[Cite as *Cooper v. Lyft, Inc.*, 2026-Ohio-765.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

BRITTNEY COOPER Appellant v. LYFT INC ET AL. Appellees	C.A. No. 30438 Trial Court Case No. 2022 CV 05451 (Civil Appeal from Common Pleas Court) **FINAL JUDGMENT ENTRY & OPINION**

. . . .

Pursuant to the opinion of this court rendered on January 16, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the service. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,

Christopher B. Epley

CHRISTOPHER B. EPLEY, PRESIDING JUDGE

TUCKER, J., and HANSEMAN, J., concur.

OPINION
MONTGOMERY C.A. No. 30438

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EPLEY, P.J.

{¶ 1} Brittney Cooper appeals from a judgment of the Montgomery County Court of Common Pleas, which granted summary judgment to Lyft, Inc., on her wrongful death and survivorship claims. For the following reasons, the trial court's judgment is affirmed.

I. Facts and Procedural History

{¶ 2} This action stems from the murder of Cooper's husband, Brandon Cooper, while he worked as driver for Lyft during the early morning hours of January 26, 2022. Construing the evidence in the light most favorable to Cooper, the record reveals the following facts.

A. The Lyft Platform

{¶ 3} Lyft is a transportation network company ("TNC"), meaning that it is a company that uses a digital network to connect TNC riders with TNC drivers who provide transportation services. R.C. 3942.01(F); R.C. 4925.01. TNC services involve the provision of transportation, beginning when a driver accepts a ride request through the digital network, continuing while the driver transports the requesting rider, and concluding when the last requesting rider departs from the driver's personal vehicle. R.C. 3942.01(I)(1). TNC services do not include services provided by a taxicab, a chauffeured limousine, or a ridesharing arrangement, such as carpooling. R.C. 3942.01(I)(2).

{¶ 4} Since 2012, Lyft has connected Lyft drivers with requesting passengers through its Lyft platform, which consists of its application (the Lyft app), website, and technology platform. To use Lyft's ridesharing services, riders must be at least 18 years old and have a Lyft account, which requires a phone number, an email address, and a valid method of payment. *See* Cooper MSJ Ex. B, Section 3 (Eligibility); Clark Dep. 41. Lyft users (riders and drivers) are permitted to have only one Lyft account, and they must be the sole authorized user of that account. Cooper MSJ Ex. B, Section 3 (Eligibility). When a user signs up with Lyft, Lyft creates an internal "TOM" profile with their contact information and various other identifying factors and notes about their account history. Clark Dep. 29.

{¶ 5} Both drivers and riders must agree to Lyft's Terms of Service ("TOS"). *See* McCachern Aff. Ex. D; Cooper MSJ Ex. B. The TOS prohibits users from, among other things, impersonating any person, violating any law, carrying any weapons, and stalking, threatening, or otherwise harassing any person while using the Lyft Platform. McCachern Aff. Ex. D, Section 9 (Restricted Activities); Cooper MSJ Ex. B, Section 9 (Restricted Activities).

{¶ 6} Qualified individuals may sign up with Lyft to become drivers. *See* Cooper MSJ Ex. B, Section 10 (Driver Representations, Warranties and Agreements). Under the TOS and Ohio law generally, drivers are independent contractors. *Id*. at Section 19 (Relationship with Lyft); R.C. 4925.10. Drivers use their personal vehicles and have the discretion to decide "when, where, and for how long [they] will utilize the Lyft Platform." Cooper MSJ Ex. B, Section 19 (Relationship with Lyft). Drivers may decide the days and times that they work as Lyft drivers, whether to accept or ignore a ride request from a Lyft rider, and to cancel an accepted ride request, subject to Lyft's cancellation policy. *Id.* Lyft drivers are not precluded from providing ridesharing services through another TNC, such as Uber. *Id*.

{¶ 7} The TOS contains several disclaimers, including that Lyft (1) cannot ensure that a driver or rider will complete an arranged transportation service, (2) has no control over the quality or safety of the transportation that occurs as a result of the rideshare services, and (3) cannot guarantee that each rider or driver is who he or she claims to be. The TOS cautions that "there are also risks of dealing with underage persons or people acting under false pretense, and we do not accept responsibility or liability for any content, communication or other use or access of the Lyft Platform by persons under the age of 18 in violation of this Agreement."

{¶ 8} Lyft has disclaimed responsibility "for the conduct, whether online or offline, of any User of the Lyft Platform or Rideshare Services." The TOS provides, "You are solely responsible for your interactions with other Users. . . . By using the Lyft Platform and participating in the Rideshare Services, you agree to accept such risks and agree that Lyft is not responsible for the acts or omissions of Users on the Lyft Platform or participating in the Rideshare Services."

{¶ 9} Several other documents are incorporated by reference into the TOS. These include Lyft's Community Guidelines, Safety Policy, Cancellation Policy, Privacy Policy, Referral Program Rules, Copyright Policy, Apple's Licensed Application End User License Agreement, ADT Mobile Security Monitoring Terms, and for drivers, a Driver Addendum, Anti-Discrimination Policy, Service Animal Policy, and Wheelchair Policy. Cooper MSJ Exs. B, J, K, JJ.

{¶ 10} Brandon consented to Lyft's TOS and became a driver for Lyft on January 4, 2017. McCachern Aff. Ex. E. During his five-year relationship with Lyft, he agreed to updated versions of the TOS, most recently in January 2021. *Id*.; McCachern Aff. Ex. F. In 2021, Brandon also agreed to Lyft's Biometric Information Security Policy, addressing how biometric information, particularly photo imagery (pictures of faces and photo IDs), would be used. Cooper MSJ Exs. C, F. During his tenure as a Lyft driver, Brandon provided more than 11,000 rides. McCachern Aff. ¶ 13.

{¶ 11} Despite its disclaimers, Lyft has maintained that "safety has been fundamental to everything we do," and that "[o]ver the years, the safety of the Lyft community has continued to drive our decision-making." McCachern Aff. Ex. A (Community Safety Report). The company has collected data regarding safety incidents reported to Lyft, developed procedures and dedicated teams for handling safety reports, and employed safety policies and features—before, during, and after the ride—to decrease safety risks for users. *See generally id*.

{¶ 12} In 2020, Lyft created a Safety Advisory Council to provide expert advice on safety initiatives, features, processes, and educational tutorials. McCachern Aff. Ex. B. (Safety Transparency Report (2020-2022)); Brandenburger Dep. 24. After a nationwide increase in carjackings in late 2020, Lyft studied trends related to carjackings and developed processes to decrease the number of carjackings of Lyft users that occur. McCachern Aff. Ex. B; Cooper MSJ Ex. E ([redacted]); Cooper MSJ Ex. F ([redacted]). Between 2019 and 2022, Lyft's safety features evolved from basic help to proactive, preemptive assistance. Cooper MSJ Ex. A. ([redacted]).

{¶ 13} Carjackings of Lyft drivers are statistically rare. However, [redacted] percent of those carjackings were perpetrated by Lyft riders. Cooper MSJ Ex. E. Lyft's data shows that at its peak in November 2020, the overall incidence of carjackings by Lyft riders was [redacted] per one million rides ([redacted] incidents). Cooper MSJ Ex. F. Regionally, the rate was [redacted] carjackings by Lyft riders per one million rides in Lyft's highest risk regions compared to [redacted] carjackings by Lyft riders per one million rides in other regions. Cooper MSJ Ex. F.

{¶ 14} Dayton has not been one of Lyft's highest-risk markets. Between January 2020 and December 2021, there was [redacted] reported carjacking in the Dayton region out of [redacted] rides. McCachern Aff. Ex. C. In the three years between January 2020 and December 2022, in Ohio generally, an estimated [redacted] incidents were reported to Lyft that were "tagged" by a Lyft employee as a non-fatal, non-sexual, criminal attack by a Lyft rider against a Lyft driver. Cooper MSJ Ex. L, ¶ 8.

{¶ 15} Lyft has added safety features with the aim of further reducing the incidence of these crimes. Cooper MSJ Exs. E, F. In 2019, Lyft launched Smart Trip Check-In, which "monitors rides for some unusual activity, like long stops or route deviations." McCachern Aff. Ex. B. If Lyft notices certain irregularities about a ride, it will contact the rider or driver to see if they need help. *Id*. In 2020, Lyft permitted riders to add trusted contacts to their in-app safety settings, allowing those contacts to follow the ride in real time. *Id*. Also in 2020, Lyft partnered with the security company ADT, enabling riders and drivers to connect with ADT in uncomfortable situations. *Id*.; *see also* Gibson Dep. 56.

{¶ 16} In December 2020, Lyft deployed Linkage Disablement Rules, which operated to automatically suspend a user's account immediately when certain data points (phone number, email address, payment method, or device ID) linked to a known carjacker's account. Cooper MSJ Ex. F; Zhang Dep., Ex.10. In early 2021 in high-risk markets, Lyft began Excessive Cancellation Disablement rules and AVS and Credit Card Challenge rules. Cooper MSJ Ex. F; Zhang Dep., Ex.10.

{¶ 17} In June 2021, Lyft launched a Verified Identity ID Scan challenge [redacted], which prompted new accounts using an anonymous payment method to upload identification when they requested their first ride. Zhang Dep.; Ung Dep. 27-28; Cooper MSJ Ex. E. In August 2021, Lyft implemented control measures to prevent risky users from bypassing ID Scan. The next month, it deployed two more ID Scan rules related to existing users. *See* Cooper MSJ Ex. E (Lyft_003501). On August 26, 2024, Lyft expanded ID Scan [redacted]. Cooper's Memo. Opposing Lyft's MSJ, Ex. C. Between April 2021 and September 2021, the overall incidence rate averaged [redacted] carjackings by Lyft riders per one million rides, a significant decrease from its peak. *Id*.

{¶ 18} Lyft's efforts have continued to be a work in progress. In 2022, Lyft launched an active machine learning model as an additional measure to try to reduce carjackings by assessing riders for carjacking risks. Various Lyft reports identified challenges in conducting safety incident analyses, [redacted]. *E.g.*, Cooper MSJ Ex. A.; Cooper MSJ Ex. KK, p. 5.

B. Carjackings in January 2022.

{¶ 19} Between 1:00 p.m. on January 25, 2022, and the early morning hours of January 26, 2022, three armed carjackings of Lyft drivers occurred in Dayton.

{¶ 20} Shortly before 1:00 p.m. on January 25, 2022, an account using the name "[J.] Dewberry" requested a ride through the Lyft Platform with a pick-up location on Pawtucket Street and a destination on Tyson Avenue. McCachern Aff. Ex. R. The Dewberry account had been used for a total of 22 Lyft rides. McCachern Aff. Ex. M. Lyft driver C.B. accepted the ride request and arrived at the pick-up location at 1:12 p.m. Three youths, including fifteen-year-old Tylan Peaks, entered C.B.'s vehicle. When she approached the intersection of Seeley Drive and Tyson Avenue, a rear-seat passenger placed a gun to her head and ordered her out of the car. The three then left in her vehicle, also taking her cell phone and purse. McCachern Aff. Ex. O.

{¶ 21} C.B. contacted the police and an investigation ensued. C.B. later reported the incident to Lyft, stating that she "was car jacked by my last passenger yesterday," and she informed Lyft that the detective needed details regarding the rider. McCachern Aff. Ex. N; Cooper MSJ Ex. S. Lyft's records for the Dewberry account showed that the first and last names on the account had been changed from "[D.] Printup" to "[J.] Dewberry" on January 19, 2022, five days after a different Lyft driver's car had been stolen by "Printup" while she was getting gas. *See* Cooper MSJ Exs. R, T, U.

{¶ 22} At 12:33 a.m. on January 26, 2022, an account under the name "Jimmy Smith" was created and accepted Lyft's TOS. McCachern Aff. Ex. S; Cooper MSJ Ex. X. Fifteen minutes later, Jimmy Smith requested a ride from an address on Oakridge Drive to an address on Cambridge Avenue. Lyft driver T.G. accepted the ride request at 1:07 a.m. and arrived at the pick-up location eight minutes later. McCachern Aff. Ex. T; Cooper MSJ Ex. AA. Lyft estimated the arrival time at the requested destination to be 1:22 a.m. McCachern Aff. Ex. T; Cooper MSJ Ex. AA.

{¶ 23} Four riders entered T.G.'s vehicle, and she proceeded toward the Cambridge address. According to T.G.'s incident report to Lyft, the passengers asked her to take a different route, stating that they knew a shortcut. As they neared the destination, one of the riders pointed a gun at T.G. and instructed her to stop the car. After she complied, a rider pushed her out of her vehicle, and the four drove away with her phone, wallet, and other belongings. McCachern Aff. Ex. AA; Cooper MSJ Ex. EE. A nearby resident helped T.G. contact the police. T.G. reported the incident to Lyft via web service later that morning. McCachern Aff. Ex. AA; Cooper MSJ Ex. EE.

{¶ 24} At 1:25 a.m., Lyft's Smart Trip Check-In feature automatically sent a message to T.G.'s phone, noting that the ride was taking longer than expected. McCachern Aff. Ex. W; Cooper MSJ Ex. BB. It asked her to check her route "and let us know if you need help." McCachern Aff. Ex. W; Cooper MSJ Ex. BB. Lyft received a response that everything was fine. McCachern Aff. Ex. Y. Jimmy Smith was reported as dropped off on Anna Street at 1:26 a.m., and the ride was recorded by Lyft as completed. McCachern Aff. Ex. T; Cooper MSJ Ex. AA.

{¶ 25} Less than a minute after the T.G. ride was reportedly ended (1:26 a.m.), the Jimmy Smith account requested a second ride from the same Oakridge Drive address to the same Cambridge Avenue address. Cooper MSJ Exs. Y, FF. Brandon Cooper auto-accepted the ride while completing a prior ride request, and he arrived for the pick-up on Oakridge Drive at 1:45 a.m. McCachern Aff. Ex. U; Cooper MSJ Ex. FF. Brandon proceeded to drive four juveniles toward the Cambridge Avenue residence. Cooper MSJ Ex. GG.

{¶ 26} At 1:51 a.m., the Dayton police received a Shot Spotter alert that a person had been shot at 1029 Ferguson Avenue, which was a few blocks from Jimmy Smith's purported destination on Cambridge Avenue. Soon after, other officers were dispatched to the Ferguson address on a reported vehicle accident. Brandon was found seated in his vehicle, deceased. His car had collided with the rear of a Chevy Avalanche that was parked on the street. McCachern Aff. Ex. Z; Cooper Exs. D, V. After an investigation, the police learned that 15-year-old Tylan Peaks, 15-year-old Da'Trayvon Mitchell, and two other juveniles had carjacked T.G. and had attempted to carjack Brandon. Mitchell admitted to detectives that he had shot Brandon in the back when Brandon attempted to drive away. Mitchell also admitted to shooting at Brandon at least once from outside the car.

C. Relevant Procedural History

{¶ 27} On December 6, 2022, Cooper, individually and as administrator of Brandon's estate, sued Lyft, Mitchell, and Peaks, asserting wrongful death and survivorship claims. Pursuant to Civ.R. 12(B)(6), Lyft moved to dismiss for failure to state a claim, but the trial court denied the motion on September 22, 2023.

{¶ 28} More than a year later, after extensive discovery, the parties filed cross-motions for summary judgment. In her motion, Cooper sought partial summary judgment as to the existence of a common law duty to warn and protect Brandon against foreseeable criminal activity. She claimed that Lyft actively participated in Brandon's work by controlling the safety systems to identify and eliminate the hazard that resulted in his death, and that the company retained the right to terminate him if he failed to comply with Lyft's rules and standards. Cooper further asserted that Lyft had voluntarily assumed a duty to exercise reasonable care in maintaining the security and safety of its platform. She cited Lyft's TOS, policies, and public statements.

{¶ 29} Lyft's summary judgment motion similarly focused on its duty. It claimed that it owed no legal duty toward Brandon in connection with the fatal assault. Lyft asserted that it had no special relationship with Brandon and had no duty to protect him from the criminal conduct of third-parties or from hazards inherent to the job. Lyft further asserted that the TOS nullified any duty by Lyft to prevent the fatal assault, as Brandon had contractually agreed that Lyft owed him no duty to warn or protect him. Lyft also contended that even if a duty existed, it was not liable because the fatal carjacking by Mitchell, Peaks, and others was not foreseeable. Additionally, it asserted that it was entitled to judgment as a matter of law because there was no evidence that the alleged breach of duty proximately caused Brandon's death. Finally, Lyft claimed that Cooper was not entitled to punitive damages.

{¶ 30} Both parties filed memoranda in opposition to the other's summary judgment motion. The parties also submitted separate statements of undisputed material facts (SOF), as well as responses to the other party's SOF.

{¶ 31} On March 4, 2025, in a lengthy and thorough decision, the trial court granted Lyft's motion for summary judgment and denied Cooper's motion for partial summary judgment. The court first noted that there was no dispute that Brandon was an independent contractor and that no other special relationship existed between the parties. Upon considering Lyft's duty in that context, the court concluded that Lyft did not actively participate in the work of its drivers, and thus it lacked a duty to protect Brandon from the criminal acts of third parties. The court further concluded that Lyft had not voluntarily assumed a duty to protect its users from unanticipated criminal activity. Finally, the trial court held that even if a duty had existed, Lyft was not liable for the Brandon's wrongful death because the criminal conduct of Peaks and Mitchell was not foreseeable. Finally, because Cooper's wrongful death claim failed, her survivorship claim did as well.

{¶ 32} Cooper appeals from the trial court's judgment, raising two related assignments of error. First, she claims generally that the trial court erred in granting Lyft's motion for summary judgment and denying her motion for partial summary judgment. Second, she claims that the trial court erred in denying her motion for partial summary judgment as to the existence of a duty owed to Brandon by Lyft.

II. Summary Judgment Under Civ.R. 56

{¶ 33} Pursuant to Civ.R. 56(C), summary judgment is proper when (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds, after construing the evidence most strongly in favor of the nonmoving party, can only conclude adversely to that party. *Zivich v. Mentor Soccer Club,* *Inc.*, 82 Ohio St.3d 367, 369-370 (1998). The moving party carries the initial burden of affirmatively demonstrating that no genuine issue of material fact remains to be litigated. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115 (1988). To this end, the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996).

{¶ 34} Once the moving party satisfies its burden, the nonmoving party may not rest upon the mere allegations or denials of the party's pleadings. *Dresher* at 293; Civ.R. 56(E). Rather, the burden then shifts to the nonmoving party to respond, with affidavits or as otherwise permitted by Civ.R. 56, setting forth specific facts that show that there is a genuine issue of material fact for trial. *Dresher* at 293. Throughout, the evidence must be construed in favor of the nonmoving party. *Id*.

{¶ 35} We review the trial court's ruling on a motion for summary judgment de novo. *Martcheva v. Dayton Bd. of Edn*., 2021-Ohio-3524, ¶ 35 (2d Dist.). De novo review means that this court uses the same standard that the trial court should have used, and we examine all the Civ.R. 56 evidence, without deference to the trial court, to determine whether, as a matter of law, no genuine issues exist for trial. *Ward v. Bond*, 2015-Ohio-4297, ¶ 8 (2d Dist.).

{¶ 36} We note, as the trial court did, that the parties did not strictly comply with the requirements of Civ.R. 56(C) regarding the submission of evidence. For example, both parties failed to file all their evidence in support of their summary judgment motions contemporaneously with their motions. Moreover, several of Cooper's exhibits were not explicitly authenticated, although they likely were implicitly authenticated by the act of production by the opposing party. *See Stumpff v. Harris*, 2015-Ohio-1329, ¶ 27-49 (2d Dist.). Nevertheless, neither party objected to the trial court's consideration of the submitted evidence on those bases and thus any such objection has been waived. *See, e.g., American*

Tax Funding v. Whitlow, 2010-Ohio-3333, ¶ 13, fn. 3 (2d Dist.) (an objection to the lack of authentication of summary judgment evidence is waived if not raised in the trial court).

{¶ 37} Both Cooper and Lyft filed motions to strike. Lyft asked the trial court to strike the expert opinion of Scott Belshaw, Cooper's expert witness. Cooper, in turn, moved to strike the expert testimony of Lyft's expert witnesses, Joseph Okpaku and Jeffrey Feldman, as well as the supplemental affidavit of Paul McCachern, Lyft's Program Lead, Safety. The trial court overruled these motions, and neither party has challenged the court's rulings on appeal. Accordingly, we may consider this evidence, to the extent it is relevant, when reviewing the trial court's summary judgment decision.

III. Wrongful Death and Survivorship Claims

{¶ 38} To prevail on a wrongful death claim, the decedent's personal representative must prove "'1) a wrongful act, neglect or default of defendant which proximately caused the death and which would have entitled the decedent to maintain an action and recover damages if death had not ensued; 2) that a decedent was survived by a spouse, children, parents, or other next of kin; and 3) that the survivors suffered damages by reasons of the wrongful death.'" *Jordan v. Howard*, 2021-Ohio-4025, ¶ 61 (2d Dist.), quoting *Bishop v. Nelson Ledges Quarry Park, Ltd.*, 2005-Ohio-2656, ¶ 19 (11th Dist.). When the wrongful death action is based on negligence, the plaintiff must establish (1) the existence of a duty owing to the decedent, (2) a breach of that duty, and (3) proximate causation between the breach of duty and the death. *E.g., Wilkinson v. Dayton*, 2024-Ohio-180, ¶ 23 (2d Dist.).

{¶ 39} "Duty, as used in Ohio tort law, refers to the relationship between the plaintiff and the defendant from which arises an obligation on the part of the defendant to exercise due care toward the plaintiff." *Commerce & Industry Ins. Co. v. Toledo*, 45 Ohio St.3d 96, 98 (1989); *Wallace v. Ohio Dept. of Commerce*, 2002-Ohio-4210, ¶ 23. Whether a duty exists is a question of law for a court to decide, even if resolving that question requires the court to consider the facts or evidence. *Wilkinson* at ¶ 25; *Wallace* at ¶ 22.

{¶ 40} A duty of care may be imposed by contract or by operation of law. *Hubbell v. Xenia*, 2008-Ohio-490, ¶ 24 (2d Dist.). "While a breach of contract is ordinarily not a tort, a common-law duty to perform with care, skill, reasonable expedience, and faithfulness is incidental to every contract, and the negligent failure to observe those conditions may constitute a tort." *Hubbell* at ¶ 25. A person injured as a proximate result of a breach of that duty has a right of action based on the contracting party's failure to exercise due care when performing the contractual obligation. *Id*.

{¶ 41} As for duties imposed by operation of law, there is generally no duty to prevent a third person from causing harm to another absent a special relationship between the parties or a duty imposed by statute. *Wilkinson*, 2024-Ohio-180, at ¶ 26 (2d Dist.). "Ohio law generally recognizes a special relationship giving rise to a duty to protect another as between a business owner and invitee, a common carrier and its passengers, an innkeeper and its guests, a possessor of land and an invitee, a custodian and individual taken into her custody, and an employer and her employee." *Meros v. Sunbelt Rentals, Inc*., 2023-Ohio-4313, ¶ 12 (8th Dist.), citing, among other authorities, *Simpson v. Big Bear Stores Co*., 73 Ohio St.3d 130, 135 (1995). Cooper does not claim that a special relationship exists in this case.

{¶ 42} The parties agree that Brandon was an independent contractor. More than seventy years ago, the Ohio Supreme Court held that "[w]here an independent contractor undertakes to do work for another in the very doing of which there are elements of real or potential danger and one of such contractor's employees is injured as an incident to the performance of the work, no liability for such injury ordinarily attaches to the one who engaged the services of the independent contractor." *Wellman v. E. Ohio Gas Co.*, 160 Ohio St. 103 (1953), paragraph one of the syllabus. As a corollary, the Supreme Court further held that "[o]ne who engages an independent contractor to do work for him ordinarily owes no duty of protection to the employees of such contractor, in connection with the execution of the work, who proceeds therewith knowing and appreciating that there is a condition of danger surrounding its performance." *Id*. at paragraph two of the syllabus.

{¶ 43} Thirty years later, the Supreme Court carved out an exception to *Wellman*, stating that "[o]ne who engages the services of an independent contractor, and who actually participates in the job operation performed by such contractor and thereby fails to eliminate a hazard which he, in the exercise of ordinary care, could have eliminated, can be held responsible for the injury or death of an employee of the independent contractor." *Hirschbach v. Cincinnati Gas & Elec. Co.*, 6 Ohio St.3d 206 (1983), syllabus. Under the "active participation" doctrine, a company who engages the services of an independent contractor involved in a dangerous activity "actively participates" in the job when it either (1) directs the activity resulting in the injury; (2) gives or denies permission for the critical acts that led to the injury, or (3) retains control over a critical variable in the workplace. *Bond v. Howard Corp.*, 72 Ohio St.3d 332, 337 (1995); *Sopkovich v. Ohio Edison Co.*, 81 Ohio St.3d 628, 643 (1998).

{¶ 44} "A general contractor who has not actively participated in the subcontractor's work, [sic] does not, merely by virtue of its supervisory capacity, owe a duty of care to employees of the subcontractor who are injured while engaged in inherently dangerous work." *Cafferkey v. Turner Const. Co.*, 21 Ohio St.3d 110 (1986), paragraph one of the syllabus. A general contractor's "retention of the authority to monitor and coordinate activities of subcontractors and the retention of control over safety policies and procedures do not rise to the level of active participation, thereby extending a duty of care from a general contractor to a subcontractor's employees." *Bond*, 72 Ohio St.3d 332, 336-37 (1995). Therefore, active participation means more than supervising or coordinating. *Badra-Muniz v. Vinyl Carpet Serv. Inc.*, 2024-Ohio-5507, ¶ 54 (2d Dist.), *appeal accepted*, 2025-Ohio-2537.

IV. Cooper's Claims Regarding Duty

{¶ 45} In seeking partial summary judgment on the issue of Lyft's duty, Cooper offered three bases for the existence of a duty by Lyft to Brandon: (1) Lyft actively participated in Brandon's work through its control over its safety systems and its role in assigning ride requests to drivers; (2) through its TOS and Biometric Information Security Policy, Lyft voluntarily undertook a duty to "[m]aintain[] the security and safety of the Lyft platform and its users," "authenticate users," "block and remove unsafe or fraudulent users," and "verify [user's] identity;" and (3) Lyft had a duty to act to protect Brandon from a criminal attack or offer him a warning when it knew he was going to face a dangerous situation because Lyft had superior knowledge to Brandon. Cooper denied that she was seeking to hold Lyft liable for breach of warranty or that she claimed that Lyft was vicariously liable for Mitchell's and Peake's actions. *See* Cooper's Memo. Opposing Lyft's MSJ, fn. 2.

A. Active Participation

{¶ 46} Cooper argues that Lyft actively participated in the performance of Brandon's job in several respects. First, she argues that Lyft gave permission to Jimmy Smith to request rides, an action that led to Brandon's fatal injury. Second, she contends that after granting permission for Jimmy Smith to use the Lyft platform, Lyft assigned the second Jimmy Smith ride request to Brandon and, in doing so, told Brandon where to go, when to be there, and where to take Jimmy Smith once he had been picked up. Finally, Cooper claims that Lyft retained and exercised control over a critical variable in the workplace. She emphasizes that "[t]he safety systems necessary to perform critical account and user verification were controlled solely by Lyft." We will address these arguments in an order that facilitates our analysis.

1. Directing Activities

{¶ 47} We begin with Cooper's claim that Lyft directed Brandon's work activities, thereby creating a duty toward her husband. Cooper's claim is belied by the structure of transportation network companies and the terms of the TOS.

{¶ 48} By its very nature, Lyft does not dispatch riders to specific locations and instruct drivers where to take passengers once they pick them up. Rather, Lyft matches drivers and riders based on such factors as their respective locations, requested pickup location, estimated time to pickup, the destination, user preferences, driver mode, and platform efficiency. Cooper MSJ Ex. B, Sections 1, 19.

{¶ 49} The TOS to which Brandon agreed made clear that the decision to accept or offer rideshare services was within the Lyft driver's sole discretion. It stated, in part:

> Lyft does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Rideshare Services, your acts or omissions, or your operation and maintenance of your vehicle. You retain the sole right to determine when, where, and for how long you will utilize the Lyft Platform. Lyft does not, and shall not be deemed to, unilaterally prescribe specific dates, times of day, or any minimum number of hours for you to utilize the Lyft Platform. You retain the option to accept or to decline or ignore a Rider's request for Rideshare Services via the Lyft Platform, or to cancel an accepted

> request for Rideshare Services via the Lyft Platform, subject to Lyft's then-current cancellation policies. Lyft does not, and shall not be deemed to, require you to accept any specific request for Rideshare Services as a condition of maintaining access to the platform. With the exception of any signage required by law or permit/license rules or requirements, Lyft shall have no right to require you to: (a) display Lyft's names, logos or colors on your vehicle(s); or (b) wear a uniform or any other clothing displaying Lyft's names, logos or colors. You acknowledge and agree that you have complete discretion to provide Rideshare Services or otherwise engage in any other business or employment activities, including but not limited to providing services similar to the Rideshare Services to other companies, and that Lyft does not, and shall not be deemed to, restrict you from engaging in any such activity.

McCachern Aff. Ex. D, Section 19; Cooper MSJ Ex. B, Section 19. During her deposition, Cooper agreed that Brandon could decide when he wanted to get on the Lyft app and perform services as a driver, which hours to drive, whether to accept a ride request, and when to turn off the Lyft app. Cooper Dep. 48, 51.

{¶ 50} The TOS contained some restrictions by which drivers had to abide. Among other things, drivers could not engage in reckless behavior while driving, drive while under the influence of drugs or alcohol, have unauthorized third parties in the vehicle, defraud Lyft or Lyft riders, and discriminate against riders with disabilities. Cooper MSJ Exs. B and K. Drivers were required to maintain a valid driver's license, be medically fit to operate a motor vehicle, and have a valid liability insurance policy. *Id*. Moreover, the Community Guidelines, which were incorporated by reference into the TOS, included such matters as respecting personal boundaries, making sure it was okay to make a phone call or turn up the volume on the driver's playlist, and keeping alcohol, cigarettes, and weapons out of the car. However, nothing in the agreement between Brandon and Lyft suggested that Lyft could direct the general performance of Brandon's work, including when to drive for Lyft and whether to accept a particular ride request.

{¶ 51} Cooper relies upon *Miller v. City Yellow Cab Co.*, Summit C.P. No. CV 2008-08-6103 (May 27, 2010), to support her assertion that Lyft actively participated in Brandon's work. In *Miller*, a person contacted Yellow Cab and requested a taxi for 1405 Pondview Drive. Upon arrival, the driver noticed police activity on the street. After an unidentified person told the driver that no one at 1405 Pondview had requested a taxi, he left. Approximately an hour later, Yellow Cab received another call and sent a different taxi to the same address. Darnail Carlisle approached the cab but left without speaking, and the driver left. Another hour later, Yellow Cab received a third request for the Pondview address. Driver Warren Miller, an independent contractor who was leasing a cab from Yellow Cab, received the fare. No one told him about the prior calls. When Miller arrived, Carlisle entered the cab and fatally shot him. The administrator of Miller's estate later brought a wrongful death suit against Yellow Cab, claiming that it had owed a duty to provide Miller a safe place of employment under the frequenter statutes, R.C. 4101.11 and R.C. 4101.12, which require employers to protect employees and furnish a safe place of employment.

{¶ 52} In granting partial summary judgment to Miller's estate, the trial court concluded that Yellow Cab had a duty to warn its driver due to its knowledge of "aberrant or unusual circumstances" at the dispatched location. However, the court found significant not only that Yellow Cab had superior knowledge of the circumstances but also that Miller could not have refused the fare. Addressing whether Yellow Cab was liable for the actions of its independent contractor engaged in a dangerous activity, the court concluded that Yellow

Cab had actively participated in Miller's dangerous work "when it directed him to the location and he had no opportunity to refuse." *Miller* at 9.

{¶ 53} We find, as the trial court did, that *Miller* is factually distinguishable and unpersuasive. Significantly, a taxi service is not the same as a TNC. Unlike cab companies, which can dispatch their drivers to specific fares, a TNC, such as Lyft, simply provides a digital marketplace where drivers and riders can connect. Unlike Miller's relationship with Yellow Cab, Lyft's agreement with Brandon did not require him to accept ride requests, and he was permitted to cancel a ride request for a variety of reasons.

{¶ 54} As to the events of January 26, 2022, both parties' evidence established that after the T.G. ride was completed, the Jimmy Smith account requested a second ride from the same Oakridge Drive address to the same Cambridge Avenue address. Cooper MSJ Exs. Y, FF. Brandon was working as a Lyft driver, but there is no evidence that Lyft required Brandon to accept that request. Rather, Brandon auto-accepted the Jimmy Smith ride request while completing a prior ride request, and he then proceeded to the requested pick-up location. McCachern Aff. Ex. U; Cooper MSJ Ex. FF. The pick-up location, pick-up time, and drop-off destination came from the Jimmy Smith account, and Brandon could have declined the request if he had wished. We find no genuine issue of material fact that Lyft, unlike Yellow Cab, did not *direct* Brandon to the Oakridge address, and that Brandon, unlike Miller, had the opportunity to refuse the ride request.

{¶ 55} Cooper counters that, in reality, Brandon did not have the option to refuse the ride request because Lyft punishes drivers for declining rides. As Cooper contends, the TOS provides that Lyft may terminate its agreement with a user if, among other things, "you fall below Lyft's star rating or cancellation threshold." Cooper MSJ Ex. B, Section 16 (Term and Termination). Cooper testified in her deposition that there were "definitely consequences for not accepting rides, as in [Brandon] would not get the opportunity to receive requests as often." Cooper Dep. 85. Brandon had told Cooper that he would decline ride requests "if there was not enough time to do the entire ride and get back to where he needed to be, and he would notice that after declining rides that his requests were less frequent." *Id*. at 86.

{¶ 56} It is understandable that a policy that penalizes excessive cancellations or declining rides would discourage drivers from engaging in those behaviors. However, Lyft's policies also provided that drivers could refuse rides for safety reasons or if the rider was an unaccompanied minor. And if the reason for terminating the agreement between Lyft and a driver were the driver's falling below the star rating or cancellation threshold, Lyft was required to provide "notice of the potential or actual deactivation and an opportunity to cure the issue to Lyft's reasonable satisfaction prior to Lyft permanently terminating the Agreement." Cooper MSJ Ex. B, Section 16. Regardless, Lyft's right to penalize drivers for excessively canceling rides does not negate a driver's ability to elect whether to provide transportation services to a particular Lyft rider or to Lyft riders in general.

{¶ 57} Finally, Lyft's general control over access to its platform and its efforts to maintain the safety of its users did not amount to active participation in Brandon's work as a driver. The Supreme Court has held that general oversight of a workplace for security and safety does not constitute sufficient control to demonstrate that the owner "actively participated" in the independent contractor's work. *Cafferkey*, 21 Ohio St.3d at 113; *Bond*, 72 Ohio St.3d at 336-337. Following that case law, we have similarly held that a property owner did not actively participate in an independent contractor's work by limiting access to the property for security reasons and requiring workers to attend a safety orientation meeting each morning. *Cracraft v. Dayton Power & Light Co.*, 2016-Ohio-3272, ¶ 16 (2d Dist.).

{¶ 58} By January 2022 when Brandon was killed, Lyft had created various tools to limit access to its platform by individuals who might use the platform for criminal activity, including for carjacking. For example, [redacted] In addition, through linkage disablement rules, Lyft would automatically suspend an account when certain account "data points" (phone number, email address, payment method, or device ID) linked to a known carjacker's account. In certain markets, Lyft had begun requiring users to upload identification if their data points included certain characteristics, such as an anonymous payment method.

{¶ 59} In addition, Lyft had implemented various features designed to support drivers and enhance driver safety. The Smart Trip Check-In feature monitored rides for unusual activity, such as long rides and route deviations, and contacted drivers if those were events were detected. Lyft also had an emergency assistance feature whereby drivers could click on a button through ADT (the security company) to immediately contact 911; if that occurred, the Lyft app would automatically provide the driver's GPS location and vehicle information to law enforcement. Lyft provided tutorials for its drivers on topics such as its in-app safety features and on how to cancel rides for safety concerns and due to unaccompanied minors. It also enforced its Community Guidelines, which related to matters of courtesy and safety.

{¶ 60} When construing the evidence in the light most favorable to Cooper, we agree with the trial court that Lyft did not actively participate in the performance of Brandon's work activities through its efforts to limit access to its platform and to maintain the general safety of its users. Unquestionably, Lyft's efforts to maintain the safety of its platform are extensive.

However, they amount to an exercise of a general supervisory role over its users, not active participation in the activities of its drivers or riders. Though Lyft retains general control over the platform itself, it does not direct or control the specific activities of its drivers. Rather, Lyft drivers retain control over the mode and manner in which they perform their duties when providing transportation to riders. Accordingly, the trial court properly found no genuine issue of material fact that Lyft did not actively participate in Brandon's work by directing his activities.

2. Permission for the Critical Act

{¶ 61} Next, Cooper asserts that Lyft actively participated in Brandon's work activities by giving permission to the Jimmy Smith account to request a ride from Brandon.

{¶ 62} Lyft had established criteria governing who may create an account and utilize Lyft's ridesharing services, either as a driver or a rider. To create an account as a rider, an individual must provide a cellphone number, an email address, and a valid method of payment. The Jimmy Smith profile met these minimum criteria when it was created in the early morning hours of January 26, 2022. The account included a Gmail email address, a phone number, and form of payment. *See* Cooper MSJ Ex. B. (The 2023 printout of the Jimmy Smith profile did not include a phone number, but an April 16, 2022 notation reflected that the phone number had been deleted.) Jimmy Smith accepted the TOS at 12:33 a.m. At that point, Jimmy Smith was able to request rides via the Lyft platform.

{¶ 63} In considering whether the activation of the Jimmy Smith account, alone, rose to level of "active participation," we look to *Cafferkey* for guidance. In *Cafferkey*, Turner Construction Company, a general contractor, hired Millgard Corporation, an independent subcontractor, to drill and install caisson foundations for an office tower and parking garage. A casing (a cylindrical liner) was found not to be deep enough, and complications arose when workers tried to force the casing deeper in the hole. After the subcontractor detected methane gas in the hole and made efforts to dispel the gas, the subcontractor permitted two employees to enter the hole and employ a cutting torch to burn off a portion of the metal casing. While in the hole, one of the employees struck his flint to light a torch, sparking an explosion that fatally injured both employees. By contract and by virtue of certain portions of Turner's safety manual, Turner had retained control over safety procedures at the project. The general contractor, however, had not been informed of the subcontractor's decision to allow its employees to go into the hole. *Cafferkey*, 21 Ohio St.3d 110, 110-111 (1986).

{¶ 64} The Ohio Supreme Court concluded that Turner had no duty with respect to Millgard's employees as Turner "neither gave nor denied permission for the critical act that led to the decedent's injuries." *Id*. at 112. The fact that Turner may have known about some of Millgard's activities did not constitute "actual participation" in those activities within the *Hirschbach* rule. *Id*. The Court held that Turner's general retention of control over safety procedures at the project site did not rise to "active participation." It recognized that Turner "had an obvious interest in safety and it insisted that its own employees as well as the employees of subcontractors carry on their work activities in as safe a manner as possible," but stated that Turner's concern for safety did not constitute active participation in Millgard's work so as to create a duty of care to Millgard's employees. *Cafferkey* at 113; *see also Bond*, 72 Ohio St.3d at 336-337 ("The general contractor's retention of the authority to monitor and coordinate activities of subcontractors and the retention of control over safety policies and procedures do not rise to the level of active participation, thereby extending a duty of care from a general contractor to a subcontractor's employees.").

{¶ 65} In this case, Jimmy Smith created an account on the Lyft platform and agreed to abide by the TOS, enabling the account to request rides from Lyft drivers. Lyft retained general oversight of the account activity, but to have created a duty to Brandon, Lyft must have given or denied permission for the critical act that led to Brandon's fatal injury. It was the juveniles' decision to attempt a carjacking, not their decision to request a ride, that constituted the "critical act" that led to Brandon's death. There is no evidence that Lyft gave permission to the juveniles to use the Jimmy Smith account to lure Brandon into a planned carjacking; to the contrary, Lyft denied that it did. As a matter of law, allowing the creation of the Jimmy Smith account on Lyft did not, alone, constitute active participation by Lyft in the subsequent conduct of that user.

{¶ 66} Cooper suggests that Lyft actively participated in Brandon's work by denying him permission to carry a gun. Cooper testified in her deposition that Brandon had wanted to carry a weapon, which was not allowed, but he did not specify what kind of weapon he wanted to have available. As to firearms specifically, Cooper stated that Brandon did not have a gun and that he had never expressed wanting to carry one while driving. Cooper Dep. 79-80. Brandon's mother stated in her deposition that Brandon did not own a gun or any other type of weapon. Michelle Cooper Dep. 21. He had expressed to her that he did not want to carry a weapon while on the Lyft platform and felt he did not need to because he was a black belt in Tai Kwon Do. *Id*. at 21-22. Even assuming, for the sake of argument, that Lyft's prohibition against weapons constituted a denial of permission regarding a critical variable, there is no evidence that this policy played any role in causing his fatal injury, particularly given the evidence that he would not have carried a gun even if it had been allowed.

3. Control over Critical Variable of the Workplace

{¶ 67} Cooper further contends that Lyft controlled a critical aspect of Brandon's job through its control over the safety of its platform. As part of this argument, she emphasizes that Lyft had superior knowledge regarding the risks posted by the Jimmy Smith account and yet it gave permission for the Jimmy Smith account to request a ride from Brandon, the alleged critical act that led to his injury. Whether Lyft controlled a critical aspect of Brandon's workplace is a separate question from whether it had superior knowledge of the risks or gave permission for the ride request. At this juncture, we focus on Cooper's argument regarding control of a critical aspect of the workplace.

{¶ 68} Brandon's specific workplace was his vehicle, and he understood allowing unknown riders into his vehicle involved personal risk. By agreeing to the TOS, Cooper acknowledged that Lyft could not guarantee that each rider was who he or she claimed to be and that there were risks involved with dealing with underaged people or people acting under false pretenses. Cooper MSJ Ex. B, Section 12. Ultimately, though, Brandon had control over whether to accept or cancel ride requests and whether to permit requesting riders into his vehicle.

{¶ 69} Even if we view the Lyft platform as the workplace, the general purpose of the platform is the coordination of transportation services by matching requesting riders with authorized drivers. There is no question that Lyft maintained exclusive control over the creation of user accounts and thus who was provided access to the platform. However, we find no basis to conclude that conducting security checks on rider accounts, particularly through the use of ID Scan, was a "critical variable" such that Lyft had a legal duty to use that safety system.

{¶ 70} In the absence of a special relationship, Lyft had no duty to protect its drivers from the criminal acts of others. *See Simpson*, 73 Ohio St.3d at 133 ("Generally, under Ohio law, there is no duty to prevent a third person from causing harm to another absent a special relation between the parties."); *Meros*, 2023-Ohio-4313, at ¶ 11 (8th Dist.). Nor did the law require Lyft to expect the criminal activities of others or to anticipate or foresee criminal activity. *Federal Steel & Wire Corp. v. Ruhlin Const. Co*., 45 Ohio St.3d 171, 174 (1989). While Ohio statutes require TNCs, such as Lyft, to perform background checks on drivers, R.C. 4925.04(A)(2), there is no corresponding obligation to perform a background check on riders. *See* R.C. 4925.03 (listing various tasks that a TNC must complete). Even in the context of taxicab drivers, we are unaware of a general duty of a cab company to perform background screenings on riders to protect its drivers. *Accord Tchakounte v. Uber Techs., Inc*., 2022 WL 326727, *8 (D.Md. Feb. 3, 2022); *Hosein v. Checker Taxi Co., Inc.*, 95 Ill.App.3d 150, 154 (Ill.App. 1981).

{¶ 71} Cooper asserts that Brandon's carjacking could have been prevented if Lyft had employed the ID Scan challenge in Dayton in January 2022. Lyft responds that this is mere speculation for several reasons. First, the vast majority of first-time riders using an anonymous payment method did not engage in fatal physical assaults. [redacted] Second, it is unknown how the juveniles would have responded had they been presented with the ID Scan challenge. [redacted] Third, even in areas where the ID Scan challenge had been implemented, carjackings occurred; the ID Scan was not a perfect deterrent. [redacted]. Cooper has not presented any evidence to demonstrate that use of the ID Scan challenge would have prevented the attempted carjacking of Brandon and thus that the failure to employ that feature in Dayton was a "critical variable" in the fatal assault.

{¶ 72} To be sure, the safety of the Lyft platform is a primary concern to both Lyft and its users, and we do not suggest that Lyft should cease its efforts to reduce the risk of harm to its users. Rather, we conclude, as a matter of law, that Lyft's implementation of security features and tools to improve user safety, most notably the ID Scan feature, did not amount to retaining or exercising control over a critical variable in Brandon's workplace.

B. Superior Knowledge

{¶ 73} Cooper claims that Lyft had a duty to warn her husband based on its superior knowledge of the risk posed by the Jimmy Smith account. She contends that Lyft knew that the Jimmy Smith account gave "strong signals that it was being used to rob Lyft Drivers but did not share that information with Brandon."

{¶ 74} The concept of a duty to warn based on superior knowledge arises in the context of premises liability case law. Under this area of law, an owner or occupier of premises is not an insurer of the safety of invitees but has a general duty to exercise ordinary or reasonable care for their protection. *Jackson v. Kings Island*, 58 Ohio St.2d 357, 359 (1979). This general duty includes a duty to warn of dangerous conditions "known to, or reasonably ascertainable by, a proprietor which a patron should not be expected to discover or protect himself against. Accordingly, the proprietor's duty is normally predicated upon his superior knowledge of a dangerous condition on his premises." *Id.*; *see also Debie v. Cochran Pharmacy-Berwick, Inc.*, 11 Ohio St.2d 38 (1967), paragraph one of the syllabus (business owner or occupier is not liable absent notice that the natural accumulation of snow and ice on the premises has created a condition substantially more dangerous to business invitees than they should have anticipated by reason of their knowledge of conditions prevailing generally in the area); *Federal Steel & Wire Corp.*, 45 Ohio St.3d 171.

{¶ 75} In the same vein as her argument regarding Lyft's participation in Brandon's work, Cooper relies on *Miller's* discussion of the Yellow Cab dispatcher's knowledge of "aberrant and unusual" circumstances to support the existence of a duty in this case. The trial court in *Miller* stated that "[w]here a dispatcher knows of aberrant or unusual circumstances at a given location, e.g. two no-shows at the same location within a relatively short period of time, it has a duty to warn any driver dispatched to the same location of such circumstances. . . . Such a warning fulfills the taxi dispatcher's duty to exercise ordinary care to eliminate a known hazard to a taxi driver." *Miller*, Summit C.P. No. CV 2008-08-6103, at 6.

{¶ 76} *Miller*, in turn, cites to *Koch v. Lind*, 121 Ohio App.3d 43 (10th Dist. 1997), in which the plaintiff, an independent contractor with a delivery service, was shot while delivering listing service directories to realty offices in a high-crime neighborhood that was dangerous at night. The trial court found no duty to warn based on the plaintiff's deposition testimony indicating that he was fully aware of the dangers involved in delivering the books at night. The appellate court agreed, noting that the defendants' knowledge of a dangerous condition was not superior to the knowledge possessed by the plaintiff, who had traveled the route for approximately three years prior to the incident.

{¶ 77} In this case, the evidence does not support a finding that Lyft had a duty to warn based on its superior knowledge of the risks posed by the Jimmy Smith account. There is not a reasonable conclusion that the carjacking of the previous driver, C.B., placed Lyft on notice that the Jimmy Smith account would be used to carjack Brandon or any other Lyft driver responding to that ride request. C.B. was carjacked at 1:15 p.m. on January 25, 2022, by three juveniles who had requested a ride under the name “[J.] Dewberry.” They had requested pick-up at a location on Pawtucket Street and provided a destination on Tyson Avenue. McCachern Aff. Ex. R. After the youths took C.B.’s car and cell phone, C.B. contacted the police. C.B. later reported the incident to Lyft, stating that she “was car jacked by my last passenger yesterday” and that the investigating detective needed details regarding the rider.

{¶ 78} It is unclear when C.B. reported the carjacking to Lyft. Lyft’s internal report of that communication ([redacted]) showed that C.B. reported the carjacking to Lyft at 2:04 a.m. on January 26, 2022. The trial court concluded that it was actually reported at 9:04 p.m. on January 25, 2022, based on McCachern’s statement in his affidavit that the time reflected on C.B.’s [redacted] was in Coordinated Universal Time (“UTC”). This conclusion, however, is seemingly inconsistent with the details of C.B.’s report, which indicated that she had contacted Lyft on the day *after* the carjacking.

{¶ 79} Regardless, even if C.B. had reported the carjacking to Lyft at 9:04 p.m. on January 25, 2024, it was not until 4 hours and 40 minutes later that a member of Lyft’s Safety Team reached out to C.B. by email, asking for details about the ride, including the date/time, pick-up and drop-off locations, name of passenger, and any additional details she could provide. The fatal carjacking of Brandon had already occurred by the time the Safety Team received detailed information from C.B. about the carjacking.

{¶ 80} Moreover, nothing in the [J.] Dewberry account linked it to the later-created Jimmy Smith account. The [J.] Dewberry account was created in August 2021 and had been used 22 times before the C.B. carjacking. When compared with the Jimmy Smith account, the Dewberry account used a different phone number and email address, it requested different pickup and dropoff locations, and the accounts were not otherwise linked. Cooper presented evidence that payment methods for the two accounts had the same bank identification number ("BIN"), which identifies the financial institution, but that information did not establish that the payment methods for the two Lyft accounts were identical. *See* Cooper MSJ Ex. Z.

{¶ 81} Cooper also asserts that Lyft should have known of the danger that the Jimmy Smith account posed based on the data points associated with that account and from the carjacking of T.G., which occurred immediately prior to Brandon's fatal carjacking.

{¶ 82} In her appellate brief, Cooper states that the Jimmy Smith account "perfectly fit Lyft's description of an account that gave a strong signal of being operated by a carjacker." She points to Lyft's [redacted] presentation, which identified [redacted] carjacking risk factors: [redacted]. Cooper MSJ Ex. E, Lyft_003498. Cooper submits that the Jimmy Smith account included six of those risk factors: [redacted]. Even accepting that the Jimmy Smith account met several of the risk factors in the presentation, the carjacker detection model was not being employed in January 2022, when Brandon was killed.

{¶ 83} When the Jimmy Smith account was created, the riskiness of the account was evaluated using vendor information. [redacted] Based on this low risk score, no additional verification requirements were issued. *Id*. Before the account placed its first ride request, the phone number for the account was verified. *Id.* at ¶ 63. In addition, no data points linked the Jimmy Smith account with an account associated with a potential carjacking or with any other account. *Id*. at ¶ 54 and

Ex. Q. At that juncture, considering the information before it, there is nothing to indicate that Lyft should have foreseen that the Jimmy Smith account would be used for a carjacking.

{¶ 84} The Jimmy Smith account placed its first ride request at 12:48 a.m. on January 26, 2022. It requested pickup from an address on Oakridge Drive and provided an address on Cambridge Avenue as the destination. Both locations had previously been used by other user accounts without safety issues. McCachern Aff., ¶ 52-54.

{¶ 85} Cooper emphasizes that the T.G. ride was "highly suspicious" and did not proceed as expected. She highlights that (1) the GPS data from T.G.'s phone showed that her vehicle did not head toward the intended destination, (2) the vehicle stopped for a few minutes and then double backed to Anna Street, a few hundred feet from the pickup location, (3) Lyft sent a Smart-Trip Check-In message to T.G. and Jimmy Smith because the ride was not progressing, (4) T.G.'s vehicle remained stationary after the ride ended (a "long drop-off"), and (5) T.G. did not respond to the second ride request from the Jimmy Smith account.

{¶ 86} T.G. picked up the Jimmy Smith riders at 1:15 a.m.; the ride was expected to end at 1:22 a.m. As Cooper states, at 1:25 a.m., the Smart Trip Check-In feature automatically contacted T.G.'s phone, noting that the ride was taking longer than expected. McCachern Aff. Ex. W; Cooper MSJ Ex. BB. It asked her to check her route "and let us know if you need help." McCachern Aff. Ex. W; Cooper MSJ Ex. BB. The Smart Check-In feature also contacted the Jimmy Smith account. Lyft promptly received responses from T.G. and Jimmy Smith indicating that "everything was fine." McCachern Aff. Ex. Y. Jimmy Smith was reported as dropped off on Anna Street at 1:26 a.m., and the ride was recorded by Lyft as completed. McCachern Aff. Ex. T; Cooper MSJ Ex. Y. Although there had been irregularities in the ride, the last communication that Lyft received from both T.G. and Jimmy Smith prior to the second ride request was that all was well.

{¶ 87} Almost immediately after carjacking T.G., the juveniles using the Jimmy Smith account requested a second ride. Brandon accepted the request, and he picked up Mitchell, Peaks, and two others at 1:47 a.m. Around 2:00 a.m., the police received separate reports of shots being fired and a vehicle crash. At this point, however, Lyft was unaware that T.G. had been carjacked earlier as T.G. did not report the carjacking to Lyft until 10:25 a.m.

{¶ 88} On this record, we conclude that Lyft did not have a duty to warn Brandon of the risk posed by the Jimmy Smith account because Lyft did not have superior knowledge of the risk it posed. Although there were several indicators of safety concerns during the ride, Lyft was notified by both rider and driver that "everything was fine" and that the ride had been successfully completed. When Brandon responded to the second ride request, Lyft did not have superior knowledge that the Jimmy Smith account posed an actual danger to a subsequent driver.

C. Voluntary Assumption of Duty

{¶ 89} Cooper next argues that Lyft voluntarily assumed a duty to maintain the security and safety of its platform through its various policies, publications, and representations. She contends that "Lyft's voluntary acceptance of the responsibility of serving as a gatekeeper to the Lyft platform is the very premise of the Lyft's business model. . . . Nearly all Lyft users provide personally identifiable information when they create an account. As such, Lyft users believe that the person who requests or offers a Lyft ride is unlikely to harm them because if they do, the information provided to Lyft can be used to ensure the bad actor is held accountable." Cooper App. Brief, p. 25. Cooper cites the TOS, Lyft's Privacy Policy, its Biometric Information and Security Policy, and its Community Safety Report to demonstrate that Lyft voluntarily undertook a duty to protect its users from criminal activity. Most notably, Cooper faults Lyft for not employing the ID Scan challenge in the Dayton region when it had been effective at reducing carjackings in high-risk regions.

{¶ 90} Under the voluntary duty doctrine, "one who gratuitously undertakes a voluntary act assumes the duty to complete it with the exercise of due care under the circumstances." *Seley v. G.D. Searle & Co*., 67 Ohio St.2d 192, 202 (1981), citing *Briere v. Lathrop Co*., 22 Ohio St.2d 166, 172 (1970); *see also Carter v. Reese*, 2016-Ohio-5569, ¶ 18, citing 2 Restatement of the Law 2d, Torts, § 323 (1965). To recover for a breach of an assumed duty, a plaintiff must establish (1) reasonable reliance on an assumed duty, or an increased risk of harm, and (2) physical injury. *Kemp v. Reno*, 2011-Ohio-4168, ¶ 19 (9th Dist.); *see Freiburger v. Four Seasons Golf Ctr., L.L.C.*, 2007-Ohio-2871 (10th Dist.). The trial court agreed with Lyft that as a matter of law, Cooper had failed to establish a voluntary assumption of a duty to maintain the safety of the Lyft platform for its users. We reach the same conclusion.

{¶ 91} First, Lyft's policies do not reasonably provide a basis for Lyft to have voluntarily assumed a duty to ensure its drivers' safety. Nothing in the TOS suggests that Lyft assumed a duty to maintain a safe platform and to protect its users from physical harm. To the contrary, the TOS warned its users that Lyft "cannot guarantee that each Rider or Driver is who he or she claims to be." It further warned of the dangers presented by unaccompanied minors and those using the Lyft platform under false pretenses, and it disclaimed responsibility for the actions of bad actors.

{¶ 92} Cooper points to statements that Lyft would review a user's personal information to "[m]aintain[] the security and safety of the Lyft platform and its users," "authenticate users," "block and remove unsafe or fraudulent users," and "verify [user's] identity." These statements are in Lyft's Privacy Policy in the section related to its use of personal information. Cooper MSJ Ex. B, Privacy Policy, Section 3. Read in context, Lyft's statements that users' personal information would be used for platform security purposes do not equate with the assumption of a legal duty to do so. The privacy policy cannot reasonably be read to mean that Lyft had assumed a duty to ensure its users' safety by employing processes to safeguard its users, particularly when the TOS disclaims any guarantee of safety.

{¶ 93} Cooper also points to Lyft's Community Safety Report, which described Lyft's Safety Team, how it had handled reported safety incidents, data on three categories of safety incidents between 2017 and 2019 (motor vehicle fatalities, fatal physical assaults, and five subcategories of sexual assault), and Lyft's safety features and policies. Cooper MSJ Ex. KK. In that three-year period, the frequency of fatal physical assaults reportedly was approximately 1 in 175 million rides. *Id*. at p. 6.

{¶ 94} In the portion of the report addressing how Lyft had handled safety incidents, Lyft identified various ways that safety incidents could be reported to Lyft, and it indicated that safety specialists "generally follow[ed] a specific set of steps for the types of incidents detailed in this report." *Id*. at p. 2. As a first step, the specialists "fr[oze] the account of the alleged offender – either the rider or driver – as well as the accounts of others involved while we investigate internally." *Id*. Additional steps included gathering information; evaluating the safety reports through correspondence with drivers and riders, third-party statements, route data, timing date, and police reports; working with law enforcement; and providing resources to those who report safety incidents to Lyft. *Id*. at p. 2-3.

{¶ 95} In the Safety Features and Policies section of the report, Lyft stated that it used "ride data, real-world feedback and conversations with experts to identify key moments before, during and after the ride where something could go wrong – and we [built] tools to prevent, intervene in or address those situations." Cooper MSJ Ex. KK, p. 8. Lyft specified that (1) before the ride, it made sure that its riders and drivers "agree[d] to our Community Guidelines" and drivers [met] its rigorous driver standards; (2) during the ride, it ensure[d] that riders and drivers could "quickly and easily access emergency assistance"; and (3) after the ride, it "empower[ed] drivers and riders to report issues while protecting their privacy and tak[e] appropriate action." *Id*. The report detailed, among other things, the emergency help available through its partnership with ADT, the Smart Trip Check-In feature, and the prompt to provide two-way star rating and mandatory secondary feedback. *Id*. at p. 8-11. Unlike the Safety Transparency Report covering 2020 to 2022 (McCachern Aff. Ex. B), the Community Safety Report did not mention that riders using an anonymous payment method or engaging in other irregular app usage were asked to provide additional identity verification before calling a ride. And the Safety Transparency Report stated that this verification requirement existed "in certain regions," not nationwide.

{¶ 96} Having publicly promoted certain safety features and processes, such as the Smart Check-In and the ADT features, Lyft arguably was required to employ those features in a non-negligent manner. *See, e.g., Kerr-Morris v. Equitable Real Estate Invest. Mgt., Inc*., 136 Ohio App.3d 331 (1st Dist. 1999) (having provided nonslip strips in the shower, hotel had a duty to maintain them). However, the Community Safety Report made clear that Lyft was striving "to continuously improve safety for riders and drivers"; it did not state or even suggest that Lyft would or could protect its users from all criminal activity, and Lyft's TOS and other policy documents disclaimed a duty to do so.

{¶ 97} Second, Cooper has not presented evidence of detrimental reliance by Brandon or that its actions created an increased risk of harm to Brandon. Cooper asserts that Brandon's willingness to drive for Lyft, by itself, was evidence that he relied on Lyft to pair him with riders whom it deemed reasonably safe. She emphasizes that Brandon "felt like because everything was being processed through the [Lyft] app that there were some type of safety measures in place." Cooper Dep. 82. "He thought he was safe because of the app." Cooper Dep. 90. However, Lyft did not indicate, either in its agreements or public statements, that it would ensure the safety of its platform. While Brandon arguably could have relied on Lyft to employ the features that it had publicly promoted, he could not have reasonably relied on Lyft to do more than it said it would do.

{¶ 98} As to the ID Scan challenge in particular, there is no evidence that Brandon knew and relied upon the fact that the ID Scan challenge was being employed where riders were using an anonymous payment method or were engaging in other irregular app usage. The record includes several safety reports and presentations—[redacted] (Cooper MSJ Ex. A); [redacted] (Cooper MSJ Ex. F); and [redacted] (Cooper MSJ Ex. E). Each of these documents was marked confidential. During the afternoon of January 26, 2022, Lyft provided a statement to Cox Media Group identifying efforts that Lyft had taken to keep drivers safe, including "carjacking-specific prevention efforts." Cooper MSJ Ex. I. Although that statement indicated that Lyft was "working to proactively detect and take action against accounts we believe may exhibit high-risk behavior, including those using anonymous payment methods," Brandon could not have relied on that public statement as it was made after his death.

{¶ 99} Moreover, Cooper presented no evidence that Brandon faced an increased risk due to Lyft's alleged failure to exercise reasonable care in making the Lyft platform safer for its drivers. Cases interpreting the voluntary duty doctrine set forth in 323(a) of the Restatement (Second) of Torts "have made clear that the increase in the risk of harm required is not simply that which occurs when a person fails to do something that he or she reasonably should have." *Wissel v. Ohio High School Athletic Assn.*, 78 Ohio App.3d 529, 540 (1st Dist. 1992). Rather, "'[the voluntary duty doctrine] applies only when the defendant's actions increased the risk of harm to the plaintiff relative to the risk that would have existed had the defendant never provided the services initially. Put another way, the defendant's negligent performance must somehow put the plaintiff in a worse situation than if the defendant had never begun the performance.'" *Id.*, quoting *Turbe v. Govt. of Virgin Islands*, 938 F.2d 427, 432 (3d Cir. 1991). Cooper has provided no evidence that Brandon was placed in a worse situation than if Lyft had never taken steps to improve the safety of its platform for its users. *Compare Freiburger*, 2007-Ohio-2871 (10th Dist.) (safety net suspended from golf center's second-story ledge potentially altered golfer's appreciation of the danger of a fall, thus creating genuine issue of material fact as to whether center owed a duty to reasonably maintain the safety net).

{¶ 100} Finally, public policy weighs against Cooper's efforts to hold Lyft liable for failing to implement the ID Scan safety feature in the Dayton area when Lyft had made no promise to do so. In a different context, we recently rejected the contention that a church had voluntarily assumed a duty to remove ice and snow from its parking lot by employing maintenance staff whose jobs were to "maintain safe grounds." *Arnett v. Archdiocese of Cincinnati*, 2025-Ohio-4679 (2d Dist.). We emphasized that imposing a duty to remove ice and snow through an "implied course of conduct" theory "would discourage landlords from ever attempting to remove ice and snow from the common areas of their premises as a courtesy to their tenants, and would, therefore, make those areas less safe." *Arnett* at ¶ 26, quoting *Hill v. Monday Villas Property Owners Assn.*, 2012-Ohio-836, ¶ 23, fn. 1 (2d Dist.). We further noted that those who made efforts to improve the safety of their premises could find themselves in a worse legal position than those who did nothing at all. The same is true here. We decline to hold that Lyft's voluntary implementation of additional carjacking prevention tools in its highest-risk areas (the Dayton area was not one of them) necessarily obligated it to provide those same tools universally.

D. Foreseeability

{¶ 101} Cooper claims that Lyft is liable for Brandon's death because it was reasonably foreseeable that an attempted carjacking would occur. She asserts that "Lyft did not need to predict that Brandon Cooper would die as a result of a shooting in Dayton, Ohio for Brandon's death to be foreseeable. Lyft did not even need to know precisely where a carjacking would occur. Rather, Lyft needed only to know that the type of injury that occurred – a carjacking gone fatally wrong – was likely to happen to someone similarly situated to Brandon in some location where Lyft operates if Lyft did not employ reasonable care."

{¶ 102} Initially, we reiterate that there generally is no duty to prevent a third person from causing harm to another absent a special relation between the parties." *Vidovich v. Little Joe LLC*, 2024-Ohio-4606, ¶ 16 (2d Dist.), citing *Simpson*, 73 Ohio St.3d at 133. "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action." *Simpson* at 134, quoting 2 Restatement of the Law 2d, Torts, § 314 (1965); *Gelbman v. Second Natl. Bank of Warren*, 9 Ohio St.3d 77 (1984). "Foreseeability alone is insufficient to create liability." *Simpson* at 134. "Even when a special relationship exists, a defendant is not liable unless the actions of the third party were foreseeable." *LaMusga v. Summit Square Rehab, LLC*, 2017-Ohio-6907, ¶ 15 (2d Dist.).

{¶ 103} The test of foreseeability is whether "a reasonably prudent person would have anticipated that an injury would result from the performance or nonperformance of an act." *M.B. v. Spence*, 2014-Ohio-1280, ¶ 21 (2d Dist.), citing *Menifee v. Ohio Welding Products, Inc*., 15 Ohio St.3d 75, 77 (1984). Ohio courts have applied several different tests to assess foreseeability, with the majority of appellate districts employing a "totality of the circumstances" approach. *Vidovich* at ¶ 18-34; *Hickman v. Warehouse Beer Sys., Inc*., 86 Ohio App.3d 271, 274-275 (2d Dist. 1993). This Court has employed the totality of the circumstances approach to evaluating foreseeability. *Vidovich* at ¶ 19, 35. "The totality of the circumstances must be somewhat overwhelming before a [defendant] will be held to be on notice of and therefore under the duty to protect against the criminal acts of others." *Reitz v. May Co. Dept. Stores*, 66 Ohio App.3d 188, 193-194 (8th Dist. 1990); *M.B*. at ¶ 23.

{¶ 104} Cooper focuses on the general likelihood that Lyft drivers would be victims of assaults by Lyft riders. In doing so, she cites to *Wilkes v. Ohio Dept. of Transp*., 2025-Ohio-1030 (10th Dist.), *appeal accepted*, 2025-Ohio-2537, in which the passenger in a vehicle traveling on Interstate 75 was killed when youths dropped a bag of cement from a bridge that spanned over the highway. The sidewalk and vandal protective fencing had been removed from the north side of the bridge as part of the work to demolish that side. On review, the Tenth District rejected the trial court's approach, which considered whether there was evidence that vandals had previously dropped objects from the bridge at issue. Instead, relying on *Semadeni v. Ohio Dept. of Transp*., 75 Ohio St.3d 128 (1996), the appellate court focused on evidence that ODOT had previously determined that vandals throwing or dropping objects from bridges onto traffic was a common enough problem that it necessitated state intervention, and consequently, ODOT employed fencing on almost every bridge over vehicular traffic. *Id*. at ¶ 37. The Tenth District concluded that the Ohio Department of Transportation had a special duty to prevent "vandals" from causing harm to motorists passing under the bridge.

{¶ 105} We question the applicability of *Wilkes* here, given that ODOT had adopted a policy requiring fencing to be installed on bridges over vehicular traffic, except where noted in its Bridge Design Manual; Lyft had no analogous policy related to prevention of carjacking. In addition, this Court has taken a narrower view than *Wilkes* and has considered the particular circumstances giving rise to the action*. E.g., M.B.; Vidovich*, 2024-Ohio-4606 (2d Dist.). "Three main factors contribute to a court's finding the evidence insufficient to demonstrate the foreseeability of a crime as a matter of law: (1) spatial separation between previous crimes and the crime at issue; (2) difference in degree and form between previous crimes and the crime at issue; and (3) lack of evidence revealing defendant's actual knowledge of violence." *Shivers v. Univ. of Cincinnati*, 2006-Ohio-5518, ¶ 9 (10th Dist.); *M.B*. at ¶ 30.

{¶ 106} Cooper asserts that Lyft reasonably should have foreseen the carjacking of Brandon, because Lyft drivers are frequently victims of crime perpetrated by riders. She points to the estimated [redacted] tagged by Lyft as involving a non-fatal, non-sexual, criminal attack by a Lyft rider against a Lyft driver in Ohio in the three years between January 2020 and December 2022—an amount that equates to [redacted] assaults per day. However, we agree with the trial court "the total number [redacted], without additional information about the number and nature of the crimes reported or actual prosecutions that resulted from these complaints, do not demonstrate the foreseeability of Brandon's murder." Trial Court Dec. (Mar. 4, 2025), p. 20-21.

{¶ 107} Cooper also points to crimes against Lyft drivers that occurred outside of the Dayton area or that occurred in Dayton but were dissimilar from carjacking offenses. For example, on August 17, 2021, a Lyft driver in Dayton was threatened with a knife; no one was reported injured. On January 15, 2022, ten days before Brandon's murder, a Lyft rider stole the driver's vehicle while the driver was getting fuel at a gas station; no weapon was used, and the Lyft driver was not injured. None of these incidents reasonably placed Lyft on notice that carjackings would occur on January 25-26, 2022.

{¶ 108} Moreover, Lyft was not aware of either the C.B. carjacking or the T.G. carjacking prior to the attempted carjacking and murder of Brandon in the early morning hours of January 26, 2022. Also, Lyft did not have actual knowledge of the risk posed by the Jimmy Smith account. Accordingly, considering the totality of the circumstances, Lyft could not have reasonably anticipated or foreseen the attempted carjacking of Brandon or his death. As a matter of law, Lyft cannot be liable for negligence based on its alleged failure to warn Brandon of the dangers of the Jimmy Smith account and to employ additional safety features to protect him.

{¶ 109} Based on the foregoing, Lyft owed no legal duty of care to Brandon. The trial court did not err in denying Cooper's motion for partial summary judgment and granting summary judgment to Lyft. Cooper's assignments of error are overruled.

V. Conclusion

{¶ 110} The trial court's judgment is affirmed.

. . . .

TUCKER, J., and HANSEMAN, J., concur.