

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

GEORGE NICHOLAS PARSONS,

Plaintiff Below, Petitioner

vs.)

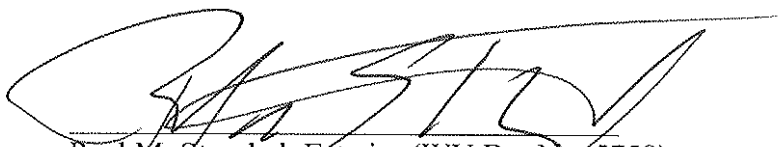
No. 24-ICA-193
(Case No. CC-07-2023-C-7)

**WILEY TYLER RAINES and
CALHOUN COUNTY COMMISSION,**

Defendants Below, Respondents

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

Counsel for George Nicholas Parsons,

A handwritten signature in black ink, appearing to read 'P. Stroebel', is written over a horizontal line.

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I. REPLY ARGUMENT

Petitioner relies on the brief previously filed but will briefly address Respondents' assertions. Respondents' brief attempts to obfuscate the salient allegations set forth in the Amended Complaint and applicable law with irrelevant facts and information. Petitioner now replies by setting forth the following:

Initially, it should be noted that Petitioner's Amended Complaint sets forth allegations that Defendant Raines intentionally crashed his vehicle into Petitioner while they were traveling in opposite directions. In the recent memorandum opinion addressing a motion to dismiss claims made pursuant to 42 U.S.C. § 1983, the Honorable Robert C. Chambers held that, a sheriff's deputy was not entitled to qualified or statutory immunity for a car crash in which he was exceeding the speed limit. In relying on *Dean v. McKinney*, 976 3d 407 (4th Cir. 2020), Judge Chambers held that:

. . . it was well established at the time of this accident under the Fourth Circuit's holding in *McKinney* that excessive speed, barring any legal authority or official justification, can present a knowing disregard for the law and pose a substantial risk of serious harm to others. Thus, the Court denies Deputy Racer's argument he is entitled to qualified immunity.

Slone v. Racer, et al., 3:23-0636 (S.D.W.Va. 9-24-24) (Memorandum Opinion).

As there was no authority for the defendants to be speeding in *Dean* and *Slone*, there is no legal authority that justifies respondent's intentionally crashing into Petitioner, thereby seriously injuring him. As in *Dean*, a jury could easily determine that Respondent Raines acted with deliberate indifference or as set forth in Petitioner's 4th Amendment claim, excessive and unnecessary force. As this matter was dismissed pursuant to W.Va. Rule of Civil Procedure 12(b)(6) this court must accept the amended complaint's factual allegations as true and draw all

reasonable references in favor of the Petitioner. Applying this standard requires that this case be remanded for further factual development.

II. CONCLUSION

For the reasons set forth above, this matter should be remanded to the Circuit Court for discovery and trial.

GEORGE PARSONS,
By Counsel,

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CERTIFICATE OF SERVICE

I, Paul M. Stroebel, do hereby certify that I have served a copy of the foregoing "*Petitioner's Reply to Respondents' Brief*" was sent via electronic submission on this 15th day of October 2024, upon the following:

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