IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0873

STATE OF WEST VIRGINIA,

Respondent,

v.

MICAH A. MCCLAIN,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the October 18, 2021, Order
Circuit Court of Monongalia County
Case No. 21-F-76

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CERTIFIED QUESTIONS

1. Does the Legislature's 2010 amendment of West Virginia Code § 17C-4-1, replacing the word "accident" with "crash" create ambiguity in the interpretation of the statute?

   Answer: No.

2. In applying the rule of lenity, does the operative phrase "vehicle **involved** in a crash" in West Virginia Code § 17C-4-1 (a) and (d) [2018], mean that a vehicle must make direct physical contact with or collide with a person or vehicle being driven or occupied by a person resulting in his or her injury or death?

   Answer: No.

3. Does the phrase "involved in a crash" as contemplated in West Virginia Code § 17C-4-1 (a) & (d), include a driver who makes contact with a single vehicle and that vehicle makes contact with other vehicles in a unbroken chain resulting in injury or death to persons in other vehicles?

   Answer: Yes.

4. If ambiguity does not exist, should the Court allow the word "crash" as used in West Virginia Code § 17C-4-1, to be given its common, ordinary and accepted meaning? Further, is it a question of fact as to whether or not the driver of any vehicle was involved in a "crash" as contemplated in West Virginia Code § 17C-4-1 (a) & (d)?

   Answer: Yes.

J.A. 6-7 (emphasis in original).

STATEMENT OF THE CASE

In September 2019, a multi-vehicle crash on Route 7 in Monongalia County, West Virginia, killed Stephanie Eddy. *See* J.A. 24-25. Allison Lippert, who was involved in the crash, reported to police that she was following an "oversize load" when a tractor trailer (actually a tri-axle dump truck, J.A. 25) approached in the oncoming lane. J.A. 52. "The oversize load," which Petitioner was driving, "swiped the oncoming tractor trailer." J.A. 52. The tri-axle dump truck then hit Ms. Lippert's vehicle, while the oversized load "kept going." J.A. 52.

Petitioner's account to police was much the same. Petitioner admitted that, while driving a tractor pulling a lowboy loaded with a bulldozer, the bulldozer's blade struck the driver's side of the dump truck. J.A. 53. The strike in turn "caus[ed] [the dump truck driver] to lose control of his truck." J.A. 53; *see also* J.A. 300 ("[T]he blade of [the bulldozer] came in contact with the front driver's tire [of] the tri-axle dump truck . . . ."). Petitioner called over the radio to his pilot car and let her know that there was a wreck. J.A. 53. He then continued on to his destination without stopping. J.A. 53.

The tri-axle dump truck, which was loaded with asphalt, struck Ms. Lippert's vehicle, and then flipped over on top of Ms. Eddy's vehicle. J.A. 25. Ms. Eddy was killed. J.A. 25.

A grand jury indicted Petitioner in February 2021 on a single count of "Leaving the Scene of an Accident Resulting in Death" in violation of West Virginia Code § 17C-4-1(a) and (d). J.A. 5. Petitioner subsequently filed "Defendant's Motion to Certify Question," asking whether

> the Legislature's amendment to W. Va. Code § 17C-4-1 in 2010 [ ] substituting the word "crash" for the word "accident" creates ambiguity as applied to the [ ] facts of this case, to-wit: That Defendant's vehicle did not collide into Ms. Eddy's vehicle or make any physical contact with Ms. Eddy's vehicle and, thereby, was not a "vehicle involved in a crash resulting in injury to or death of [Ms. Eddy]."

J.A. 241. The State responded in opposition, arguing that the statute was unambiguous. J.A. 256. Following a hearing on the matter, the circuit court certified four questions to the Court. J.A. 526-27.

This criminal proceeding is in its infancy. When the circuit court stayed proceedings pending the answers to these certified questions, this matter was set for a substantive pretrial motion hearing. J.A. 12. Those pretrial motions include Petitioner's Motion for Judgment on the Pleadings, J.A. 12, Motion to Dismiss Indictment [for] Unconstitutional Vagueness and

Ambiguity, J.A. 80-82, and Motion to Dismiss, J.A. 140-46. Thus, this Court's guidance in answering the certified questions will shape how this case unfolds and moves forward to trial.

SUMMARY OF ARGUMENT

This case involves a "crash" in every sense. The Legislative intent and the language of West Virginia Code § 17C-4-1 is clear and unambiguous: 1) replacing the word "accident" with "crash" in the 2010 amendment of West Virginia Code § 17C-4-1 does not create ambiguity in the statute; 2) the plain language of West Virginia Code § 17C-4-1 is clear such that the operative phrase "vehicle involved in a crash" does not mean a vehicle must make direct physical contact with a person or vehicle occupied by another, thus causing injury or death; 3) the operative phrase "involved in a crash" includes a driver who makes contact with a single vehicle, which then makes contact with other vehicles in an unbroken chain resulting in injury or death to persons in other vehicles; and 4) because ambiguity does not exist, the word "crash" as used in West Virginia Code § 17C-4-1, should be given its common, ordinary, and accepted meaning. Whether Petitioner was involved in the crash that killed Ms. Eddy is a mixed question of law and fact: the interpretation of the language of the statute is a question of law while the question of whether Petitioner violated the statute is question of fact for the jury.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This case is set for Rule 20 oral argument before this Court at some point in the near future. This case is not suitable for memorandum decision.

ARGUMENT

A. Standard of Review.

The standard of review for this certified questions case is *de novo*. Syl. Pt. 1, *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W. Va. 172, 172, 475 S.E.2d 172, 172 (1996) ("The appellate standard of review of questions of law answered and certified by a circuit court is *de novo*.").

B. The 2010 amendment of West Virginia Code § 17C-4-1 is not unconstitutionally vague.

West Virginia Code § 17C-4-1, also known as "Erin's Law," provides, in pertinent part:

> (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.
>
> . . .
>
> (d) Notwithstanding the provisions of § 17C-4-1(b) or § 17C-4-1(c) of this code, any driver who is involved in a crash that proximately causes the death of another person 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 $5,000, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned: *Provided,* That any death underlying a prosecution under this subsection must occur within one year of the crash.

Prior to amendment in 2010,[1] § 17C-4-1 referred to an "accident," rather than a "crash." throughout the statute. In the case at bar, Petitioner asserts that the 2010 amendment is so ambiguous that it rises to the point of being unconstitutionally vague. *See* Pet'r Br. at 15, 18, 21. Petitioner's contentions, however, have no firm grounding in law.

[1] The Legislature also amended the statute in 2018, but nothing in that amendment is relevant here.

Petitioner's brief makes substantial arguments that West Virginia Code § 17C-4-1 is unconstitutionally vague. *See* Pet'r Br. at 15-17. However, this argument is a red herring meant to circumvent the actual certified questions before this Court, and the Court should not consider it. In any event, this statute is not unconstitutionally vague. "Claims of unconstitutional vagueness in criminal statutes are grounded in the constitutional due process clauses, *U.S. Const.* amend. XIV, Sec. 1, and *W.Va. Const.* art. III, Sec. 10." *State v. Bull*, 204 W. Va. 255, 512 S.E.2d 177 (1998). This Court held in Syl. Pt. 1 of *State v. Blair*, 190 W. Va. 425, 438 S.E.2d 605 (1993), "[a] criminal statute must be set out with sufficient definiteness to give a person of ordinary intelligence fair notice that his contemplated conduct is prohibited by statute and to provide adequate standards for adjudication." Further, in Syllabus Point 2 of *Blair*, this Court stated,

> "[t]here is no satisfactory formula to decide if a statute is so vague as to violate the due process clauses of the State and Federal Constitutions. The basic requirements are that such a statute must be couched in such language so as to notify a potential offender of a criminal provision as to what he should avoid doing in order to ascertain if he has violated the offense provided and it may be couched in general language."

(citations omitted). Erin's Law "is sufficiently definite to give a person of ordinary intelligence fair notice that his or her contemplated conduct is prohibited." *See* Syl. Pt. 1, *Bull*, 204 W. Va. 255, 512 S.E.2d 177.

1. The Legislature's decision to exchange the word "accident" with the word "crash" did not create ambiguity in West Virginia Code § 17C-4-1.

Replacing the word "accident" with the word "crash" did not create ambiguity in West Virginia Code § 17C-4-1; therefore, this Court should answer "no" to the first certified question.

Statutes are not to be construed in a vacuum, but must be read "as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part." Syl. Pt. 5 *Community Antenna Service, Inc. v. Charter Communications VI*, LLC, 227 W. Va. 595,

712 S.E.2d 504 (2011). The Court presumes that "legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, . . . and intended the statute to harmonize completely with the same." *Id.* "Accordingly, a court should not limit its consideration to any single part, provision, section, sentence, phrase or word, but rather review the act or statute in its entirety to ascertain legislative intent properly." *Id.* at Syl. Pt. 6, in part. "The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. Pt. 2, *Bradford v. West Virginia Solid Waste Management Board*, 246 W. Va. 17, 866 S.E.2d 82 (2021) (quoting Syl. Pt. 1, *Smith v. State Workmen's Compensation Commissioner*, 159 W. Va. 108, 219 S.E.2d 361 (1975).

When addressing the meaning of a given statute, "legislative intent is the dominant consideration. [Where] that intent is expressed by clear and unambiguous language . . . it is . . . not necessary for us to rely on canons of statutory construction calling for liberal construction of remedial legislation to effectuate legislative intent." *U.S. Life Credit Corp. v. Wilson*, 171 W. Va. 538, 541, 301 S.E.2d 169, 172 (1982). Where the Legislature has not defined a term in the statute, the undefined term is given its "common, ordinary, and accepted meaning." Syl. Pt. 6, in part, *State ex rel. Cohen v. Manchin*, 175 W. Va. 525, 336 S.E.2d 171 (1984); *see also Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012) ("When a term goes undefined in a statute, we give the term its ordinary meaning.").

"Courts frequently turn to dictionaries for help in determining a term's ordinary meaning." *United States v. Leak*, 426 F. Supp.3d 206, 213 (W.D.N.C. 2019); *see generally Nielson v. Shinseki*, 607 F.3d 802, 805-806 (Fed. Cir. 2010) (citations omitted) ("When terms are not defined, it is a basic principle of statutory interpretation that they are deemed to have their ordinary meaning. For that meaning, it is appropriate to consult dictionaries."). Indeed, this Court often

relies on dictionaries to determine the ordinary meaning of words. *See e.g., In re R.S.*, 244 W. Va. 564, 571-72 n.10, 855 S.E.2d 355, 362-63 n.10 (2021) (looking to Merriam-Webster Dictionary to define the word "including"); *State ex rel. Gorlin v. Webster*, No. 19-0423, 2019 WL 5858074, at *5 (W. Va. Supreme Court, Nov. 8, 2019) (memorandum decision) (referring to Merriam-Webster's Collegiate Dictionary to define the terms "arising" and "relating to"); *State v. Blatt*, 235 W. Va. 489, 504, 774 S.E.2d 570, 585 (2015) (referring to the Merriam-Webster's Collegiate Dictionary definition of the words "vicious," "aggression," and "dangerous" to determine their "common understood meaning"); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Miller*, 228 W. Va. 739, 748, 724 S.E.2d 343, 352 (2012) (relying on Merriam-Webster Online Dictionary to determine the "plain meaning" of the word "fence"); *W. Va. Employers' Mut. Ins. Co. v. Summit Point Raceway Assocs., Inc.*, 228 W. Va. 360, 368, 719 S.E.2d 830, 838 (2011) (consulting Merriam-Webster's Collegiate Dictionary, Random House Webster's Unabridged Dictionary, and Webster's Third New International Dictionary to examine the "common usage" of the term "offer"). Moreover, although the West Virginia Legislature did not define the term "crash," "silence does not, in and of itself, render a statute ambiguous." *Leggett v. EQT Prod. Co.*, 239 W. Va. 264, 278, 800 S.E.2d 850, 864 (2017) (quotation marks omitted). Here, the word "crash" has a readily understood meaning.

This Court's own prior holdings show why the Legislature replaced the word "accident" with "crash" in the 2010 amendment to § 17C-4-1. "Accident" is far broader and encompasses more potential scenarios than "crash." In *West Virginia Fire and Cas. Co. v. Stanley*, 216 W. Va. 40, 49, 602 S.E.2d 483, 492 (2004), this Court stated:

> Ordinarily, "accident" is defined as "an event occurring by chance or arising from unknown causes[.]" *Webster's New Collegiate Dictionary* 7 (1981). As one court has explained, "[a]n 'accident' generally means an unusual, unexpected and unforeseen event. . . . An accident is never present when a deliberate act is

> performed unless some additional unexpected, independent and unforeseen happening occurs which produces the damage . . . . To be an accident, both the means and the result must be unforeseen, involuntary, unexpected, and unusual." *Harrison Plumbing & Heating, Inc. v. New Hampshire Insurance Group,* 37 Wash. App. 621, 681 P.2d 875, 878 (1984) (citations omitted). *See also Travelers Ins. Companies v. P.C. Quote, Inc.*, 211 Ill.App.3d 719, 156 Ill.Dec. 138, 143, 570 N.E.2d 614, 619 (1991) ("An accident is defined as 'an unforeseen occurrence of untoward or disastrous character' or 'an undesigned sudden or unexpected event.' " (citation omitted)); *Arco Industries Corp. v. American Motorists Ins. Co.*, 448 Mich. 395, 531 N.W.2d 168, 173 (1995).

Using the preceding guidance, the Court stated, "The common and everyday meaning of 'accident' is a chance event or event arising from unknown causes." *Stanley*, 216 W. Va. at 49, 602 S.E.2d at 492. On the other hand, "crash" (used as a noun as it is in Erin's Law) is ordinarily defined as "a breaking to pieces by or as if by collision; an instance of crashing." *Merriam-Webster's Collegiate Dictionary* 292 (11th ed. 2012). That is, unlike an "accident," a "crash" has a known cause: a collision. *See, e.g., Beckley Nat. Exch. Bank v. Provident Life & Acc. Ins. Co.*, 121 W. Va. 152, 2 S.E.2d 256, 257 (1939) (distinguishing between a "natural sequence" and "an accident"). Therefore, based on prior precedent from this Court, the word "accident" was far more broad and expansive, covering many more scenarios than traffic "crashes."

Using the foregoing as a starting point, this Court can look to other jurisdictions that have defined "crash." *See e.g., Motto v. CSX Transp., Inc.*, 220 W. Va. 412, 418, 647 S.E.2d 848, 854 (2007) (noting that this Court "look[s] to how other jurisdictions, both federal and state, have dealt with" statutory applications in the absence of existing West Virginia precedent). North Carolina General Statutes § 20–4.01(4b) (2013) defines "crash" as "[a]ny event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous." Further, although not codified into statute or rule, the State of Florida had occasion to define the term "crash" in *Gaulden v. State*, 195 So.3d 1123, 1126 (Fla. 2016) (quoting *State Dept. of Highway Safety and Motor*

Vehicles v. Williams, 937 So.2d 815, 817 (Fla. Dist. Ct. App. 2006))(internal citations omitted). In *Gaulden*, the Florida Supreme Court defined "crash" as "'a breaking to pieces by or as if by collision' or 'an instance of crashing,' . . . and 'collide,' which in turn means 'to come together with solid or direct impact[.]'" Both of these definitions track the plain, ordinary meaning of "crash."

Therefore, this Court should answer the first certified question in the negative. Substituting the word "crash" for "accident" did not create an ambiguity in West Virginia Code § 17C-4-1.

2. The operative phrase "vehicle *involved* in a crash" in West Virginia Code §§ 17C-4-1 (a) and (d) does not require a defendant's vehicle to make direct physical contact or collide with a person or vehicle being driven or occupied by a person resulting in his or her injury or death.

West Virginia Code §§ 17C-4-1(a) and (d) are clear that a defendant is not required to "crash" his or her vehicle directly into another vehicle in which another person is fatally injured to be "involved" in a crash under Erin's Law. This Court must should answer "no" to the second certified question.

Petitioner argues that the rule of lenity should apply in his favor because the language of Erin's Law is unclear. Pet'r B. 21. "In construing an *ambiguous* criminal statute, the rule of lenity applies which requires that penal statutes must be strictly construed against the State and in favor of the defendant." Syl. Pt. 5, *State ex rel. Morgan v. Trent,* 195 W.Va. 257, 465 S.E.2d 257 (1995) (emphasis added). Here, the text of West Virginia Code §17C-4-1is not ambiguous and, thus, does not require the rule of lenity. Erin's Law clearly encompasses situations where the vehicle of the charged defendant does not even make contact with another vehicle in order to be "involved" in a crash. Again, this Court should look to Florida for guidance.

This Court has previously looked to outside jurisdictions for guidance in interpreting § 17C-4-1. In *State v. Stone*, the Court was called upon to determine whether a driver could be

punished for multiple charges of leaving the scene of a single accident in which five people died and seven others were injured. 229 W. Va. 271, 274, 728 S.E.2d 155, 158 (2012). In determining that for purposes of § 17C-4-1, "a driver of a vehicle involved in an accident resulting in injury or death may be punished only once for leaving the accident scene regardless of the number of injuries or deaths resulting therefrom," the Court looked to similar situations in Washington, California, Virginia, and Illinois for guidance. *Id.* at 278-80, 728 S.E.2d 155, 162-64. Likewise, here, this Court should look to outside jurisdictions to determine what the term "vehicle involved in a crash" means.

In relevant part, much like Erin's Law, the Florida stop-and-assist statute states:

> The driver of a vehicle involved in a crash occurring on public or private property which results in the death of a person shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062.

Florida Statutes § 316.027(c) (2021). In *Gaulden*, also a certified question, the driver was not involved in a collision at all; rather, the petitioner-driver's passenger fell from the open door of the vehicle as it accelerated and swerved. 195 So.3d at 1124. The *Gaulden* court was called upon to answer the following question:

> WHEN A PASSENGER SEPARATES FROM A MOVING VEHICLE AND COLLIDES WITH THE ROADWAY OR ADJACENT PAVEMENT, BUT THE VEHICLE HAS NO PHYSICAL CONTACT EITHER WITH THE PASSENGER, AFTER THE PASSENGER'S EXIT, OR WITH ANY OTHER VEHICLE, PERSON, OR OBJECT, IS THE VEHICLE "INVOLVED IN A CRASH" SO THAT THE DRIVER MAY BE HELD CRIMINALLY RESPONSIBLE FOR LEAVING THE SCENE?

Id. at 1125. The Florida court determined that the answer turned on the meaning of the operative phrase "involved in a crash," *id.*, ultimately ruling that the petitioner was not a driver "involved in a crash," *id.* at 1128. The *Gaulden* court held "that the operative phrase 'any vehicle involved in a crash' means that a vehicle must collide with another vehicle, person, or object." *Id.* In so doing,

the *Gaulden* court looked to guidance from prior Florida rulings, including *State v. Elder*, 975 So.2d 481 (Fla. 2007).

In *Elder*, the petitioner-driver turned into the path of another vehicle, which swerved to avoid hitting Elder's car, drove off the road and flipped, ejecting a passenger and killing the driver of that other vehicle. *Elder*, 975 So. 2d at 482. The *Elder* court expressly disagreed with the petitioner-driver "that before a driver can be found to have been 'involved' in a crash, the driver's car must collide with another car." *Id.* at 483.

> Section 316.027(1)(b) [the Florida equivalent of § 17C-4-1] does not limit its application to the driver of any vehicle that collides with another vehicle but instead requires the driver of any vehicle "involved" in a crash to stop. "Involved" is a word of common usage, not defined in the statute, and as such should be construed in its plain and ordinary sense. *Francis v. State,* 808 So.2d 110, 138 (Fla.2001). "Involve" is defined, in pertinent part, as "to draw in as a participant," to "implicate," "to relate closely," to "connect," "to have an effect on," to "concern directly," to "affect." *Webster's Third New International Dictionary* 1191 (1986). Clearly, a driver of a vehicle that causes a crash is "involved" in the crash.

Id. In the years since *Elder* and *Gaulden*, the courts have not waivered. *See Pringle v. Sec'y, Fla. Dep't of Corr.*, No. 3:20-CV-35-HES-PDB, 2021 WL 4295844, at *13 (M.D. Fla. Sept. 21, 2021) (finding that *causing* a crash means a driver was "involved in the crash," even where the driver did not collide with another vehicle).

Other courts have recognized this notion as well. *See e.g., Armstrong v. State,* 848 N.E.2d 1088, 1092 (Ind. 2006) (holding that the duties imposed under a statute governing a driver's failure to stop after an accident causing death are triggered regardless of whether the driver's vehicle struck anything), *cert. denied,* 549 U.S. 996 (2006); *Spencer v. Liberty Mut. Ins. Corp.*, 381 F. Supp. 2d 811, 818 (S.D. Ind. 2005) (finding an insured driver was "involved in" a crash for purposes of Florida's stop-and-assist statute, even though he did not actually collide with either vehicle in the crash); *State v. Perebeynos,* 87 P.3d 1216, 1219 (Wash. App. 2004) (affirming

conviction of driver who swerved his vehicle, leading to a collision between other vehicles and finding the swerving driver was "involved" in the accident despite the fact that he did not collide with any of the other vehicles); *State v. Korovkin,* 202 Ariz. 493, 47 P.3d 1131, 1135 (2002) (holding in a prosecution for leaving the scene of an accident that a driver, by racing with another driver, actively participated in the immediate chain of events culminating in a collision between the other driver and a third car); *Steen v. State,* 640 S.W.2d 912, 914 (Tex. Crim.App.1982) (holding in a prosecution for failure to stop and render aid that the defendant was "involved" in the collision where his improper lane change caused a passing vehicle to swerve to avoid hitting the defendant, resulting in a head-on collision between the passing vehicle and an oncoming vehicle). Importantly, none of these cases hold that a vehicle must collide *with the vehicle in which a person is injured or killed* to be "involved in a crash." Indeed, none of these cases require that a vehicle need physically collide with any other vehicle in a crash at all.

Furthermore, when read together, the plain language of West Virginia Code §§ 17C-4-1(a) and (d) supports the State's assertion that no direct crash or collision with another vehicle is necessary to charge a defendant under the statute. West Virginia Code § 17C-4-1(d) addresses the issue of "proximate cause," an element completely ignored by the Petitioner in his brief. *See generally* Pet'r Br. at 1-24. West Virginia Code §17C-4-1(d) states, in part, "any driver who is involved in a crash that *proximately causes the death of another person* 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." (emphasis added).

"To be actionable, negligence must be the proximate cause of the injury complained of and must be such as might have been reasonably expected to produce an injury." Syl. Pt. 1, *Wehner v. Weinstein*, 191 W. Va. 149, 444 S.E.2d 27 (1994) (citations omitted). Further, "[w]here an act or

omission is negligent, it is not necessary to render it the proximate cause of injury that the person committing it could or might have foreseen the particular consequence or precise form of the injury, or the particular manner in which it occurred, or that it would occur to a particular person." *Id.* at Syl. Pt. 4. Further still, "[w]here separate and distinct negligent acts of two or more persons continue unbroken to the instant of an injury, contributing directly and immediately thereto and constituting the efficient cause thereof, such acts constitute the sole proximate cause of the injury." *Id.* at Syl. Pt. 5 (citations omitted).

The concept of proximate causation is applicable in both criminal and tort law, and the analysis is parallel in many instances. *Paroline v. U.S.*, 572 U.S. 434, 444-445 (2014) (citing W. LaFave, Substantive Criminal Law § 6.4(c), p. 471 (2d ed. 2003)).

"Proximate cause is a cause which, in a natural and continuous sequence and unbroken by any new and independent cause, produces the injury, without which the injury would not have occurred and from which a person of ordinary prudence could have reasonably foreseen that such a result, or a similar injurious result, was probable under the facts as they existed." *State v. Pierce*, 216 N.C. App. 377, 383, 718 S.E.2d 648, 653 (2011). Further, "an act or omission to act is the proximate cause of death when it substantially and materially contributes, in a natural and continuous sequence, unbroken by an efficient, intervening cause, to the resulting death." *State v. Lin Qi Si*, 184 Conn. App. 402, 412, 194 A.3d 1266, 1273 (2018)). "Proximate cause in the criminal law does not necessarily mean the last act of cause, or the act in point of time nearest to death. The concept of proximate cause incorporates the notion that an accused may be charged with a criminal offense even though his acts were not the immediate cause of death." *Id.*, at 411-412, 1273. The Massachusetts Supreme Court held that "[c]onduct is a proximate cause of death if the conduct, 'by the natural and continuous sequence of events, causes the death and without

which the death would not have occurred.'" *Com. v. Carlson*, 447 Mass. 79, 84, 849 N.E.2d 790, 794 (2006)).

The thrust behind Erin's Law was a tragedy in which a young woman was struck and killed by unknown person(s) driving a vehicle, who subsequently left the scene after her death. A.R., 224-225. The act of crashing into another human being, thus causing her death, created a "natural and continuous sequence of events, causes the death and without which the death would not have occurred.'" *See Carlson*, 447 Mass. at 84, 849 N.E.2d at 794. In the case at bar, by his own admission, the fatal crash that killed Ms. Eddy occurred after Petitioner's load made contact with the front left tire of the tri-axle dump truck. *Id.* at 53, 300. The dump truck lost control, crossed the center line of the roadway, and "sideswiped" the driver's side of a vehicle driven by Ms. Lippert. *Id.* at 25, 354-363. The dump truck proceeded on the roadway, eventually rolling over on its side and landing on a vehicle driven by Ms. Eddy. *Id.* at 25, 44-45, 354-3693, 380-381. The load of hot asphalt carried by the dump truck spilled out and onto Ms. Eddy who died as a result of the injuries she sustained in the aftermath. *Id.* The Petitioner's act of crashing the bulldozer blade into the dump truck started the chain reaction that "substantially and materially contribute[d], in a natural and continuous sequence, unbroken by an efficient, intervening cause, to the resulting death." *See Lin Qi Si* 184 Conn. App. at 412, 194 A.3d at 1273. In neither the death of Erin nor the death of Ms. Eddy did any sufficient intervening cause arise to relieve either Erin's killer or the Petitioner from responsibility. *See Pierce* 215 N.C. App. at 383, 718 S.E.2d at 653. Thus, the contact between the blade of the bulldozer and the tire of the dump truck was a proximate cause of Ms. Eddy's death. Syl. Pt. 5, *Wehner*, 191 W. Va. 149, 444 S.E.2d 27.

The plain language of West Virginia Code § 17C-4-1 does not require that a vehicle must make contact with the vehicle in which a person is seriously injured or is killed in order to be

"involved" in the crash. As the actions of the Petitioner are, at least, a proximate cause of the death of the alleged victim in the matter below, this Court's answer to certified question number two should be in the negative.

C. The operative phrase "involved in a crash" as contained in West Virginia Code §§ 17C-4-1 (a) and (d) clearly contemplates that the phrase includes a driver, such as Petitioner, who makes contact with a single vehicle and that vehicle makes contact with other vehicles in a unbroken chain resulting in injury or death to persons in other vehicles.

The circuit court's third certified question is very closely related to its second question, and the Court should answer it by looking at much the same law as cited previously.

Petitioner relies on *Gaulden* to argue that "the substitution of the word 'crash' for 'accident' [in Erin's Law] clearly limited the reach and narrowed the scope of criminal liability." Pet'r Br. 20. He argues that the term "crash," though more narrow in scope, remains ambiguous and that, as in *Gaulden*, the rule of lenity should apply to find that Petitioner is not a person "involved in a crash." *Id.* *Gaulden*, however, actually *undercuts* Petitioner's argument. Recall that *Gaulden* looks beyond the word "crash" alone and focuses, instead, on the operative phrase "involved in a crash." It then looks to *Elder*, which applies an understanding of crash that reaches beyond the specific vehicle that might have struck the injured person. 975 So.2d at 483. Thus, *Gaulden*—and several other cases —in fact, supports Respondent's position and the circuit court's answers to the certified questions.

As discussed previously, jurisdictions that have addressed this very issue have repeatedly declined to hold that a vehicle must collide *with the vehicle in which a person is injured or killed*—or even collide with another vehicle at all—to be "involved in a crash."

Applying the undisputed facts of this case—that the blade of the bulldozer Petitioner was hauling made contact with the asphalt truck in some manner, J.A. 53, 300—to the plain and

common meaning of the operative term "involved in a crash," this Court should find that Petitioner was a driver "involved in [the] crash" that killed Ms. Eddy. It does not matter that Petitioner's vehicle did not collide with Ms. Eddy's vehicle. *See* J.A. 25. Petitioner was a driver of vehicle that collided with another vehicle (the asphalt truck), which subsequently lost control, flipped over, and crushed Ms. Eddy's vehicle. *See id.* Accordingly, he was "involved in [the] crash." *See Gaulden*, 195 So.3d at 1126 ("[T] the operative phrase 'any vehicle involved in a crash' means that a vehicle must collide with another vehicle, person, or object."); *see also See Pringle*, 2021 WL 4295844, at *13; *Elder*, 975 So. 2d at 483; *Armstrong*, 848 N.E.2d at 1092; *Spencer*, 381 F. Supp. 2d at 818; *Perebeynos,* 87 P.3d at 1219; *Korovkin,* 47 P.3d at 1135; *Steen*, 640 S.W.2d at 914. Indeed, Petitioner was a direct factor in causing the crash.

Even if one doubts the clarity of the language of the statute, though, it is hard to question the clear *intent* of Erin's Law: to aid those who have been injured in motor vehicle accidents. *See* 2010 West Virginia House Bill No. 4534, West Virginia Seventy-Ninth Legislature - Regular Session ("AN ACT to amend and reenact §17C-4-1 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalty *for failing to stop and render aid* after a motor vehicle crash; clarifying intent requirement; extending suspension period; and naming the code section Erin's Law.") (emphasis added). That clear intent should not be overlooked when contemplating the term "involved in a crash" as it appears in §§ 17C-4-1 (a) and (d). *See Armstrong v. State,* 818 N.E.2d 93, 97 (Ind. App. 2004) (holding that a collision is not required for a "fatal accident" for purposes of statute, noting that the statute should be construed consistently with purposes of providing prompt aid for persons who are injured or killed in the accident). After all, "[t]he primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. Pt. 1, *Smith v. State Workmen's Comp. Comm'*, 159 W. Va. 108, 219 S.E.2d 361

(1975). With that stated intent in mind, it is hard to fathom that the Legislature did not anticipate that a driver such as Petitioner, who sets into motion a chain of events that eventually leads to a fatal accident, is a driver "involved in a crash" for the purposes of Erin's Law.

This Court should answer the third question in the affirmative.

D. The word "crash" as used in West Virginia Code § 17C-4-1 should be given its plain meaning, and the question of whether the driver of any vehicle was involved in a "crash" as contemplated in West Virginia Code §§ 17C-4-1 (a) and (d) is a mixed question of fact and law.

Because the word "crash" is unambiguous as used in Erin's Law, the Plain Meaning Rule applies. "The Plain Meaning Rule of statutory interpretation holds that, if the language of a statute is unambiguous, a court applying the statute should not, many say must not, delve beyond that meaning in interpreting the statute." *Beyond Sys., Inc. v. Kraft Foods, Inc.*, 972 F. Supp. 2d 748, 763 (D. Md. 2013), *aff'd*, 777 F.3d 712 (4th Cir. 2015). Indeed, this Court has recognized that "'[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.' Syllabus Point 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970)." Syl. Pt. 5, *Progressive Max Ins. Co. v. Brehm*, No. 20-0850, 2022 WL 1115060, at *1 (W. Va. Apr. 14, 2022). As noted above, Merriam-Webster Dictionary defines crash (used as a noun) as "a breaking to pieces by or as if by collision; an instance of crashing." Here, there can be little doubt that there was a crash on Route 7 on that fateful day in September 2019. The asphalt truck, Ms. Lippert's vehicle, and Ms. Eddy's vehicle were all broken to pieces in an instance of their vehicles crashing. *See* J.A. 25.

Under the circumstances of this case—where Petitioner does not dispute that his vehicle made contact with the asphalt truck that then lost control and rolled over on top of Ms. Eddy's vehicle, J.A. 53, 300—the question of whether Petitioner was "involved in a crash" for the purposes of Erin's Law is a mixed question of fact and law. "[M]ixed questions of fact and law

are those where 'the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.'" *United States v. Lang*, 149 F.3d 1044, 1047 (9th Cir.), *amended*, 157 F.3d 1161 (9th Cir. 1998). Here, Petitioner admits, and the surviving drivers corroborate, that Petitioner's load made contact with the tri-axle dump truck, causing the ensuing collision; thus, the facts regarding the crash itself are undisputed. *See* J.A. 52-53. And, as explained previously, the rule of law is equally undisputed: a driver involved in a crash that results in serious injury or death must stop and render aid. W. Va. Code §§ 17C-4-1(a) and (d). Therefore, the question of whether Petitioner was bound by Erin's Law in the first instance is one for the court. *See Aikens v. Debow*, 208 W. Va. 486, 490, 541 S.E.2d 576, 580 (2000) ("Importantly, the determination of whether a defendant in a particular case owes a duty to the plaintiff is not a factual question for the jury; rather, '[t]he determination of whether a plaintiff is owed a duty of care by the defendant must be rendered as a matter of law by the court.'" (citation omitted)); *Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., Inc.*, 682 F.3d 1003, 1007 (Fed. Cir. 2012) (holding that "the objective determination of recklessness, even though predicated on underlying mixed questions of law and fact, is best decided by the judge as a question of law").

Of course, there remains the question of whether Petitioner performed his duty under Erin's Law. That is, did Petitioner stop and render aid as required by statute? *See United States v. McConney,* 728 F.2d 1195, 1200 (9th Cir.1984) ("Questions of fact essentially require the establishment of 'a recital of external events and the credibility of their narrators.'" (citation omitted)). That question *is* disputed, and it is a question for the trier of fact. *See Fitzwater v.*

Spangler, 150 W.Va. 474, 478, 147 S.E.2d 294, 296 (1966) ("Perhaps the most fundamental rule of our system of jurisprudence is that questions of fact are to be determined by a jury . . . .").

Thus, in answering the fourth and final question, this Court should find that the term "crash" should be given its plain meaning and that the question of whether Petitioner was involved in a "crash" as contemplated by Erin's Law is, on these undisputed facts, a question of law for the circuit court. The question of whether Petitioner stopped to render aid as required by Erin's Law, however, is a question of fact for the jury.

CONCLUSION

For the foregoing reasons, this Court should answer the first three certified questions in the same manner as the Circuit Court of Monongalia County. This Court should answer the fourth certified question by finding that the term "crash" should be given its plain meaning but finding that the question of whether any driver was involved in a "crash" is a mixed question of fact and law.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0873

STATE OF WEST VIRGINIA,

Respondent,

v.

MICAH A. MCCLAIN,

Petitioner.

CERTIFICATE OF SERVICE

I, Karen C. Villanueva-Matkovich, counsel for the State of West Virginia, the Respondent, hereby certify that I have served a true and accurate copy of the foregoing **Respondent's Brief** upon counsel for Petitioner, by depositing said copy in the United States mail, postage prepaid, on this day, June 27, 2022, and addressed as follows:

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