Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801

802-828-4774
www.vermontjudiciary.org

COVER FOR BRIEF OR PRINTED CASE

Vermont Rule of Appellate Procedure (V.R.A.P.) 32(a)(2)

IN THE SUPREME COURT OF THE STATE OF VERMONT

Cheryl Brown — ☑ Appellant ☐ Appellee
(Plaintiff's Name)

v.

State of VT (It's Employee's agents & Representatives) — ☐ Appellant ☑ Appellee
(Defendant's Name)

Supreme Court Docket No.: 2021-052

Appellant's Reply Brief
(Title of Filing, for example, "Appellant's Brief" or "Printed Case")

APPEALED FROM:

Unit: CHITTENDEN

Division: CIVIL

Board or Agency:

Trial Court Docket No.: 473-5-15 Cncv

Name: Rabbi Stuart Jay Robinson, Esq.

Mailing address: 27 Kettlepond Lane Unit #8
Williston, Vermont 05495

Phone: 802-881-9158

Email address: terpsrobinson@gmail.com

Attorney for: Cheryl Brown

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

OATH OF ALLEGIANCE; OATH OF OFFICE

State Police Oath (P.C. Ex.19); 12 V.S.A. 5801 Et Seq. Forms of Oaths. Title 12; Ch. 211: Oaths., Sub Ch. 1; Forms of Oaths. Id. 5801. Forms of Oaths prescribed, Id. 5803 Oath to be administered to Petit Juror impaneled to try civil causes in Superior Courts; Id. 5807. Oaths to be administered to Officer taking charge of Jury in Superior Court; Id. 5810 Oath to be administered to Witnesses V.R.E 603 Oath Affirmation; Id. 5812, Oath to be administered to Attorneys, Id. 5813. Oath to be administered to Officials, committees, etc.; Sub Ch 2; Administration of Oaths: Id. 5851 Affirmation; Id. 5856. Storage of Judicial Oaths, Judges Oath Id. 56; Attorney General and Assistant Attorneys General Id. 56 Oaths.....2,10,15,16

Vermont Rules of Civil Procedure (V.R.C.P.)

Vermont Rule of Appellate Procedure (V.R.A.P)

Vermont Rules of Evidence (V.R.E.)

State of Vermont Constitution

State of Vermont Constitution- Declaration of Rights:

Chapter Two (2) PLAN OR FRAME OF GOVERNMENT - DELEGATION AND DISTRIBUTION OF POWERS

§ 4. [JUDICIARY].....4,7

The judicial power of the State shall be vested in a unified judicial system which shall be composed of a Supreme Court, a Superior Court, and such other subordinate courts as the General Assembly may from time to time ordain and establish.

JUDICIARY DEPARTMENT

§ 28. [COURTS OF JUSTICE].....4,7,14

The Courts of Justice shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay.

OATH OF ALLEGIANCE; OATH OF OFFICE

§ 56. [OATHS OF ALLEGIANCE AND OFFICE].....2,4,10,15,16

Every officer, whether judicial, executive, or military, in authority under this State, before entering upon the execution of office, shall take and subscribe the following oath or affirmation of allegiance to this State, (unless the officer shall produce evidence that the officer has before taken the same) and also the following oath or affirmation of office, except military officers, and such as shall be exempted by the Legislature.

The Oath or Affirmation of Allegiance.

The Oath or Affirmation of Office

Statutes:

CONSOLIDATED ARGUMENT

... *"How long will Ye Judge unjustly and respect the persons of the wicked"*... Psalm 82.

Administrative Order No. 10 and Promulgating the Vermont Code of

Judicial Conduct 2019:

PREAMBLE

"An independent, fair, and impartial judiciary is indispensable to our system of Justice. The Vermont legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of persons of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of Justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system."

Cheryl Brown has never been given an independent, fair and impartial Judiciary or Trial. The Judges created a legal fiction, labeling the accident description as a "basic fender bender" when in reality it was a Hit and Run that required 911, **Davis infra.** assistance to locate the unknown driver who turned out to be V.S.P. Sgt. Matthew Denis.

There are several factors that need to be brought to the Courts immediate attention is that this is not a case for the Court to interpret the facts of an accident in order to protect their employer, the State of Vermont and the Trooper who clearly held himself above the law when he left the scene.

You Appellee raises issues which have nothing to do with the falsification of facts, but instead place their faith in the accident version of Judge Toor, Mello and Hoar, without any factual basis, statutory authority or case law providing and allowance by a Judge(s) to unilaterally change the facts of the events in order to protect themselves and fellow employees of the State of Vermont.

There was always only one set of facts for the accident, investigation and collateral damage of property and physical injury to the Appellant arising from the Hit and Run, which took place on 5/16/2012. There were two (2) causes of action that resulted from the Hit and Run facts as reflected in the lawsuits filed by the Appellant in **Brown v. State** and **Brown v. Backus.** The Appellee cannot in good conscience expect that a Court will look at the Judicial fact manipulation through falsification by declaring it was a "basic fender bender" while in **Brown v. Backus** it was a Hit and Run, based on the same facts filed in **Brown v. State**, which links these cases together. Once the **Brown v. Backus** Mandate on July 7, 2020 was issued the **Brown v. Backus** was closed. It also meant that the Statement of Facts setting out the Hit and Run accident and Waiver of the Certificate of Merit accompanying the Complaint, set up a collision course of the false facts created by the Judges and the true facts supported by the evidence. (P.C. Ex. 1-18 A & B). The only way that Cheryl Brown can have her day in Court, which has yet to take place on the Hit and Run is to award her a new trial based on the Hit and Run, not the creation of Judge Toor, Mello, and Hoar's version of the facts.

Your Appellee's assert in their Brief that there would be no new evidence because your Appellant was asking for a new trial on **Brown v. State 2018 Vt 1..; 1182 A.3d 597 (Vt. 2018) Docket # 473-5-15 Cncv**, which had already been litigated through the Appeal and Mandate affirming the Appellee's Verdict in the Lower Court. What was not taken into consideration is

that your Appellant is not looking for a re-trial on Judge Toor's falsification of facts. However, she is looking for a new trial based on her Statement of Claim as the victim of a Hit and Run accident by a State Trooper, which has never been presented to a Jury in the selection process. Nor have those facts ever been presented to the Trial Jury. The evidence would be new.

The essence of their timeline argument is flawed not just because they have a time period restriction which is not in the Statute for V.R.C.P. Rule 60 (b) (6). Nowhere is it anticipated that the basis for the Motion would be the falsification of facts by Judges Toor and Mello, and affirmed by Judge Hoar in denying the Motion. **(P.C. Ex. 19).** Even assuming that there needed to be a timeline (See Timeline Chart) the period involved would have to be from the Mandate on **Brown v. Backus** on July 7, 2020, when the case was officially closed. It means that the identical Statement of Facts relating to the motor vehicle accident was also the proximate cause for both the involvement of Dr. Backus regarding the disputed I.M.E.in the Medical Negligence Case for lack of informed consent. **Brown v. Backus 2019-261 (Vt. Mar. 20, 2020) Docket # 441-5-19 Cncv** was filed on May 10, 2019. A mandate was issued on July 7, 2020 affirming the Dismissal of the Complaint. This time period is six (6) months from the filing of the V.R.C.P. Rule 60 (b) (6) Motion on January 12, 2021. The Mandate closing **Brown v. Backus** meant that the Statement of Claim and Waiver of Certificate of Merit despite losing went unchanged by Judge Toor who granted the Dismissal and this Court in its review of the unsuccessful Appeal in **Brown v. Backus**. This leaves a permanent conflict in facts which were supposed to be identical. Judge Toor and Judge Mello crafting a "basic fender bender" with evidence limitations cannot be reconciled with either the original Hit and Run facts in the Original Law Suit **(P.C. Ex 3)** and the original identical facts of the Hit and Run lawsuit which was the basis for the Medical Negligence Claim through the I.M.E of Dr. Backus. The Judges went so far as to order the

Medical Records description of the accident be the "basic fender bender" version instead of the description of the accident provided by your Appellant to not only her long time family healthcare providers and deposition **(P.C. Ex. A),** but also in the pre-I.M.E. questionnaire of Dr. Backus, which took place on May 13, 2016. **(P.C. Ex B)** As indicated below and in the original Brief of Brown, the actions of Judge Toor and Mello, with Judge Hoar's affirmation, required the witnesses to abandon their Oaths to tell the truth and put on false facts for the Jury. Although a Jury Trial is held sacred, there is equal protection and due process guarantees for a fair and impartial Jury and Judge, it was the Court's manipulation that robbed the Appellant - **Vermont Constitution**. The rape of her rights began at the accident scene when the Appellee Trooper left the scene figuring he would not get caught. When they got out of their cars he glowered at the Appellant and no doubt figured to himself that as a women your Appellant would have no clue what to do and where to go for help. He also knew when he ran that he would be avoiding traffic tickets for Hit and Run, post-accident investigations, which could result in an inquest and a forfeiture of his driving privileges, which would potentially cost him his employment. He also knew that he would not face a mandatory internal investigation on his conduct. The end result of the investigation was that Officer Kendrew and your Appellee made a determination not to issue a ticket or any kind of follow up investigation. This cleared the way for Judge Toor and Judge Mello to falsify the facts because there was no accountability to Cheryl Brown or the general public. If the Defendant was not a public servant, and in particular law Enforcement, most likely tickets would have been issued and an investigation would have taken place with an inquest to determine driving privileges. It is disturbing that Hit and Run accidents regularly appear on the news and there is a double standard with how law enforcement gets dealt with when they are the Defendant.

TIMELINE

Brown v. State I Complaint and Request for Jury Trial filed on May 12, 2015

Brown v. State I Jury Trial on "basic fender bender" not Hit and Run facts March 15-17, 2017.

Appeal to Vermont Supreme Court filed on May 15, 2017.

Appeal is Denied Mandate Issued on February 26, 2018

Brown v. Backus Complaint and Waiver of Cert. of Service and Request for Jury Trial filed on May 10, 2019.

Appellee Files successful Motion to Dismiss on June 10, 2019

Appellant files Appeal to the Vermont Supreme Court July 29, 2019

Supreme Court Denies the Appeal and Affirms Dismissal of Med. Negligence Case on April 8, 2020

Vermont Supreme Court issues Mandate on July 7, 2020

Brown v. State filed V.R.C.P. Rule 60 (b) (6) Motion based on falsification of facts on January 12, 2021.

Your Appellee's Brief is based on the entire premise that your Appellant wants another Trial on **Brown v. State**, the fender bender created by Judges Toor and Mello. Appellee knows that this is false. What Cheryl Brown wants, and has never had up to this point her Jury Trial based on her statement of facts and evidence supporting the Hit and Run. The cases referred to in the

Appellee's Brief do not apply to the current circumstances of the Hit and Run. What is troublesome is that your Appellee which includes that Office of the Attorney General is part of the interference with the fair and impartial administration of justice that has been eluding your Appellant since the accident on May 16, 2012.

CONSOLIDATED ISSUES PRESENTED BY APPELLEE

The Appellee's Brief does not refute the falsification of facts. It also has misrepresented to this Court a timeline issue, in an attempt to bar this Court from considering your Appellant's Brief, this Reply Brief and Printed Case in support of her effort to gain a new Trial with New Facts which are true facts, based on the Hit and Run.

Your Appellee presented only two (2) issues none of which refute your Appellant Brief:

1. *Did the Trial Court abuse its discretion in denying Brown's Rule 60 (b) (6) Motion in light of the Law of the Case established by this Court in Brown I ? Pp.16-19.*

   The Trial Court not only abused its discretion in denying the Motion, but committed Plain Error by the irreparable harm and damage done to the Appellant in violating her Constitutional Rights guaranteed under both the U.S. Constitution and the Vermont Constitution Chapter 1 Declaration of Rights. See below.

   The Law of the Case as presented earlier is not applicable, because your Appellant is not interested in re- litigating "Brown I" which is the Judge's version of the facts which were created and not actual.

2. *Did the Trial Court abuse its discretion in denying Brown's Rule 60 (b) (6) Motion given that Brown waited nearly three years after this Court's decision in "Brown I" to file her Rule 60 (b) (6) Motion? Pp.19-20.*

As set forth in the Timeline, supra, your Appellee miscalculated the three (3) years because of the failure to consider the date of the Mandate in Brown v. Backus 7/7/2020. The Motion was filed in a reasonable time within six (6) months of the Brown v. Backus Mandate. See Also In re: Balivet 214 VT 41 98 A.2.d 794 (Vt 2014), In re Kilburn 157 Vt 456 (Vt 1991), 599 A.2d. 1377;See below.

The falsification of facts has gone unrefuted in all of the Briefs and Motions filed by your Appellee because the truth cannot be denied. Your Appellee knows that the Judges changed the facts from a Hit and Run and failure to render assistance to a basic fender bender, and placed the necessary prohibitions on evidence presentation to ensure that Judge Toor and Mello's version of the accident could not dispute, notwithstanding Exhibits 1-19 A & B. These exhibits include the actual 911 call and certified transcript, the Uniform Crash Report, the Statement of facts setting forth the automobile negligence claim for a Hit and Run. **(P. C. Ex. 1, 2). Davis infra.**

"*Equal Justice under the Law*" is inscribed on the front of the west façade of the U.S. Supreme Court Building in Washington, D.C. Those words are derived from the Fourteenth Amendment (14^{th}) to the U.S. Constitution which states in part; …

"*That no state shall deny to any person within its jurisdiction the equal protection of the laws*"... This has been interpreted to mean that the government and its' leaders must also obey the laws. Written in 1787 our Founding Fathers wanted to ensure in the Constitution that our government was ruled by laws not by men. In order to ensure that laws created followed the Constitution the Judiciary Branch was created among its functions to resolve dispute to determine the Constitutionality of laws and most importantly guarantee that the citizens receive equal justice under the law.

Vermont's Constitution established in 1793 and Amended through November 2, 2010. It contains several chapters. The Declaration of Rights, Chapter One (1) Article Four (4) provided both equal protection and due process. Article Twelve (12) holds the right to a Jury Trial as being sacred. Implicitly, the language ensures that those selected to sit on a Jury will be fair and impartial in their decision making process. It stands to reason that it would require the Jury to have the full, truthful, and correct facts from which they make their decision.

This did not happen with Cheryl Brown, because Judges Toor and Mello took it upon themselves without any authority to change the violent Hit and Run accident which occurred on May 16, 2012.

Chapter one (1) Article Eighteen (18) of Vermont's Constitution, deals with- the Regard to Fundamental Principles and Virtues necessary to preserve liberty. In part…

" That frequent recurrence to fundamental principles, and a firm adherence to justice… are absolutely necessary to preserve the blessings of liberty"… Once again, the importance of adhering to justice and the fundamental principles which includes guaranteeing due process, jury trials, access to the Courts and impartiality by the Judge.

Judges Toor, Mello and Hoar, made the decision beyond the scope of their authority to change the facts of the Hit and Run and its' investigation to a "basic fender bender" **(P.C. Ex. 5, 6.)**. All of which was designed to protect the unknown absconding driver who failed to exchange information, identified only because Cheryl Brown called 911 with the license number. **(P.C. Ex. 1).** The Defendant driver was Vermont State Trooper Sgt. Matthew Denis. 911 sent Colchester Patrol Officer Derrick Kendrew to the Appellant's location, who was then directed to follow him to the location of the absconding driver. Your Appellant was provided the name of the Defendant driver for the first time, when she was provided a copy of the State of Vermont Uniform Crash

Report (2 pages) and it's follow up Narrative. **(P.C. Ex. 2).** The only driver's in the vehicles was the Appellant and the Defendant State Trooper. There was no "canine partner" in the car according to your Appellant and the investigating Officer Kendrew, who checked both vehicles.

This is a critical fact because Judge Mello through the Assistant Attorneys General, Alexander and Gengler, knowingly were all allowed to produce false testimony into evidence through the presentation of the Appellee's case in order to elicit sympathy from the Jury. The blame for the negligent driving resulting in the rear end collision into Appellant's vehicle, which was stopped in traffic traveling easterly on Rt. 15 at or near the intersection of Johnson Ave., in Colchester, Vermont. **(P.C. Ex. 2).**

The false testimony painted a picture of the canine partner being in distress in the back seat. Your Defendant stated that he turned away from traffic and rear-ended the Appellant. The impact cracked her rear bumper cover and left an imprint of his license plate in the bumper cover. Appellant was also was physically injured. Those injuries as a result of the impact evolved into permanent medical injuries. Dr. Verne Backus testified that he was told about the dog during his preparation for Trial under cross examination. **(P.C.E x. 7)** However, the problem was that Dr. Backus knew that there was no dog in the car or at the scene, because he had a copy of the Uniform Crash Report, which was part of his record review and I.M.E. submission to the Court. The Court did nothing about the untruthful testimony, which also included under the direction of Judges Toor and Mello **(P.C. E.x. 5, 6),** that his medical records and those of all healthcare providers and witnesses, were required without the prior knowledge or consent of your Appellant to change the description of the Hit and Run accident to "a basic fender bender", which was contrary to the Oaths required for any witnesses to testify, including your Appellant. V.R.E. 603. Oath Affirmation. Appellant in filing out her pre-I.M.E. questionnaire on May 13,

2016, she clearly indicated that she was stopped in traffic, and the other driver instead of exchanging information left the scene requiring her to call 911. See Appellant Brief- Oaths pages 4,8,13,33,34,36.,**Davis infra**,

Appellees are in a tough spot because they know it was not a "basic fender bender" but in fact was a failure to comply with the Vermont Statutes governing Duty to Stop, when the Defendant driver left the scene (a.k.a. Hit and Run) 23 V.S.A. 1128. In leaving the scene without exchanging the mandatory contact information, in the hopes of not being identified as the driver for the Hit and Run. He failed to comply with the mandatory statute requiring accident reports, (Id. 1129). Appellee is in a box because the identical facts that served as the basis of Appellant's law suit **(P.C. Ex 3)** are the identical fact basis for the probable cause of the Appellant's Medical Negligence claim against Dr. Backus. **(P.C. Ex. 14).** However, except for the creation of the false facts and their management for trial by Judge Toor and Judge Mello, there has been no one shred of objective proof provided to support that false set of facts that were manufactured by the Judges in order to support their employer, the State of Vermont (which is in and of itself a conflict of interest), at your Appellant's expense. Judge Hoar denied your Appellant's Motion to reverse the Judgement pursuant to V .R.C.P. Rule 60 generally and Id. R. 60 (b) (6), by his Orders of February5, 12, 2021. **(P.C. Ex.19).**

The timeline argument is not only bogus, but indefensible by the Appellee. Appellant's timeline is going to support that she filed her lawsuit against the State and Defendant driver for a Hit and Run in May, 2015. Judge Toor and Judge Mello in their In Limine Rulings changed the facts to a "basic fender bender" **(P.C. Ex.5, 6).** The Jury Pool selection which resulted in the Petit Jury (Trial) was not based on the Hit and Run and its supporting exhibits and testimony, but rather on the falsification of facts by Judge Toor and Judge Mello, which were not even close to

the real facts of the accident. There was a Pre-Trial Conference on March 3, 2017 which included warnings to Appellant and her Counsel that sanctions would follow if there was any mention of the "Hit and Run" and it's supporting exhibits. This included her deposition **(P.C. Ex. A)** and the 911 call, cd of the call and transcripts of the cd, all in compliance with the requirements of **Davis v. Washington, 547 US 813, 126 S.CT 2266, (2006)** and the Vermont Rules of Evidence V.R.E. 803 governing excited utterances, and relevant evidence V.R.E. 401, generally. In this forbidden evidence, was included the Uniform Crash Report and Supplemental Narrative **(P.C. Ex 5)** which had as the only occupants in either of the vehicles the Defendant and the Plaintiff, based on the inspection of Colchester Patrol Officer Derrick Kendrew who was dispatched by 911 to the scene.

A summary Reply to the Appellee's Brief is that it is a deflection and smoke screen because they have not as Defendants in the Lower Court, nor in their Brief in this Court refuted the falsification of facts by Judges Toor and Mello. Appellant challenged the falsification of facts in its unsuccessful Motion pursuant to V.R.C.P. R. 60 generally, Id. 60 (b) (6) to Reverse the Judgment. Judge Hoar denied the Motion which was not only an abuse of discretion, but a commission of Plain Error due to the magnitude of the irreparable harm violating your Appellant's Constitutionally guaranteed due process rights to a fair and impartial Trial. Judge Hoar made himself a willing accomplice to the victimization of Cheryl Brown not only as a Hit and Run victim, but also in the violation of her Constitutional due process without regard for the truth. His denial of the Motion was to protect his colleagues and the institutions being challenged by the Appellant in what can only be described as a systemic pandemic corruption of our Court system and law Enforcement. **(P.C. Ex. 1-19, A & B).**The tainted Jury selection

process omitting the Hit and Run and follow up investigation and collateral facts changed the entire Trial. 12 V.S.A. 1941. Jury Preemptory Challenges.

The Motion could have been filed soon after the Mandate for several reasons. First, the case is closed, the facts are the facts and don't change, and there are no time limits except 'reasonable' time for filing after the **Brown v. Backus** Mandate which took place within six (6) months. Appellant is not re-litigating the same facts, nor will the case be tried in the same way. A Jury won't be asking itself how can there be over 160 medical appointments with bills in excess of $40,000.00 for healthcare relating to a "basic fender bender" as of March 17, 2017 ?

As horrible as it was to see the abuse of police power and authority by the Office of the Attorney General, Law Enforcement Agencies and the Court, it makes clear that a life can be ruined without having to use a firearm, a taser, or a knee on the neck of a suspect and others because systemic racism and abuse of Police power has no place in our society. In this case, we have Judges hiding behind the authority of their Office, disregarding their Oath, Police Officers with the help of the Attorney General's Office covering up the facts to ensure that a fellow state employee would not face the rigors of a Courtroom having to answer for a failure of his Duty to Stop (Hit and Run) or his lack of willingness to comply with the requirements of completing information exchange with the Appellant, violating Accident Reports. 23 V.S.A. 1128; Id. 1129. … "Justice, Justice shall you pursue"… Deut. 16:20

CONCLUSION

For the reasons set forth above Appellant, Cheryl J. Brown requests this Court to Grant the relief sought in Appellant's V.R.C.P. Rule 60 (b) (6) to Reverse the Judgment or Order and Grant a New Trial based on the true facts of a Hit and Run accident, the follow up investigation, using all of the evidence and Exhibits previously barred by Judges Toor, Mello, and Hoar on the Rule 60 (b) (6) Motion, Memorandum, and Exhibits 1-19 A & B. Your Appellant requests that his matter be remanded to the Vermont Superior Court of Chittenden County for a Jury Trial on the Merits and exclude any Judges who participated in either Brown v. State and /or Brown v. Backus from presiding over the New Trial.

CERTIFICATE OF COMPLIANCE

I certify that the above brief submitted under V.R.A.P. Rule 32(a) (7) (B) was typed using Microsoft Word 2010 word count is 4007

Rabbi Stuart Jay Robinson, Esq. Attorney for Appellant Cheryl J. Brown

Rabbi Stuart Jay Robinson, Esq

Dated May 13, 2021

Electronic Version Certified Virus Free by:

Rabbi Stuart Jay Robinson Esq

Dated

May 13, 2021