if Petitioner could produce more than a scintilla of evidence that the stop was unsafe, summary judgment in Respondents' favor is proper as no West Virginia law extends a common carrier's duty so as to require protection of an already-alighted person who travelled from the stop and crossed the road. As further explained *infra* and as other courts explain,[3] no such duty exists because it is not reasonable, and places too heavy a burden on common carriers, to require common carriers to anticipate and ensure against what dangers lie beyond the stop. This Court should affirm the circuit court's grant of summary judgment

III. CONSIDERING COMMON SENSE PUBLIC POLICY CONSIDERATIONS, THIS COURT SHOULD NOT IMPOSE A DUTY WHERE NONE HAS BEEN FOUND BEFORE

[3] *See* § I.B. *supra*.

As the circuit court discussed, under West Virginia law,

> Beyond the question of foreseeability, the existence of duty also involves policy considerations underlying the core issue of the scope of the legal system's protection . . . . Such considerations include the likelihood of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the defendant.

Robertson v. LeMaster, 171 W. Va. 607, 612, 301 S.E.2d 563, 568 (1983) (internal citations omitted). This Court has warned against imposing duties where none exist:

> A line must be drawn between the competing policy considerations of providing a remedy to everyone who is injured and of extending exposure to tort liability almost without limit. It is always tempting to impose new duties and, concomitantly, liabilities, regardless of the economic and social burden. Thus, the courts have generally recognized that public policy and social considerations, as well as foreseeability, are important factors in determining whether a duty will be held to exist in a particular situation.

Aikens v. Debow, 208 W. Va. 486, 493, 541 S.E.2d 576, 583 (2000).

Imposing a duty on the KRT to (1) assist passengers in crossing the road (2) otherwise somehow ensure that passengers properly cross a road, i.e., refrain from crossing the road diagonally, (2) ensure that passengers yield to traffic, (3) ensure that other drivers yield to passengers, and (4) ultimately guarantee that the passenger walk to their destination without incident is extraordinarily burdensome. The magnitude of imposing such a duty is overly burdensome and would hamstring or completely impede KRT's operations. Must a KRT driver ensure the passenger walks safely to wherever their ultimate destination is? Must a driver de-board the bus at every stop to accompany passengers to wherever their ultimate destination is? What of the passengers left on the bus? How would this duty be satisfied? Where would the duty end? Must common carriers hire additional staff to accompany passengers beyond the stop? How many additional staff? How many per bus? These policy considerations lean strongly in favor of finding no duty because to hold otherwise would render Respondents "an absolute insurer of a passenger's

safety in limitless ways." *See Harper v. Decatur Transit Mgmt*, 2018 IL App (4th) 170146-U, ¶ 34 (2018), App. 828.

It also cannot be ignored that current, longstanding West Virginia law already addresses whose duty it is to yield to traffic, whose duty it is to yield to pedestrians, and criminalizes drivers who hit a pedestrian and flee. Under W. Va. Code § 17C-10-3:

> (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
> (b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
> (c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Under W. Va. Code § 17C-10-4:

> Notwithstanding the foregoing provisions of this article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

Under W. Va. Code § 17C-4-1:

> (a) The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash until he or she has complied with the requirements of § 17C-4-3 of this code: Provided, That the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to any person injured in the crash, as required by § 17C-4-3 of this code.
> (b) Any driver who is involved in a crash in which another person suffers bodily injury and who intentionally violates § 17C-4-1(a) of this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more

> than $1,000, confined in jail for not more than one year, or both fined and confined.
> (c) Notwithstanding the provisions of § 17C-4-1(b) of this code, any driver who is involved in a crash in which another person suffers serious bodily injury and who intentionally violates § 17C-4-1(a) of this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,500, or imprisoned in a state correctional facility for not less than one year nor more than three years, or both fined and imprisoned.

While West Virginia law already addresses a pedestrian's duty to yield, and a driver's duty to yield and stop, West Virginia law has not recognized any duty owed to passengers after they've alighted from a public transit bus. As discussed, other jurisdictions' recognize affirmatively that no such duty exists. In sum, application of West Virginia law on duty generally, the lack foreseeability, strong policy considerations, and a survey of law from across the country—all militate in favor of a finding of no duty here. The circuit court should be affirmed.

ARGUMENT ON CROSS-ASSIGNMENT OF ERROR

I. THE CIRCUIT COURT ERRED IN NOT GRANTING SUMMARY JUDGMENT ON NUMEROUS OTHER IMMUNITY-DRIVEN GROUNDS THOROUGHLY BRIEFED BELOW.

On *de novo* review, the Court can consider the other grounds thoroughly briefed below to affirm the circuit court's grant of summary judgment. First, KRT is entitled to absolute immunity as Plaintiff's claims are based on the KRT adopting or failing to adopt certain policies. App. 604–605, 618–622. Under the Tort Claims Act at W. Va. Code § 29-12A-5(a)(4), the Respondents are entitled to absolute immunity for any claim resulting failing to adopt rules or policies. *See* App. 467–468, 842–844.

Second, KRT cannot liable for negligence as Petitioner can show no breach and no causation, and in any event, KRT cannot be liable as Petitioner alleged Daniel Taylor acted recklessly. App. 468–475, 767–770, 841–842, 847–848. Because Petitioner's negligence claim

fails for this reason too, Respondents are immune under the Tort Claims Act, and the circuit court should have entered summary judgment on this ground.

Third, Taylor Jenkins hit-and-run is the proximate and/or intervening cause of Petitioner's injury. App. 475–476, 848–850. Because Petitioner's negligence claim fails here, Respondents are immune under the Tort Claims Act, and the circuit court should have entered summary judgment on this ground.

Fourth, Daniel Taylor is immune because Petitioner produced no evidence that he acted recklessly. App. 477–478, 850–854. Because Petitioner's negligence claim fails for this reason too, Respondent Taylor is immune under the Tort Claims Act at W. Va. Code § 29-12A-5(b), and the circuit court should have entered summary judgment on this ground.

Fifth, summary judgment was warranted on Petitioner's failure-to-train claim because it is undisputed that Daniel Taylor was trained on the subject route 23. App. 845–847; Argument § II *supra*. Because Petitioner's negligence claim fails for this reason too, Respondents are immune under the Tort Claims Act, and the circuit court should have entered summary judgment on this ground.

CONCLUSION

West Virginia law imposes no duty on Respondents to ensure the safety of passengers who alight, travel from the stop, and are struck by a nonparty vehicle. Case law from other jurisdictions instructs and persuades that common carriers owe no such duty for good reason. The circuit court's *Order* granting summary judgment should be affirmed.

The circuit court was presented with numerous other grounds for summary dismissal, all involving immunity. This Court should instruct the circuit court to enter summary judgment on these additional grounds as well.

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No. 22-0207

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SANDY K. HAYES,

Plaintiff Below, Petitioner,

v.

KANAWHA VALLEY REGIONAL TRANSPORTATION AUTHORITY, a political subdivision, and JOHN DOE bus driver, an employee of KANAWHA VALLEY REGIONAL TRANSPORTATION AUTHORITY,

Defendants Below, Respondents.

From the Circuit Court of Kanawha County, West Virginia

Civil Action No. 20-C-1013

CERTIFICATE OF SERVICE

The undersigned counsel for Respondent, Corey Davis, do hereby certify that on this **4th** day of **August, 2022**, a true copy of the foregoing ***RESPONDENTS' RESPONSE TO PETITION FOR APPEAL*** has been served via U.S. Mail to the following counsel of record:

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