

No. 23-978

1/2/2024

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IN THE SUPREME COURT OF THE UNITED STATES

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LOAN PHUONG

*Petitioner,*

CONG V. NGUYEN

*Respondents,*

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On Petition for a Writ of Certiorari to the Virginia Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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LOAN PHUONG

5410 Jennifer Dr.

Fairfax, VA 22032

1-703-981-9561

## I. QUESTION PRESENTED

Whether the Virginia Supreme Court's decision caused the Petitioner to suffer damages when it refused to rehear her case against the Respondent in violation of the due process of law guaranteed under the Sixth Amendment of the U.S. Constitution, and Va R. Sup Ct. Canon 1, asserts that the judge of any court in the State of Virginia should not exert signs of bias or prejudice from the bench and must be impartial.

## LIST OF PARTIES

LOAN PHUONG

*Petitioner,*

CONG V. NGUYEN

*Respondent,*

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## II. APPENDIX CONTENTS

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IN RECORD # 230413

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IN RECORD # 230423

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IN RECORD # 0547-22-4.

APPENDIX D: DECISION OF COURTS OF APPEAL TO DENY THE PETITION FOR APPEAL ON 04/18/2023

IN RECORD # 0547-22-4.

APPENDIX E: DECISION OF FAIRFAX COURT CIRCUIT COURT TO DENY MOTION FOR RECONSIDERATION FINAL ORDER

IN RECORD # CL-20210007314 ON 3/9/2022. Judge: Robert Smith.

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IN RECORD # CL-20210007314. Judge: Robert Smith

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TO COMPEL on July 26<sup>th</sup>, 2021, on the set-up term date) on 2/4/2022 ORDER  
DENYING MOTION FOR SUMMARY JUDGMENT

IN RECORD CL-20210007314 IN THE VIRTUAL COURT. Judge: Grace Burke  
Carroll.

APPENDIX H: DECISION OF FAIRFAX COUNTY GENERAL DISTRICT  
COURT TO DENY

IN RECORD # GV-20124859-0 ON 4/20/2021. Judge M.A. Capsalis

### III. TABLE OF AUTHORITIES CITED

No additional cases are cited in this petition.

- i. Authorities for case # GV 20224859-0 in General District Court. The spirit of the good Samarita law status of 8-01-225 (Suggest by Johnathan S. Rochkind, Esq. lawyer for Plaintiff in General District Court)
- ii. Authorities for case # CL-2022-0007314 in Circuit Court
- iii. Pullman. Standard V. Swint, 456 U.S. 273, n.19 (1982)  
(when the fact need established correctly; the law is determined -apply) Virginia Negligence Laws: Status Code of Virginia, Title 8.01: Section 34  
(<https://codes.findlaw.com/va/title-8-01-civil-remedies-and-procedure/va-code-sect.-8-01-34.html>), et seq. (injury to person)
- iv. Authorities of Court of Appeal case # 0547-22-4

- 1. Va. Code &8.01-384.1:1.

Circuit Court erred as a matter of fact by relying on the inaccurate interpretation of the Plaintiff's statements from the interpreter provided by the court. Can a trial court rely on the inaccurate interpretation of a court

interpreter when the party requires the interpretation in Pro-Se and does not raise on objection during trial? (Assignment of error.)

2. The error assigned on appeal is an error. This court's review therefore is if there is erroneous judgment, resulting in a miscarriage of justice. The error must be "clear, substantial, and material.

Redman v. Commonwealth, 25 Va. App. 215, 220-21, 487 S.E.2d 269, 272 (1997)

(Quoting Brown v. Commonwealth, 8 Va. App. 126, 132, 380 S.E.2d 8, 10-11, 5 Va Law Rep. 2507 (1989)

3. In order to avail oneself of the exception a defendant must affirmatively show that a miscarriage of justice has occurred, not that a miscarriage might have occurred.

"Id. At 221, 487 S.E.2d at 272 (citing Mounce v. Commonwealth, 4 Va App. 433, 436,357 S.E. 2d 742, 744, 4 Va. Law Rep. 99 (1987).

Masika v. Commonwealth, 63 Va. App. 330, 333-334

4. VA Code Section & 8.0-34

Contribution among wrongdoers may be enforced when the wrong results from negligence and involves no moral turpitude Authorized code in Virginia Supreme Court: Pullman-Standard v. Swint, 456 U.S. 273, n.19 (1982) The lower court did not apply the correct facts of the case to legal analysis appropriately to the law determine judge.

#### IV. PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari to issue to review the judgment below

#### V. OPINION BELOW

The decision of the Virginia Supreme Court appears in Appendix A\_B based on the Court of Appeal decision. They did not have their own decision on my case. Delaying filling is not criminal? Let me have a chance to make up because the Appellant is a first-general immigrant with grammar limitations, which has factually affected the proceedings and outcomes of this matter, miscalculated filling dates though the briefing regarding the matter was complete, also Pro-se appellant does not have legal representation and is attempting to achieve some form of justice by handling this matter pro-se.

The decision from the Courts of Appeal is ORDERED:

“In consideration of the petition of the appellant to set aside the judgment rendered herein on August 8, 2023, and grant a rehearing thereof, the prayer of the said petition is denied.”

So, the Court of Appeal can tolerate my filing late because I didn’t have a lawyer and lacked understanding of communication in English. Based on the rule of judge error.

Judge Smith in Circuit court did not appoint ACTUAL legal error. In his eyes it was based on the fact both parties were presented in the court.

The Judge erred because the trial court denied a request for continuance at Tr: 41:19. The trial denied a request at Tr.42:6-15, to have the Plaintiff's ear doctor subpoenaed by the Appellant at trial, which ultimately would support the claim of injury and damages.

Plaintiff was therefore not having a fair trial under the Sixth Amendment of the United States Constitution, and Va. R. Sup. Ct. Canon 1 asserts that the judge of any court in the State of Virginia should not exert signs of bias or prejudice from the bench and must be impartial be a witness for evidence.

No legal was involved in my case, so I could not answer rule 5A:20(c)2 judge error in Circuit Court in Courts of Appeal so the court declined my case. No assigned error in this issue. It was an incompetent judgment order.

The decision of the Circuit Court: The Judge prejudges the matter even before the proceedings started. The judge started the beginning of the court. He announced to the Defendant in that matter, "You are a helper, and I will award you, do not worry." This occurred when he saw the Defendant's face stressed. (I had 2 witnesses in court: Patrick John Cooper and Lee Jones who were attending the hearing in the courtroom, heard this statement, however but the court reporter did not capture them on the record (not in the transcript). No rule or code was involved, it was an invalid judgment order. The Plaintiff signed off OBJECTION 's section of the judgment order.

The decision of the General District Court was unbelievable. The judge ruled that the tripod fell first before the Plaintiff opened the compartment Tr.82.3-4. The Judge comingled the Defendant open the bin, not Plaintiff, she is too short to reach the bin, and if the bin closed how tripod inside the bin can drop down. Plaintiff said the tripod dropped down first because the tripod is longer with three legs, so it can reach down first when Defendant reached inside the bin to pull out luggage struck Plaintiff 's head naturally by the tripod. The defendant's lawyer confirmed that with the judge in court Defendant's hand reached into the bin to grab luggage at Tr. 51.7-12.

The Defendant testified the tripod automatically fell off when he opened the bin. The judge is easily believable what the defendant said. The defendant made a false fabrication story: when he opened the bin the tripod automatically dropped down, but he stayed in the opposite position to pull out the bag, so it made the tripod strike and fall off. I stood behind him and I saw in my eyes I also be my first witness when he opened the bin, he still asked me where your bag is he started his hand pulled out my bag in the opposite way. If He stayed straight on the bag position on the right and He had no negligent action during he wore dark eyes sunglass. At about 6.00 pm EST in Niagara Falls still has sunset with the strong sun in the clear sky.

After the court was over, I heard the Defendant talk in the alley court with his friend, Michael Phu, owner of Morning Travel Tour who rented the new Mercedes Bend bus for the group tour to Niagara Falls, CA. NGUYEN threatened his liability, so NGUYEN false fabrication story to court.

BECAUSE AT THE START OF THE COURT, THE DEFENDANT'S ALLEGATION THAT THE CAMERA TRIPOD FELL OUT OF THE OVERHEAD STORAGE BIN BY ITSELF WHEN HE OPENED THE OVERHEAD COMPARTMENT ON THE BUS IS A FALSE FABRICATION.

The lower court erred in applying claim elements that are legally covered regarding Defendant's NEGLIGENCE, Negligence under the code of Virginia, Title 8.01 Section 34, has 4 elements: Duty, Breach of duty, Cause in Fact, and Proximate Cause.

A. Defendant in active participant in his group VNPS. Mainly, the Defendant performed singing Vietnamese music on the tour bus during a trip to Niagara Falls, Canada. He was a coordinator, and also, a member of VNPS. So, I asked him to remove my luggage I could not reach my belongings in an overhead bin. This is substantiated by his testimony at Tr. 71:18-19 (General District Court). Having AGREED to assist Plaintiff in removing her suitcase on a tour bus, Defendant was under a duty to do so with reasonable care.

B. Defendant failed to exercise reasonable care while assisting Plaintiff, including the failure to pay attention to surrounding hazards in the overhead, including a tripod and other traveling suitcases. In not paying attention to detail, Defendant pulled items out of the overhead bin which subsequently struck the Plaintiff on the head, The obviousness of the Plaintiff being injured due to the defendant's negligence, affirms his failure to take reasonable care.

C. The fact established in the matter substantiates the claim that the Defendant's conduct caused the tripod to fall and strike the plaintiff on the head, causing Plaintiff injury.

Due to the defendant's negligence, the Plaintiff suffered irreparable harm.

D. No events other than Defendant's conduct resulted in Plaintiff's injuries. The lower court denied Plaintiff's request for a continuance at Tr. 41:19. The trial court denied a request at Tr.42:6-15 to have a Plaintiff's ear Doctor subpoenaed by the Appellant at trial. Which ultimately would support the claim of injury and damages. Plaintiff was therefore not afforded a fair trial under the Sixth Amendment of the United States Constitution, and Va. R. Sup. CT. Canon 1, which asserts that the judge of any court in the state of Virginia should not exert sign of bias or prejudice from the bench and must be impartial.

Defendant 's neglected to produce discovery-related material for court (though ordered by the lower court Judge to do so) including the heavy professional tripod to bring to the court room for demonstration purpose, but TRAN did not do so.

During the trial on 2/6/22, The defendant did not produce relevant discovery for evidence and there was no tripod to weigh or use in the open of that day 's proceeding. There was also no Ear Doctor allowed to testify. Without key demonstration of key evidence, the Plaintiff did not receive a fair trial.

There was a suppression of factual testimony during the trial including the falsehoods of the VNPS group: DO DUNG, DIANA, and TRAN's testimonies were not truthful in their testimony to the court. It was clear from the time of the accident that the

did not want to take accountability and/or responsibility for the injury to the Plaintiff. Though TRAN is the vice-chairman/tour guide leader/owner of the tripod. He was still in the bus picking up his tripod in the bin next to my luggage.

DIANA, a coordinator, was in the front of the bus, and the two of them were responsible for making sure that the bus was clear before they left. He saw the incident, But DIANA called me a few days after that the incident a tripod dropped in my right head by Defendant's negligence and TRAN told the small group he saw it about 50 students in the tour bus knew the tripod involved in the incident belonged to TRAN. Because they went to the class weekly seeing TRAN carry with him to performance by taking pictures within the Group VNPS.

The translator lacks adequate translation skills and did not capture specific language that was important to the Appellant. The transcripts appear to skip at Tr.69:12-25 through Tr.70:1-12 SO, Plaintiff did not understand the answer and translation of the answer the court.

Issues in this case center around the Appellant's substantive due process right to a fair trial on the merits of her claim that the Appellee was negligent after voluntarily agreeing to assist her in removing her luggage from the overhead bin compartment of a tour bus upon arriving at its destination in Niagara Falls, Canada.

The Appellant has a limited command of the English language, as is apparent from a cursory reading of the transcript, and to remedy this critical deficiency in her

understanding, she engaged a pair of translations of what was said in English during the trial into her native Vietnamese language and what she said in Vietnamese into English.

In numerous instances, the translator failed to complete the translations competently and sometimes failed to translate at all into Vietnamese what the trial judge and Appellee's counsel said in English during the course of the trial. As a result, the Appellant was unable to understand the substance of what was occurring during the trial as the trial judge himself recognized. Tr. 60:18-22.

The fundamental fact is that the Appellant was not in a position to object to a ruling made by the trial judge that she did not understand. Appellee in effect argues that Appellant should be held to a standard she could not possibly meet. This is plainly and simply unconscionable and a patent denial of due process.

Separately, when it became clear the doctor subpoenaed by the Appellant did not appear at her trial to support her claim of injury and damages completely undermined her case, the Appellant requested a continuance. Tr.41:19. The trial judge denied her request for continuance. Tr. 42. This adversarial ruling was completely unfair and deprived the Appellant of a fair right to a hearing on her claim. The appellant therefore requests that the ruling below be vacated and a new trial on her issues be granted. The defendant's lawyer, the first in the term date, requested for a jury trial on 6/2/21. If this request is accepted, the Appellant will engage a more competent translator so that she may more effectively pursue her claim. It alleges, initial brief at 6.00 pm at Niagara Falls 's hotel parking lot, that the camera tripod fell by itself out of the overhead storage bin as soon as he opened it. This is a patently untrue fabrication. The controverted facts and

circumstances of this case demonstrate the defendant's prevarication with absolute certitude.

First, when the camera tripod was placed inside the overhead storage bin at the beginning of the trip, it could not have been so haphazardly positioned to be capable of falling out by itself because it would have been impossible to close the bin if that were the case.

It is, however, possible that vibration, lane changes, or other turning by the bus during the lengthy trip from Falls Church, VA to Niagara Falls might have resulted in a corresponding movement of the tripod within the overhead compartment to place it nearer to the bin door and potentially capable of spontaneously falling. However, that possibility does not make the defendant's position any more plausible.

At the time the plaintiff politely requested the defendant, he is coordinator participate in the organized VNPS by singing Vietnamese folk songs to entertain in the bus, virtually all of the assembled passengers had already requested the defendant to help, and virtually all of the assembled passengers had already disembarked from the bus at the tour destination at Niagara Falls, taking their belongings with them, both from the overhead had already been opened, perhaps several times, at the tour destination before the time the plaintiff asked the defendant to help her retrieve her suitcase.

Given that, if the Camera tripod were going to spontaneously fall, it would already have done so when the overhead compartment had been previously opened by other passengers.

The Defendant's position was that the camera tripod fell spontaneously by itself as soon as he opened the overhead compartment door is obviously an impossibility and patent fabrication on the defendant's part.

Witnessed on his group VNPS side, Diana, testified not true, her chairman ordered her to say NO. So, She used back words she did not see the evidence in the incident. She told me she saw it. I had CD recorded the voice of the Defendant 's translator.

The defendant brought a lady translator into the courtroom and Mr. DO, chairman of VNPS behind the door court room told a translator to tell DIANA to say NO by request of the chairman of the VNPS group. This CD is to prove the evidence on the bad group VNPS leader. WE NEED A TRANSLATOR IN VIETNAMESE LANGUAGE TO TRANSLATE on Paragraph 56 Page 12 time 01.06.39 on the transcript in Circuit Court. If Diana said: "No" that meant Plaintiff had no witness to prove the tripod dropped by his hand pulled out and struck tripod to drop in my right head causing my right hearing deaf, migraine.

ANOTHER WITNESS: Mr. TRAN owns a black heavy metal professional tripod required brought to the court for evidence Plaintiff filed to the court for his tripod to be shown and display the weight, but he failed to bring it to the court and Defendant 's lawyer, Ms. Panya, Esq. asked the judge not to mention it.

It is unbelievable that judges can forfeit and waive the important evidence. The translator involved skipped or stopped so more misunderstanding of the judge's saying. Trial page 69 para 12 to page 70 para 12 time at 1.20.55-1.22.10.

I did not hear any sound from the translator on the CD recorded; He skipped translating this part or was critical for the defendant's lawyer to ask the judge for a motion to strike, So I did not present or talk to the judge about my thoughts. I lost this case because more essential points by Defendant 's lawyer spoke about the last part in court.

## VI. JURISDICTION

The date on which the Virginia Supreme Court decided my case was August 8<sup>th</sup>, 2023, Appendix B. A timely Petition for Rehearing was thereafter denied on the following date Oct. 3<sup>rd</sup>., 2023 and a copy of the order denying rehearing appears in Appendix A. The jurisdiction of this court is involved under 28 U. S.C & 1257 (a).

## VII. CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The jurisdiction of this court is involved pursuant to U.S.C. 1257.

The relevant constitutional provisions are the Due Process Clause of the Fifth Amendment, which provides that “[no] person shall be.... Deprived of life, liberty, or property, without due process of law.... And the Fourteenth Amendment provides a similar statement.

The Sixth Amendment involves, too; the need for evidence to prove in the court before judgment.

## VIII. STATEMENT OF NATURAL CASE

This case is about an injury I suffered while on a bus tour with the Vietnamese Photographic Society (VNPS) from Falls Church, Virginia to Niagara Falls, Canada, and returning to Falls Church, Virginia.

The tour occurred on 10/06/2018 at about 6.00 pm when the new Mercedes Benz coach bus arrived at the Quality Inn, Ontario, Canada. The tour members were instructed to disembark from their luggage. the bus was related to a new model and in new physical condition. The latches, and pivots to the overhead compartment worked properly and security fastened the door to the overhead compartment, including the door to the overhead compartment where my suitcase, which, as noted, was stored in an overhead compartment and where my suitcase was located. Because I am short in stature.

The defendant was in the line at the bus alley to walk out. He is a member of VNPS and a coordinator (Singing Vietnamese folk songs in the Vietnamese Photographic Society). So be polite I just asked him for help, and he volunteered and offered to remove my suitcase, which, as noted, was stored in an overhead compartment and he AGREED. He began to open the top of the compartment bus. He asked me which piece of luggage was mine and I pointed to it and described it.

My suitcase was located on the right of the compartment. At the time, Defendant was standing on the opposite side of the

compartment, that is, on the left side of the compartment, I was standing behind Defendant. This aisle of the bus was not obstructed at the time, and Defendant would readily have moved to the opposite side of the compartment in order to be directly below my suitcase and be able to pull it straight out.

However, instead of doing this, he remained where he was standing and began pulling at my suitcase, which slid in a sideway direction in the situated to the left of my suitcase became dislodged and fell from the overhead compartment striking me on the right on my head and my neck by three long legs of the tripod before falling to the aisle of the bus.

I want to make clear that the black heavy metal professional tripod did not fall out of the compartment spontaneously. It did not fall until after it came into contact with my suitcase as a result of Defendant opening the latch on the bin and raising the cover bin, He stood sideways when it was still in the overhead compartment. He directly caused the tripod to fall by dragging and grabbing the handles of my luggage with both hands and pulled on it my suitcase sideways in the overhead compartment, causing these two separate items to come into contact with each other and subsequently causing the tripod to fall out of the bin was dislodged from in front with the three legs of the tripod coming down first and hitting me on the right side of my head TMJ and neck.

It is my position that while Defendant was on duty the act of coordinator of VNPS to help me retrieve my suitcase, he agreed to do so. His ensuing actions were neither careful nor reasonable. To the contrary, his behavior was negligent, and I am suing him to recover damages for my injury. My injury appears to be permanent.

I suffer from a loss of hearing in my right ear. I had pain in my TMJ, Trigeminal Neuralgia, numbness in the right skull, and vertigo. He had liability insurance on his homeowner insurance. He false fabrication the story when he threatens court. The judge believes what he says in the lower court.

TRAN was still on the bus late, and I assume he was there to get his tripod before the incident happened. I heard TRAN say: that he saw the scene in the small group the next day in the small group in the bus.

The tour coach bus is brand new with a signed MGM tag and a new temporary license plate from Virginia. The latch on the overhead bin in which my luggage worked perfectly, correctly, and properly. We open the latch and go up like most bins in airplanes only had hinges on the top side. The camera tripod did not spontaneously fall from the bin by itself. It fell after It was dislodged by Defendant instead of pulling my luggage directly out of a bin, He negligently pulled it sideway, thereby dislodging the tripod.

Mr. Tony Lafazanis, Esq. in his file # 41983 in Ontario, Canada required VNPS from Mr. Dinh T. Tran, Vice chairman, to provide a video camera, tape recorder, camera control for security plus liability insurance coverage in the group 55 passengers including VNPS Students and volunteer teachers, tour guide leader and guests including all coordinators to service in the bus as Defendant. But TRAN failed to supply and provide his record document on the trip to Niagara Falls, Canada to Mr. Tony Lafazanis, Esq. So, he closed his file. Because COVID 19 affected all the world, so I filed in local Fairfax for all parties involved resident in Fairfax, Virginia.

IN THE GENERAL DISTRICT COURT

Tr. 71. 18-19 AGREE to remove her luggage by Defendant who is a coordinator, and member VNPS organization of the trip.

The defendant said when he opened the bin the tripod automatically dropped down. He false fabrication story.

Tr. 82. 9-11 (He completes the process of opening the compartment that he pulled her bag out.)

The defendant did not testify truly in court; the Defendant said the tripod automatically fell off when he opened the bin. The defendant's lawyer, Sanford IV, Esq. confirmed with Judge General District Court the defendant's hand inside the bin to pull out luggage on Tr. 51. 13-15 (And, so after he reached in and grabbed your suitcase then tripod fell. A. Correct by the court). But the tripod struck because Defendant stayed on the opposite site way. If he stayed on the straight way to the right of the luggage. He would not have negligent action in pulling out my bag. Defendant's false fabrication story He said the tripod automatically fell off when he opened the bin why did the judge believe it?

Plaintiff's lawyer, Mr. Rochkind, Esq. asked Defendant: so, you-you—so you-so were-so your testimony is that the tripod never fell to the ground, that when it struck my client, you were holding it?

Nguyen: Yes

Mr. Rockind: Okay

Nguyen: And hand it to her

But Phuong never received it by hitting her head.

As it stands about the issues in this matter, it can be determined that Defendant being in control of the tripod when it strikes Plaintiff is the most relevant fact to Plaintiff's cause of action for negligence. From this fact, an inference can be made to each element that is needed to prove a cause of action for negligence.

The judge said the bin closed when the tripod fell. Is it funny? How can the tripod fall when the bin is closed during the tripod inside the bin? Oh, General District Court in Fairfax. the trial was incompetent.

The tripod is still inside the bin. How can the tripod go out of the bin to drop down? The judge ordered judgment without thinking.

On Tr. 82. 2-3 (Plaintiff said I wrote down she said the tripod fell first after Plaintiff opened the compartment I wrote down) The judge was wrong. The plaintiff is too short and cannot reach the bin. Judge comingled between Plaintiff and Defendant. Plaintiff meant the tripod was three separate feet longer than the luggage when Defendant pulled out, so the tripod's leg is longer than fell first.

**THE TRIAL COURT DECIDED BASED ON A FACT AND NOT ON THE FACTUAL HISTORY OF THE CASE**

When the trial judge made the legal determination as to the Defendant 's Motion to Strike Defendant had not been in control of the tripod when it struck Plaintiff. The judge did not reasonably explain why his facts were different and were not consistent with the factual history. This seems like a very unreasonable thought process that somehow the tripod fell from a securely latched closed overhead compartment space before Defendant had unsecured latched and opened it up. The facts as stated on the transcript record, are as follows:

- Judge: "But one of things that the Plaintiff said, Which I wrote down- the said the tripod fell first before Plaintiff opened the compartment. I wrote that down. That is consistent with what the Defendant said. The Defendant said that when he wanted the latch, then this item fell down which he caught. He didn't know that it had hit her. As I turn out, apparently it did hit her."
- Judge: --"The Defendant's testimony who testified as a Plaintiff's witness, that the tripod fell first before the Plaintiff opened the – excuse me before the Defendant opened the compartment"
- As the Judge continues in this very unreasonable thought process in the closing of his legal conclusion "The tripod fell before the Plaintiff opened the -excuse me, the Defendant opened the compartment" The question becomes how the tripod fell out of a securely latched compartment if Defendant did not open it" The answer is the tripod could not have fall in out until after Defendant had opened the bin.

Even if one were to entertain the unreasonable thought process that somehow the tripod unsecured the overhead compartment itself and fell out, it is still made

irrelevant by the fact that Defendant is in control of it when it hits Plaintiff. The judge does not explain his thought process in determining the facts of the matter.

Please, needs to read the beginning of the transcript which clarifies and confirms the hand being inside the bin, before it falls on the Defendant (General District Court transcript, pages 10-12).

#### NEGLIGENCE HAD 4 ELEMENTS:

- A. The defendant had a DUTY OF CARE to anybody within reach to not harm that person with the tripod when Defendant assumed control of the tripod. The fact is Defendant had control of the tripod and acted in a reckless manner not consistent with what a normal person would have done under the same circumstance. The reasonable person holding a tripod would find somewhere else to put it besides Plaintiff's head.
- B. The Judge 's unreasonable line of reasoning regarding the tripod has gained a life of its own. The judge 's reasoning first opens a secure compartment to escape, and it somehow. Also struck Plaintiff without human engagement when Defendant was holding it. At what point does the person holding the tripod bear the response of the injury the tripod causes that holding? When does the person holding the tripod duty begin moment? The defendant came in control of the tripod. As Plaintiff has shown from Defendant's testimony. See Page 20. Defendant is an active participant,

member, and coordinator in his group VNPS, He performed singing Vietnamese folk songs on the tour bus during the trip. He is a volunteer who offered to load my belongings in an overhead bin. This is substantiated by his testimony at Tr.71:18-19 (General District Court). Having AGREED to assist Plaintiff in removing her suitcase on a tour bus. The defendant was under DUTY to do so with reasonable care.

C. Defendant controlled the tripod and failed to exercise reasonable care while assisting Plaintiff, including the failure to pay attention to surrounding hazards in the overhead including a tripod and other traveling suitcases. In not paying attention to detail, the defendant pulled items out of the overhead bin which subsequently struck the Plaintiff on the head. The fact is Defendant struck Plaintiff in the process breached the duty. Defendant hit to Plaintiff it is that simple. The obviousness of the plaintiff being injured due to the Defendant's negligence, affirms his failure to take reasonable care.

D. The fact established in the matter substantiates the claim that Defendant's conduct caused the tripod to fail and strike the plaintiff's head, causing Plaintiff's injury. Due to Defendant 's negligence, Plaintiff suffered irreparable harm.

## PLAINTIFF TESTIFIES TO DAMAGES

The tripod that Defendant struck Plaintiff 's head with harmed Plaintiff 's physical body enough that Plaintiff has had to endure many clinic visits and pain, agony, and suffering all of which Plaintiff testified to at trial.

However, as with what has been uncovered thus far about the Judge 's line of reasoning, It has been over complicated and convoluted, Plaintiff believes that the Judge has sought to ignore the damages part of the testimony and for the purpose of this appeal and reasonable line of reasoning, Plaintiff testified to the damages which went un objected to and should be deem admitted improving that all elements of negligence had been prove at the time of trial when judge errored off the path in a line of reasoning.

## THE TRIAL COURT STATES ELEMENT OF CAUSATION EXITS

Upon oral ruling, the Judge states in fact that Defendant had hit Plaintiff with a tripod at this moment and harm had been caused to Plaintiff by Defendant. He also alluded to the element of causation being met. To show that the trial court erred in excluding the element of causation, the Judge 's own words will be used. Judge's statement in the oral ruling concerning Defendant, is as follows.

- “He didn't know that it had hit her. As it turns out he apparently did”

As found in the court transcript, the sentence that followed with Judge on a reasonable path state, “as it turns out he apparently did” Regarding Defendant, Plaintiff has met the burden to prove causation as an element in common law negligence and the Judge has

admitted it. Plus, both lawyers agreed it Tr. 81. 14-15 (Sanford, Esq.: I think we 'be put together a prime Facie Negligence case. SO, you can make this case for NEGLIGENCE.

\* On 7/26/2021 Judge Burke Carroll in court denied The DEMUR from the Defendant 's Lawyer on the term date and set up to the new court on 2/16/22 when she saw my right face injured by Defendant 's negligence tripod dropped on my right head.

IN THE VIRTUAL COURT on 2/3/2022, Judge Burke Carroll AGREED Negligence is a common law by the Defendant's negligence causing my right hearing loss, TMJ injury...

Hence, Judge Burke Carroll ORDERED DENYING DEFENDANT MOTION FOR SUMMARY because Defendant's lawyer changed the Demur title to Defendant Motion Judgment, but the content of the pleading remained the same content inside. But Demur was already denied by the same judge, so Motion for Motion for Judgment was also denied too, by trick title pleading, again.

IN THE CIRCUIT COURT

I had four witnesses:

1. DO DUNG, chairman of VNPS told me Mr. DINH TRAN, the vice chairman had a professional tripod very heavy about 15 lbs., but he could pay the maximum to help my medical bill of \$500.00. But in the court, he said NO he did not say that. He is back words.
2. Ms. DIANA, Coordinator, every hour she repeated PLEASE put all equipment like computer or tripod underneath the bus. Before she testified in court, the loud voice from a Lady translator brought by Defendant group VNPS said: Mr. DO DUNG,

(chairman of VNPS leadership of VNPS), wants you to say NO when you testify in court.

CD recorded on Page 56 para 12 time 01.06.39 but it was not in recorded in the transcript. Please, the US SUPREME have a Vietnamese translator translate this section to prove VNPS chairman Mr. DO arranged and ordered to request for Diana to say NO Because in Virginia Supreme Court did not have a chance to prove it for my EVIDENCE. I enclosed my CD transcript from the Circuit Court to the US SUPREME COURT for the evidence in the CD record. Because I ordered and found in the CD recorded Diana, a witness, testified falsely after the case over in Circuit Court.

The CD was recorded (not in the transcript) arriving when the case was appealed to the Appeal Court. It crossed Circuit Court. I did not reply to the answer by the Defendant's lawyer to the Virginia Supreme Court by requesting the Virginia Supreme Court to have a Vietnamese translator translate this section unrecorded by the transcript.

Mr. Tran, Vice chairman/teacher/tour guide leader/owner tripod denied that I filed to the clerk in court, and he failed to bring his tripod to the court for a piece of evidence to show the size and weight of the tripod. He was back word and said his tripod to the court for a piece of evidence to show the size and weight of the tripod. He was backswords and said he was not the owner of his heavy professional tripod. All Passenger students on the bus knew he was the owner of this tripod; they could prove it. TRAN usually brought his tripod to the class and in the field to take pictures with the students in class practice. because the bus was under his control; as a tour leader,

TRAN knew it was the tripod that belonged. If no one recognizes it, he is exactly the owner. TRAN tried to avoid his account liability and responsibility a heavy professional tripod of up to 15 lbs.

Footnotes: VNPS: Vietnamese Photography Society

TRAN: Vice chairman & Teacher VNPS/

Tour guide Leader/ Owner profess. tripod

DIANA: Diana Ho, Coordinator, witness

NGUYEN: CONG V. NGUYEN, Defendant /

Coordinator/Member VNPS

DO: Dung Linh Do, chairman VNPS

Michael Phu, owner of Morning Star Travel Company, testified in court brought a new Mercedes Benz.

No defect on brand-new latches or pivots with a new temporary license plate registration to carry 55 passengers to Niagara Falls, Canada.

When I got out of the courtroom for the sheriff to close the courtroom, I heard the Defendant speak with Michael Phu, The Defendant threatened his liability, so He had false fabrication story.

Mr. Daniel H. Nguyen lived in Maryland state. I filed for him to testify in court, but he had a conflict with VNPS, so he said I did not want to be involved with VNPS anymore to testify in court because he put his similar weight professional tripod cross on another side bin, but his tripod never fell when he opened the bin to prove the balance on a bus road trip.

I can prove the length of the black heavy professional tripod, cumbersome, about 15 lbs. Fits perfectly along the bin about 2 ft5 with my small luggage. The hook lock in the middle of the bin holds the length of the tripod, just lift the top of the bin style like in the airplane bins. I stood behind him when he opened the bin, he still asked me where is your luggage? I was a witness to see him put his hand inside the bin to pull out my luggage. Ms. Panya, Esq. tried to confuse the judge to NON-ISSUE the tripod to display and compare another tripod in Maryland State who did not show up. The plaintiff filed for Tripod evidence in court, but TRAN failed to bring his tripod to the court for weight and display to know exactly and she advised the judge not to continue my case for Dr. Ear to testify the court late. Believe it or not, Judge Robert Smith did not know the 6<sup>th</sup> Amendment of the Constitution, his judgment must be clear by all pieces of evidence and the facts need to be solved.

The time bin had been opened and closed all day to take the tripod out to take pictures by Mr. TRAN in Letchworth Falls, New York, and Ms. Mai Hanh Tran took her luggage out to New York Park to see her son. So, Defendant testified the tripod automatically fell off when the bin was closed that false fabrication story why the bin closed, a tripod inside the bin can fall off without his hand pulled out by his defect of performance. the bin had

been opened and closed on a new bus so the performance pivot or hinges perfectly many times by other passengers in the bus.

The plaintiff spoke broken English, She studied English only 2<sup>nd</sup> language in Vietnamese Jr. High School. Except when she wrote English with grammar corrections, so her sentences were perfect corrections.

So, the translator was retained for the court proceeding, however, the translator did not correctly and adequately translate all hearings and did not correct what wasn't readily understood in the transliteration from Vietnamese to English. A list of errors is attached as an appendix to the original Opening brief,

These errors were so numerous and relevant to the issues in the proceeding that the Judge's deliberations were obviously affected and caused the judge to rule on behalf of the Defendant.

If the Translator had properly translated what was said in Vietnamese to English, it is quite possible that the Judge would have turned a verdict in favor of the Plaintiff.

The translator skips over what the judge and parties said, as indicated on the oval record of this proceeding, and does not translate the correct details. The translator captured the basic meanings of words. On some sections denied by the Plaintiff, the translator should have said: Objection but the Translator did not. I did not have a chance to talk with the judge in the Circuit court to explain the Defendant's negligence:

Law of Negligence. I did not get a transcript from the proceeding until 4/6/22 at 9.30 pm to read, because of my right hearing loss. But when I read the transcript, I noticed that

the transcript was different after I filed a Motion for Reconsideration. So, I did not explain to the judge a lot of detail that the Translator did not translate.

The translator skipped or did not translate some sections Tr. 69 12 to Tr 70. 12 time 1.20.55-1.22.10 (I did not hear any sound from the translator on the CD. He skipped translating this part more critically for the defendant's lawyer to ask the judge for a motion to strike, So, I did not present or talk to the judge about my thoughts and the Defendant's negligence. I lost this case because more essential points by the Defendant's lawyer spoke the last part in court.)

## XI. REASON TO GRANT THE WRIT

The petitioner has suffered severe damages including the lawyer fee, legal fees: filing fees, bond, and processing fees. Medical expenses were not covered by Medicare for special head concussion serious head traumatic injury treatment was hit by a professional heavy metal tripod up to 15 lbs., I have been with Kaiser Permanente in 15 years, and I never had a concussion for head injury in my medical record so affect my traumatic head injury: vertigo, TMJ pain, right hearing loss...Been treated by specialist ear doctors, Physical Therapy, neurology Dr. chiropractors, and acupuncture at Virginia University Integrative Medicine. The bill runs about \$25,000.00

Defendant involved by Negligence performance by 4 elements above. See the Negligence section.

The defendant neglected to produce discovery-related material for the court (though ordered by the lower court Judge to do so), including the heavy professional tripod to bring to the courtroom for demonstrative purposes, but TRAN, the witness, owner, and vice chairman did not do so.

During the trial on 2/16/22, The Defendant did not produce relevant discovery for evidence, and there was no tripod to weigh or display to performance or use in the span of that day's proceeding. There was also no Ear Doctor allowed to testify. Without key demonstrative or key evidence, the Plaintiff did not receive a fair trial.

There was a suppression of factual testimony during the trial including the falsehoods of the VNPS group, DO DUNG. DIANE, and TRAN's testimonies were not truthful in

their testimony to the court. It was clear from the time of the accident that they did not want to take accountability, liability, and/or responsibility for the injury to the Plaintiff. Though TRAN, was still in picking up his tripod in the bin next to my luggage, DIANA, a coordinator was in the front of a bus, and the two of them were responsible for making sure that the bus was clear before they left. They saw the incident, but DIANA called me a few days after the incident. She saw a tripod dropped to my right head by the defendant's negligence and TRAN told the small group he saw it. About 50 students in the tour bus knew the tripod involved in the incident belonged to TRAN, who carried it to class and the field for photography.

The translator lacks adequate translation skills and did not capture specific language that was important to the Appellant.

Incompetent trial from the General District Court: The Judge did not put the reason code by law why he offered judgment to the defendant. The judge easily believed the Defendant's false fabrication story, The defendant's lawyer testified to the court Defendant put his hand inside the bin it was not bin closed so, a tripod could fall by Judge said.

In Circuit Court the order was based on the witness by the Order but the witnesses from the Defendant side: VNPS were on the falsehood together the Plaintiff requested to case to be continued to support her evidence, but the judge denied the Plaintiff's witness: Ear Doctor. based on the Sixth Amendment in the US. Constitutions are required before judgment it is fair both parties need both witnesses, But the judge listened to the

Defendant's lawyer and failed to continue the Plaintiff's witness to testify and support her trial. So, the trial is incompetent.

After that, Plaintiff found evidence by CD after listening; Plaintiff found the chairman VNPS told Defendant's translator to tell DIANA, a witness also coordinator, lied to the court to say "NO" She did not see the incident, but she told me she saw it she was back words to testify in court from transcript delivery after the circuit court was over. It is CD cross when the circuit court over, but the Appeal Court need to prove by the code 5A: 20(c)(2) but the Order judgment in Circuit Court without a code of law.

Plaintiff did not agree on the order; so, Plaintiff signed: OBJECTION. Beginning the court, Judge Robert Smith said the defendant is a helper; so, Judge awarded him. Judge prejudged Plaintiff Because of the list of alleged legal errors that occurred in the proceedings before the trial court that the appellant is now filing to justify the reversal of the decision, my case is not an actual legal error.

So, the Appeal court granted my judgment, but I filed not timely, so they denied it. Virginia Supreme Court based on Appeal Court denial, so Virginia Supreme Court denied, too without announcing the Virginia Supreme Court is reviewing and ruling.

All reasons above:

May the U.S. Supreme Court grant the writ.

## X. CONCLUSION

The Petition for A Writ Of Certiorari should be granted.