No._____

IN THE

SUPREME COURT OF THE UNITED STATES

"IN RE, PEARL HENYARD"- PETITIONER,

VS.

MV TRANSPORTATION, ET AL. - RESPONDENTS.

APPLICATION TO STAY ISSUANCE OF THE MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT PENDING THE FILING FOR AN EXTRAORDINARY WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PEARL HENYARD
PRO SE, PETITIONER
1512 N Lasalle Drive
APT 416
Chicago IL, 60610
773.983.1590

LIST OF PARTIES

The Petitioner, Pearl Henyard whom is the applicant is Pro Se. Respondents are Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority. As well as Mv Transportation Inc.

DISCLOSURE STATEMENT

Pearl Henyard is the Petitioner in this case. There is no parent or publicly held company owning 10% or more of the corporation's stock.

RELATED CASES:

Henyard v. Mv Transportation, et al., No. 15-cv-10835, U.S. District Court for the Northern District of Illinois, Eastern Division. Order entered Mar. 18, 2021.

Henyard v. Mv, et al., No. 21-2141, U.S. Court of Appeals for the Seventh Circuit. Order entered Jun. 23, 2020.

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES CITED

Pages(s)

CASES:

STATUTES:

OTHER AUTHORITIES:

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

Applicant, Pearl Henyard respectfully applies for a stay of the issuance of the mandate in the United States Court of Appeals for the Seventh Circuit pending a timely filing and disposition of the Applicant's forthcoming petition for an Extraordinary Writ of Certiorari as well as any further proceeding in the Supreme Court of the United States. The date of issuance of the mandate in the Court of Appeals for the Seventh Circuit in the case, Pearl Henyard v. Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority was entered on July 30, 2021. There are extraordinary circumstances for the request of the stay of the mandate pending the filing for an Extraordinary Writ of Certiorari.

JURISDICTION

The Court of Appeals for the Seventh Circuit decided the case on May 20, 2021. A petition for panel rehearing was timely filed on June 04, 2021. The timely petition for panel rehearing was denied by the Court of Appeals for the Seventh Circuit on June 22, 2021. The Court has statutory jurisdiction under 28 U.S.C. §1254(1). The Court has jurisdiction pursuant to 28 U.S.C. § 1651(a) for a petition for an Extraordinary Writ of Certiorari in aid of the Court of Appeals for the Seventh Circuit appellate jurisdiction, exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. The Petition for an Extraordinary Writ of Certiorari will be of First Impression. The statute 28 U.S.C. § 2403(a) applies, the Respondent Pace, the Suburban Bus Division of the Regional Transportation Authority is a party, which is a federal transportation agency. There was

no certification to the Attorney General of the fact that the constitutionality of an Act of Congress was drawn into question. The statute 28 U.S.C. § 2403(b) applies which shall be served on the Illinois Attorney General. There was no certification to the Attorney General of the fact that the constitutionality of a statute of the state of Illinois was drawn into question.

CONCISE STATEMENT

Petitioner, Pearl Henyard filed a Notice of Appeal in the United States District Court for the Northern District of Illinois Eastern Division on December 14, 2020 appealing to the United States Court of Appeals for the Seventh Circuit. On May 20, 2021 the judgment of the District Court was affirmed, final judgment was entered in the case Pearl Henyard v. Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority Case No. 20-3462. A timely Petition for Panel rehearing was filed on June 04, 2021, which the Seventh Circuit Court denied on June 22, 2021. On June 17, 2021, a Second Notice of Appeal was filed in the Northern District Court, the whole case was taken on appeal, appealing to the Seventh Circuit Court which the Court entered an order on June 23, 2021 stating the case is over- the district court entered judgment on November 30, 2020, appellant Pearl Henyard appealed, and the court affirmed the judgment on May 20, 2021. *See* Appeal No. 20-3462. The June 23, 2021 order also stated the district court's post-judgment orders regarding the correcting or supplementing of the record on appeal are no longer reviewable, In any event no district court order was entered within 30 days prior to the filing of the appeal on June 21, 2021- a jurisdictional requisite. *See* 28 U.S.C. § 2107(a). The issuance of the mandate by the Seventh Circuit Court was entered on June 30, 2021.

ARGUMENT

A. THERE ARE EXTRAORDINARY REASON FOR GRANTING THE STAY OF THE MANDATE PENDING THE FILING OF AN EXTRAORDINARY WRIT, WHICH IS WHY THE APPLICATION FOR THE STAY OF THE ISSUANCE OF THE MANDATE SHOULD BE GRANTED

A stay of the mandate may be granted by a Justice, which the Applicant/Petitioner is a party to a judgment sought to be reviewed therefore is presenting the application to the Justice, the Honorable Amy Coney Barrett to stay the enforcement of the judgment. 28 U.S.C. § 2101(f). The relief sought is not available from any other judge due to the Justice, the Honorable Amy Coney Barrett is the Justice allotted to the Seventh Circuit from which the case arises, a stay of the mandate was filed in the Seventh Circuit on July 22, 2021 which was denied by the Court on July 27, 2021. The relief sought is not available in any other court, the stay of the mandate which was filed in the Seventh Circuit Court and denied, which the only other Court to file an application for the stay of the mandate is the Supreme Court of the United States. The judgment sought to be reviewed, the order on June 22, 2021 denying the timely Petition for Panel Rehearing in the Case No. 20-3462 (Appendix C); the May 20, 2021 final judgment in the Case No. 20-3462 (Appendix A); the June 23, 2021 order in the Case No. 21-2141 stated the case is over the district court entered judgment on November 30, 2020, Appellant Pearl Henyard appealed and the Court affirmed the judgment on May 20, 2021 and there was no order entered in the district court within 30 days prior to filing the appeal on June 21, 2021 which is a jurisdictional requisite to 28 U.S.C.§ 2107(a) (Appendix A); the order of March 18, 2021 entry on March 19, 2021 in the Seventh Circuit (Appendix A); the March 18, 2021 minute entry before the Honorable Edmond E. Chang on the Plaintiff's motion 207 to correct three

lines in the transcript of the 11/25/2019 hearing was denied in most part and granted in part (entry appears at Appendix B); the March 31, 2021 minute entry before the Honorable Edmond E. Chang, the Plaintiff's motion 211 and 213 to supplement the record on appeal is granted in part and denied part (Appendix B); the April 19, 2021 minute entry before the Honorable Edmond E. Chang, the Plaintiff's motion 215 to enter Rule 58 judgments or orders for docket entries R. 212 and R. 214 is denied (Appendix B); the issuance of the mandate by the Court of Appeals for the Seventh Circuit entered on June 30, 2021 (Appendix D); and the order that denied the relief sought to stay the mandate pending the filing of an Extraordinary Writ of Certiorari in the Seventh Circuit Court on July 27, 2021. (Appendix E).

A stay of the mandate must be first sought in the appropriate court. Supreme Court Rule 23. The relief requested was sought in the Court of Appeals for the Seventh Circuit on July 22, 2021. On July 27, 2021 the Court of Appeals for the Seventh Circuit entered an order denying the request to stay the mandate due to the court's issuance of the mandate does not affect the appellant's ability to seek review from the Supreme Court. The July 27, 2021 order also stated, it is further ordered that to the extent that the appellant seeks further rehearing in the appeal, the court denies her leave to file a second petition for rehearing; and it is finally ordered that the court will take no action on the appellant's petition for an extraordinary writ of certiorari, the appellant is reminded that any petition for a writ of certiorari must be filed directly with the clerk of the United States Supreme Court and in accordance with the Supreme Court Rules.

The Stay of the Mandate Pending the filing of an Extraordinary Writ of Certiorari is justified as follows:

Petitioner, Pearl Henyard requested a stay of the mandate in the Court of Appeals for the Seventh Circuit due to the entry of final judgment. The entry of final judgment in the case Pearl Henyard v. Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority Case No. 20-3462 on May 20, 2021 deemed the case over filed on June 17, 2021 from the post judgment proceedings on November 30, 2020 in the case Pearl Henyard v. Mv Transportation and Pace Suburban Bus Service case No. 21-2141.

Petitioner, Pearl Henyard is Petitioning for an Extraordinary Writ of Certiorari in the case, Pearl Henyard v Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority case No. 20-3462, there is conflict between statutes and case law between the Case Nos. 20-3462 and 21-2141. Although from the case No. 21-2141 there can be a direct appeal. The Notice of an Extraordinary Writ of Certiorari was filed in the Seventh Circuit on July 22, 2021 in the case, Pearl Henyard v. Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority Case No. 20-3462. The case, Pearl Henyard v. Mv Transportation and Pace Suburban Bus Service Case No. 21-2141 was not included in the caption for the Notice of an Extraordinary Writ of Certiorari. There is controversy between the cases, Pearl Henyard v. Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority case No. 20-3462 and the case Pearl Henyard v. Mv Transportation and Pace Suburban Bus Service Case No. 21-2141 which has included the Case No. 21-2141. The case, Pearl Henyard v. Mv Transportation and Pace Suburban Bus Service Case No. 21-2141 aspects of the case from the post judgment proceeding was not on review, heard in the Seventh Circuit Court. The Case No. 21-2141 are Post Judgment

Proceedings from the November 30, 2021 final judgment which post judgment proceedings are a separate freestanding lawsuit.

In the case, Pearl Henyard v. Mv Transportation Case No. 21-2141 the whole case was taken on appeal from the post judgment proceeding, therefore the cases will be moot due to the case Pearl Henyard v. Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority Case No. 20-3462 having the merits on review at the same time.

This is a case of first impression where there is a conflict between statutes and case law between two appeals which has created manifest injustice to the Petitioner, Pearl Henyard. There is importance to the public due to our justice system not allowing an individual to maneuver through the court system which prevents an individual from the relief sought when there are violations of civil rights of the claims alleged such as Title VII of the Civil Rights Act of 1964 (Hostile Work Environment claims), Illinois Eavesdropping Act (720 ILCS 5/14), and the dismissed claims: Sex Discrimination claims, Retaliation claims, Fourteenth Amendment Equal Protection Clause claims, Fourteenth Amendment Equal Protection Clause: Criminal Claim for Torture pursuant to 18 U.S.C. Chapter 113C, Violations of the Protection of a Human Subject provisions in 45 C.F.R. § 46 and 45 C.F.R. § 46.1010 Informed Consent.

There is a necessity to stay the mandate to aid in jurisdiction, there are exceptional circumstances that warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. The case involves important questions of federal law that should be settled by this Court due to the conflict of statutes and case law. The issues are of first impression.

There is controversy. In the case, Pearl Henyard v. Mv Transportation and Pace Suburban Bus Service case No. 21-2141, the post judgment proceedings are from the November 30, 2020 final judgment which the whole case was taken on appeal which was over due to the final judgment on May 20, 2021 (Appendix A) which an order was entered on June 23, 2021 (Appendix A) which stated the case is over, the district court entered judgment on November 30, 2020, appellant Pearl Henyard appealed, and the court affirmed the judgment entered on May 20, 2021 in the First Appeal Case No. 20-3462, and the district court's post-judgment orders regarding the correcting or supplementing of the record on appeal are no longer reviewable, in any event no district court order was entered within 30 days prior to the filing of the appeal on June 21, 2021 which is a jurisdictional requisite of 28 U.S.C. § 2107(a). A notice of appeal must be filed within 30 days of the judgment, order, or decree for review before a Court of Appeals, or with 60 days if the United States is a party. There are conflicts between the statutes and caselaw, 28 U.S.C. § 1291 holding that an appeal will not lie until the district court has entered a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States, 324 U.S. 229 (1945).* The statute 28 U.S.C. § 2107(a), a notice of appeal must be filed within 30 days of the judgment order, or decree for review in the Court of Appeals, and within 60 days if the United States is a party. Post judgment proceedings are treated for purposes of appeal as a separate, freestanding lawsuit. *JP Morgan Chase Bank, N.A. v. Asia Pulp & Paper Co., Ltd., 707 F.3d 853 (7th Cir. 2013).* The post judgment proceedings cannot be appealed until the merits are decided on. The merits in the Case No. 20-3462 had not been decided on to file the Notice of Appeal in the Case No. 21-2141 from the post judgment proceedings of the November 30, 2021 final

judgment within 30 days of the order. The touchstone of federal appellate procedure, the final-decision rule of 28 U.S.C. § 1291 which holds that an appeal will not lie until the district court has entered a decision that "ends the litigation on the merits and leave nothing for the court to do but execute the judgment." *Catlin v. United States 324 U.S. 229, 223 (1945).* The Petitioner had 60 days to file a Notice of Appeal due to the United States agency Pace, the Suburban Bus Service of the Regional Transportation Authority is a party, which is a federal transportation agency.

In the First Appeal Case No. 20-3462, the case is on petition for an Extraordinary Writ of Certiorari. A Notice of Petition for an Extraordinary Writ of Certiorari was filed in the Seventh Circuit on July 22, 2021. There are filed documents in the Second Appeal case No. 21-2141 after issuance of the mandate on July 30, 2021 (Appendix D). When petitioning to the Supreme Court of the United States, two federal Court's will have subject matter jurisdiction, only one federal court may have jurisdiction over the case at a time. Although, Briefing has been suspended in the Second Appeal Case No. 21-2141 there is documentation that is continuously filed.

There is a necessity to stay the mandate to allow the stay of the mandate in the Seventh Circuit Court pending the filing of an Extraordinary Writ of Certiorari for further review of the Petition for Panel rehearing that was denied on June 22, 2021 (Appendix C) which there were no reasons given in the order for the denial. The Questions presented for the Petition for an Extraordinary Writ of Certiorari is very similar to one of the questions in the issues on appeal in the Court of Appeals for the Seventh Circuit, which will moot that issue, which is an Extraordinary Issue. If there is a warrant to recall the mandate due to jurisdictional issues for further proceedings in the entire case (both appeals) for

dismissing the appeals erroneously on jurisdictional grounds for misreading, and misrepresentation. Also, the Second Appeal Case No 21-2141 aspects of the case have not been reviewed or does not have a prior ruling in the Seventh Circuit Court.

The Second Appeal from the post judgment proceedings affects the totality of the case, where there is a request for reversal of the district court's judgment and revival of the dismissed claims due to the pure legal issue from the post judgment proceeding with the correction of the Transcript on 11/25/2019 that pertains to evidence (information that was withheld) that was withheld which relates to the issue of Discovery which there was an abuse of discretion in the denial by the District Judge Edmond E. Chang. If there is a remand with directions for further proceeding, the District Court judgment is reversed and there are further proceedings to continue to trial. There is concrete injury and civil rights violations of the claims in the case which are the Hostile Work Environment claims (Title VII of the Civil Rights Act of 1964), the Illinois Eavesdropping Act claims (720 ILCS 5/14), and the Dismissed claims (Sex Discrimination, Retaliation, Fourteenth Amendment Equal Protection Clause, Fourteenth Amendment Equal Protection Clause: Criminal Claim of Torture pursuant to 118. U.S.C Chapter 113C, Violations of the Protection of a Human Subject provisions in 45 C.F.R. § 46, and 45 C.F.R. § 46.101 Informed Consent. Whereas the Court of Appeals for the Seventh Circuit Court affirmed the District Court judgment (Appendix A) when there was an abuse of discretion in the denial of the Extension for Discovery motion, the surreply and its extra related briefings, facts were not taken into consideration, as well as other errors which the judgment was entered against the Plaintiff and in favor of the Defendants. The case was dismissed with prejudice which

was decided by the District Court Judge Edmond E Chang on a motion for summary judgment.

For the foregoing reasons above Petitioner, Pearl Henyard request the grant of this application to stay the mandate pending the filing for the petition for an Extraordinary Writ of Certiorari.

A threshold requirement for obtaining Appellate review is standing. The Constitution limits it grant to the "judicial power" to "Cases" and "Controversies." The standing Article III requires a person that is seeking Appellate review, or appearing in courts of first instance to meet the following: A party must show (1) an " injury in fact", (2) "a causal connection between the injury and the conduct complained of, (3) a likelihood that "the injury will be redressed by a favorable decision. Article III Standing.

There is reasonable probability of succeeding on the merits and there will be irreparable injury absent a stay. There is a reasonable probability that four Justices will vote to grant an Extraordinary Writ of Certiorari and a "fair prospect" that there is a reasonable possibility that five Justices will vote to reverse the Court's judgment due to the questions that will be raised in the Extraordinary Writ of Certiorari, which the Court of Appeals need aiding in jurisdiction and there are exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. The issues presented are important questions of federal law that should be settled by the Supreme Court due to the controversy, conflicts of statutes and case law which prevents an individual from maneuvering through the justice system to seek redress when there is injury and civil rights violation of the claims in the case such as the Hostile Work Environment claims (Title VII of the Civil Rights Act

of 1964), the Illinois Eavesdropping Act claims (720 ILCS 5/14), and the Dismissed claims (Sex Discrimination, Retaliation, Fourteenth Amendment Equal Protection Clause, Fourteenth Amendment Equal Protection Clause: Criminal Claim of Torture pursuant to 118. U.S.C Chapter 113C, Violations of the Protection of a Human Subject provisions in 45 C.F.R. § 46, and 45 C.F.R. § 46.101 Informed Consent.

The substantial question,

In, the result of the denial of the petition for panel rehearing on June 22, 2021, the Court of Appeals for the Seventh Circuit entered an order on June 23, 2021 stating the second appeal is over due to the District Court entered judgment on November 30, 2020, and the court affirmed the judgment on May 20, 2021. As well as the District Court's post-judgment orders regarding the correcting or supplementing of the record on appeal are no longer reviewable. In any event, no District Court order was entered within 30 days prior to the filing of the appeal on June 21, 2021 which is a jurisdictional requisite pursuant to 28 U.S.C.§ 2107(a). The date of issuance of the mandate is June 30, 2021. In relevance to post judgment, post judgment proceedings are treated for purposes of appeal as a separate, free standing lawsuit, and an appeal cannot be taken until the district court completely disposed of that post-judgment proceeding. *JP Morgan Chase Bank, N.A. v. Asia Pulp & Paper Co., Ltd., 707 F. 3d 853 (7th Cir. 2013).* The post judgment proceedings can not be appealed until the merits are decided on. The touchstone of federal appellate procedure is the final-decision rule of 28 U.S.C.§ 1291 which holds that an appeal will not lie until the district court has entered a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States,*

324 U.S. 229 (1945). An appeal has to be filed within 30 days after the entry of such judgment, order, or decree for review before a court of appeals. 28 U.S.C 2107(a).

The questions presented are:

1. Can the first appeal affect the second appeal from the post judgment proceedings which is a separate standalone proceeding which results in the case is over in the second appeal, where there are conflicting statutes and case law?
2. Whether the issuance of the mandate on June 30, 2021 included the second appeal?

This is an issue of first impression where there is conflict between statutes and case law between two appeals which has created manifest injustice to the Petitioner, Pearl Henyard. There is importance to the public due to our justice system not allowing an individual to maneuver through the court system which prevents an individual from the relief sought when there are violations of civil rights of the claims alleged such as Title VII of the Civil Right of 1964 (Hostile Work Environment claims), Illinois Eavesdropping Act (720 ILCS 5/14), and the dismissed claims: Sex Discrimination claims, Retaliation claims, Fourteenth Amendment Equal Protection Clause claims, Fourteenth Amendment Equal Protection Clause: Criminal Claim for Torture pursuant to 18 U.S.C. Chapter 113C, Violations of the Protection of a Human Subject provisions in 45 C.F.R. § 46 and 45 C.F.R. § 46.1010 Informed Consent. The merits of the case in the First Appeal is of great importance to the public also due to violations of Civil Rights, as well as injury that has/is inflicted on the Petitioner, Pearl Henyard. The post judgment proceeding is importance because it affects the totality of the case.

The claims of the Hostile Work Environment where the Respondents are liable for sexual harassment due to a female coworker Aliesha Green's unwelcoming touching of Pearl Henyard's rear, unwelcome verbal sayings of "You a cute chocolate girl," "You like me," "You missed me," and she would laugh every time she saw Pearl Henyard, which there was also unwelcome sexual flirtation and unwelcome propositioning based on sex. The Operations Manager sexual harassment caused two tangible adverse employment actions, there were three months of missed holiday pay for the months of November and December of 2014 and January of 2015, pay was missed not delay because of the Operation Manger not wanting to pay Henyard because of her sex which there were runarounds for three months when constantly requesting her pay. Pearl Henyard's full-time status was degraded to a part-time employee preventing her from receiving full-time employee benefits from Jaricho Worthy not wanting to pay her because of her sex. There were requests for time off for doctor appointments, but the Operations Manager Jaricho Worthy did not want to sign request forms for time off because of her sex. The Operations Manager, Jaricho Worthy fabrication of a story about a 4 year old boy being struck in a Burger King parking lot which Pearl Henyard signed her signature on a document in return for confirmation of being informed in connection with the story whereas all other employees male and female drivers signed their signature on the document of the story of the two pedestrians being struck which was a pattern of sexual harassment because of her sex. Jaricho Worthy pulled Pearl Henyard's scarf as she walked by which she was choked, which was also a pattern of sexual harassment because of her sex. The causal connection, Defendants are employers of both the female coworker and the Operation's Manager who sexual harassed Henyard, which Defendants are liable for the sexual harassment. There is

injury and violation of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

In the Illinois Eavesdropping claim, the Defendants secretly recorded video and audio surreptitiously of private conversations without consent by the DriveCam that is installed on the Defendant's Mv Transportation and Pace, the Suburban Bus Division of the Regional Transportation Authority work vehicles where Pearl Henyard had a reasonable expectation of privacy. Pearl Henyard has had private conversations while on speakerphone on the Defendants work vehicles, which there was an expectation of privacy where there was no notice to Pearl Henyard of monitoring throughout the entire duration of employment on the Defendants work vehicles. There is casual connection, the secret recording of Pearl Henyard's private conversations has caused harmed by everything that Pearl Henyard has stated on the Defendants work vehicles was being played out by her family and society which was the result of the Defendants secret recording. The harm outside of work stemmed from the Defendants secret recordings due to the Defendants retaliation, due to Pearl Henyard communicating on the Defendants work vehicles and the Defendants punishing Pearl Henyard for complaining of the sexual harassment. There are injuries sustained and violation of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

In the Dismissed claims, the Sex Discrimination claim there were denials of assignments which resulted in changes of route, which there is adverse employment action which job responsibilities materially diminished. The Dispatchers and Management Personnel were altering Pearl Henyard's manifest, which led to Henyard being harassed by third parties, trips were taking off Henyard's manifest such as restaurants, stores etc.

The casual connection, Dispatchers and Management Personnel would put one or two trips back on and notify the customer and or the establishment. There is injury and violation of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

In the Dismissed claims, the Retaliation claims, there was engagement in a statutorily protected activity and was subject to adverse employment actions as a result of engaging in the activity. The injuries that Henyard sustained was a result of her complaining in which the Defendants took part in causing the injuries. The causal connection, After complaining about sexual harassment on July 1, 2015, the retaliation occurred on July 3, 2015 when scheduled back to work, after starting the vehicle during the pre-trip of the shuttle bus where little pieces of an agent flew from the left vent while Henyard was sitting in the driver's seat when the agent flew in Henyard's eye which caused injury. The Defendants retaliated due to complaining about the incidents of sexual harassment. The white powder on Henyard's work vehicle which she encountered, and the grease base/oil substance caused burning and numbness in Henyard's finger, which was also in retaliation, there was a pattern of retaliation. There are injuries sustained and violation of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

In the Dismissed claims, The Fourteenth Amendment Equal Protection Clause claim, Pearl Henyard's second vehicle accident on August 4, 2015, when she visited the emergency room at Rush Hospital, she was injected with an unknown agent that could have cause death which caused injury. Henyard did not give informed consent for any injections. Henyard was injected twice with an unknown agent, which was at Aurora

Medical Center also. Henyard was poisoned at family residences and contacted Police, there was nothing done. Henyard was also poisoned at restaurants and stores. The causal connection, the Defendants are state and federal actors. The Defendants provide transportation services and partner with city and county government transit agencies, school districts, universities, and corporations. Pace is a federal transportation agency, which is one of Henyard's former employers. There is injury and violation of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

In the Dismissed claims, The Fourteenth Amendment Equal Protection Clause: Criminal Claim for Torture pursuant to 18 U.S.C. Chapter 113C, Henyard has stated on Defendants vehicle that she never wanted to be tortured which has happened. Henyard was poisoned with agents that was poured on her head, skin (hands, legs, and feet) and being injected with needles which was very tortious. The agents that were poured on Henyard was put in her food and on her belongings that caused harm to her in the households. The public issuing surveys (for votes) for their interest in degrading and ostracizing Henyard could have caused death. The acts that is committed on the Chicago Transportation Authority buses and trains against Henyard where passengers would throw things on her, etc. The causal connection, Defendants coherently committed acts through family, businesses in Illinois, as well as acts on the Chicago Transportation Authority buses and trains. Defendants secretly recording of Henyard's private conversations on the work vehicle throughout the entire employment, the things Henyard said (she would not want to be held hostage, maid, tortured, etc.) on the Defendants work vehicles are being acted out by Henyard's family and society. There are injuries sustained

and violations of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

The Dismissed claims, the Violation of the Protection of a Human Subject provisions in 45 C.F.R.§ 46 and 45 C.F.R. § 46.101 Informed Consent. The Defendants were conducting research on the work vehicles, employees were recorded through their entire employment on the Defendants work vehicles without consent. The Defendants does research pertaining to the driver's behavior. The secret recording of Henyard led to other experimentation (medical and scientific) which is illegal, Henyard did not consent to. Henyard has been injured in numerous of ways going into the hospital which would have been a third unknown injection. In the first visit to the Behavior Health Hospital (Hartgrove) she was given a pill when awaken out her sleep, which was not her medication which was intentionally which would have caused injury. Henyard was a Human subject on the Defendants work vehicles and in the family residences where she was injured. Henyard experienced secret recording obtained or made by stealth or deception or executed through secrecy or concealment when she arrived at the family residence which the most bizarre things happened. Henyard has not consent orally or neither written consent. The combination of all three claims has caused Henyard's disability, two of the injuries sustained on the Defendants work vehicles, injections from hospitals, torture inflicted physically and mentally that cause injury, the government's technology, and other experimentation which is to deprive one of life. The causal connection, Pace is a federal transportation agency which the provisions are a federal policy regarding human subjects. There is injury and violations of civil rights which there is a likelihood that the requested relief will redress the injury by a favorable decision.

There is concrete injury in all the claims from the federal government, state government, and local government. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Fourteenth Amendment.

There will be irreparable injury absent a stay, there are still filing in the Seventh Circuit Court of Appeals after the issuance of the mandate on June 30, 2021 in the Second appeal Case No. 21-2141. Only one federal court at a time may have subject matter jurisdiction to a case, therefore the Petitioner Pearl Henyard will not be able to Petition for an Extraordinary Writ of Certiorari in the Supreme Court of the United States, the Supreme Court is a federal court that will have the same subject matter jurisdiction as the Court of Appeals for the Seventh Circuit. There will not be further review of the denial for the Petition for Panel Rehearing, which there were no reasons stated for the denial. If there is a warrant to recall the mandate to proceed further if there is a jurisdiction issue. Henyard would not be able to seek redress for her injuries and violations of civil rights.

A judge, court, or Justice granting an application for a stay pending review by the Court may condition the stay on the filing of a supersedes bond having an approved surety or sureties. Supreme Court Rule 23.4. Petitioner, Pearl Henyard has proceeded in Informa Pauperis in the United States District Court for the Northern District of Illinois, Eastern Division. Which the Petitioner, Pearl Henyard has proceeded on Appeal in Informa Pauperis in the United States Court of Appeals for the Seventh Circuit from the grant of the Informa Pauperis in the United States District Court for the Northern District of Illinois, Eastern Division. Pearl Henyard has paid the Supreme Court Rule 38(a)

docketing fee of $300.00. Petitioner, Pearl Henyard receives $891.00 in Social Security Disability. (Appendix F). Henyard receives $235.00 in Snap benefits, regular benefits in the amount of $118.00 and Emergency Snap benefits in the amount of $116.00 a month which meets the qualification of indigence. (Appendix G). Applicant, Pearl Henyard is enduring a crisis which has led her to apply for an application to proceed in Informa Pauperis due to her extreme circumstances.

CONCLUSION

Wherefore, for the foregoing reasons, Petitioner, Pearl Henyard respectful request the grant of this Application to Stay the Issuance of the Mandate pending the filing of an Extraordinary Writ of Certiorari in the Court of Appeals for the Seventh Circuit.

Dated: September 09, 2021

/s/Pearl Henyard

Pearl Henyard
Pro Se, Pearl Henyard
1512 N Lasalle Drive
APT 416
Chicago IL, 60610
773.983.1590

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

May 20, 2021

Before

WILLIAM J. BAUER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-3462	PEARL HENYARD, Plaintiff - Appellant v. MV TRANSPORTATION and PACE, the Suburban Bus Division of the Regional Transportation Authority, Defendants - Appellees
Originating Case Information:	
District Court No: 1:15-cv-10835 Northern District of Illinois, Eastern Division District Judge Edmond E. Chang	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment** (form ID: **132**)

Appendix A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 23, 2021

By the Court:

PEARL HENYARD, Plaintiff-Appellant,	] Appeal from the United] States District Court for] the Northern District of
No. 21-2141 v.	] Illinois, Eastern Division.]
MV TRANSPORTATION and PACE SUBURBAN BUS SERVICE, Defendants-Appellees.	] No. 1:15-cv-10835]] Edmond E. Chang,] Judge.

ORDER

A preliminary review of the short record reveals that appellant Pearl Henyard's case is over – the district court entered judgment on November 30, 2020, appellant Pearl Henyard appealed, and this court affirmed the judgment on May 20, 2021. *See* Appeal No. 20-3462.

The district court's post-judgment orders regarding the correcting or supplementing of the record on appeal are no longer reviewable. In any event, no district court order was entered within 30 days prior to the filing of the appeal on June 21, 2021 – a jurisdictional requisite. *See* 28 U.S.C. § 2107(a).

IT IS ORDERED that appellant Pearl Henyard shall file, on or before July 8, 2021, a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. A motion for voluntary dismissal pursuant to Fed. R. App. P. 42(b) will satisfy this requirement. Briefing shall be suspended pending further court order.

NOTE: Caption document "JURISDICTIONAL MEMORANDUM." The filing of a Circuit Rule 3(c) Docketing Statement does not satisfy your obligation under this order.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Pearl Henyard

Plaintiff,

v.

Case No.: 1:15–cv–10835
Honorable Edmond E. Chang

MV Transportation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, March 18, 2021:

MINUTE entry before the Honorable Edmond E. Chang: On the Plaintiff's motion [207] to correct three lines in the transcript of the 11/25/2019 hearing, the motion is denied in most part and granted in part. The Court has listened to the audio–recording of the hearings of that date. At 14:46 of the recording, the lines in question are spoken by the Plaintiff, that is, pages 2:25–3:2 of the transcript. The only exceptions are (a) the Plaintiff repeats a few lead–up words ("I have") in the last sentence; and (b) the words "still" and "have" are flipped in the last sentence. Specifically, then, the spoken words are in actuality: "New information became available as far as the defendant's part. I have, I have a request information, and I still have yet to receive it." The Court notes the following: it is clear from context that the Plaintiff was asserting that the Defendant had information that the Defendant should disclose; she had requested it; and she had not received it yet. Hopefully, this satisfies whatever concerns the Plaintiff had with the transcript. This docket entry represents the correction to the record, so she should cite to this entry as needed. Lastly, if the Plaintiff wishes to challenge this entry, she may file another motion and ask for the audio–recording to be lodged in the record. On the Plaintiff's motion [211] to supplement the record on appeal, the Plaintiff shall file, by 03/26/2021, a Supplement to the Motion that specifically identifies the docket entry numbers that she wishes to make part of the appellate record, or if not docketed, identify the dates of the transcripts. If the defense for some reason wishes to respond, the defense must do so by 03/31/2021. The Clerk's Office shall transmit this docket entry to the Seventh Circuit to be made part of the record on appeal. The tracking status hearing of 03/19/2021 is reset to 04/02/2021 at 8:30 a.m., but to track the case only (no appearance is required, the case will not be called). Instead, the Court will review the Supplement to the motion and any response. Emailed notice (mw,)

criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PEARL HENYARD,	)	
	)	
Plaintiff,	)	No. 1:15-CV-10835
	)	
v.	)	
	)	Judge Edmond E. Chang
MV TRANSPORTATION and PACE SURBUBAN BUS SERVICE,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Pearl Henyard brings this *pro se*[1] lawsuit against her former employer, MV Transportation, Inc., and its client, Pace Suburban Bus Service.[2] There are two remaining claims in this action: a hostile work environment claim under Title VII, 42 U.S.C. 2000e *et seq.*, and an Illinois statutory eavesdropping claim, 720 ILCS 5/14-2(a)(1). The Defendants move for summary judgment on the remaining claims. R. 132.[3] For the reasons explained below, the motion is granted.

---

[1]After Henyard brought the case without attorney representation, the Court recruited *pro bono* counsel for her, but Henyard fell out of communication. R. 6, 7, 40. After re-appearing, a disagreement between counsel and Henyard prompted the Court to recruit new counsel. R. 60, 66. But this representation too did not work out, R. 71, with Henyard terminating the representation, R. 75.

[2]This Court has federal question jurisdiction over the Title VII claim under 28 U.S.C. § 1331, and supplemental jurisdiction under the state law claim under 28 U.S.C. § 1367.

[3]Citations to the record are noted as "R." followed by the docket number, and when necessary, the page or paragraph number.

Appendix B

I. Background

The facts narrated below are undisputed unless otherwise noted, in which case the evidence is viewed in Henyard's favor because she is the non-movant.[4] MV provides paratransit services in partnership with local government transit agencies, school districts, universities, and corporations. DSOF ¶ 2. MV contracts with Pace to provide paratransit services in the Chicago metropolitan area. *Id.* ¶ 4. Henyard started working with MV as a driver in 2014. *Id.* ¶ 6.[5] Henyard's last day at MV was August 4, 2015, when she was involved in an on-the-job traffic accident. *Id.* ¶ 11. Although she was cleared to return on November 24, 2015, Henyard never went back to work. *Id.* ¶ 12. MV notified Henyard that if it did not hear from her in one month (by December 23), MV would consider her inaction as a voluntary resignation. PSOF ¶ 12. But she did not return and her employment with MC ended. DSOF ¶ 12.

A. Hostile Work Environment

Henyard's claim for hostile work environment arises out of incidents involving two colleagues: coworker Alicia Greene and supervisor Jaricho Worthy. Henyard alleges that Greene touched her rear end on one occasion with a piece of paper. DSOF

---

[4]Citations to the parties' Local Rule 56.1 Statements of Fact are identified as follows: "DSOF" for the Defendants' Statement of Facts [R. 131]; "PSOF" for Henyard's Statement of Additional Facts [R. 145]; and "Def. Resp. PSOF" for Defendants' response to Henyard's Statement of Additional Facts [R. 153]. Henyard's Additional Statement of Facts, R. 145, is formatted as a response to Defendants' Rule 56 Statement, R.131. But for purposes of this Opinion, the Court will identify R. 145 as "PSOF."

[5]Several times throughout Henyard's Rule 56 statement, R. 145, Henyard says that she disputes the Defendants' particular statement of fact—but her explanation then does not actually deny, at least not entirely, the actual substance of the defense's statement. For failing to comply with Local Rule 56.1 in those instances, the Court will treat those facts as undisputed.

¶¶ 17, 19; R. 131-2, DSOF, Exh. 2, Henyard Dep. at 49:18-24. Henyard also alleges that Greene would proposition her by saying "you're a cute chocolate girl," "you missed me," and "you like me." PSOF ¶ 19. According to Henyard, Greene would also laugh during their encounters. *Id.* After a couple of months, Henyard eventually made a complaint within the company and had no further contact with Greene. *Id.* ¶ 24; Henyard Dep. at 54:8-22.

With regard to supervisor Jaricho Worthy, Henyard first asserts that Worthy caused her holiday pay to be delayed when she took time off in late 2014 and early 2015. R. 80, Am. Compl. ¶11, 22; PSOF ¶ 20. In December 2014 or January 2015, Henyard complained to an employee in the payroll department about the non-payment. R. 146, Henyard Decl. ¶ 47. Second, according to Henyard, Worthy did not want to approve time off for doctor's appointments.[6] PSOF ¶ 20. Third, after an accident involving two pedestrians, Worthy fabricated a story about a young boy being struck in a Burger King parking lot. Henyard Decl. ¶ 39; Henyard Dep. at 62:9-20. But Henyard was not involved in the accident. DSOF ¶ 21. Worthy required both male and female drivers, including Henyard, to sign a document on a clipboard about the incident as part of some protocol. PSOF ¶ 21. Lastly, on one occasion, Worthy pulled on Henyard's scarf as she was walking by. Henyard Dep. at 65:6-66:3. Although the record is unclear about when the clipboard incident and the scarf incident happened, Henyard testified in her deposition that they happened on the same day. *Id.* 91:9-12.

[6]It appears that eventually, Henyard received her holiday pay and approval for leave. *See* Henyard Decl. ¶ 38; Henyard Dep. at 61:19-21; 67:1-5; Am. Compl. ¶¶ 11-12, 22; R. 148, Pl. Resp. Br. at 56.

In any event, according to Henyard, in July 2015, she reported Worthy to the union representative, at which point she and Worthy had no further communication. Henyard Decl. ¶¶48-49; PSOF ¶ 26.

B. DriveCam

The eavesdropping claim arises out of a video system called DriveCam. Each MV vehicle is equipped with a DriveCam device which records audio and video of the driver. DSOF ¶ 7. The camera is positioned to record both the road ahead and the inside of the vehicle. *Id.* All MV drivers receive training on the DriveCam device. *Id.* ¶ 8. In a sworn declaration, MV General Manager Jesus Valenzuela averred that the DriveCam starts recording only when triggered by one of two events: (1) the driver turns on the recording function manually; or (2) vehicular impact starts the recording function automatically. R. 131-1, DSOF, Exh. 1, Valenzuela Decl. ¶ 8. According to Valenzuela, when the recording function is triggered (by either of the two ways), the recording captures only the 10 seconds preceding and the 10 seconds following the triggering event. *Id.* ¶ 9.

Henyard does not dispute that she consented to being recorded when triggering events happened. Henyard Decl. ¶ 87. She does contend, however, that the DriveCam actually records vehicle operators "from the time the operator starts work and ends work." *Id.* ¶ 79. Henyard believes that MV was recording her "throughout the duration of employment" from "the first day of employment until the last day." *Id.* ¶¶ 88-90.

The DriveCam is equipped with a red and green light. *Id.* ¶ 92. Henyard has observed these lights flashing "sometimes red, or green," or even both red and green at the same time. *Id.* According to Henyard, employees "were not informed of the representation of both green and red lights on at the same time." *Id.* During training, Henyard contends, drivers were told that "they will be recorded 10 seconds before and 10 seconds afterwards when the green light turns red and flashes, if the light is already red, it will flash for recording when the camera is hit manually or if there is a shift." *Id.* ¶ 93. But according to Henyard, she saw the camera "do things" contrary to what she was told during training. Henyard Dep. at 41:3-4. She testified in her deposition that, on certain days, the camera would "shift from red back to green" and that the camera would flash green upon her starting the vehicle. *Id.* at 41:6-20. On other days, Henyard observed the camera shift from green to red upon a vehicular jerk and stay red for the rest of the day. *Id.* at 42:3-13.

II. Standard of Review

Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In evaluating summary judgment motions, courts must "view the facts and draw reasonable inferences in the light most favorable to the" non-moving party. *Scott v. Harris*, 550 U.S. 372,

378 (2007) (cleaned up).[7] The Court "may not weigh conflicting evidence or make credibility determinations," *Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 629 F.3d 697, 704 (7th Cir. 2011) (cleaned up), and must consider only evidence that can "be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). The party seeking summary judgment has the initial burden of showing that there is no genuine dispute and that they are entitled to judgment as a matter of law. *Carmichael v. Village of Palatine*, 605 F.3d 451, 460 (7th Cir. 2010); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If this burden is met, the adverse party must then "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256.

III. Analysis

Before discussing the two remaining claims, it is worth noting that, throughout the response brief, Henyard attempts to re-litigate claims that the Court previously dismissed. *See generally* R. 148, Pl. Resp. Br.; R. 102. There is no need to address those already-dismissed claims, so the Court moves on to the claims for hostile work environment and for eavesdropping.[8]

---

[7]This Opinion uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See* Jack Metzler, *Cleaning Up Quotations*, 18 Journal of Appellate Practice and Process 143 (2017).

[8]Henyard's motions to file a sur-reply and its related extra briefing, R. 154, 155, 159, are denied. Henyard had ample time to file the response brief; the defense's opening brief was filed on February 11, 2020, R. 132, and Henyard eventually responded on June 22, 2020, R. 148. And the Defendants did not add anything new in the reply briefing and Local Rule 56.1 response that would justify a sur-reply to either filing.

A. Hostile Work Environment

To survive summary judgment on the hostile work environment claim, Henyard must offer enough evidence, viewed in her favor, that would allow a reasonable jury to find that (1) she was subject to unwelcome harassment; (2) the harassment was based on membership in a protected class; (3) the harassment was severe or pervasive enough so as to alter the conditions of employment and create a hostile work environment; and (4) there is a basis for employer liability. *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 833-34 (7th Cir. 2015).

The Defendants' arguments against the hostile work environment claim are as follows: (1) Henyard waited two months to report Greene's conduct, and when she did, MV took action to remedy the problem; (2) Henyard's subjective belief that Worthy did not want to approve her holiday pay or her time off for doctor's appointments are insufficient because she eventually received both the holiday pay and the approval; (3) Henyard failed to show that being required to sign the document about the accident was based on her sex; (4) Worthy's pulling on her scarf was neither severe nor pervasive enough to have created a hostile work environment; and (5) Henyard provides no evidence that the conditions of her employment were changed. *See* R. 133, Def. Br. at 2–5.

1. Coworker Liability

The first two arguments challenge the basis for employer liability. First up are the incidents related to Alicia Greene, who was Henyard's coworker. The standard for a hostile work environment claim based on *coworker* conduct (as distinct from a

supervisor) is a negligence standard: "if only coworkers were culpable for making a work environment hostile, the plaintiff must show that the employer has been negligent either in discovering or remedying the harassment." *Vance v. Ball State Univ.*, 646 F.3d 461, 470 (7th Cir. 2011) (cleaned up), *aff'd*, 570 U.S. 421 (2013). An employer can avoid liability for coworker harassment if it takes prompt and appropriate corrective action reasonably likely to prevent the harassment from recurring. *Porter v. Erie Foods Int'l, Inc.*, 576 F.3d 629, 636 (7th Cir. 2009). An employer does not even have to successfully remedy the harassment to avoid liability, so long as the corrective action was prompt and reasonably likely to prevent reoccurrence. *See id.*; *Vance*, 646 F.3d at 471 (employer satisfied obligations under Title VII even though corrective measures did not ultimately persuade coworkers to treat plaintiff with respect). Here, Henyard concedes that she took a couple of months before complaining to MV about Greene. Henyard Dep. at 54:4-22. And after she complained, the two had no further communication. Henyard Decl. ¶ 36. In fact, when Henyard concedes that she herself told Greene to stop touching her, and Greene stopped. Henyard Decl. ¶ 32. Although the record is not crystal clear on what MV did to effectuate the separation, Henyard must provide evidence that MV failed to take prompt and appropriate corrective action. There is no evidence like that: after the complaint to MV, she had no contact with Greene. Without a showing of negligence, the hostile work environment claim premised on Greene cannot survive.

2. Supervisor Liability

Moving on to the incidents involving Worthy, it is easier for a plaintiff to prevail on employer liability for a supervisor's misconduct, but the evidence falls short here. It is true that employers are held strictly liable for a supervisor's misconduct if the harassment resulted in a tangible employment action, such as a discharge, demotion, change in work conditions, or a significant change in benefits. *Roby v. CWI, Inc.*, 579 F.3d 779, 784 (7th Cir. 2009); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). Here, at most, Worthy merely caused relatively short delays in Henyard's receipt of holiday pay and in approval for time off. Am. Compl. ¶¶ 11-12, 22; Henyard Decl. ¶ 38; Henyard Dep. at 61:19-21; 67:1-5. Relatively minor hindrances in receiving benefits typically do not amount to tangible employment action. *See Griffin v. Potter*, 356 F.3d 824, 829 (7th Cir. 2004) (occasional denial of leave requests, even when combined with other inconveniences, did not materially alter the conditions of employment). Based on the record evidence, and even viewing the evidence in Henyard's favor, she did not suffer a tangible employment action. So there is no basis for strict liability against MV.

3. Sex-based Harassment

Even if there was some basis for strict liability for Worthy's conduct, there is an independent, fatal deficiency with Henyard's claim: no reasonable jury could find that the conduct was based on sex. For example, the Defendants correctly point out that, even on Henyard's telling, both male and female employees were required to

sign the document on the clipboard after the accident involving two pedestrians. Henyard Decl. ¶ 40. Henyard concedes this. *Id.* And nothing else about what Worthy was alleged to have done in creating a hostile environment would support a finding that the conduct was based on Henyard's sex. This alone warrants summary judgment against the hostile work environment claim arising from any conduct attributed to Worthy.

4. Severe or Pervasive

As another independent basis against the claim premised on Worthy's conduct, no jury could reasonably find that the conduct was severe or pervasive enough to create a hostile work environment. *See Huri*, 804 F.3d at 833-34. "In determining whether a plaintiff has met this standard, courts must consider all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it was physically threatening or humiliating; or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Adusumilli v. City of Chicago*, 164 F.3d 353, 361 (7th Cir. 1998) (cleaned up) "[I]solated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (cleaned up). Worthy pulled on Henyard's scarf only once, Henyard Dep. at 65:2-66:21; Henyard alleges that Worthy only *delayed* the benefits that she ultimately re-

ceived, Am. Compl. ¶¶ 11-12, 22; communications with Worthy stopped after she complained, Henyard Decl. ¶49; and Henyard concedes that she left MV for reasons unrelated to Worthy. *Id.* ¶ 78.

Even viewed cumulatively, these incidents involving Worthy do not amount to severe or pervasive harassment. The governing case law sets too high a bar for Henyard to meet. For example, in *Adusumilli v. City of Chiago*, the severe-or-pervasive standard was not met despite several instances of misconduct committed by multiple colleagues. 164 F.3d at 361-62. There, the employee suffered the unwanted touching of the buttocks on one occasion, four other touching incidents, and several other off-color comments. *Id.* The Seventh Circuit nonetheless held that these incidents were too isolated to establish a hostile work environment claim. *Id.* at 362. The incidents that Henyard allege, even in their totality, are no more severe or pervasive. The summary judgment record does not allow a juror to establish that the Defendants created a hostile work environment claim.

This applies also to the other alleged misconduct. Although Henyard asserts that she received fewer responsibilities and that her routes were changed, Henyard Decl. ¶ 74; Pl. Resp. Br. at 20, 38, she does not offer evidence to show how this related to sexual harassment. Indeed, these assertions appear to be remnants of her retaliation claims that were previously dismissed. *See* Am. Compl. ¶15, R. 102, at 14-15. On the termination of her employment, Henyard eventually left MV at the end of 2015, but she provides no evidence that she left as a result of the alleged conduct. In fact, Henyard acknowledges that she stopped coming to work because of injuries sustained

in an on-the job accident. Henyard. Decl. ¶ 78. Furthermore, any delays in receiving benefits were eventually remedied. Am. Compl. ¶¶ 11-12, 22; Henyard Decl. ¶ 38; Henyard Dep. at 61:19-21; 67:1-5. All in all, Henyard lacks evidence showing that the alleged conduct materially changed the conditions of her employment. For all these reasons, summary judgment is granted against the hostile work environment claim.

B. Eavesdropping

Next, the Defendants argue that Henyard has insufficient evidence to allow a jury to find that they knowingly and intentionally recorded her without her consent. Def. Br. at 5. The Illinois Eavesdropping Act prohibits a person from knowingly and intentionally using "an eavesdropping device, in a surreptitious manner, for the purpose of overhearing, transmitting, or recording all or any part of any private conversation to which he or she is not a party unless he or she does so with the consent of all the parties to the private conversation." 720 ILCS 5/14-2(a)(1). The evidence offered by Henyard is insufficient for a jury finding on several statutory elements.

1. Private Conversation

First, the record is devoid of evidence that Henyard was partaking in any private conversation recorded by the DriveCam. The eavesdropping statute prohibits the "overhearing, transmitting, or recording" of any "*private* conversation." 720 ILCS 5/14-2(a)(1) (emphasis added). An eavesdropping device is "any device capable of being used to hear or record *oral conversation*." 720 ILCS 5/14-1(a) (emphasis added). The statute further defines "private conversation" as "any *oral communication* between 2 or more persons regardless of whether one or more of the parties intended

their communication to be of a private nature under circumstances justifying that expectation." 720 ILCS 5/14-1(d)(emphasis added). Henyard only alleges that she was "recorded via/audio on work vehicles." Am. Compl. ¶¶ 16, 24. And aside from a generalized statement—so general as to lack foundation for admissibility—in Henyard's deposition that the DriveCam was recording "all your conversation," Henyard Dep. 43:24, there is no evidence that she was engaged in any *private* conversations while driving for MV. Nor is there evidence that Henyard would take personal phone calls on the road. All in all, Henyard has failed to provide any factual specifics on the nature, timing, or duration of any private conversations, so this element cannot be found by a jury.

2. Knowledge and Intent

Second, Henyard does not offer any evidence establishing the knowledge and intent requirement. Henyard contends that the DriveCam continuously recorded her throughout the course of her employment. Henyard Decl. ¶¶ 86, 89-90. She has not, however, seen or heard any of the alleged recordings. *Id.* ¶¶ 82, 96. Although Henyard claims to have documentation of unconsented recordings, none of it is in the record.[9] *Id.* ¶ 84. Thus, Henyard is left with her sworn statement about the red and green lights. *Id.* ¶ 92. According to Henyard, the lights would change without a triggering event: "DriveCam lights are sometimes red, or green" and "there have been times where there have been both red and green lights at the same time." *Id.* Even if that

[9]Throughout her declaration, Henyard cites to several exhibits that are neither attached nor otherwise submitted as part of the summary judgment record. The only exhibits attached to her declaration are excerpts from her deposition transcript and from her first set of answers to Defendants' first set of interrogatories. *See* R. 146 at 18-67.

assertion is assumed to be true, the mysterious lights are not enough to infer MV's *knowledge* or *intent* to make unauthorized recordings. That would be a speculative leap that takes reasonable inferences too far. The state-of-mind element is not met.

3. Surreptitious

Lastly, Henyard offers little evidence that the device was used in a "surreptitious manner," as required by Illinois law. The eavesdropping statute defines surreptitious as "obtained or made by stealth or deception, or executed through secrecy or concealment." 720 ILCS 5/14-1(g). Henyard's very awareness of the purportedly erratic lights would refute that the alleged recordings were made by stealth or by concealment. It is true that, under Henyard's version of events, the drivers did not consent to recordings beyond the two types of triggering events. But if the recording lights visibly turned on for the drivers to see, then no reasonable jury could find that MV made the recordings in a surreptitious manner. For the failure on these three statutory elements—even one failure would be enough to undermine the claim—the eavesdropping claim is dismissed.

C. Discovery

Throughout her summary judgment briefing, Henyard argues that she is entitled to more discovery. *See generally* Pl. Resp. That is wrong. Discovery closed on November 18, 2019. R. 110. On December 9, 2019, Henyard moved to extend discovery, but the request was denied because she presented "no good-cause explanation for why she is only now pursuing this discovery" when the case has "been pending for an extensive time." R. 127. Like before, Henyard still fails to explain what good cause

there is to re-open discovery, especially after the ample time for discovery and after summary judgment briefing. Henyard's request to reopen discovery is denied.

IV. Conclusion

The Defendants' motion for summary judgment is granted in full. The tracking status hearing of December 4, 2020 is vacated, and the Court will enter final judgment.

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: November 29, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Pearl Henyard,

Plaintiff(s),

v.

MV Transportation, et al.,

Defendant(s).

Case No. 15 C 10835
Judge Edmond E. Chang

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Judgment entered against the Plaintiff and in favor of the Defendants. Case dismissed with prejudice.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Edmond E. Chang on a motion for summary judgment.

Date: 11/30/2020

Thomas G. Bruton, Clerk of Court

/s/ Michael Wing, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Pearl Henyard

Plaintiff,

v.

Case No.: 1:15–cv–10835
Honorable Edmond E. Chang

MV Transportation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, November 30, 2020:

MINUTE entry before the Honorable Edmond E. Chang: The Plaintiff's motion to file a sur–reply and its related extra briefing, R. 154, 155, 159, are denied. See Mem. Op. at 6 n.8. Emailed notice (mw,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Pearl Henyard

Plaintiff,

v.

Case No.: 1:15–cv–10835
Honorable Edmond E. Chang

MV Transportation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, March 18, 2021:

MINUTE entry before the Honorable Edmond E. Chang: On the Plaintiff's motion [207] to correct three lines in the transcript of the 11/25/2019 hearing, the motion is denied in most part and granted in part. The Court has listened to the audio–recording of the hearings of that date. At 14:46 of the recording, the lines in question are spoken by the Plaintiff, that is, pages 2:25–3:2 of the transcript. The only exceptions are (a) the Plaintiff repeats a few lead–up words ("I have") in the last sentence; and (b) the words "still" and "have" are flipped in the last sentence. Specifically, then, the spoken words are in actuality: "New information became available as far as the defendant's part. I have, I have a request information, and I still have yet to receive it." The Court notes the following: it is clear from context that the Plaintiff was asserting that the Defendant had information that the Defendant should disclose; she had requested it; and she had not received it yet. Hopefully, this satisfies whatever concerns the Plaintiff had with the transcript. This docket entry represents the correction to the record, so she should cite to this entry as needed. Lastly, if the Plaintiff wishes to challenge this entry, she may file another motion and ask for the audio–recording to be lodged in the record. On the Plaintiff's motion [211] to supplement the record on appeal, the Plaintiff shall file, by 03/26/2021, a Supplement to the Motion that specifically identifies the docket entry numbers that she wishes to make part of the appellate record, or if not docketed, identify the dates of the transcripts. If the defense for some reason wishes to respond, the defense must do so by 03/31/2021. The Clerk's Office shall transmit this docket entry to the Seventh Circuit to be made part of the record on appeal. The tracking status hearing of 03/19/2021 is reset to 04/02/2021 at 8:30 a.m., but to track the case only (no appearance is required, the case will not be called). Instead, the Court will review the Supplement to the motion and any response. Emailed notice (mw,)

criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Pearl Henyard

Plaintiff,

v.

Case No.: 1:15–cv–10835
Honorable Edmond E. Chang

MV Transportation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, March 31, 2021:

MINUTE entry before the Honorable Edmond E. Chang: The Plaintiff's motion [211] [213] to supplement the record on appeal is granted in part and denied part. Certain docket entries proposed by the Plaintiff are items that already have been transmitted; some are transcript information sheets or other filings (like the Notice of Appeal due letter) that need not be supplemented into the record. Aside from that, some entries do not appear necessary for the appeal. But out of an abundance of caution, the following docket entries shall be supplemented into the record on appeal to the extent that they have not already been transmitted: 170, 171, 176, 177, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 207, 208, 209, 210, 211, and 212. The tracking status hearing of 04/02/2021 is vacated. Emailed notice (mw,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Pearl Henyard

Plaintiff,

v.

Case No.: 1:15–cv–10835
Honorable Edmond E. Chang

MV Transportation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, April 19, 2021:

MINUTE entry before the Honorable Edmond E. Chang: The Plaintiff's motion [215] to enter Rule 58 judgments or orders for docket entries R. 212 and R. 214 is denied. In neither case are judgments necessary for the Plaintiff to challenge them (if the Court is wrong about that, then of course the Court will take the Seventh Circuit's direction to do so). First, the 03/18/2021 correction of the record under Appellate Rule 10(e) has been forwarded to the Seventh Circuit, see Docket Entry of 03/19/2021, as required by Circuit Rule 10(b). If the Plaintiff wishes to challenge the correction, then she may ask the Seventh Circuit to do so under Appellate Rule 10(e)(2)(C), without the need for a separate judgment and notice of appeal. Second, the 03/31/2021 order granted in part and denied in part a motion to supplement the record. Here again if the Plaintiff disagrees, then she may file a motion with the Seventh Circuit under Appellate Rule 10(e)(2)(C). The motion to enter judgment orders is denied. Emailed notice (mw,)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 22, 2021

Before

WILLIAM J. BAUER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-3462

PEARL HENYARD,
Plaintiff-Appellant,

v.

MV TRANSPORTATION & PACE, THE SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY.
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:15-CV-10835

Edmond E. Chang,
Judge.

ORDER

On consideration of the petition for rehearing filed by plaintiff-appellant on June 4, 2021, all members of the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for rehearing is hereby **DENIED**.

Appendix C