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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2023-UP-179
Submitted March 1, 2023 – Filed May 11, 2023
Appellate Case No. 2022-000082

RONALD L. MIMS,

Petitioner,

vs.

DIANE W. RAY

Respondent.

APPENDIX

GEORGE SINK, P.A. INJURY LAWYERS
Robert E. Treacy, Jr., SC Bar#12102
Patrick T. Napolski, SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29401
P: (843) 569-1700
Attorneys for Petitioner

Other Counsel of Records:
Christopher H. Pearce, Esq.
L. Raymond Wells, Esq.
Charles B. Jordan, Esq.
The Pearce Law Group, P.C.
1314 Professional Drive
Myrtle Beach, SC 29577

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

RECORD ON APPEAL

GEORGE SINK, P.A. INJURY LAWYERS
Robert E. Treacy, Jr., SC Bar#12102
Patrick T. Napolski, SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29406
P: (843) 569-1700
Attorneys for Appellant

THE PEARCE LAW GROUP, P.C.
Christopher H. Pearce SC Bar#71083
Charles B. Jordan, Jr. SC Bar#11708
L. Raymond Wells SC Bar#102622
1314 Professional Drive
Myrtle Beach, SC 29577
P: (843) 839-3210
Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2019CP2605892

Ronald L Mims
PLAINTIFF(S)

Diane W Ray
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider is DENIED.

This motion is decided without oral arguments.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/04/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Jan 05 8:30 AM - Horry - COMMON PLEAS - CASE#2019CP2605892



Horry Common Pleas

Case Caption: Ronald L Mims VS Diane W Ray

Case Number: 2019CP2605892

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2022-01-04 11:17:37 page 3 of 3

ELECTRONICALLY FILED - 2022 Jan 05 8:30 AM - HORRY - COMMON PLEAS - CASE#2019CP2605892

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2605892

Ronald L Mims
PLAINTIFF(S)

Diane W Ray
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion for Summary Judgment is GRANTED.
See S.C. Code Ann. section 56-5-3150(a).
See also Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000).

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/20/2021 .

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Horry Common Pleas

Case Caption: Ronald L Mims VS Diane W Ray

Case Number: 2019CP2605892

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
RONALD L. MIMS,)
)
)
Plaintiff,)
)
-vs-)
)
DIANE W. RAY,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO: 2019-CP-26-

SUMMONS
(Tort - Automobile Collision)
(Jury Trial Requested)

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT’S ATTORNEY(S):
YOU WILL PLEASE TAKE NOTICE that you are hereby summoned and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the attorney(s) for the Plaintiff listed below at his office at 7011 Rivers Avenue, Ste 105, North Charleston, South Carolina, 29406, within thirty (30) days after service hereof excluding the date of such service. IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN THE TIME AFORESAID, PLAINTIFF WILL APPLY TO THE COURT FOR A JUDGMENT BY DEFAULT FOR THE RELIEF DEMANDED IN THE COMPLAINT AND ANY OTHER RELIEF DEEMED APPROPRIATE.

GEORGE SINK, P.A. INJURY LAWYERS

s/ Patrick T. Napolski
Robert E. Treacy, Jr. SC Bar#12102
Patrick T. Napolski SC Bar#100966
Attorneys for the Plaintiff
7011 Rivers Avenue, Suite 105
North Charleston, SC 29460
P: (843) 569-1700

North Charleston, South Carolina
Dated: September 18, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
RONALD L. MIMS,)
)
Plaintiff,)
)
-vs-)
)
DIANE W. RAY,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2019-CP-26-

COMPLAINT
(Tort - Automobile Collision)
(Jury Trial Requested)

The Plaintiff above named complaining of the Defendant herein say as follows:

1. The Plaintiff, Ronald L. Mims (hereinafter "Mims"), is a citizen and resident of the County of Horry, State of South Carolina.
2. That the Defendant, Diane W. Ray (hereinafter "Ray"), upon information and belief, is a citizen and resident of the County of Horry, State of South Carolina.
3. That the substantial acts and omissions alleged herein occurred in the County of Horry, State of South Carolina.
4. That venue is proper in Horry County, as the situs of substantial acts and omissions alleged herein.
5. That on or about June 20, 2019, at approximately 5:45 p.m., Plaintiff was lawfully crossing South Dogwood Drive, near the intersection of Atlantic Avenue, in Murrell's Inlet, County of Horry, State of South Carolina.
6. That at or about the aforementioned time, date, and location, Defendant Ray, was driving and operating a 2015 BMW SUV traveling east on Atlantic Avenue and turned south on South Dogwood Drive.

7. That suddenly and without warning Defendant Ray slammed into Plaintiff Mims, knocking him to the ground, resulting in severe injuries to Plaintiff Mims.

8. That Defendant Ray was negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) In then and there failing to keep a proper lookout;
- (b) In then and there failing to maintain proper control over the aforesaid motor vehicle;
- (c) In failing to yield the right-of-way to the Plaintiff;
- (d) In striking Plaintiff with a motor vehicle;
- (e) In then and there failing to take advantage of any last clear chance to avoid striking the Plaintiff;
- (f) In then and there failing to properly observe the road and traffic conditions;
- (g) In failing to exercise due care in the safe operation of a motor vehicle;
- (h) In failing to equip said motor vehicle with adequate and proper brakes, or if so equipped, in failing to properly apply the same;
- (i) In failing to equip said motor vehicle with adequate and proper steering mechanism, or if so equipped, in failing to properly utilize the same;
- (j) In failing to equip said motor vehicle with an adequate signaling device or horn, or if so equipped, in failing to properly utilize the same;
- (k) All of which were the direct and proximate cause of the injuries and damages the Plaintiff suffered, as are more fully set forth below, said acts being in violation of the laws of the State of South Carolina.

9. That as the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts or omissions of Defendant Ray, Plaintiff Mims suffered great and permanent physical harm and injury from being struck by Defendant Ray's vehicle, all of which has and will, upon information and belief, in the future cause Plaintiff Mims to undergo tremendous medical treatment, physical pain, suffering, and mental anguish, and has and will, upon information and belief, in the future cause him to have to spend money for medicine and medical services and to suffer economic losses present and future.

12. Plaintiff Mims is informed and believes that he is entitled to judgment against Defendant Ray in such sum of actual and punitive damages that a trier of fact may determine, together with the costs of this action and for such other relief as this Court may deem just and proper.

WHEREFORE, the Plaintiff, Ronald L. Mims, prays for a trial by jury, judgment against Defendant Diane W. Ray on claims of negligence, gross negligence, carelessness, recklessness, negligence *per se*, and willfulness in such sum of actual and punitive damages, as well as general damages, that a trier of fact may determine together with such other relief this Court may deem just and proper.

[Attorney Signature on Following Page]

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

/s/ Patrick T. Napolski

Robert E. Treacy, Jr. SC Bar#12102

Patrick T. Napolski SC Bar#100966

7011 Rivers Avenue, Suite 105

North Charleston, S.C. 29406

P: (843) 569-1700

E: RTreacy@Sinklaw.com

E: PNapolski@Sinklaw.com

Attorneys for the Plaintiff

North Charleston, SC
September 18, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2019-CP-26-05892

Ronald L. Mims,

Plaintiff,

vs.

Diane W. Ray,

Defendant.

**DEFENDANT’S ANSWER TO
PLAINTIFF’S COMPLAINT**

[JURY TRIAL DEMANDED]

Diane W. Ray (hereinafter referred to as “Defendant”), by and through her undersigned counsel, hereby answers Plaintiff Ronald L. Mims’ (hereinafter referred to as “Plaintiff”) Complaint and would otherwise show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. A Jury Trial is hereby demanded on all issues so triable.
2. Each and every allegation of the Complaint not expressly admitted herein is denied.
3. Upon information and belief, Defendant admits Paragraph 1 of the Plaintiff’s Complaint.
4. Defendant admits Paragraphs 2, 3 and 4 of the Complaint.
5. Defendant lacks sufficient information to form a belief as to the allegations of Paragraphs 5 and 6 of the Plaintiff’s Complaint; and therefore, denies same.
6. Defendant denies the allegations contained in Paragraphs 7, 8, and 9, including all subparagraphs, of the Complaint.
7. Paragraphs 10 and 11 appear to be omitted from the Complaint and, therefore, do not require a response from this Defendant.
8. Defendant denies the allegations contained in Paragraph 12, including all subparagraphs, of the Complaint.

FOR A SECOND AND FURTHER DEFENSE

9. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.
10. Defendant asserts that pursuant to Rule 12(b)(6), SCRCP, Plaintiff has failed to state facts sufficient to state a cause of action against him for negligence or any other cause of action.

FOR A THIRD AND FURTHER DEFENSE

11. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.
12. The Defendants alleges that any award of punitive damages in a civil action violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution in that civil punitive damages violate the Defendant's right to due process, equal protection of the laws and that civil punitive damages are sufficiently criminal in nature so as to require criminal procedure safeguards. Further, the Defendant alleges that any award of punitive damages in a civil action violates Article I, Section 3 of the Constitution of the State of South Carolina in that:
 - a. The judiciary's ability to correct a punitive damage award is on upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
 - b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
 - c. Any award of punitive damages based upon the wealth of the Defendant violate due process guarantees;
 - d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standards and is inconsistent with due process guarantees; and

- e. Even if it would be argued that the standards governing the imposition of punitive damages exist, the standard is void for vagueness and/or ambiguity.
13. That the Defendant's conduct did not rise to the level of gross negligence, carelessness, recklessness, willfulness, or wantonness so as to justify an award of punitive damages in this matter.

FOR A FOURTH AND FURTHER DEFENSE

14. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.
15. Defendant alleges that any damages sustained by the Plaintiff were caused by the greater negligence and/or willfulness of the Plaintiff, which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, the Plaintiff's alleged damages would not have occurred or been sustained, and for that reason, the Plaintiff is totally barred from recovery from the Defendant.
16. Alternatively, the Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said damages were caused by the negligence and/or willfulness of the Plaintiff, combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and for that reason, the Plaintiff's recovery against the Defendant, if any, shall be reduced in proportion to the amount of the Plaintiff's negligence.

FOR A FIFTH AND FURTHER DEFENSE

17. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.
18. The Defendant alleges, upon information and belief, that the Plaintiff has failed to act reasonably to mitigate the damages alleged in this matter.

FOR A SIXTH AND FURTHER DEFENSE

19. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.
20. The Defendant reserves and does not waive any additional or further defenses as may be revealed through additional information that may be revealed by future discovery in this matter or discovered otherwise.

WHEREFORE, the Defendant prays that the Plaintiff's Complaint be dismissed, for costs and disbursements, and for such other and further relief as this Honorable Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

By: **S/ Marissa A. VanCamp**
Marissa A. VanCamp, Esquire
S.C. Bar No. 103766
E-mail: mvancamp@pearcelawgroup.com
Pamela Ansari-Cobiella, Esquire
S.C. Bar No.: 103369
E-Mail: pcobiella@pearcelawgroup.com
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

ATTORNEYS FOR DEFENDANT

October 23, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

C/A No.: 2019-CP-26-05892

Ronald L. Mims,

Plaintiff,

vs.

Diane W. Ray,

Defendant.

**DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Defendant Dianne W. Ray, improperly identified as Diane W. Ray, by and through the undersigned counsel, and hereby submits this Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. For the reasons set forth herein, counsel would show that the Motion should be granted as a matter of law.

FACTUAL BACKGROUND

This is a negligence action arising out of an accident involving an automobile and a pedestrian that occurred on June 20, 2019, on South Dogwood Drive (“Dogwood”) in Surfside Beach, South Carolina. Since the filing of this suit, Plaintiff, Defendant, and the investigating police officer, Trooper Brendan Delaney, have been deposed. In Defendant’s deposition, she testified that she was driving east on Dogwood when she saw a delivery truck parked ahead of her on the right side of the road and partially in her lane. As Defendant approached the truck, she stopped to look for traffic and proceeded with caution. As the front of Defendant’s vehicle began to pass the front of the truck, Plaintiff walked into the passenger side of her vehicle. Defendant testified that she was familiar with the area where the accident occurred and that there was no crosswalk in the spot where the accident occurred.

In his deposition, Plaintiff also testified that he did not cross the street using a crosswalk at the time of the accident. The relevant testimony is as follows:

Q. Is there a crosswalk or anything like that at the area where you cross the street?

A. No, ma'am, they're all eroded.

Q. They were eroded?

A. Yes, ma'am.

Q. Could you see lines in the road for a crosswalk that had been there before?

A. No, ma'am.

Q. What makes you say they're eroded?

A: Well, the one – that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.

Q. At Atlantic where the intersection is?

A. Yes, ma'am.

Exhibit A, Dep. of Ronald Mims, 30;4 – 30;20, June 1, 2020.

Trooper Delaney testified in his deposition that, after speaking with both parties and observing the scene of the accident, he determined that Plaintiff contributed to the accident and Defendant did not. Regarding the issue of whether Plaintiff attempted to use a crosswalk when crossing the street at the time of the accident, Trooper Delaney testified as follows:

Q. And are you familiar with that area where this crash had taken place?

A. Yes, sir.

Q. And when you arrived on the scene of this crash, had you observed any crosswalks?

A. The only crosswalk is when you turn right off, and I can't remember the, the main road that feeds into that area, but off Dogwood Drive there's a crosswalk on that corner.

Q. On the corner of Dogwood Drive and Atlantic Avenue?

A. I think it's Atlantic Avenue, yes, sir, 'cause I think there's a row of restaurants and stuff right there.

Q. And is that a painted pedestrian walkway? When you say the pedestrian crosswalk, what are you referring to?

A. The crosswalk.

Q. Well, what is a crosswalk?

A. Painted crosswalk.

Q. Was there a painted crosswalk at the corner of Dogwood Drive and Atlantic Avenue on the date of this crash?

A. To my knowledge, yes.

Exhibit B, Dep. of Trooper Delaney, 14;25 – 15;24, June 1, 2020.

Q. And I think you said a moment ago you marked Mr. Mims as contributing to that crash; is that correct?

A. Yes, sir.

Q. What evidence did you use to reach that conclusion?

A. With where the driver of the BMW stated she hit the pedestrian was outside the crosswalk and where Fire –

Q. So ---

A. Sorry, where Fire and EMS said they – where Fire and EMS treated him, also, we put all that together. Well, I put it all together.

Exhibit B, Dep. of Trooper Delaney, 17;9 – 17;22, June 1, 2020.

Q. So just to be clear, the reason you marked Mr. Mims as contributing to this crash is because he was outside the painted crosswalk there on South Dogwood Drive; is that correct?

A. Yes, sir. Yes, sir.

Exhibit B, Dep. of Trooper Delaney, 19;3 – 19;8, June 1, 2020.

Based on the testimony of Defendant, Plaintiff, and the investigating officer, it is clear that the accident occurred outside of a legal pedestrian crossing. In light of this undisputed testimony, Defendant files this Motion for Summary Judgment on the grounds that Plaintiff's own negligence bars him from recovery against Defendant.

LEGAL STANDARD

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRCP; see also Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington Cty. Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). In ruling on a motion for summary judgment, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of material fact for trial. See Thomas v. Waters, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994).

After the party seeking summary judgment shows a genuine issue of material fact does not exist, the opposing party may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist which give rise to a genuine issue. See *id.* at 526, 445 S.E.2d at 661. Summary judgment may be granted where the evidence favoring the nonmoving party is merely colorable or not significantly probative. See Bean v. S.C. Cent. R. Co., Inc., 392 S.C. 532, 546, 709 S.E.2d 99, 106 (Ct. App. 2011). Pursuant to the plain language of Rule 56(c), an entry of summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof. See Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (citing Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)).

ARGUMENT

To establish a cause of action in negligence, a plaintiff must prove the following elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. See Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under the doctrine of comparative negligence, the plaintiff's recovery is barred if his negligence is greater than that of the defendant. See Hopson v. Clary, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996) (holding that plaintiff's claim was barred under comparative negligence doctrine because plaintiff's own negligence was, as a matter of law, greater than any negligence attributable to defendant and the more determinative factor in causing the accident).

In this action, Defendant asserted comparative negligence as an affirmative defense in her Answer to the Plaintiff's Complaint. Though comparative negligence is typically deemed to be a jury question, courts have granted summary judgment to a defendant based on comparative

negligence where the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. See Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000); see also Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created"), and Creech v. S.C. Wildlife and Marine Resources Dep't, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997) (discussing directed verdict standard).

For example, the South Carolina Supreme Court upheld the circuit court's decision to grant the defendant's motion for summary judgment based on the plaintiff's comparative negligence in Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The facts in Bloom are directly on point with this matter: in an attempt to cross a street, a pedestrian entered the street between two parked vehicles and ran into the side of the Defendant driver's vehicle. The pedestrian did not enter the street at a crosswalk or any other pedestrian crossing, so the driver had no warning of the impact. Additionally, the evidence showed that the driver was driving no more than 25 miles per hour and was not driving recklessly at the time of the impact. Ultimately, the Supreme Court of South Carolina affirmed the circuit court's decision to grant the defendant driver's motion for summary judgment and held that the only reasonable inference was that the pedestrian's own negligence was more than fifty percent, thus precluding his recovery in a negligence action against the motorist. Specifically, the Court held the following:

Here, the undisputed facts establish that [the pedestrian] attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues that might exist as to [the motorist's] fault in this accident cannot alter the inescapable conclusion that, as a matter of law, [the pedestrian's] fault exceeded fifty percent. Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.

Id. at 424, 529 S.E.2d at 714.

Trooper Delaney did not testify as to a specific statute but stated that he determined Plaintiff had been outside a crosswalk when the impact occurred. Pursuant to S.C. Code Ann. § 56-5-3150(a) (1976, as amended), “[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.” As stated above, Plaintiff does not dispute that he did not use a crosswalk or other pedestrian crossing when he entered the street. Because he was not crossing within a marked crosswalk or within an unmarked crosswalk at an intersection, Plaintiff should have yielded the right-of-way to Defendant.

If Defendant is said to have any duty to the Plaintiff, it would be a duty to exercise due care to avoid colliding with any pedestrian. See S.C. Code Ann. § 56-5-320 (1976, as amended). Defendant testified that the headlights in her vehicle were turned on, as “[t]hey’re on all, all the time on my car.” Exhibit C, Dep. of Diane Ray, 20;21, June 1, 2020. Further, Defendant testified that she was watching for traffic as she attempted to pass the delivery truck:

Q. Do you recall any detail, any of the vehicles that were on the road with you?

A. When I went to make the right turn onto Dogwood, there was a tractor-trailer food truck, I can’t think of the name of it, partially in the road and sitting off the road, and I had to stop when I started going around, to make sure there was no oncoming traffic, that I had enough room to get through.

Exhibit C, Dep. of Diane Ray, 21;2 – 21;11, June 1, 2020.

Finally, Defendant testified that she was driving at a low speed at the time of the accident:

Q. Do you recall how fast you were driving once you returned onto Dogwood Drive?

A. Well, like I said, I come to a full stop when I realized the truck was partially in the road, and it couldn't have been more than past the first little notch there on your speedometer. I think it has ten on mine, couldn't have been going past that.

Exhibit C, Dep. of Diane Ray, 24;1 – 24;10, June 1, 2020.

The evidence shows that Defendant was being cautious and keeping a proper lookout at the time of the accident, and in fact, Defendant did not hit Plaintiff that day, as Plaintiff struck her vehicle. Even if there was some evidence that indicated Defendant contributed to the accident, the conclusion that Plaintiff's fault exceeded fifty percent is inescapable. Therefore, Plaintiff's own negligence in attempting to cross the street outside of a legal crossing was greater than any negligence attributable to Defendant and was the more determinative factor in causing the accident.

CONCLUSION

Based on the above, Defendant contends that no reasonable jury could find that Plaintiff's negligence was not greater than any negligence on the part of Defendant. Therefore, Defendant respectfully requests that this Court grant her Motion for Summary Judgment.

[SIGNATURE PAGE TO FOLLOW]

THE PEARCE LAW GROUP, P.C.

By: /s/ Marissa A. VanCamp
Christopher H. Pearce, Esquire
S.C. Bar No. 71083
E-mail: cpearce@pearcelawgroup.com
Marissa A. VanCamp, Esquire
S.C. Bar No. 103766
E-mail: mvancamp@pearcelawgroup.com
Pamela Ansari-Cobiella, Esquire
S.C. Bar No.: 103369
E-Mail: pcobiella@pearcelawgroup.com
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

ATTORNEYS FOR DEFENDANT

Dated: July 15, 2020

EXHIBIT “A”

Dep. of Ronald Mims, June 1, 2020.

State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
)
 Plaintiff,)
)
 vs.)
 Diane W. Ray,)
)
 Defendant.)

**THE DEPOSITION OF
RONALD MIMS**

Monday, June 1, 2020
10:53 a.m. - 2:21 p.m.

The deposition of RONALD MIMS, taken on behalf of the Defendant, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 27

REMOTE APPEARANCES:

THE WITNESS:

RONALD MIMS
722 6th Avenue
Surfside Beach, South Carolina 29575

FOR THE PLAINTIFF:

Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

FOR THE DEFENDANT:

Marissa VanCamp, Esquire
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

Sharon Brock Court Reporting

Post Office Box 32157
Myrtle Beach, South Carolina 29588
(843) 685-7179

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EXHIBITS

(No exhibits were marked during this proceeding.)

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STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

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1 RONALD MIMS HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 **EXAMINATION**

4 **BY MS. VANCAMP:**

5 Q: Thank you, Mr. Mims. My name is Marissa
6 VanCamp. I represent Diane Ray, and
7 we're here so that I can ask you some
8 questions about yourself and about an
9 accident that occurred back in 2019.
10 Have you ever had your deposition taken
11 before?

12 A: No, ma'am.

13 Q: Okay. I'm going to go over a few rules
14 and guidelines right now. If at any
15 point you don't hear me, please feel free
16 to interrupt and I'll rephrase or restate
17 my question or try to speak louder, okay?

18 A: Yes, ma'am.

19 Q: And since we're all on video today, if
20 you can wait until I'm done asking my
21 question before you give your answer, I
22 will do my very best not to interrupt you
23 before I ask my next question. You know,
24 normal conversation it's easy to kind of
25 anticipate where the question is going

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1 and you start your answer, but if you
2 could please try not to do that just so I
3 can hear you, Patrick can hear you, and
4 most importantly Sharon can hear you
5 since she's recording everything that's
6 being said, okay?

7 A: Yes, ma'am.

8 Q: Along those same lines, if you could keep
9 all of your answers verbal just as you're
10 doing, yeses and noes. Even though I can
11 see you, if you're nodding your head or
12 shaking your head and I'm going to
13 probably know what you're saying, I'll
14 ask you, "Is that a yes or a no," and I'm
15 not trying to be rude or ugly or anything
16 like that, I just want to make sure we
17 have a clean record; does that make
18 sense?

19 A: Yes, ma'am.

20 Q: Okay. And same thing with uh-huh
21 (affirmative response) and huh-uh
22 (negative response), if I ask you, "Is
23 that a yes or no," I'm not trying to be
24 rude or anything like that. Do you
25 understand that the court reporter is

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1 recording everything that's being said?

2 A: Yes, ma'am.

3 Q: And do you understand that you're
4 testifying under oath and there's
5 penalties that come along with lying or
6 being dishonest?

7 A: Yes, ma'am.

8 Q: Okay. If you need to take a break at any
9 point, let me know. I'm going to try to
10 get through this as quickly as we can. I
11 don't want to keep you any longer than
12 necessary, but if you need to take a
13 break to stretch your legs or get some
14 air, feel free to let me know. I'll tell
15 you, one thing about breaks is it's one
16 of the only times in the case when the
17 attorney-client privilege doesn't apply,
18 which basically means if we take a break
19 and you speak with your attorney during
20 the break, once we come back on the
21 record, I can ask you about that
22 conversation; does that make sense?

23 A: Yes, ma'am.

24 Q: Are you under the influence of any
25 medications or alcohol or anything like

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1 that, that could inhibit your ability to
2 answer my questions today?
3 A: No, ma'am.
4 Q: Okay. And if you do give me an answer to
5 my question, I'm going to assume that you
6 heard my question and that you understood
7 it; does that make sense?
8 A: Yes, ma'am.
9 Q: Okay. So, feel free to have me restate
10 or rephrase at any time. We're going to
11 go ahead and get started. Could you
12 state your full name for the record, Mr.
13 Mims?
14 A: Yes. Ronald Lee Mims, Jr.
15 Q: What's your date of birth?
16 A: 5/6/83.
17 Q: Were you born here in South Carolina?
18 A: Yes, ma'am.
19 Q: Which city?
20 A: Georgetown, Georgetown County.
21 Q: What's your current address?
22 A: 722 6th Avenue South, Surfside Beach
23 29575.
24 Q: Do you know approximately how long you've
25 been living at that address?

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1 A: About two and a half years, three.
2 Q: And I know these questions are difficult,
3 but do you remember where you were living
4 prior to the 6th Avenue Address?
5 A: Yes, I was living on 2nd Avenue South, I
6 meant, North, excuse me, ---
7 Q: Second Avenue.
8 A: --- in Surfside Beach.
9 Q: Do you know approximately how long you
10 lived at the 2nd Avenue address?
11 A: Just about two years.
12 Q: Besides South Carolina, have you lived in
13 any other states?
14 A: No, ma'am.
15 Q: All right. Are you on any social media
16 websites like Facebook or Instagram?
17 A: I have Facebook. I rarely mess with it.
18 Q: Okay. Have you ever made any posts
19 related to the accident that we're going
20 to talk about today?
21 A: No, ma'am.
22 Q: What's your phone number?
23 A: 843-315-5140.
24 Q: Do you know who the carrier is?
25 A: Straight Talk.

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1 Q: Would you walk me through your
2 educational background, starting with
3 where you went to high school?
4 A: Yes, I went to Socastee High School for
5 ninth and tenth grade, and then I went to
6 the Academy For Arts Science & Technology
7 for eleventh and twelfth, graduated.
8 Q: Do you remember which year you graduated?
9 A: 2001.
10 Q: After graduating, did you pursue any
11 additional education?
12 A: Some college at Horry-Georgetown
13 Technical.
14 Q: Okay. How long did you attend Horry-
15 Georgetown?
16 A: About three semesters.
17 Q: What program were you in or what was your
18 major?
19 A: Golf Course Management and Horticulture.
20 Q: All right. And after you stopped taking
21 those courses, did you attend any other
22 colleges or institutions?
23 A: No, ma'am.
24 Q: Do you have any professional licenses or
25 certifications?

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1 A: No, ma'am.

2 Q: Okay. Are you currently employed?

3 A: Yes, ma'am.

4 Q: Where do you work?

5 A: Save More Super Store.

6 Q: What's your position?

7 A: Basically, bicycle mechanic, and we

8 assemble, you know, furniture, pool

9 tables, you know, it's a surplus store.

10 Q: Okay. Approximately how long have you

11 been doing that?

12 A: About a month and a half, maybe two

13 months.

14 Q: Where were you working prior to that

15 position?

16 A: I was with the family business called

17 SpruceUp.

18 Q: SpruceUp?

19 A: Yes, ma'am, SpruceUp.

20 Q: What was your position there?

21 A: Landscaping and irrigation.

22 Q: Do you know roughly how long you were

23 working at SpruceUp?

24 A: I would say twelve years.

25 Q: Were you working at SpruceUp at the time

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1 of the accident in 2019?
2 A: Yes, ma'am.
3 Q: Okay. And while we're on that subject,
4 I'll go ahead and ask you now, are you
5 making a claim for lost wages or income
6 as a result of the accident in 2019?
7 A: I'm sorry?
8 Q: Are you making a claim for lost wages or
9 income as a result of the accident in
10 2019?
11 A: I'm not sure, I presume.
12 Q: Usually, it's kind of a claim that, due
13 to the accident, you missed work or you
14 lost income because you weren't able to
15 work; does that sound like something
16 you're claiming? I'll tell you, I do see
17 that claim in your discovery responses.
18 A: Yes, ma'am.
19 Q: Could you tell me about how much income
20 you're claiming you lost?
21 A: Well, at the time I've, I've been getting
22 -- the pay fluctuated. It was \$13 an
23 hour or if we had big jobs, it was by the
24 job.
25 Q: Do you have any documentation from your

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1 employer that would show the jobs you
2 ***missed, the wages you would've earned,
3 do you remember***938*?

4 A: Yes, ma'am.

5 Q: Do you have documentation that shows the
6 days of work you missed?

7 A: Yes, ma'am.

8 Q: Do you know the estimate of what your
9 lost wages ***came in, what amount of
10 money?

11 A: Not at the exact moment, but I can get it
12 to you as soon as possible.

13 Q: If you can get that information to your
14 attorney, he can give it to me.

15 A: Yes, ma'am.

16 Q: And I'm not going to hold you to
17 specifics, but do you know, roughly, how
18 many days you missed from work?

19 A: It was about -- it was seven, eight
20 months.

21 Q: Okay. During that time period, at the
22 end of eight months, were you able to
23 work at all?

24 A: No, ma'am, I was -- no, ma'am.

25 Q: So that would've been seven to eight

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1 months, starting in June 2019, when the
2 accident occurred?
3 A: Correct.
4 Q: Were you able to return to work,
5 eventually?
6 A: Yes. That's why I got this new job, it's
7 easy on my body.
8 Q: Did you go back to SpruceUp at all after
9 the accident or did you immediately stop?
10 A: No, ma'am.
11 Q: Okay. So, once you were able to start
12 working, you were working in your new
13 position?
14 A: Yes, ma'am.
15 Q: And I think you were starting to say
16 something along the lines of the job at
17 Save More is easier on your body; is that
18 right?
19 A: Yes, ma'am.
20 Q: Can you tell me more about that?
21 A: Yes. Well, everything -- they know my
22 situation, and everything is like
23 lightweight, light work, you know, it's
24 nothing strenuous.
25 Q: Okay. Are you working full-time or part-

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1 time?
2 A: Full-time.
3 Q: Do you know the name of your supervisor
4 at Save More?
5 A: Jimmy and Andrea, but I don't know their
6 last name at the moment.
7 Q: Do you remember who your supervisor was
8 when you were working at SpruceUp?
9 A: Yes, it was my father, Ronald Mims, and
10 my mother, Fran Mims. My father passed
11 away.
12 Q: And I'm sorry, what was your mother's
13 name?
14 A: Fran Mims.
15 Q: Is your mother still working at SpruceUp?
16 A: No, ma'am.
17 Q: Do you know of a supervisor or an
18 employee that's currently working at
19 SpruceUp?
20 A: No, ma'am.
21 Q: I hope this question doesn't offend you,
22 I have to ask this of everyone, but have
23 you ever been arrested or convicted of
24 any crimes?
25 A: Yes, ma'am.

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1 Q: Could you tell me what year you remember
2 that occurring?
3 A: I couldn't -- you want me to go with the
4 most recent?
5 Q: Sure.
6 A: Okay. That was early 2019, and I am
7 currently in Mental Health Court, and
8 will be graduating in August, and it is a
9 program that is amazing. It has changed
10 my entire outlook upon life and just
11 really has turned any kind of negative
12 into a positive thought.
13 Q: That's good to hear.
14 A: Yes.
15 Q: And I don't want to dig too much into
16 this, could you tell me what the charge
17 was?
18 A: Yes, it was drugs, methamphetamine.
19 Q: Possession charge?
20 A: No, ma'am, distribution.
21 Q: Okay. And, then, walking back, it sounds
22 like you had been arrested prior to 2019
23 **1524?
24 A: Yes, ma'am, I had a -- I'm sorry?
25 Q: Sorry, I didn't mean to interrupt you,

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1 just want to make sure if there was more
2 than one, that we heard them all.
3 A: Yeah, DUI. I can't remember the exact
4 date, but it was a long -- it was a while
5 ago. It's six, six years, seven.
6 Q: Do you remember if that took place in
7 Horry County or Georgetown or somewhere
8 else?
9 A: Horry County.
10 Q: Okay. Do you remember how that charge
11 was resolved?
12 A: Yes, ma'am. I took the classes at -- on
13 Wise Road at Shoreline, Shoreline
14 Behavioral Health Services.
15 Q: Okay. Besides the 2019 charge and then
16 the DUI charge that was about six years
17 ago, can you think of any other charges?
18 A: A DUS, driving under suspension, a while
19 ago, as well.
20 Q: Okay. Would that have been sometime
21 after the DUI?
22 A: Yes, ma'am.
23 Q: And what happened with that charge?
24 A: I paid the fine and -- yeah.
25 Q: Has your driver's license been revoked at

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1 any point?
2 A: It had been.
3 Q: And, then, has it been reinstated since
4 then?
5 A: Yes, ma'am.
6 Q: Okay. Are there any other criminal
7 charges that you can recall?
8 A: No, ma'am 1743*.
9 Q: Prior to the accident in June 2019, do
10 you recall ever being involved in any
11 other motor vehicle accidents either as a
12 driver, a passenger, or a pedestrian?
13 A: No, ma'am.
14 Q: And, then, can you recall any accidents
15 after that 2019 accident?
16 A: No, ma'am.
17 Q: Before I get into the actual accident and
18 your treatment, I'm going to ask you a
19 little bit about your past medical
20 history. Do you suffer from any chronic
21 condition like diabetes or high blood
22 pressure or anything like that?
23 A: No, ma'am.
24 Q: Have you ever been hospitalized prior to
25 the 2019 accident?

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1 A: Yes, ma'am.

2 Q: Do you remember what year or roughly when
3 it was?

4 A: 2018, maybe early 2019, around in there.

5 Q: And I've looked through your medical
6 record and it looks like, correct me if
7 I'm wrong, was that for alcohol
8 withdrawals and things like that?

9 A: Yes, ma'am.

10 Q: And it looked like as part of that
11 history you suffered from some seizures;
12 is that right?

13 A: Yes, ma'am.

14 Q: Do you currently suffer from any
15 seizures?

16 A: No, ma'am.

17 Q: Besides that treatment, have you ever
18 been hospitalized for anything else,
19 surgeries, anything like that?

20 A: I'm sorry, you broke up a little bit.

21 Q: Besides the seizures and alcohol
22 withdrawal issues, have you ever been
23 hospitalized for anything else like any
24 other surgeries or illnesses?

25 A: No, ma'am.

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1 Q: Okay. Do you have a primary care
2 physician or a family doctor that you
3 see?
4 A: Yes, ma'am.
5 Q: What's the doctor's name?
6 A: Dr. Archambeau.
7 Q: Do you know what practice that doctor is
8 with?
9 A: No, ma'am, he's just a primary care
10 physician.
11 Q: Do you know, like, where the location is;
12 is that ---
13 A: Pawleys Island.
14 Q: Okay. Roughly, how long have you been
15 seeing that doctor?
16 A: Roughly, five years.
17 Q: Did you see that doctor for anything
18 related to this accident in 2019?
19 A: No, ma'am.
20 Q: I just want to make sure I wasn't missing
21 anything, because I didn't see his name
22 or her name. All right. Have you ever
23 suffered from neck or back pain prior to
24 the 2019 accident?
25 A: Yes, ma'am.

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1 Q: Can you tell me when that was?
2 A: That was about the same time, 2018, '19,
3 from seizures.
4 Q: And I guess, just to be clear, is that
5 neck pain or back pain or both?
6 A: Back pain.
7 Q: And that would occur whenever you had
8 seizures?
9 A: Yes, ma'am, I fell.
10 Q: Okay. Was there a serious injury to your
11 back?
12 A: No, ma'am, no surgery.
13 Q: No surgery, did you have treatment for
14 it?
15 A: Yes, ma'am.
16 Q: Do you remember where you treated?
17 A: Tideland Health.
18 Q: Do you remember if that was all over your
19 back or upper back, lower back, mid-back?
20 A: Mid to lower.
21 Q: And what was the pain like, can you
22 describe it for me?
23 A: Yeah, it was very -- it was more stabbing
24 and shooting pains. It would go down my
25 left leg sometimes and right.

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1 Occasionally, it was like the sciatica
2 nerve, and like certain positions, I
3 couldn't, I couldn't do, you know, as far
4 as lifting, bending. I couldn't sit for
5 a while without being uncomfortable.

6 Q: Was that constant pain or did it come and
7 go, do you remember?

8 A: It was pretty constant, and certain
9 things would alleviate it temporarily.

10 Q: What kind of things would alleviate it?

11 A: Laying in certain positions, sometimes
12 just walking would help it.

13 Q: Do you remember if you took any pain
14 medications or prescriptions or anything
15 to help with the back pain?

16 A: I can't recall, except for Ibuprofen
17 800s. I'm not really sure. I don't
18 think so.

19 Q: What was your treatment like at
20 Tideland, was it like physical therapy
21 where you would do stretches and
22 exercises or do you remember what that
23 treatment was?

24 A: Yes, ma'am, it was physical therapy.

25 Q: Okay. Did that back pain resolve prior

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1 to the 2019 motor vehicle accident?
2 A: I'm sorry?
3 Q: Do you remember if that back pain
4 resolved or went away before you were
5 involved in the accident in 2019 with Ms.
6 Ray?
7 A: Yes, ma'am, it got much better.
8 Q: Were you still experiencing pain at that
9 point in time?
10 A: Only if I did something extreme and then
11 that'd be immediately quick.
12 Q: Okay. Do you know when you stopped going
13 to Tideland for PT prior to the
14 accident?
15 A: A year and a half ago-ish.
16 Q: Was it close in time to the accident or
17 had it been a few months, do you
18 remember? And, again, I won't hold you
19 to specific dates, I'm just trying to get
20 an idea.
21 A: It was months, it was months before.
22 Q: Okay. Prior to the 2019 accident, had
23 you ever experienced any pain or issues
24 with your right wrist?
25 A: No, ma'am.

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1 Q: Besides the physical therapy we've
2 already talked about, have you ever
3 completed any chiropractic treatment or
4 other physical therapy before that 2019
5 accident with Ms. Ray?

6 A: No, ma'am.

7 Q: All right. Before I start asking you
8 about the accident, I just have a quick
9 follow-up to your background questions.
10 Are you currently married?

11 A: No, ma'am.

12 Q: Have you ever been married?

13 A: Yes, ma'am.

14 Q: Okay. What was your spouse's name?

15 A: Tina Clifford.

16 Q: Do you remember what year you were
17 divorced?

18 A: About four years ago.

19 Q: Okay. And, then, if we do go to trial at
20 some point down the road when we're
21 looking at a jury, I'm going to avoid
22 putting any family members on the jury,
23 so do you have any relatives that are
24 over the age of eighteen that currently
25 reside in Horry County?

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1 A: No, ma'am.
2 Q: Do you know if Tina is still in Horry
3 County?
4 A: I don't.
5 Q: Okay. Do you live with anyone right now?
6 A: My mother.
7 Q: Do you have any siblings that are over
8 the age of eighteen that live in this
9 county?
10 A: No, ma'am.
11 Q: The date of the accident that I have is
12 June 20th, 2019; does that sound about
13 right to you?
14 A: Yes, ma'am.
15 Q: Do you remember what time of day the
16 accident occurred?
17 A: It was afternoon.
18 Q: Do you remember what the weather was
19 like?
20 A: Yeah, it was sunny.
21 Q: Tell me what you remember ---
22 A: And it rained.
23 Q: It was ---
24 A: It was like a popcorn, excuse me, it was
25 like a popcorn shower, typical summer

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1 stuff.
2 Q: At the time of the accident, was it
3 raining?
4 A: Not at the time.
5 Q: Do you remember if it rained at all
6 before the accident?
7 A: Maybe a little. Like I say, it was the
8 summertime hit and miss storms.
9 Q: Do you remember if it rained after the
10 accident?
11 A: Yes, ma'am.
12 Q: All right. And just to start off, I want
13 to be clear, you were a pedestrian at the
14 time of the accident, correct?
15 A: Yes, ma'am.
16 Q: Do you remember where you were walking
17 from?
18 A: Yes. I was walking across the street
19 from the fire station, going to cross the
20 street, go towards the beach.
21 Q: Was the beach your destination?
22 A: Yes, ma'am.
23 Q: All right. And you were coming from the
24 fire station?
25 A: Across the street from the fire station,

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1 yes, ma'am, Dogwood.
2 Q: Had you been at your home or is there a
3 business you were at?
4 A: No, ma'am, I had parked my car.
5 Q: Where had you been prior to parking your
6 car?
7 A: My house.
8 Q: All right. If you could tell me, what do
9 you remember from the minutes leading up
10 to the accident?
11 A: I left my house, parked my car, went to
12 go to the beach across the street, and
13 that's when it happened.
14 Q: Okay. Just to get a little more detail,
15 can you describe what the road is like in
16 that area?
17 A: Describe the road?
18 Q: Do you know, is it one lane in each
19 direction, is it multiple lanes in each
20 direction, is there ---
21 A: Yeah, one in ---
22 Q: --- an intersection?
23 A: One in each direction.
24 Q: Were you crossing near an intersection?
25 A: I was crossing to another street, not off

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of the main street, Atlantic, the secondary street.

Q: Do you know if there's any traffic signals or stop signs or anything like that at the spot where you were crossing or nearby?

A: Nearby.

Q: About how far away?

A: Maybe fifty to eighty feet.

Q: Is that a traffic signal or a stop sign?

A: No, it's the direct turn off of Atlantic.

Q: Okay. Do you remember what traffic was like that day?

A: Typical summer traffic.

Q: Prior to crossing the street, do you remember, you know, checking for traffic and things like that?

A: Yes, ma'am.

Q: Tell me what you remember about that. Did you see vehicles in the road?

A: Not at the time, no, ma'am.

Q: From either direction?

A: No, ma'am.

Q: Were any vehicles parked alongside the road?

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1 A: Yes, ma'am.
2 Q: What kind of vehicle, do you remember?
3 A: A delivery truck and other regular cars.
4 Q: Where were those vehicles parked in
5 relation to where the accident occurred?
6 A: They were parked at the corner by
7 Atlantic coming off of that turn from
8 Atlantic.
9 Q: Were there any vehicles parked near,
10 right near where the accident occurred or
11 were they all closer to Atlantic?
12 A: They were closer to Atlantic and spread
13 along, along the other side of the
14 street.
15 Q: Was the delivery truck parked nearby
16 where the accident occurred or was that
17 close to Atlantic?
18 A: Right in between.
19 Q: Okay. So, am I correct that there are
20 vehicles parked along the road, but no
21 moving traffic that you saw along
22 Dogwood?
23 A: Yes, ma'am.
24 Q: Okay. Do you know, roughly, how long you
25 paused to check for traffic before you

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1 crossed the street?

2 A: Yes, maybe five seconds, looked both

3 ways, checked, you know.

4 Q: Is there a crosswalk or anything like

5 that at the area where you cross the

6 street?

7 A: No, ma'am, they're all eroded.

8 Q: They were eroded?

9 A: Yes, ma'am.

10 Q: Could you see lines in the road for a

11 crosswalk that had been there before?

12 A: No, ma'am.

13 Q: What makes you say they're eroded?

14 A: Well, the one -- that's what I mean. The

15 one at Atlantic, it used to be yellow

16 years and years ago. I've lived here my

17 whole life, and it hasn't been painted

18 in, I don't think ever.

19 Q: At Atlantic where the intersection is?

20 A: Yes, ma'am.

21 Q: Okay. Tell me what you remember about

22 the actual impact.

23 A: The actual impact, I just heard the

24 engine, looked over, saw a blue hood, and

25 I don't remember anything after that.

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1 Q: Do you know if you lost consciousness?
2 A: Yes, ma'am.
3 Q: And just to backtrack, did you say you
4 heard the engine or you heard a car?
5 A: Yes, ma'am, it was real quick.
6 Q: What do you remember or what's the first
7 thing you remember when you came to after
8 losing consciousness?
9 A: Just shaky and, you know, in shock,
10 freaked out, stood up, went to kind of
11 shake off, you know, like, "Whoa," and
12 that's when I noticed my arm, and went
13 over to the firehouse.
14 Q: All right. When you say you noticed your
15 arm, I just want to be clear about what
16 that means. Is that your right arm or
17 your left arm?
18 A: My right arm was completely broke.
19 Q: Were you experiencing any pain at that
20 point in time?
21 A: (Audio was muted.)
22 Q: I couldn't hear you. Try to say
23 something now.
24 A: Okay, sorry.
25 Q: That's okay. I can hear you now. I'll

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1 repeat that question. Were you
2 experiencing any pain in your arm at that
3 point in time?

4 A: Yes, ma'am, once I started coming to.

5 Q: Besides your arm, do you recall
6 experiencing pain in any other areas of
7 your body?

8 A: Yes, ma'am. Oh, I am so sorry. Can --
9 may we please continue shortly?

10 Q: Do you need to take a short break or do
11 you need to step away for a longer period
12 of time?

13 A: Maybe -- how about one o'clock. I am so
14 sorry.

15 Q: Do you need to leave for a meeting or a
16 class or something?

17 A: Yes, ma'am. I had a meeting and it's
18 starting a little early. That's why it
19 was breaking through on me, they're
20 telling me to come in.

21 Q: Okay.

22 MS. VANCAMP: SHARON, ARE YOU
23 AVAILABLE THIS
24 AFTERNOON?

25 COURT REPORTER: I AM.

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1 MS. VANCAMP: OKAY. AND, PATRICK, IS
2 THAT OKAY WITH YOU IF
3 WE TAKE A BREAK AND
4 RESUME AT ONE?

5 MR. NAPOLSKI: YEAH. THAT WORKS JUST
6 FINE FOR ME IF THAT'S
7 OKAY WITH EVERYONE
8 ELSE.

9 MS. VANCAMP: THAT WORKS FOR ME. MR.
10 MIMS, IF YOU CAN SIGN
11 BACK ON AROUND 1:00
12 P.M., I'LL SIGN BACK
13 ON, TOO.

14 ****OFF THE RECORD****

15 11:33 a.m. - 1:46 p.m.

16 (ON THE RECORD.)

17 MS. VANCAMP: I KNOW WE JUST TOOK A
18 LONG BREAK. SHARON, IF
19 YOU WOULDN'T MIND JUST
20 READING INTO THE RECORD
21 THE LAST QUESTION SO
22 THAT WE CAN KIND OF
23 START WHERE WE LEFT
24 OFF.

25 (COURT REPORTER COMPLIES WITH REQUEST).

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1 **MS. VANCAMP CONTINUES:**

2 Q: Okay. So, circling back to where we're
3 talking about the accident, Mr. Mims,
4 could you tell me what areas of your body
5 you started feeling pain in immediately
6 after the impact?

7 A: My left leg, it, it triggered my sciatic
8 nerve, and my lower back.

9 Q: And I apologize, I might ask you some
10 repeat questions, but ---

11 A: That's okay.

12 Q: --- I believe you said you did lose
13 consciousness; is that right?

14 A: Yes, I did.

15 Q: Do you have any idea how long?

16 A: Honestly, I'm not too sure. It wasn't,
17 you know, terribly long, maybe thirty
18 seconds to a minute, maybe, somewhere
19 around in there.

20 Q: And, then, you were able to stand up; is
21 that right?

22 A: Yeah. It took, it took me a second, but
23 I, you know, got up, a little dizzy,
24 shaken.

25 Q: All right. And, then, I believe you had

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1 said you spoke with the Defendant; is
2 that right, just briefly?
3 A: I'm not sure, maybe briefly.
4 Q: And, then, you walked over to the fire
5 station?
6 A: Yes, I just went straight there.
7 Q: Did any of the firefighters come to you
8 or did you go straight over there?
9 A: A gentleman helped me to walk over there.
10 Q: Do you know who he was?
11 A: I do not.
12 Q: Do you know if he was a firefighter?
13 A: No, sir, I mean, no, no, he was not.
14 Q: Okay. Tell me what you remember from
15 your time at the fire station.
16 A: They put a temporary sling on my arm,
17 like, I believe some kind of wrap just
18 to, you know, give it a little help so I
19 didn't have to keep holding it, like a
20 little sling, and that was when, you
21 know, they stayed with me, and my mother
22 came to take me to the hospital.
23 Q: Do you know how long after the accident
24 it was before she arrived?
25 A: Oh, it wasn't that long, maybe ten

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1 minutes-ish.
2 Q: Do you remember if you called your mom or
3 if one of the firefighters did or
4 somebody else?
5 A: I -- I'm pretty sure I did.
6 Q: Do you remember calling anyone besides
7 your mother?
8 A: No, just my mother.
9 Q: Okay. And you said that she took you to
10 the hospital?
11 A: Yes, ma'am.
12 Q: So, no ambulance showed up at any point
13 that you remember?
14 A: No, ma'am, because my mother was right
15 there.
16 Q: Do you remember if you spoke with the
17 Defendant at any point before you left
18 for the hospital once you're at the fire
19 station?
20 A: The only thing I recall was her
21 apologizing, and that was it.
22 Q: Do you remember which hospital you went
23 to?
24 A: Tideland's Health.
25 Q: And tell me what you remember from your

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1 treatment there.

2 A: They took me into the emergency room, put
3 me on -- I'm not sure what it's called,
4 but I have a picture of it, but it looked
5 like Chinese handcuffs like they attach
6 to my fingers and attached something to
7 my bicep muscle and pulled down as those
8 -- they were trying to gently let the
9 bone come back together, which it didn't,
10 you know, and then they sent me home in a
11 sling, and then that's when I -- after
12 that, a little bit of time passed, I went
13 to Dr. Lewis to have surgery.

14 Q: All right. Going back to the ER
15 treatment, do you remember if they did
16 any x-rays or diagnostic scans when you
17 were at the hospital?

18 A: Yes, they did.

19 Q: Do you remember speaking with a doctor
20 about the results?

21 A: Not, I mean, not really. I was pretty --
22 I'm not sure. I was kind of, you know, I
23 was just shaken up.

24 Q: And you said they put you in a sling and
25 sent you home?

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1 A: That, I do remember.
2 Q: Do you know if they gave you any pain
3 medication?
4 A: I refused. I, I just -- like Ibuprofen.
5 Q: Can you tell me why you refused the pain
6 medication?
7 A: Yes, 'cause I don't like -- I don't take
8 drugs. I'd, I'd rather be clean and deal
9 with it.
10 Q: All right. After you were released from
11 the hospital, did you just go home that
12 night, do you remember anything specific
13 about what you did that night?
14 A: Just went home.
15 Q: And I believe you said you saw Dr. Lewis
16 next?
17 A: Yes, ma'am.
18 Q: Do you know when that was?
19 A: I don't have the paper in front of me,
20 no, ma'am.
21 Q: Was it shortly after the accident, was it
22 a couple weeks later, do you have any
23 estimate?
24 A: It was, you know, a week or two,
25 something like that. That's when he told

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1 me, you know, for sure I needed surgery.
2 I was like, "Well, yeah, it's hanging
3 out."
4 Q: Do you know what practice Dr. Lewis is
5 with?
6 A: He's with Tideland Health. He's -- he
7 does arms and wrists and stuff, you know,
8 bone, ortho -- orthopaedic.
9 Q: I think the first date that I have with
10 Tideland Health Orthopaedics is July
11 2nd; does that maybe sound about right?
12 A: Okay, yes.
13 Q: Do you remember any treatment between the
14 date of the accident on June 20th and
15 then that visit with Dr. Lewis on July
16 2nd?
17 A: Any treatment, no.
18 Q: And was Dr. Lewis the one that performed
19 the surgery?
20 A: Yes, ma'am.
21 Q: Were there any complications from the
22 surgery?
23 A: No, ma'am.
24 Q: All right. Will you tell me about the
25 treatment you remember having after your

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1 surgery was completed?
2 A: Yes, ma'am. I had two months' worth of
3 physical therapy for my right arm and for
4 my back. That was from December to
5 January.
6 Q: December 2019 to January 2020?
7 A: Yes, ma'am.
8 Q: Have you had any treatment since that
9 ended in January 2020?
10 A: I went to Dr. Yee's office and got a
11 epidural, a shot in the spine.
12 Q: Could you say the doctor's name? Did you
13 say Yee with a "Y"?
14 A: Yeah, Y-E-E.
15 Q: Do you know which practice -- Which
16 practice is Dr. Yee with?
17 A: It's Pain Management with Tideland's
18 Health.
19 Q: And you said you had an epidural
20 injection?
21 A: Yes, ma'am.
22 Q: And I'm assuming that was in your back?
23 A: Yes, and -- yes, ma'am.
24 Q: Have you just had one injection?
25 A: I had two.

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1 Q: Is there any other treatment since
2 January 2020 that you can think of
3 besides those two injections?
4 A: No, ma'am.
5 Q: Do you have any additional injections
6 planned or additional appointments set
7 up?
8 A: No, ma'am, just a follow up.
9 Q: I want to circle back to the physical
10 therapy you had right after your surgery.
11 Do you feel like that physical therapy
12 helped with your issues or how would you
13 describe your progress?
14 A: You broke up a little.
15 Q: How would you describe your progress
16 during your therapy right after your
17 surgery; do you feel like you improved?
18 A: You know, it was getting there, you know,
19 there was, there was a little progress,
20 you know, they told me it'd take a while.
21 My hand doctor or the physical therapy
22 said I had about forty-six percent, kind
23 of wish I could've got a little bit more,
24 but, you know, it was all I could do at
25 the time.

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1 Q: At this point in time, are you still
2 experiencing any pain in your right arm?

3 A: Yes, ma'am.

4 Q: How often do you experience the pain?

5 A: Pretty much, every day.

6 Q: Is it constant pain or does it come and
7 go?

8 A: Comes and goes.

9 Q: And how would you describe it, like
10 stabbing, or how would you describe it?

11 A: It's, it's just sharp, you know, bad
12 pain. That, that extreme pain is, you
13 know, very short-lived and then it hurts,
14 you know, mildly after that for a while.

15 Q: All right. At this point in time when
16 you get that pain, how do you treat it?

17 A: I put my brace back on, you know, I, I
18 keep it on most of the time anyway, but
19 it just -- it doesn't matter, but I, you
20 know, I keep it super tight, you know,
21 just to try to limit any kind of tweaking
22 of it, you know.

23 Q: Are you wearing your brace right now?

24 A: No, ma'am.

25 Q: How often do you wear your brace?

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1 A: When I go to work, whenever I'm doing
2 anything with my hands, I've always got
3 it handy.

4 Q: Okay. At this point in time, are you
5 still experiencing back pain?

6 A: Yes, ma'am.

7 Q: How often do you feel that pain?

8 A: Once, again, when it's just something,
9 you know, that would tweak it, you know,
10 just certain movements, you know, lifting
11 certain things, you know, just difficult.
12 Sitting too long, it starts, you know,
13 cramping up and everything, it starts
14 getting real painful, you know, just
15 twisting, bending, lifting.

16 Q: Do you feel like the injections helped
17 with your pain?

18 A: Yes, *1315.

19 Q: Sounds like that pain is not constant; is
20 that right?

21 A: No, ma'am.

22 Q: And that's a no, it's not constant? I
23 just want to make sure I'm clear.

24 A: Yes.

25 Q: Earlier, you had said that your back pain

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1 would radiate into one of your legs, is
2 it one leg or the other or the both legs?

3 A: The left leg.

4 Q: Does it still do that to this day?

5 A: Yes.

6 Q: All right. When you have back pain at
7 this point in time or pain that radiates
8 into your legs, do you have any treatment
9 that you're doing for it?

10 A: No, just personal things that I can do to
11 alleviate it, not professional.

12 Q: Like stretches and things like that?

13 A: Yes, ma'am.

14 Q: And I know you said you didn't want to
15 take any medications before, but do you
16 have any medications that you take now
17 for your pain?

18 A: Gabapentin.

19 Q: Do you remember when you first started
20 taking that?

21 A: Not really, maybe October-ish of last
22 year, maybe.

23 Q: How often do you take it?

24 A: In the morning and in the late afternoon,
25 evening.

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1 Q: Is that every day?
2 A: Yes, ma'am.
3 Q: Do you have a pharmacy that you regularly
4 refill that prescription at?
5 A: Yes, ma'am.
6 Q: Where's that at?
7 A: The Wal-Mart Pharmacy in Garden City.
8 Q: Okay. Do you know if that's prescribed
9 by your primary care physician or is it
10 the Pain Management doctor?
11 A: Pain Management.
12 Q: Besides the Gabapentin, are you taking
13 any other medications right now?
14 A: Yes.
15 Q: Medications for pain?
16 A: No, ma'am, for sleep. It's been tough
17 to, you know, sleep, tossing and turning.
18 Q: Do you know what medication you take for
19 sleep?
20 A: Trazadone.
21 Q: Do you take that every night?
22 A: Yes, ma'am.
23 Q: Are there any other medications you're
24 currently taking?
25 A: I take Lexapro as well, once in the

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morning.

Q: All right. And since you've told me you still have pain at this point in time, can you tell me, is there anything that you absolutely can no longer do following the accident?

A: Yes, you know, like the work I used to do, landscaping, irrigation, because I can't use any force, you know, like as far as digging, moving plants, pruning trees, you know, 'cause all those movements, I, I just can't do it, it hurts too bad, you know, having to lift, so I can't do that. Leisurely, sports-wife, I used to surf a lot, haven't tried, but I don't see how I could do that, because my wrist does not bend back, nor, you know, fishing kind of, you know, that hurts. I've tried that twice. Yeah, it's knocked out a couple of things out of my life.

Q: And you said you haven't tried surfing since the accident; is that right?

A: Correct. I doubt I could, I mean, you know, I don't know if you know anything

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1 about surfing, but, you know, you got to
2 pop up, and my wrist doesn't bend back.
3 That's all it does, it goes straight,
4 maybe two degrees.

5 Q: Can you estimate for me how often you
6 would go surfing before the accident?

7 A: Any time there was waves.

8 Q: That sounds like a surfer answer.

9 A: I mean, you know.

10 Q: Are there any areas of your body that we
11 haven't talked about yet that you're
12 claiming were affected in the accident?
13 I know we've talked about your right
14 wrist and your back and kind of your leg.
15 Is there any other area we haven't
16 covered?

17 A: No, ma'am.

18 Q: Okay. In one of your, I think it was
19 your final note from your therapy in
20 January 2020, it said that you were
21 planning on joining a gym and starting
22 Yoga because you were feeling better;
23 were you able to do that?

24 A: No, ma'am, because Covid-19, everything,
25 you know.

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1 Q: At the time you stopped therapy, were you
2 feeling like your issues were resolving?

3 A: I mean, like I say, they, they weren't
4 getting worse. There was slow
5 improvement, but it was an improvement.

6 Q: Okay, that's fair. Do you remember
7 anything about the conversation you had
8 with the police officer at the hospital?

9 A: Not really, no, ma'am.

10 Q: Do you remember that a police officer
11 came?

12 A: Yes. I, I vaguely remember that, yes, I
13 remember that, uh-huh (affirmative
14 response).

15 Q: Besides the brace that you've been
16 talking about, do you have any other
17 devices or other braces that you use for
18 your arm or anything for your back?

19 A: I just have a heating pad for when I lay
20 down for my back.

21 Q: Okay. At one point, I think you
22 mentioned photos, do you have photos that
23 you took after the accident?

24 A: Yes, ma'am.

25 Q: What are they photos of? Is it of your

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1 arm or things like that?
2 A: Yeah, it's just a picture of the break
3 and the Chinese handcuff hookup they had
4 at the hospital.
5 Q: Do you know if you've given all those
6 photos to your attorney?
7 A: I'm not sure, but I sure can.
8 Q: Okay. I think I have some, but I don't
9 know if I have all of those. Let's see.
10 A: And I have some as well from doing the
11 stim, the electrode shock stim in my
12 back, too. That was interesting.
13 Q: And I promise I'm just about done, but I
14 do have some follow-up, so I apologize
15 for being ---
16 A: Okay.
17 Q: --- all over the place. Prior to the
18 accident in 2019, do you remember if
19 you'd ever made any Workers' Compensation
20 claims?
21 A: No, ma'am.
22 Q: Have you ever made any other personal
23 injury claims?
24 A: No, ma'am.
25 Q: I do not want to know anything that

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1 you've discussed with your attorney, but
2 do you remember when you first contacted
3 an attorney after the accident?

4 A: It was very shortly.

5 Q: Okay. I have a damages summary. This
6 was produced to me in the discovery
7 responses that your attorney sent me, and
8 I apologize, I don't have a way to get it
9 to you right this second, but it lists,
10 kind of, the different damages you're
11 claiming.

12 MS. VANCAMP: AND, PATRICK, YOU
13 PROBABLY HAVE THIS.

14 Q: ****2300. One of the ones that I see is
15 deprivation of normal life expectancy,
16 can you tell me about that claim?

17 A: Yes. Like I mentioned before, everything
18 up until then, you know, I, I lost my
19 work, I lost my personal hobbies, and
20 like I say, everything that I love is
21 physical and involves my right hand. I'm
22 right-handed, for one thing, you know, it
23 just, it disables every part of my life
24 that I've known and grown to love.

25 Q: Okay. Another one on here, and I'm not

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1 trying to embarrass you at all, but these
2 are claims that are listed, so I want to
3 ask you about them. One of them listed
4 is sexual dysfunction, can you tell me
5 about that claim?

6 A: Yes. Well, something has -- okay, how do
7 I -- okay. It's not getting proper blood
8 flow, like even when, after I sleep, I
9 mean, I'll get kind of technical, you
10 know, usually when you wake up there's
11 blood, you know, flow, nothing.

12 Q: Had that ever happened prior to the
13 accident in 2019?

14 A: No. I kind of had some issues a while
15 back, but that got resolved.

16 Q: When you say a while back, do you know,
17 roughly, how long ago you're talking
18 about?

19 A: Probably ten years.

20 Q: Were you seeing a doctor to help resolve
21 that?

22 A: I saw a doctor one time.

23 Q: Do you remember the name of the doctor or
24 where that was?

25 A: No, I, I do not. It was such a long time

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1 ago, I don't.
2 Q: And you said it resolved?
3 A: Yes. Yes.
4 Q: How long after the accident did you start
5 having this issue?
6 A: Immediately.
7 Q: Like the next morning?
8 A: Every morning.
9 Q: Starting back since the accident?
10 A: Yes, a little awkward, but it's okay.
11 Q: And like I said, I'm not trying to
12 embarrass you, but this is my only chance
13 to really ask you questions, and that's
14 part of your claim, so I just want to
15 make sure that I am clear.
16 A: No, that's fine, I get it.
17 Q: Let's see. And, again, I'm not trying to
18 embarrass you or make you uncomfortable,
19 but some of the other ones I see are
20 mental anguish, mental distress,
21 apprehension and depression. Can you
22 tell me how those things are related to
23 the accident?
24 A: Okay. Could you start with one at a
25 time?

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1 Q: Sure. We can start with mental anguish.
2 A: Yeah, the mental anguish is, you know,
3 the daily frustrations, you know, from
4 being limited to what I, you know, am
5 able to do well and enjoy, you know, it's
6 quite frustrating.
7 Q: Okay. Mental distress, kind of same
8 thing?
9 A: Along those same lines, yes, ma'am.
10 Q: And, then, there's apprehension?
11 A: Apprehension?
12 Q: Yes.
13 A: Elaborate.
14 Q: It just says apprehension, and I just
15 want to know what that means to you.
16 A: Would you mind elaborating, please?
17 Q: Well, what do you think of when you hear
18 apprehension?
19 A: Apprehension basically, to me, sounds
20 like, you know, everything, you know,
21 that I love was stripped from me as far
22 as like I, I would love to hopefully say
23 that I could be able to do a few of them.
24 I'm sorry, I'm, I'm kind of drawing a
25 blank at the moment.

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1 Q: It's okay, and like I said, I just want
2 to get your perspective on these. Well,
3 I do want to ask you, though, about
4 depression. Can you tell me about how
5 that's related to this car accident?

6 A: Yes, you know, the depression part, it's,
7 it's -- like I say, it's another daily
8 feat that I, I have to try to overcome,
9 you know, by, you know, I, I just don't
10 see anything else that I would love
11 nearly as much as everything I used to
12 do. You know, I was really, really well
13 at it, you know, it took my confidence
14 down tremendously, that sucks. You know,
15 just basically trying to, trying new
16 things, and, and it gets, it gets very
17 aggravating, just, you know, even trying
18 to talk about it, because I had such love
19 and passion for what I did. I took pride
20 in everything I did, you know, and pride
21 was huge for me, you know. You know, as,
22 as, as far as my work ethics go and, you
23 know, making people happy by doing what I
24 did, knowing now I can't, so that would,
25 you know, it just, it puts me in a dump

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1 once in a while, you know, it's just --
2 and then I hear people talking about this
3 job or that and then the waves are good,
4 and I'm like, "Yeah, cool, must be nice."

5 Q: Are you seeking any treatment for
6 depression or for your mental anguish and
7 distress at this point in time?

8 A: I talk with my counselor through Mental
9 Health Court, which is amazing, by the
10 way.

11 Q: Outside of the Mental Health Court, do
12 you have any psychiatrists or therapists
13 that you go to?

14 A: Not at the moment.

15 Q: All right. Just to circle back to the
16 accident, Mr. Mims, I'm just going to put
17 you on the spot. Do you take any
18 responsibility for the accident?

19 A: Do I take any responsibility?

20 Q: Yes, sir.

21 A: I, I was just trying to go check the
22 babes.

23 Q: Is that a no?

24 A: That would be a no.

25 Q: Okay. Do you understand that the police

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1 officer that investigated the accident
2 determined that you were at fault?
3 A: Don't see how.
4 Q: So, you disagree with that finding?
5 A: Right. Yes, ma'am.
6 Q: Can you just explain to me a little bit
7 more about why you would disagree with
8 that finding?
9 A: Well, because I was a pedestrian, for
10 one. She should've been paying attention
11 coming off around a, you know, a turn
12 like that, for one. She had to be, I
13 mean, I know she was going fast. It
14 wasn't -- I'm six, three. It wouldn't
15 have knocked me out and sent me flying
16 and broke bones if she was putting.
17 Q: When you say it sent you flying, can you
18 tell me how far away from the vehicle you
19 landed?
20 A: Honestly, I couldn't tell you, because it
21 knocked me out, so I, I don't, you know.
22 Q: When you stood up, how far away from the
23 vehicle were you?
24 A: I'm -- honestly, there, again, I couldn't
25 really tell you. I just remember being

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1 dirty, you know, off in the sand and
2 rocks, and I was kind of just looking at
3 myself first, you know, I wasn't worried
4 about where the car was. I was trying to
5 -- I was -- had to make sure I was okay.
6 I wasn't worried about where the car was
7 and this, that, and the other, you know,
8 I was in shock. I don't know.

9 Q: Okay. I just want to make sure I
10 understand since you had testified that
11 it kind of knocked you. It sounded like
12 you were saying it knocked you far away.
13 Now, I want to make sure I understand. I
14 think earlier you had said you did not
15 see her vehicle prior to the accident; is
16 that right?

17 A: That is correct. All I remember, like I
18 say, is blue hood, and that was it, okay,
19 that's it.

20 Q: Okay. Mr. Mims, I think that's all I
21 have for you today. Thanks for coming
22 back after your meeting and making the
23 time to finish this. If your attorney
24 has any questions, please go ahead and
25 answer those.

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MR. NAPOLSKI: I DON'T HAVE ANY
QUESTIONS FOR YOU, MR.
MIMS, AND SHARON, WE'LL
GO AHEAD AND WAIVE.

(The deposition concluded at 2:21 p.m.)

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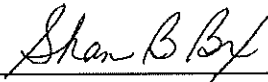
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **RONALD MIMS**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **FIFTY-NINE (59)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020**.



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

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EXHIBIT "B"

Dep. of Trooper Delaney, June 1, 2020.

ELECTRONICALLY FILED - 2020 Jul 15 2:17 PM - Horry - COMMON PLEAS - CASE#2019CP2605892

State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
Plaintiff,)
vs.)
Diane W. Ray,)
Defendant.)

**THE DEPOSITION OF
TROOPER BRENDAN DELANEY**

Monday, June 1, 2020
12:00 p.m. - 12:26 p.m.

The deposition of TROOPER BRENDAN DELANEY,
taken on behalf of the Plaintiff, was taken
before Sharon B. Brock Via Remote
Videoconferencing for All Parties, on Monday,
June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 87

REMOTE APPEARANCES:

THE WITNESS:

TROOPER BRENDAN DELANEY
South Carolina Highway Patrol Station
4195 US-701
Conway, South Carolina 29526

FOR THE PLAINTIFF:

Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

FOR THE DEFENDANT:

Marissa VanCamp, Esquire
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

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EXHIBITS

(No exhibits were marked during this proceeding.)

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STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was **NOT** waived by the deponent.

1

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1 TROOPER BRENDAN DELANEY HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:
3
4 **EXAMINATION**
5 **BY MR. NAPOLSKI:**
6 Q: Trooper Delaney, could you please give
7 your full name for the record?
8 A: Brendan Thomas Delaney.
9 Q: Trooper Delaney, what police agency are
10 you with?
11 A: South Carolina Highway Patrol.
12 Q: And, Trooper Delaney, have you ever been
13 -- I'm sorry, what's your current rank?
14 A: Trooper.
15 Q: Trooper Delaney, have you ever been
16 deposed before?
17 A: Not in this aspect, but personally, yes.
18 Q: All right. Well, then, I just want to go
19 over just some of the ground rules for a
20 deposition so they're fresh in your head.
21 This is my opportunity and Marissa
22 VanCamp, who's the attorney for Diane
23 Ray, and her opportunity to ask you
24 questions about the accident for which
25 we're here today. When I'm referring to
the accident or the crash, what I'm

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1 referring to is the June 20th, 2019
2 automobile crash that happened on South
3 Dogwood Drive in Surfside Beach. Do you
4 remember that crash?

5 A: Yes, I do.

6 Q: Okay. The difference between a
7 deposition and just a casual interview is
8 twofold; one, you've been put under oath
9 to tell the truth, the whole truth, and
10 nothing but the truth; do you understand
11 that?

12 A: Yes, sir.

13 Q: And the other difference is that
14 everything is being taken down by the
15 court reporter here on an audio reporting
16 and stenographically; therefore, it's
17 very important that you and I try not to
18 speak over one another. We have a
19 tendency to always do it in casual
20 conversation because we like to
21 anticipate the question that's being
22 asked. For purposes of today, if you
23 give me the courtesy of allowing me to
24 fully ask my question, I'll return that
25 courtesy and allow you to fully answer

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1 that question before I move on to my next
2 question; is that fair?

3 A: Absolutely, yes, sir.

4 Q: And you're doing a great job so far,
5 continue to give verbal responses and try
6 to avoid the use of uh-huh (affirmative
7 response) or huh-uh (negative response).
8 If you do say uh-huh (affirmative
9 response) or huh-uh (negative response),
10 I'm probably going to ask you, "Is that a
11 yes or is that a no." Understand, I'm
12 not being rude, I'm just trying to make
13 sure that we got a nice, clear record
14 here.

15 If at any time during this
16 deposition you want to take a break, we
17 can go ahead and do that. Honestly,
18 Trooper Delaney, I don't have a whole lot
19 of questions for you, but nonetheless,
20 you're in control of today's deposition.
21 If you want to take a break, we can go
22 ahead and do that.

23 The assumption is going to be made
24 that if you answer a question, you
25 understood that question; therefore, if

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1 you don't understand a question that's
2 being asked, go ahead and ask me to
3 clarify or to restate the question. I
4 want to make sure that we're all reading
5 from the same sheet of music here, and
6 I'm not trying to trick you, I'm not
7 trying to hide the ball, by any means,
8 just trying to find out a little bit
9 about this particular crash, fair enough?

10 A: Yes, sir.

11 Q: All right. And, Trooper Delaney, are you
12 under the influence of any drugs or
13 alcohol that may impair your ability to
14 give truthful answers this afternoon?

15 A: No, sir.

16 Q: All right. Then, we're going to go ahead
17 and get started. Trooper Delaney, what
18 is your date of birth?

19 A: Is January 31st, 1991.

20 Q: And are you originally from South
21 Carolina?

22 A: No, sir, I'm not.

23 Q: Where are you from?

24 A: Long Island, New York.

25 Q: And when did you come down to South

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1 Carolina from Long Island?
2 A: August, just before the hurricane,
3 Florence.
4 Q: And did you attend the academy down here
5 in South Carolina?
6 A: Yes, sir.
7 Q: What year did you graduate?
8 A: 2019.
9 Q: Do you know what month?
10 A: December, I believe December 23rd.
11 Q: And this accident took place on June
12 20th, 2019, had you not yet graduated the
13 academy prior to this wreck?
14 A: I was already out. I was on my own
15 during this wreck.
16 Q: Okay. So, would that have been December
17 23rd of 2018?
18 A: Correct, I'm sorry. Yes, sir. Yes, sir.
19 Q: I'm just making sure the record reflects
20 that graduation date. And, Trooper,
21 what's the highest level of education
22 you've obtained?
23 A: Working towards college degree.
24 Q: And are you currently enrolled in
25 classes?

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1 A: No.
2 Q: And have you taken any college courses?
3 A: Yes.
4 Q: Where have you taken those courses?
5 A: Back home in New York.
6 Q: Are you working towards a bachelor's
7 degree or an associate's degree?
8 A: Undecided right now.
9 Q: And do you have an area of focus of
10 study?
11 A: Criminal Justice and Business.
12 Q: Did you go to high school in New York?
13 A: Yes, sir.
14 Q: And what brought you down from New York
15 to South Carolina?
16 A: We've been coming here since we were kids
17 and (unintelligible). The weather is one
18 big ---
19 Q: There you go. I get that answer quite
20 often. Did you usually come down to the
21 Grand Strand area?
22 A: Yeah. Actually, that's -- basically, it
23 was Myrtle Beach that we came down to all
24 the time and then -- I don't think I've
25 been to Charleston yet, but just, you

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1 know, Myrtle Beach area.
2 Q: I hear you. And where are you currently
3 living?
4 A: Myrtle Beach.
5 Q: And what team are you out of with the
6 Highway Patrol?
7 A: Horry County.
8 Q: And after graduating the academy, have
9 you worked for any other police agencies
10 in South Carolina?
11 A: No, sir.
12 Q: Is this your first and only job after
13 graduating from the academy?
14 A: Yes, sir.
15 Q: And I think you said a moment ago your
16 rank is trooper with South Carolina
17 Highway Patrol, that's correct?
18 A: Yes, sir.
19 Q: And what do your duties entail as a
20 trooper with the South Carolina Highway
21 Patrol?
22 A: Enforce traffic laws, investigate
23 collisions, and ensuring that the driving
24 public is safe on South Carolina
25 roadways.

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1 Q: Was there a portion of your training
2 dedicated to accident investigation at
3 the academy?
4 A: Yes, sir.
5 Q: And what was that, a particular course or
6 a particular group of courses?
7 A: Group of courses.
8 Q: If you can remember specifically, do you
9 remember what each course was?
10 A: No, it was a block of courses like a, I
11 guess you would say a presentation. It
12 was more than one course multiple days.
13 Q: And I apologize for the pause, I'm just
14 writing down some notes here.
15 A: No, you're fine.
16 Q: Did you complete that block of courses
17 successfully?
18 A: Yes, sir.
19 Q: Was any one of those courses accident
20 reconstruction?
21 A: Yes. We don't -- we have advanced
22 accident reconstruction, but we -- that's
23 something we have to be sent to.
24 Q: Are you a member of the MAIT team?
25 A: No, sir.

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1 Q: And when you say that there's advanced
2 courses that you need to be sent to, is
3 that something different than the MAIT
4 team?
5 A: No, that's what I was referring to as the
6 MAIT team.
7 Q: Okay. I just want to make sure I
8 understand. Do you know, on average, how
9 many wrecks you handle in a month?
10 A: I don't think I could put a number on
11 that.
12 Q: I mean, is it, you know, ten?
13 A: I can, I can work zero, I can work zero
14 in a day or I can work up to eight a day.
15 Q: Okay. And have you ever testified in
16 court as a trooper with the South
17 Carolina Highway Patrol?
18 A: Yes, sir.
19 Q: How many times?
20 A: When we do Traffic Court, we're
21 testifying for every case if there's, you
22 know, an opportunity to testify.
23 Q: What about any civil cases like a
24 personal injury case like the one that
25 we're here for today?

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1 A: No, sir.
2 Q: All right. Have you ever been sworn or
3 identified as an expert?
4 A: Say again, you came a little broken up.
5 Q: Have you ever been identified as an
6 expert witness in any case?
7 A: No, sir.
8 Q: Tell me what you remember, if anything,
9 about the June 20th, 2019 crash that
10 we're here for today.
11 A: I remember I was responding to a
12 pedestrian struck on South Dogwood Drive
13 involving a BMW SUV and a pedestrian. It
14 was in the afternoon, but afternoon time,
15 and it was stated that the pedestrian
16 that was struck was struck by the BMW
17 outside the crosswalk, coming from the
18 driver of the BMW.
19 Q: You had arrived at the scene of this
20 crash; is that correct?
21 A: Yes, sir.
22 Q: And upon your arrival, did you take any
23 photographs of the scene?
24 A: No, sir.
25 Q: And are you familiar with that area where

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1 this crash had taken place?
2 A: Yes, sir.
3 Q: And when you arrived on the scene of this
4 crash, had you observed any crosswalks?
5 A: The only crosswalk is when you turn right
6 off, and I can't remember the, the main
7 road that feeds into that area, but off
8 Dogwood Drive there's a crosswalk on that
9 corner.
10 Q: On the corner of Dogwood Drive and
11 Atlantic Avenue?
12 A: I think it's Atlantic Avenue, yes, sir,
13 'cause I think there's a row of
14 restaurants and stuff right there.
15 Q: And is that a painted pedestrian walkway?
16 When you say the pedestrian crosswalk,
17 what are you referring to?
18 A: The crosswalk.
19 Q: Well, what is a crosswalk?
20 A: Painted crosswalk.
21 Q: Was there a painted crosswalk at the
22 corner of Dogwood Drive and Atlantic
23 Avenue on the date of this crash?
24 A: To my knowledge, yes.
25 Q: And do you remember speaking to the

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1 driver of the BMW when you arrived on the
2 scene?

3 A: Yes, ma'am -- yes, sir, sorry.

4 Q: Do you remember what, if anything, she
5 said to you?

6 A: She was saying that she was driving down
7 Dogwood and someone came out in front of
8 her vehicle.

9 Q: And did you come to learn that the person
10 that she was referring to coming out in
11 front of her vehicle was Ronald Mims?

12 A: I wasn't able to see him, 'cause he was
13 already transported to the hospital, but
14 I spoke to him after.

15 Q: Okay. Did you mark a party at fault on
16 the accident report?

17 A: Yes, sir.

18 Q: And who was that?

19 A: Mr. Mims, Ronald.

20 Q: And had you completed that accident
21 report prior to speaking to Ronald Mims?

22 A: No, we -- well, we initially start a
23 report to gather all the information, but
24 we don't complete it 'til we talk to both
25 parties.

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1 Q: Did you eventually speak with Mr. Mims?
2 A: Yes, sir.
3 Q: And where was it that you spoke with him?
4 A: It was the hospital. I want to say it
5 was Waccamaw in Murrells Inlet.
6 Q: And do you remember what, if anything, he
7 told you about the crash.
8 A: I don't remember what he told me.
9 Q: And I think you said a moment ago you
10 marked Mr. Mims as contributing to that
11 crash; is that correct?
12 A: Yes, sir.
13 Q: What evidence did you use to reach that
14 conclusion?
15 A: With where the driver of the BMW stated
16 she hit the pedestrian was outside the
17 crosswalk and where Fire ---
18 Q: So ---
19 A: Sorry, where Fire and EMS said they --
20 where Fire and EMS treated him, also, we
21 put all that together. Well, I put it
22 all together.
23 Q: So, is it my understanding any time that
24 a pedestrian is struck outside a
25 crosswalk, they are at fault for a

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1 collision?
2 A: To my knowledge, yes.
3 Q: All right. If you were to learn that
4 that, in fact, is not the law in South
5 Carolina, would you have reached a
6 different collision in this crash?
7 A: Say -- repeat the last half, I got the
8 first half of your question.
9 Q: Sure. I said if you were to find out
10 that that, in fact, is not the law in
11 South Carolina, would you have changed
12 the contributing parties in this crash?
13 A: Well, I, I went to clarify it with a few
14 other people, so I, I was informed no,
15 that wouldn't have changed.
16 Q: Who were the people that you clarified it
17 with?
18 A: My supervisor at the time.
19 Q: And who was your supervisor at the time?
20 A: Corporal Boyette.
21 Q: What was the last name?
22 A: Boyette, B-O-Y-E-T-T-E.
23 Q: And is Corporal Boyette still with the
24 South Carolina Highway Patrol?
25 A: Yes, sir.

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1 Q: Is he still your supervisor?
2 A: Yes, he is.
3 Q: So just to be clear, the reason you
4 marked Mr. Mims as contributing to this
5 crash is because he was outside the
6 painted crosswalk there on South Dogwood
7 Drive; is that correct?
8 A: Yes, sir. Yes, sir.
9 Q: Other than speaking with the driver of
10 the BMW who did -- Have you come to learn
11 that her name is Diane Ray?
12 A: Yes, sir, that's her name.
13 Q: Other than speaking with Diane Ray and
14 Ronald Mims, did you speak with anyone
15 else about this crash?
16 A: Other than my supervisor, no.
17 Q: Did you speak to any other witnesses to
18 the crash?
19 A: No. I spoke to Fire and EMS, that was
20 it.
21 Q: And I should've asked this earlier,
22 Trooper Delaney, did you yourself witness
23 this actual crash?
24 A: No.
25 Q: To your knowledge, other than Mr. Mims

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1 and Ms. Ray, did anyone else witness this
2 crash?

3 A: To my knowledge, no.

4 Q: All right. Trooper Delaney, I think I'm
5 all through. Marissa may have some
6 additional questions for you, though,
7 okay?

8 A: Okay.

9 **EXAMINATION**

10 **BY MS. VANCAMP:**

11 Q: I just have a few questions, Trooper
12 Delaney. First of all, did your
13 investigation lead to any findings that
14 the driver, Ms. Ray, did anything wrong?

15 A: No.

16 Q: And you spoke with Mr. Mims at the
17 hospital after you had started your
18 report, correct?

19 A: Yes.

20 Q: If any of your findings had changed after
21 speaking with Mr. Mims, would your
22 accident report reflect that change?

23 A: Yes, 'cause, I mean, if there's anything
24 that could be, you know, initially, we go
25 off of what we can see and whoever is

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1 there, still, and then we go to the
2 hospital, get their side of the story,
3 that can change it, yes.
4 Q: And it appears that after speaking with
5 Mr. Mims you stayed with your position
6 that he contributed to the accident,
7 correct?
8 A: Yes.
9 Q: And just to be clear, when we're talking
10 about the accident today, is your
11 testimony based off of your personal
12 memory or have you referred to other
13 documents today?
14 A: Memory and documents.
15 Q: What documents have you been referring
16 to?
17 A: The 310 report.
18 Q: Okay. Do you have a copy of that report
19 in front of you right now?
20 A: Yes, I do.
21 Q: I do have a quick question, if you'd turn
22 to the second page, the very last section
23 where it's talking about contributing
24 factors at the bottom of the page.
25 A: What box? I'm sorry.

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1 Q: It looks like the very last box, ---
2 A: Yes.
3 Q: --- contributing factors. I probably
4 just have a poorly printed out copy, but
5 I want to make sure that I understand
6 what it says. It looks like the number
7 assigned in the primary box is fifty-one;
8 is that correct?
9 A: Yes, ma'am.
10 Q: Okay. And it looks like, if you look at
11 fifty-one, that falls under the non-
12 motorist acts; is that right?
13 A: Yes, ma'am.
14 Q: And this is what I can't quite read on my
15 copy, is it something like lying in a
16 crossing, in a roadway or do you know
17 what that says?
18 A: Lying and/or illegally in the roadway.
19 Q: Okay, illegally in the roadway. And one
20 other thing, just for my clarification,
21 when you refer to EMS as some people that
22 you spoke with, do you remember
23 specifically who those were, was it the
24 firefighters?
25 A: Firefighters, EMS, I put them all under

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1 the same, 'cause usually, they will come
2 out of the same area. I don't, I don't
3 know what the name was.

4 Q: And I'll represent to you that based on
5 the information I have, Mr. Mims was not
6 taken to the hospital by ambulance. Did
7 you speak with anybody that would've been
8 a paramedic or somebody like that with
9 the EMS workers?

10 A: Yes.

11 Q: Those are all the questions I have for
12 you, Trooper Delaney. Mr. Napolski might
13 have a few follow-ups.

14 MR. NAPOLSKI: YES, I GOT A COUPLE
15 FOLLOW-UPS.

16 **EXAMINATION**

17 **BY MR. NAPOLSKI:**

18 Q: Trooper Delaney, you said you're aware,
19 you're familiar with that general area
20 where the accident took place; is that
21 correct?

22 A: Yes, sir.

23 Q: Are you aware of any other crosswalks on
24 South Dogwood Avenue?

25 A: Not to my knowledge, sir.

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1 Q: My understanding is South Dogwood Avenue
2 goes down several blocks; is that
3 correct?

4 A: Yes, sir, it does.

5 Q: And it's also my understanding that
6 people can parallel park on the side of
7 the road or the grass on South Dogwood
8 Drive in order to go to the beach; is
9 that correct?

10 A: Yes, sir.

11 Q: Using a hypothetical here, if someone
12 were to park, say, four blocks away from
13 the corner of Dogwood Drive and Atlantic
14 Avenue, is it your understanding that to
15 be within the word of the law, they need
16 to walk all the way down to the nearest
17 crosswalk which you testified to was at
18 the corner of Atlantic Drive and South
19 Dogwood Avenue?

20 A: Yes.

21 Q: So, to be clear, anyone that is -- even
22 if you're four blocks away, in order to
23 get to the beach, you need to walk all
24 the way down to that corner?

25 A: Any crosswalk to cross.

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1 Q: And you're not aware of any other
2 crosswalks there on South Dogwood Avenue?
3 A: No, sir.
4 Q: All right. Trooper Delaney, I don't have
5 anything further for you. I appreciate
6 your time.
7 MR. NAPOLSKI: MARISSA, DO YOU HAVE
8 ANYTHING ELSE?
9 MS. VANCAMP: NO. THANK YOU VERY
10 MUCH, TROOPER DELANEY.
11 (The deposition concluded at 12:26 p.m.)
12
13
14
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25

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June 15, 2020

Patrick Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

RE: Ronald L. Mims vs. Diane W. Ray
CASE NO: 2019-CP-26-05892

Dear Mr. Napolski;

Enclosed you will find both the original and copy of the deposition of TROOPER BRENDAN DELANEY, taken Monday, June 1, 2020, in the above referenced action.

As you may recall, Trooper Delaney, requested to read and sign his deposition. Therefore, by copy of this letter, I am forwarding a copy of the transcript to Trooper Delaney, along with the original signature page, errata sheet and instructions for reading and signing so he may complete the same.

Upon completion of the signature page and errata sheet, the original of these pages will be sealed under separate cover and forwarded to you with a copy to all parties involved. *If the said pages are not completed within the thirty-day period or when required in court, the original deposition shall be considered complete with this letter in lieu of the signature page.*

It was a pleasure working with you. If we can be of assistance to you in the future, please give us a call.

Very truly yours,

**SHARON BROCK
COURT REPORTING**

Sharon B. Brock

Enclosures

cc: Marissa A. VanCamp, Esquire
Original Deposition
Copy of Deposition

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MIMS v. RAY - RECORD ON APPEAL: 112

Mims v. Ray; APPENDIX 113

SIGNATURE PAGE

I do hereby certify that I have read the foregoing deposition given by me before Sharon B. Brock, a Notary Public for South Carolina, Horry County, South Carolina.

- (A) Said deposition is correct as is and requires no changes.
- (B) I desire that the changes attached hereto, described on the "Errata Sheet" be incorporated into said deposition.

State of South Carolina
County of _____

On this _____ day of _____, 20____,
before me personally appeared **TROOPER BRENDAN DELANEY**, who provided satisfactory evidence of his Document Holder identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

Document Holder's Signature

Sworn to (or affirmed) and subscribed before me this the _____ day of _____, 20____.

Official Signature of Notary (Official Seal)

Notary Public Notary's printed or typed name

My commission expires: _____

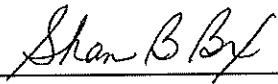
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **TROOPER BRENDAN DELANEY**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **TWENTY-NINE (29)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **15TH** day of **JUNE, 2020**.



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

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EXHIBIT "C"

Dep. of Diane Ray, June 1, 2020.

ELECTRONICALLY FILED - 2020 Jul 15 2:17 PM - HORRY - COMMON PLEAS - CASE#2019CP2605892

State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
)
 Plaintiff,)
)
 vs.)
)
 Diane W. Ray,)
)
 Defendant.)

**THE DEPOSITION OF
DIANE RAY**

Monday, June 1, 2020
10:02 a.m. - 10:48 a.m.

The deposition of DIANE RAY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 117

REMOTE APPEARANCES:

THE WITNESS:

Diane Ray
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

FOR THE PLAINTIFF:

Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

FOR THE DEFENDANT:

Marissa VanCamp, Esquire
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

Sharon Brock Court Reporting

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EXHIBITS

(No exhibits were marked during this proceeding.)

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STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

1

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1 DIANE W. RAY HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:
3
4 **EXAMINATION**
5 **BY MR. NAPOLSKI:**
6 Q: Good morning, Ms. Ray. My name is
7 Patrick Thomas Napolski, and I'm an
8 attorney with George Sink's office in
9 Charleston, South Carolina. I am,
10 though, not there right now, I am in the
11 spare bedroom here taking your deposition
12 this morning. Have you ever been deposed
13 before?
14 A: No.
15 Q: Okay. Well, as I mentioned a moment ago,
16 I'm an attorney, and I represent Ronald
17 Mims with regard to injuries sustained in
18 a June 20th of 2019 automobile collision.
19 What we're doing today is taking your
20 deposition which is my opportunity to ask
21 you questions about your background and
22 about this particular incident; do you
23 understand that?
24 A: Yes.
25 Q: Okay. The difference between this being
a casual interview and a deposition is

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1 two main things; first, you've been put
2 under oath to tell the truth, the whole
3 truth, and nothing but the truth; do you
4 understand that?

5 A: Yes.

6 Q: Okay. And the second difference between
7 this being a casual interview and a
8 deposition is that we have a court
9 reporter taking down everything that we
10 say, both stenographically and on audio
11 recording; therefore, it's very important
12 that you and I try our best not to speak
13 over one another. If you give me the
14 courtesy of allowing me to fully ask my
15 question, I'll give you the courtesy of
16 fully answering the question before I ask
17 a follow-up question; is that fair?

18 A: Yes.

19 Q: Because this is being taken down
20 stenographically and on an audio
21 recording, I'm going to ask that you
22 continue to do what you've been doing
23 thus far, and that's been verbal
24 responses. Try to avoid shaking your
25 head, if you do, I'm going to ask you,

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1 "Is that a yes or a no." Understand, I'm
2 not being rude, I'm just trying to make
3 sure that Marissa and I have a nice,
4 clean record so that we don't have to get
5 in a fight in front of a judge later on
6 as to whether shaking your head or
7 nodding your head is a yes or a no, okay?

8 A: Yes.

9 Q: Same thing goes for avoiding the use of
10 uh-huh (affirmative response) or huh-uh
11 (negative response), again, I'll probably
12 just ask you, "Is that a yes or a no,"
13 just to make sure that we've got a nice,
14 clean record, understand?

15 A: Yes.

16 Q: Okay. Ms. Ray, are you under the
17 influence of any drugs or alcohol which
18 may impair your ability to give truthful
19 answers his morning?

20 A: No.

21 Q: Okay. I want you to know that you are in
22 complete control of this deposition this
23 morning, okay? If at any moment you need
24 to take a break, we'll go ahead and take
25 that break, if you need a bottle of water

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1 or if you need to use the restroom. The
2 only thing that I ask is that if I've
3 posed a question that you answer that
4 question before we take a break; is that
5 okay?

6 A: Yes.

7 Q: And the second thing that I ask is that
8 you not communicate with your attorney
9 while this deposition is going on. You
10 are here to give your testimony this
11 morning, not your attorney. There may be
12 times where I ask a question that is
13 worded a little funny or I use some
14 legalese, your attorney may step in and
15 say, "Patrick, I object to the form of
16 the question." I get the opportunity to
17 rephrase that question, but if I think
18 the question is posed just fine, then I'm
19 going to ask you to answer that question
20 as it's been worded, okay?

21 A: Okay.

22 Q: And one final thing, Ms. Ray, the
23 assumption is going to be made that if
24 you answer a question that you understood
25 that question; therefore, it's very

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1 important if you don't understand a
2 question, go ahead and ask me to either
3 rephrase the question or clarify and I'll
4 do my best to do that for you. Under no
5 means am I trying to trick you or hide
6 the ball or play any games with you.
7 This is simply my opportunity to ask you
8 questions about your background and about
9 this accident, fair enough?

10 A: Yes.

11 Q: All right. Ms. Ray, could you please
12 give your full legal name?

13 A: Diane Watson Ray.

14 Q: And, Ms. Ray, what's your address?

15 A: 1216 Lakeland Drive, Conway, South
16 Carolina 29526.

17 Q: And was that the same address that you
18 had on the date of the accident that
19 we're here for today?

20 A: I stay at 642 South Dogwood in Garden
21 City, because it's so close to my
22 business, a lot.

23 Q: Do you own that residence as well?

24 A: Yes.

25 Q: All right. And, Ms. Ray, does anyone

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1 live with you at the 1216 Lakeland Drive
2 address?
3 A: My husband.
4 Q: And what's his name?
5 A: Charlie Ray.
6 Q: And how long have you and Mr. Ray been
7 married?
8 A: About fifty-two years. Let's see, we got
9 married in '69, so yeah, a long time, a
10 long time.
11 Q: You wouldn't have thought that was going
12 to be the most difficult question of the
13 morning.
14 A: Yeah. Oh, me.
15 Q: And does Mr. Ray also live with you at
16 the 642 South Dogwood address as well?
17 A: Yes.
18 Q: Anyone else live with you and Mr. Ray at
19 either of those addresses?
20 A: No.
21 Q: And, Ms. Ray, do you have any relatives
22 over the age of eighteen with a last name
23 other than Ray that live in Horry County?
24 And let me tell you why I'm asking that.
25 If Marissa and I need to impanel a jury

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1 for a trial in this case, I want to make
2 sure that I'm not putting any of your
3 family members on the jury, so I'm
4 looking for anyone that has a last name
5 other than Ray that lives in Horry County
6 that's over the age of eighteen.

7 A: We have some cousins around somewhere,
8 but not very close with them, so I, I, I
9 would probably say, no. As far as close
10 family, I do not, so.

11 Q: And, Ms. Ray, what's your maiden name?

12 A: Watson, W-A-T-S-O-N.

13 Q: Did you grow up in the Grand Strand area?

14 A: I grew up in Conway.

15 Q: In Conway, okay.

16 A: Uh-huh (affirmative response), yeah.

17 Q: Are there some Watsons in Horry County,
18 living in Conway?

19 A: Marion County is where most of the
20 relatives are from, and, gee, I can't
21 think of anybody else close around here.

22 Q: That's fair enough. If you think of
23 someone, just interrupt me any time
24 during this deposition.

25 A: Okay. I'll have to think on that, too.

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1 Q: Sure, sure. And what's your date of
2 birth?
3 A: 5/14/47.
4 Q: And what's the highest level of education
5 that you completed?
6 A: College.
7 Q: Where did you attend college?
8 A: Winthrop.
9 Q: What was your degree?
10 A: Education.
11 Q: I think most people from Winthrop are
12 Education majors, if I'm not mistaken,
13 right?
14 A: Right. I did teach school a couple of
15 years before I started working at the
16 furniture store. It was a good
17 experience, it taught me a lot of
18 patience.
19 Q: Where was it that you taught?
20 A: I'm sorry, what?
21 Q: Where was it that you taught?
22 A: Repeat that one more time.
23 Q: Where was it that you were a teacher?
24 A: Oh, in Conway, at Conway -- I think it
25 was called Conway Elementary at that

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1 time. I taught one year at Waccamaw
2 Elementary, and then the rest of the time
3 I was at Conway Elementary on 12th
4 Avenue.

5 Q: And when did you stop being -- what was
6 your last year teaching?

7 A: '74. I taught from '69 through '74.

8 Q: What did you do after you left teaching?

9 A: Well, I have a child, and then I went to
10 work at the furniture store, at Garden
11 City Furniture, when she was around two
12 and a half or three.

13 Q: Okay. And are you the owner of Garden
14 City Furniture?

15 A: It's a family corporation. I am one of
16 the owners, and my husband is part-owner
17 and my two children.

18 Q: You said your husband, and then there's
19 another ---

20 A: Owns a percentage. He has a small
21 percentage. My two children have a
22 percentage of the stock of Garden City.
23 I run the store, so.

24 Q: What is your title?

25 A: President.

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1 Q: And is that an hourly position or are you
2 salary?

3 A: Salaried.

4 Q: And what's your salary?

5 A: For the year or ---

6 Q: Correct.

7 A: For the year would be sixty, sixty
8 thousand. All this Direct Deposit, you
9 don't even get to look at your salary
10 anymore.

11 Q: Sure, sure. Other than working as
12 president at Garden City Furniture, have
13 you had any other jobs in the past ten
14 years?

15 A: None.

16 Q: What's the address of the Garden City
17 Furniture store?

18 A: 2444 Highway 17 South, and they use
19 Murrells Inlet, because Garden City
20 doesn't have a zip code, and it'd be
21 29576.

22 Q: And what type of vehicle were you driving
23 on the date of this incident?

24 A: A X5 BMW.

25 Q: And am I correct in saying that vehicle

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1 was owned by Garden City Furniture?
2 A: It is, yes. Yes.
3 Q: Do you still own that vehicle or does
4 Garden City Furniture still own that
5 vehicle?
6 A: Yes.
7 Q: Does Garden City Furniture own any other
8 vehicles?
9 A: We have -- my son has a truck he drives,
10 and we have the vehicles, the delivery
11 vehicles at the store.
12 Q: So, the BMW X5, the truck that your son
13 drives, and delivery vehicles?
14 A: And, then, we have three of the, what we
15 call, what we call box trucks, three box
16 trucks that we deliver in. We have a
17 pickup truck and a small service van.
18 Q: Ms. Ray, have you ever been arrested?
19 A: No.
20 Q: Have you ever been involved in any other
21 motor vehicle crashes?
22 A: I, I mean, I was involved in a chain
23 reaction thing back in the -- gosh, that
24 was forty years ago, I reckon, you know,
25 where you were stopped at a stop light

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1 and somebody hits and it goes down, I did
2 that, and other than that, no other
3 accident.

4 Q: And the way you described it, it sounds
5 like you weren't placed at fault for that
6 chain reaction ---

7 A: No.

8 Q: --- accident; is that correct?

9 A: No, I was not.

10 Q: And you have a valid driver's license?

11 A: Yes.

12 Q: And did you at the time of this accident?

13 A: Yes.

14 Q: Are there any restrictions on that
15 driver's license?

16 A: I wear glasses.

17 Q: And were you wearing glasses at the time
18 of this accident?

19 A: Yes.

20 Q: Do you have an optometrist?

21 A: Yes.

22 Q: And what's that optometrist's name?

23 A: When I get my eyes checked, I go to the
24 -- I go to Duke University for my
25 physicals, and I can't remember the name,

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1 but I use 20/20 Vision to do my glasses.
2 Q: Why is it that you go to Duke University
3 for your physicals?
4 A: I've been doing this for twenty years
5 now. I go up and -- we have a history of
6 cancer in our family and I go there and
7 get all my checkups done, and I continue
8 to do it.
9 Q: I'm sorry, it broke up right when you
10 told me the history of your family.
11 A: My family has a history of cancer and I
12 chose to go to this clinic at Duke and I
13 go once a year for a complete physical
14 even though I still have a doctor here
15 locally.
16 Q: Do you see a particular doctor at Duke
17 University?
18 A: Yes, it's called Duke Executive Health,
19 Dr. Orlando is her name.
20 Q: Orlando like the City in Florida?
21 A: Yes, Orlando.
22 Q: And what's the name of your doctor
23 locally?
24 A: Well, it's not really a doctor. I go to
25 Conway Physicians Group, and I see, you

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1 know, what, what they call a part-time
2 person?

3 Q: Is it a physician's assistant?

4 A: Conway Physicians, in fact, I have my
5 first appointment with her since they
6 changed over. The office I was going to,
7 the doctor retired, and then I was put in
8 this clinic, so now I'm going to her for
9 the first time. I'm very rarely sick,
10 so.

11 Q: At the time of this accident, were you
12 prescribed any prescription medications?

13 A: The only prescription that I take is
14 Ambien, and that's a half tablet at night
15 to sleep, and that's not an every night,
16 when I feel like I need it to go to
17 sleep.

18 Q: Do you recall whether or not you took a
19 half of Ambien on the evening prior to
20 this wreck?

21 A: I do not.

22 Q: You do not recall?

23 A: I do not recall, no.

24 Q: Has your driver's license ever been
25 revoked or suspended for any reason?

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1 A: No.

2 Q: And you said that you, and I see that you
3 wear glasses, do you have difficulty
4 seeing far away or close up or both?

5 A: Close up.

6 Q: Ms. Ray, do you have any social media
7 accounts like Twitter, Facebook or
8 Instagram?

9 A: Yes.

10 Q: Can you please list those accounts?
11 Well, let me ask you this, on any of
12 those accounts, have you posted anything
13 about this accident?

14 A: No.

15 Q: And up to this point when I've said,
16 "This accident," do you understand that
17 I'm referring to a June 20th, 2019 crash
18 that took place on South Dogwood Drive in
19 Surfside Beach?

20 A: Yes.

21 Q: All right. And do you recall that crash?

22 A: Yes.

23 Q: Can you tell me where you were coming
24 from and where you were going to?

25 A: I had left my son's house. I was coming

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1 down Atlantic Avenue turning right on
2 Dogwood to go home.
3 Q: And what's your son's address?
4 A: 568 Mt. Gilead Road.
5 Q: Is that in Murrells Inlet or Garden City,
6 Murrells Inlet?
7 A: That's Murrells Inlet. Garden City is
8 next door to Murrells Inlet?
9 Q: Do you recall what the weather was like?
10 A: It was getting ready to storm.
11 Q: Was it raining yet?
12 A: Not at the time of the accident. It
13 started shortly thereafter.
14 Q: Was it sunny or cloudy?
15 A: I would say cloudy.
16 Q: Do you recall whether or not you had your
17 windshield wipers on?
18 A: I do not recall.
19 Q: Do you recall whether or not you had your
20 headlights on?
21 A: They're on all, all the time on my car.
22 Q: Was there any other traffic, any other
23 vehicles in front of you after you made
24 the right turn?
25 A: I'm sure there was. There's a lot of

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traffic going.

Q: Do you recall any detail, any of the vehicles that were on that road with you?

A: When I went to make the right turn onto Dogwood, there was a tractor-trailer food truck, I can't think of the name of it, partially in the road and sitting off the road, and I had to stop when I started going around, to make sure there was no oncoming traffic, that I had enough room to get through.

Q: I'm sorry, that broke up. Can you say that one more time?

A: Do you want me to repeat?

Q: Yeah, could you repeat that? It was kind of choppy there.

A: Okay. When I got ready to turn right onto Dogwood, I had to stop because there was a food service truck simply -- it was a small delivering food to some restaurant. I stopped, I looked and eased around to make sure there was nothing coming in my lane so I could get by, you know, the truck, and proceed down Dogwood, and that's when the accident

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1 happened. When I got level at the end
2 of the truck, the man stepped out in
3 front of the truck.

4 Q: And did you come to understand that that
5 man was Ronald Mims?

6 A: I didn't know at the time 'til after the
7 accident.

8 Q: Okay. Had you passed the semi-truck?

9 A: No, I was kind of dead even with the
10 front end.

11 Q: When is the first time that you saw Mr.
12 Mims?

13 A: When he hit the side of the car.

14 Q: What side of your vehicle -- What part of
15 your vehicle hit Mr. Mims?

16 A: The right front fender area, what you
17 call it.

18 Q: Was there any damage to your vehicle?

19 A: None.

20 Q: Do you know how many lanes there are
21 there on Dogwood Drive?

22 A: Just two, just a regular road.

23 Q: And were you in the right-hand lane or
24 the left-hand lane?

25 A: Going south, I was in the right-hand

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lane.

Q: And when you took that right-hand turn, had you ever crossed into the -- did you ever cross into the left-hand lane?

A: I don't recall. I would probably be very close to it, because it was very narrow through there.

Q: And did you speak to Mr. Mims after the crash?

A: Yes, I went up to him and told him, you know, I apologized for it happening, and then, you know, that was all. We, we didn't exchange any names or have any conversation.

Q: Okay. And do you take responsibility for causing this crash?

A: No.

Q: You said a moment ago you apologized to Mr. Mims, what did you ---

A: That it happened, that the crashed happened.

Q: Do you think there's anyone else to blame for this crash other than you?

A: I would say he, Mr. Mims, contributed to the crash. Is that what you're asking?

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1 Q: Correct, yes, ma'am. Do you recall how
2 fast you were driving once you turned
3 onto Dogwood Drive?
4 A: Well, like I said, I come to a full stop
5 when I realized the truck was partially
6 in the road, and it couldn't have been
7 more than past the first little notch
8 there on your speedometer. I think it
9 has ten on mine, couldn't have been going
10 past that.
11 Q: I'm sorry, we cut out for a moment there.
12 Can you repeat that?
13 A: You know, as you stop and then you start
14 to accelerate, I -- if I had to look at a
15 speedometer, I would say it wouldn't be
16 past that first mark on mine, which is a
17 ten on it or something. It would be less
18 than that. I would say less than a mile,
19 two miles an hour, if you want to put a
20 number to it, just kind of rolling along,
21 as they say.
22 Q: Did you see Mr. Mims at all prior to
23 impact?
24 A: No.
25 Q: Had you driven down Dogwood Drive before?

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1 A: Every day.
2 Q: And have you ever seen pedestrians in the
3 general vicinity where this accident took
4 place?
5 A: You know how the beach is, you could walk
6 all over the place.
7 Q: And I apologize, Ms. Ray, so is that a
8 yes, ---
9 A: Yes.
10 Q: --- you are aware that pedestrians are in
11 that area?
12 A: Yes.
13 Q: Do you have any reason or any explanation
14 as to why you didn't see Mr. Mims prior
15 to the impact?
16 A: Well, because the truck was parked on the
17 right-hand side and he stepped out in
18 front of that truck.
19 Q: And you said that you drive down Dogwood
20 Drive every day, have you ever seen a
21 truck, a delivery truck like that parked
22 in that same location?
23 A: Yes.
24 Q: So, you're aware that there's pedestrians
25 that cross in that general area and that

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1 there have been a delivery truck in that
2 general area previously; is my
3 understanding correct?

4 A: Yes.

5 Q: And did you receive a ticket for this
6 crash?

7 A: No.

8 Q: Other than apologizing to Mr. Mims, did
9 you speak with anyone else at the scene
10 of the crash?

11 A: No, I didn't, except the fire people that
12 were at the fire station. They were the
13 ones that came over when it happened.

14 Q: Did you ever speak with the police
15 officer that responded to the crash?

16 A: When he got there, yes.

17 Q: Do you remember what, if anything, you
18 said to the employees at the fire
19 station?

20 A: No.

21 Q: Do you remember what you said to the
22 police officer?

23 A: Only that -- I responded only to the
24 questions he asked me about the accident.

25 Q: At any time at the scene of the crash,

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1 did you see the police officer speaking
2 with Mr. Mims?

3 A: After he spoke with me, he went to speak
4 to Mr. Mims at the hospital, and the
5 officer was two hours getting to the
6 scene of the accident.

7 Q: It took the police officer two hours
8 after the accident took place to arrive
9 at the accident scene?

10 A: Yes.

11 Q: And did you wait there until the police
12 officer arrived?

13 A: What I did, the fire marshal, I reckon
14 you'd call him, the fire chief, came from
15 the, over there when it happened, and so,
16 I was sitting in the road, of course, you
17 know, and he said, "I want you to pull
18 your car over to the shoulder of the road
19 toward the firehouse, but do not leave,"
20 and that's what I did, I pulled over
21 there and sat. So then he came back to
22 the car sometime later on, I don't
23 remember how long, and he said, "It's
24 going to be a while before the policemen
25 get here, I want you to pull your car up

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1 to the fire station and come inside and
2 wait with us because you can't leave the
3 scene." Of course, it was pouring down
4 rain by then, too, so that's what I did.
5 I just sat at the police station until
6 the officer arrived to do the report.

7 Q: Okay. Did you ever follow up with Mr.
8 Mims to find out the extent of his
9 injuries?

10 A: No.

11 Q: Okay. At the time of this crash, did you
12 have a cell phone?

13 A: Yes.

14 Q: Do you recall what the phone number was
15 for that cell phone?

16 A: Yes, it's my same one, 843-997-6861.

17 Q: Do you know who the carrier is for that
18 phone?

19 A: Oh, gee, it's not Spectrum, Verizon, and
20 the phone is owned by the store, also.

21 Q: And immediately before the impact, were
22 you talking on your cell phone?

23 A: No.

24 Q: Were you distracted by anything inside
25 your vehicle immediately prior to the

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impact?

A: No.

Q: Were you distracted by anything outside your vehicle immediately before the impact?

A: Well, of course, I was, you know, observing what was going on with traffic.

Q: Where were you looking, observing that traffic?

A: Everywhere there. You have to watch when you're in the beach area.

Q: Including looking to your right?

A: Well, I would be looking to the right and to the left.

Q: And Mr. Mims came from your right, is that my understanding?

A: Came from my right, yes.

Q: After the crash and then the two hours before the police officer got there, did you make any phone calls from your cell phone?

A: No.

Q: Did you send any text messages?

A: Not to my knowledge.

Q: Other than your attorney, and I don't

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1 want to know anything about that
2 conversation, but other than your
3 attorney, have you spoken to anybody else
4 about this crash?

5 A: Well, of course, I told my husband, and I
6 -- we had let my son know at the store
7 what had happened. Other than that, no,
8 no one else.

9 Q: What's your son's name?

10 A: Joey Ray.

11 Q: Does Joey have a cell phone?

12 A: Yes.

13 Q: What's his phone number?

14 A: I knew you would ask me that.

15 Q: And I'm going to ask you your husband's
16 as well, so if you're ---

17 A: You know you just hit the number. Hold
18 on just a minute.

19 Q: Sure.

20 A: I, I want to give it to you correct. I
21 don't want to give it to you wrong, so.
22 This is terrible. We just depend on this
23 all the time. All right. My son's phone
24 number is 843-877-2496, and Charlie's
25 mobile number is 843-222-3144.

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1 Q: And, Ms. Ray, I'm almost done, I just got
2 a couple of questions left for you, okay?
3 Were there any mechanical problems with
4 that BMW X5 that you were driving on the
5 date of the accident?

6 A: No.

7 Q: Did any issues with that vehicle's
8 maintenance or mechanics contribute at
9 all to this crash?

10 A: No. No.

11 Q: All right. And, Ms. Ray, would you agree
12 with me that a driver has a duty to
13 maintain a proper lookout?

14 A: Yes.

15 Q: And would you agree with me that the
16 driver has a duty to yield the right-of-
17 way?

18 A: Yes.

19 Q: And would you agree with me that a driver
20 has a duty to yield the right-of-way to
21 pedestrians?

22 A: Yes.

23 Q: All right. Ms. Ray, is there anything at
24 all that we haven't yet discussed that
25 you think is important for me to know?

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1 A: Not at this -- I, I just, you know, I
2 can't think of anything, right off the
3 top of my head, unless, you know, Mr.
4 Mims was not paying attention, didn't see
5 me or what. I don't know what his
6 thoughts were.

7 Q: All right. Ms. Ray, just give me one
8 moment to go through my notes and then we
9 may be almost squared away with you,
10 okay? Ms. Ray, where were you prior to
11 your son's house?

12 A: I would've been at work.

13 Q: All right. Ms. Ray, I don't have any
14 further questions for you, but your
15 attorney may have some additional
16 questions for you, okay?

17 A: Okay.

18 Q: Thank you very much for your time this
19 morning. It was a pleasure to speak with
20 you. I appreciate you making yourself
21 available.

22 A: Thank you.

23 **EXAMINATION**

24 **BY MS. VANCAMP:**

25 Q: I think I just have two follow-up

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1 questions. Ms. Ray, at the location
2 where the impact occurred, were there any
3 crosswalks or anything like that in the
4 road?

5 A: No. There is a corner that, that you're
6 supposed to cross at, is the only thing.

7 Q: Okay. And the accident did not occur at
8 the corner?

9 A: No, it was, you know, like halfway to the
10 street there.

11 Q: Are there any signs indicating that
12 there's a pedestrian crossing nearby?

13 A: No. No.

14 Q: That's all I have.

15 MS. VANCAMP: PATRICK, DO YOU HAVE
16 ANY FOLLOW-UP
17 QUESTIONS?

18 **RE-EXAMINATION**

19 **BY MR. NAPOLSKI:**

20 Q: Ms. Ray, you said a moment ago that
21 there's a corner that you're supposed to
22 cross at, what's the authority that you
23 cite saying that you're supposed to cross
24 at that corner?

25 A: Well, I don't know of any authority.

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1 It's -- you always go to the corner and
2 cross the street, is what I was taught,
3 you know, there's a sidewalk there and it
4 ends and the road, you know, a sidewalk
5 picks up the next block, and I would just
6 think that people that were crossing the
7 street in that area would go to the
8 corner and do it.

9 Q: Okay. Just give me one more moment.

10 A: I'm sorry?

11 Q: Just give me one moment here. Ms. Ray,
12 am I understanding correctly this
13 accident took place near the same corner
14 as the Causeway Grill & Raw Bar?

15 A: Yes, you cross the Causeway, it's the
16 first street to the right, South Dogwood.

17 Q: And you said that you take South Dogwood
18 Drive every day to get home; is that
19 correct?

20 A: Yes.

21 Q: Do you ever see vehicles parked alongside
22 South Dogwood Drive?

23 A: Yes. Yes.

24 Q: And anywhere between Atlantic Avenue on
25 South Dogwood Drive, are you aware of any

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pedestrian crossings?

A: Just the one at the corner.

Q: So, is my understanding correct that if someone were to be at your home and park in front of your home, they need to walk all the way to the corner where Causeway Grill & Bar is in order to cross the street?

A: That's kind of a hard question to ask at the -- because we don't have any sidewalks on Dogwood, so it's, you know, my home is about a full block down from Atlantic Avenue, so I, I don't know an answer that, you know, people cross the street if there's nothing coming or you can walk to the corner and cross the street.

Q: And, Ms. Ray, do you ever go to the beach, ever walk to the beach from your home?

A: On occasion, yes.

Q: And do you ever walk to the corner where Causeway Grill & Raw Bar is in order to get to the beach?

A: I -- no, I can get access to the beach

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before that.

Q: Do you have to cross South Dogwood Drive in order to get to the beach?

A: Yes, at the corner, you turn right on, I think it's called Yaka Street and walk over to the beach. There's a, you know, a public access at the end of that street.

Q: And is there a pedestrian crossing at the corner of South Dogwood and Yaka Avenue?

A: No. No, there's no pedestrian. The only pedestrian -- no, there wouldn't be any markings, we, we just cross the street.

Q: So, when you're going to the beach, you typically cross South Dogwood Drive, not at a pedestrian crossing; is that my understanding?

A: Yes. Yes.

Q: Ms. Ray, I don't have any further questions for you.

A: Okay.

MS. VANCAMP: I DON'T HAVE ANYMORE QUESTIONS EITHER.

MS. RAY: ALL RIGHT.

(The deposition concluded at 10:48 a.m.)

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **DIANE RAY**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **THIRTY-SEVEN (37)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020**.



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
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My Commission Expires:5/31/2021

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Ronald L. Mims,)
)
)
Plaintiff,)
)
v.)
)
Diane W. Ray,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2019-CP-26-05892

**PLAINTIFF’S MEMORANDUM IN
OPPOSITION TO DEFENDANT’S
MOTION SUMMARY JUDGMENT**

INTRODUCTION

Plaintiff Ronald L. Mims (hereinafter “Plaintiff” or “Plaintiff Mims”) respectfully submits that genuine issues of material fact exist as to the negligence of Defendant Diane W. Ray (hereinafter “Defendant” or “Defendant Ray”) and that Plaintiff has clearly presented a “mere scintilla of evidence” as required by law to defeat Defendant’s motion for summary judgement as outlined below.

STATEMENT OF THE FACTS

Plaintiff Ronald L. Mims was severely injured at the hands of Defendant Diane W. Ray who was not paying attention when she struck Plaintiff Mims while he was crossing the roadway on June 20, 2019.

At approximately 5:45 P.M., in clear and daylight conditions, Ronald L. Mims was crossing South Dogwood Drive near the intersection of Atlantic Avenue in Murrell’s Inlet when Defendant Ray, traveling east on Atlantic Avenue turned south onto South Dogwood Drive heading towards her beach house and slammed into Ronald L. Mims. As a result of the collision, Plaintiff Mims suffered injuries to his back and right upper extremity.

Plaintiff Mims filed suit alleging Defendant Ray was negligent in failing to keep a proper lookout; in failing to maintain proper control over her vehicle; in failing to yield the right-of-way to Plaintiff; in striking Plaintiff with her vehicle; in failing to take advantage of any last clear chance to avoid striking Plaintiff; in failing to properly observe the road and traffic conditions; in failing to exercise due care in the safe operation of a vehicle; in failing to equip and/or apply adequate brakes; in failing to equip and/or apply a proper steering mechanism; and in failing to equip and/or apply an adequate signaling device or horn.

Defendant Ray answered and raised the following defenses: failure to state a claim pursuant to SCRCP 12(b)(6); unconstitutionality of punitive damages; comparative negligence; and failure to mitigate damages.

STANDARD OF REVIEW

Rule 56(c) SCRCP provides that a trial court may grant a motion for summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) SCRCP. “In determining whether any triable issues of fact exists, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in that light most favorable to the nonmoving party.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). “At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” *S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803.

“Since it is a drastic remedy, summary judgment ‘should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.’” *Baughman v. American Tel. and Tel. Co.*, 306 S.C 101, 410 S.E.2d 537 (S.C. 1990).

ARGUMENT

In her motion for summary judgment, Defendant attempts to convince this Court that the facts in *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 are analogous to those in the case at bar.

In *Bloom*, the Supreme Court of South Carolina held the Court of Appeals erred in reversing the trial court’s grant of summary judgment. The *Bloom* decision was decided on a specific set of narrow undisputed facts. (“[I]n the rare case where a verdict is not reasonably possible under the facts presented, summary judgement is proper.”) *Bloom*, 339 S.C. at 425. In *Bloom*, both Bloom and Ravoira were visiting Charleston. *Id.* at 421. Plaintiff Bloom was crossing Meeting Street in Charleston, between Market and Cumberland Streets. *Id.* at 420. At both ends of this block of Meeting Street, there were crosswalks, traffic lights, and walk/don’t walks signals. *Id.* Bloom testified that while carrying a taxidermically stuffed, mounted pig – before crossing Meeting Street, he looked to the left and then to the right and as he crossed the street, he was struck on his left by Ravoira’s car. *Id.* At the time, there was a misty rain and it was dark. *Id.* Bloom was wearing a navy-colored overcoat. *Id.* Ravoira testified that his car’s lights and windshield wipers were on at the time of the wreck. *Id.* Witnesses testified that there were cars parked in front of where Bloom was crossing the street and therefore, Bloom must have entered the street from between parked cars or in front of a parked car. *Id.* at 421.

Here, unlike in *Bloom*, there were no crosswalks, traffic lights, or walk/don’t walk signals in the immediate proximity of where Plaintiff was crossing S. Dogwood Drive. In fact, Dogwood Drive, an approximate 1.1 mile road that runs parallel to the South Carolina coast in Garden City

from Cyprus Road to Moonfish Lane, does not have a single crosswalk, traffic light, or walk/don't walk signal. Plaintiff testified that in his entire life he never remembers a crosswalk on Dogwood Avenue. (Depo of Mims 30:13-18). Further, Plaintiff's Exhibits 1-6 attached hereto demonstrate that as far back as 2008 there has not been a painted crosswalk, traffic light, or walk/don't walk signal at or near the subject location. Unlike in *Bloom*, Defendant Ray was not a visitor to the area, rather she was intimately familiar with the location and in fact owns a second home on Dogwood Avenue where she frequently stays. (Depo of Ray 9:17-22). Defendant Ray admits that she was unable to see because of a delivery truck parked along Dogwood Avenue. (Depo of Ray 25:13-18). In the same breath, Defendant Ray testified that she drives on Dogwood Avenue everyday (Depo of Ray 24:25-25:1) and is aware pedestrians and delivery trucks are often in the vicinity (Depo of Ray 25:2-26:4). Defendant Ray also mentioned that there are no signs directing pedestrians to a pedestrian crossing. (Depo of Ray 33:11-13). Further, unlike in *Bloom*, before crossing Plaintiff waited five second and checked both directions (Depo. of Mims 29:24-30:3). After checking, Plaintiff did not see any traffic on Dogwood Avenue (Depo of Mims 28:19-21). Additionally, the weather was clear and it was daylight outside (Depo of Mims 25:18-26:4). Further, Defendant Ray admitted that a driver has a duty to yield the right-of-way to pedestrians (Depo of Ray 31:19-22). Finally, Defendant Ray admits that when she walks to the beach from her home on Dogwood Avenue, she does not go to the corner of Dogwood Avenue and Atlantic Avenue, like she argues is the duty of Plaintiff, but rather crosses Dogwood Avenue not at a pedestrian crossing. (Depo of Ray 35:18-36:21).

CONCLUSION

For the reasons stated more fully above, Defendant Ray's Motion for Summary Judgment must be denied. Although Defendant Ray argues the facts of the case at bar are analogous to the

narrow set of facts in which *Bloom* was decided, Plaintiff has demonstrated the same is not true. Unlike the Court held in *Bloom*, here, the negligent acts and/or omissions of Defendant Ray proximately caused the injuries sustained and damages incurred by Plaintiff Mims. Given the facts viewed in the light most favorable to Plaintiff, the non-moving party, Defendant Ray's Motion for Summary Judgement must be denied.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

s/ Patrick T. Napolski

Robert E. Treacy, Jr. SC Bar#12102
Patrick T. Napolski SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29406
P: (843) 569-1700
E: PNapolski@Sinklaw.com

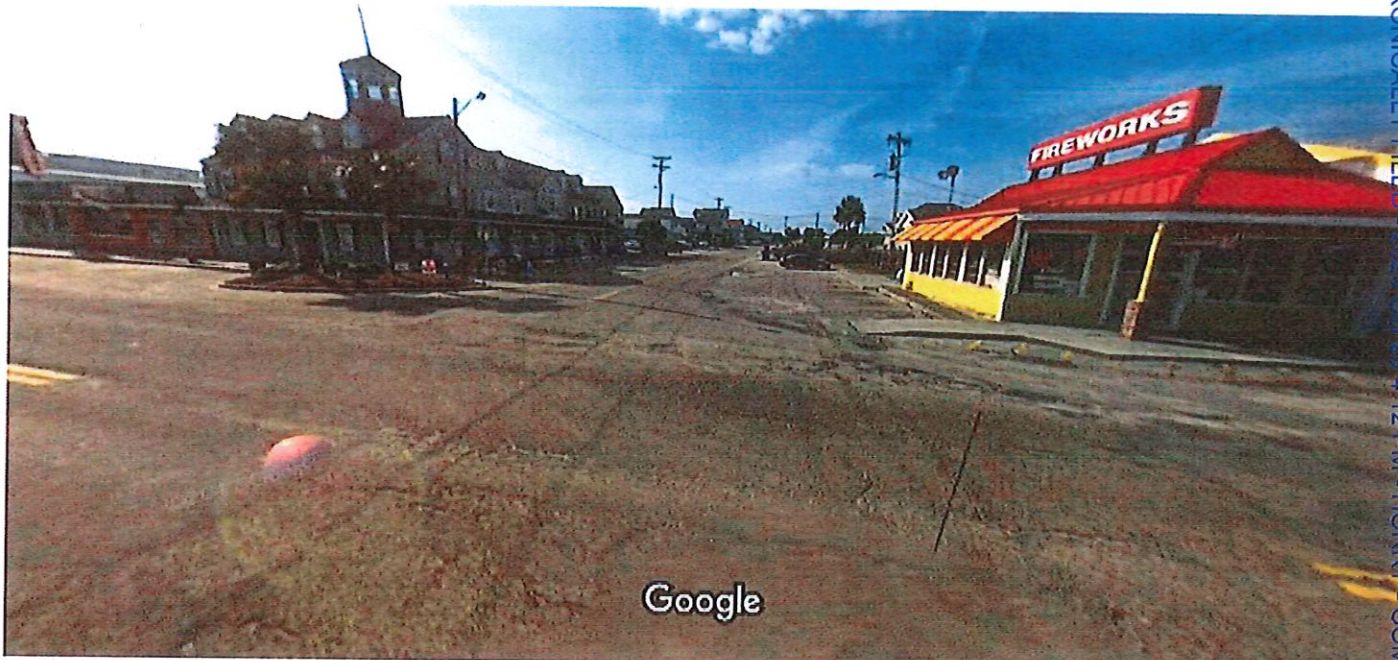
Attorneys for Plaintiff

Dated: October 20, 2020
North Charleston, South Carolina

Exhibit 1
(Google Maps Image Capture: Feb 2008)

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgement

Google Maps 100 Dogwood Dr N



Google

Image capture: Feb 2008 © 2020 Google

Murrells Inlet, South Carolina



Street View



ELECTRONICALLY FILED - 2020 OCT 20 4:12 PM - HERRY - COMMON PLEAS - CASE#2019CP2605892

Exhibit 2
(Google Maps Image Capture: Jul 2012)

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgement

MIMS v. RAY - RECORD ON APPEAL: 161

Google Maps 101 Dogwood Dr N



Google

Image capture: Jul 2012 © 2020 Google

Murrells Inlet, South Carolina



Street View



ELECTRONICALLY FILED - 2020 Oct 20 4:12 PM - HERRY - GGMON PLEAS - CASE#2019CP2605892

Exhibit 3
(Google Maps Image Capture: Nov 2014)

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgement

MIMS v. RAY - RECORD ON APPEAL: 163

Google Maps 101 Dogwood Dr N



Image capture: Nov 2014 © 2020 Google

Murrells Inlet, South Carolina



Street View



ELECTRONICALLY FILED 2/19/20 Oct 20:12 PM - HERRY - COMMON PLEAS - CASE#2019CP2605892

Exhibit 4
(Google Maps Image Capture: Jan 2017)

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgement

Google Maps 146 Atlantic Ave



Image capture: Jan 2017 © 2020 Google

Murrells Inlet, South Carolina



Street View



Currently shown: Jan 2017



ELECTRONICALLY FILED 09/29/2020 04:29:41:12 PM - HERRY - COMMON PLEAS - CASE#2019CP2605892

Exhibit 5
(Google Maps Image Capture: May 2017)

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgement

MIMS v. RAY - RECORD ON APPEAL: 167

Google Maps 146 Atlantic Ave



Image capture: May 2017 © 2020 Google

Murrells Inlet, South Carolina



Street View



Currently shown: May 2017



ELECTRONICALLY FILED - 2020 Oct 20 4:12 PM - Horry - COMMON PLEAS - CASE#2019CP2605892

Exhibit 6
(Google Maps Image Capture: Jul 2019)

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgement

Google Maps 148 Atlantic Ave

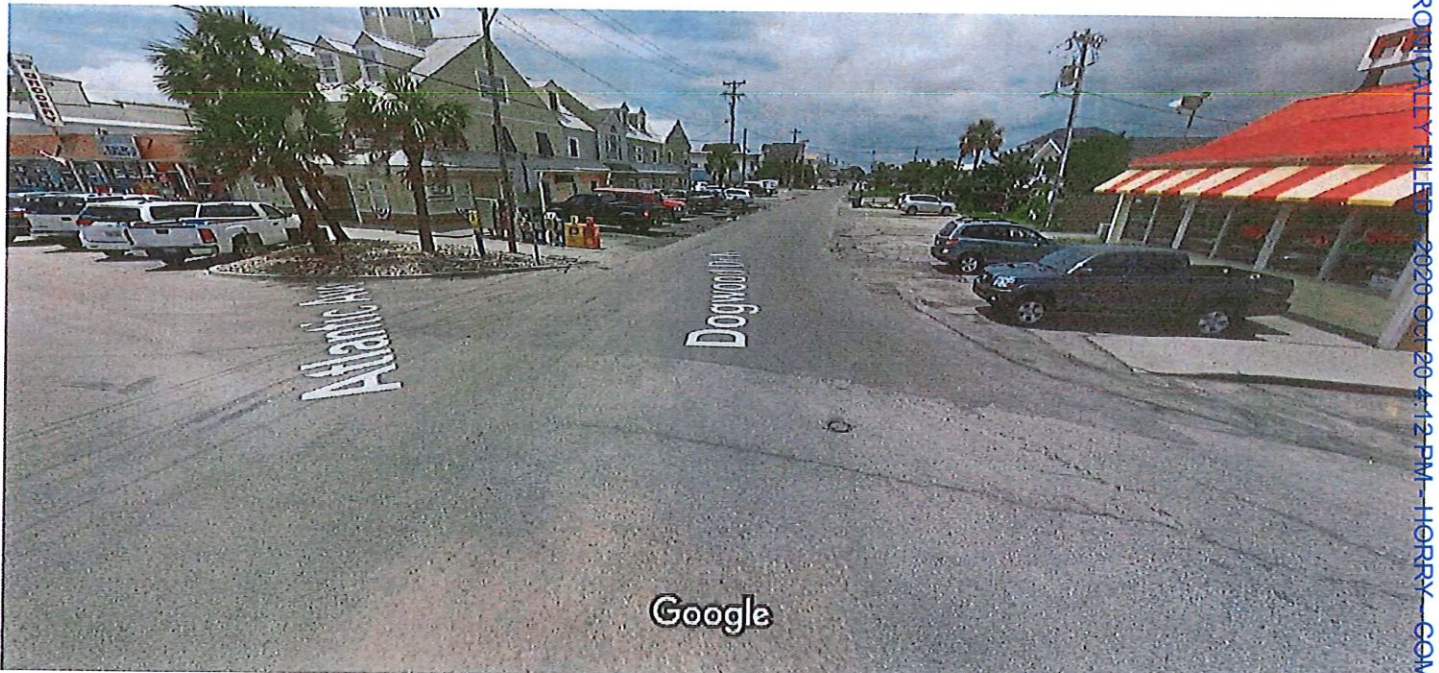


Image capture: Jul 2019 © 2020 Google

Murrells Inlet, South Carolina



Street View



ELECTRONICALLY FILED - 2020 Oct 29 4:12 PM - Horry - COMMON PLEAS - CASE#2019CP2605892

Exhibit 7
(Deposition of Plaintiff Mims (relevant portions only))

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment

MIMS v. RAY - RECORD ON APPEAL: 171

State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
)
 Plaintiff,)
)
 vs.)
)
 Diane W. Ray,)
)
 Defendant.)

**THE DEPOSITION OF
RONALD MIMS**

Monday, June 1, 2020
10:53 a.m. - 2:21 p.m.

The deposition of RONALD MIMS, taken on behalf of the Defendant, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 172

1 A: No, ma'am.
2 Q: Do you know if Tina is still in Horry
3 County?
4 A: I don't.
5 Q: Okay. Do you live with anyone right now?
6 A: My mother.
7 Q: Do you have any siblings that are over
8 the age of eighteen that live in this
9 county?
10 A: No, ma'am.
11 Q: The date of the accident that I have is
12 June 20th, 2019; does that sound about
13 right to you?
14 A: Yes, ma'am.
15 Q: Do you remember what time of day the
16 accident occurred?
17 A: It was afternoon.
18 Q: Do you remember what the weather was
19 like?
20 A: Yeah, it was sunny.
21 Q: Tell me what you remember ---
22 A: And it rained.
23 Q: It was ---
24 A: It was like a popcorn, excuse me, it was
25 like a popcorn shower, typical summer

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stuff.

Q: At the time of the accident, was it raining?

A: Not at the time.

Q: Do you remember if it rained at all before the accident?

A: Maybe a little. Like I say, it was the summertime hit and miss storms.

Q: Do you remember if it rained after the accident?

A: Yes, ma'am.

Q: All right. And just to start off, I want to be clear, you were a pedestrian at the time of the accident, correct?

A: Yes, ma'am.

Q: Do you remember where you were walking from?

A: Yes. I was walking across the street from the fire station, going to cross the street, go towards the beach.

Q: Was the beach your destination?

A: Yes, ma'am.

Q: All right. And you were coming from the fire station?

A: Across the street from the fire station,

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1 of the main street, Atlantic, the
2 secondary street.
3 Q: Do you know if there's any traffic
4 signals or stop signs or anything like
5 that at the spot where you were crossing
6 or nearby?
7 A: Nearby.
8 Q: About how far away?
9 A: Maybe fifty to eighty feet.
10 Q: Is that a traffic signal or a stop sign?
11 A: No, it's the direct turn off of Atlantic.
12 Q: Okay. Do you remember what traffic was
13 like that day?
14 A: Typical summer traffic.
15 Q: Prior to crossing the street, do you
16 remember, you know, checking for traffic
17 and things like that?
18 A: Yes, ma'am.
19 Q: Tell me what you remember about that.
20 Did you see vehicles in the road?
21 A: Not at the time, no, ma'am.
22 Q: From either direction?
23 A: No, ma'am.
24 Q: Were any vehicles parked alongside the
25 road?

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1 A: Yes, ma'am.

2 Q: What kind of vehicle, do you remember?

3 A: A delivery truck and other regular cars.

4 Q: Where were those vehicles parked in
5 relation to where the accident occurred?

6 A: They were parked at the corner by
7 Atlantic coming off of that turn from
8 Atlantic.

9 Q: Were there any vehicles parked near,
10 right near where the accident occurred or
11 were they all closer to Atlantic?

12 A: They were closer to Atlantic and spread
13 along, along the other side of the
14 street.

15 Q: Was the delivery truck parked nearby
16 where the accident occurred or was that
17 close to Atlantic?

18 A: Right in between.

19 Q: Okay. So, am I correct that there are
20 vehicles parked along the road, but no
21 moving traffic that you saw along
22 Dogwood?

23 A: Yes, ma'am.

24 Q: Okay. Do you know, roughly, how long you
25 paused to check for traffic before you

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1 crossed the street?

2 A: Yes, maybe five seconds, looked both

3 ways, checked, you know.

4 Q: Is there a crosswalk or anything like

5 that at the area where you cross the

6 street?

7 A: No, ma'am, they're all eroded.

8 Q: They were eroded?

9 A: Yes, ma'am.

10 Q: Could you see lines in the road for a

11 crosswalk that had been there before?

12 A: No, ma'am.

13 Q: What makes you say they're eroded?

14 A: Well, the one -- that's what I mean. The

15 one at Atlantic, it used to be yellow

16 years and years ago. I've lived here my

17 whole life, and it hasn't been painted

18 in, I don't think ever.

19 Q: At Atlantic where the intersection is?

20 A: Yes, ma'am.

21 Q: Okay. Tell me what you remember about

22 the actual impact.

23 A: The actual impact, I just heard the

24 engine, looked over, saw a blue hood, and

25 I don't remember anything after that.

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Exhibit 8
(Deposition of Defendant Ray (relevant portions only))

Mims v. Ray
Case No.: 2019-CP-26-05892
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment

MIMS v. RAY - RECORD ON APPEAL: 178

State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
Plaintiff,)
vs.)
Diane W. Ray,)
Defendant.)

**THE DEPOSITION OF
DIANE RAY**

Monday, June 1, 2020
10:02 a.m. - 10:48 a.m.

The deposition of DIANE RAY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 179

1 important if you don't understand a
2 question, go ahead and ask me to either
3 rephrase the question or clarify and I'll
4 do my best to do that for you. Under no
5 means am I trying to trick you or hide
6 the ball or play any games with you.
7 This is simply my opportunity to ask you
8 questions about your background and about
9 this accident, fair enough?

10 A: Yes.

11 Q: All right. Ms. Ray, could you please
12 give your full legal name?

13 A: Diane Watson Ray.

14 Q: And, Ms. Ray, what's your address?

15 A: 1216 Lakeland Drive, Conway, South
16 Carolina 29526.

17 Q: And was that the same address that you
18 had on the date of the accident that
19 we're here for today?

20 A: I stay at 642 South Dogwood in Garden
21 City, because it's so close to my
22 business, a lot.

23 Q: Do you own that residence as well?

24 A: Yes.

25 Q: All right. And, Ms. Ray, does anyone

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1 Q: Correct, yes, ma'am. Do you recall how
2 fast you were driving once you turned
3 onto Dogwood Drive?

4 A: Well, like I said, I come to a full stop
5 when I realized the truck was partially
6 in the road, and it couldn't have been
7 more than past the first little notch
8 there on your speedometer. I think it
9 has ten on mine, couldn't have been going
10 past that.

11 Q: I'm sorry, we cut out for a moment there.
12 Can you repeat that?

13 A: You know, as you stop and then you start
14 to accelerate, I -- if I had to look at a
15 speedometer, I would say it wouldn't be
16 past that first mark on mine, which is a
17 ten on it or something. It would be less
18 than that. I would say less than a mile,
19 two miles an hour, if you want to put a
20 number to it, just kind of rolling along,
21 as they say.

22 Q: Did you see Mr. Mims at all prior to
23 impact?

24 A: No.

25 Q: Had you driven down Dogwood Drive before?

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1 A: Every day.
2 Q: And have you ever seen pedestrians in the
3 general vicinity where this accident took
4 place?
5 A: You know how the beach is, you could walk
6 all over the place.
7 Q: And I apologize, Ms. Ray, so is that a
8 yes, ---
9 A: Yes.
10 Q: --- you are aware that pedestrians are in
11 that area?
12 A: Yes.
13 Q: Do you have any reason or any explanation
14 as to why you didn't see Mr. Mims prior
15 to the impact?
16 A: Well, because the truck was parked on the
17 right-hand side and he stepped out in
18 front of that truck.
19 Q: And you said that you drive down Dogwood
20 Drive every day, have you ever seen a
21 truck, a delivery truck like that parked
22 in that same location?
23 A: Yes.
24 Q: So, you're aware that there's pedestrians
25 that cross in that general area and that

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1 there have been a delivery truck in that
2 general area previously; is my
3 understanding correct?

4 A: Yes.

5 Q: And did you receive a ticket for this
6 crash?

7 A: No.

8 Q: Other than apologizing to Mr. Mims, did
9 you speak with anyone else at the scene
10 of the crash?

11 A: No, I didn't, except the fire people that
12 were at the fire station. They were the
13 ones that came over when it happened.

14 Q: Did you ever speak with the police
15 officer that responded to the crash?

16 A: When he got there, yes.

17 Q: Do you remember what, if anything, you
18 said to the employees at the fire
19 station?

20 A: No.

21 Q: Do you remember what you said to the
22 police officer?

23 A: Only that -- I responded only to the
24 questions he asked me about the accident.

25 Q: At any time at the scene of the crash,

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1 Q: And, Ms. Ray, I'm almost done, I just got
2 a couple of questions left for you, okay?
3 Were there any mechanical problems with
4 that BMW X5 that you were driving on the
5 date of the accident?

6 A: No.

7 Q: Did any issues with that vehicle's
8 maintenance or mechanics contribute at
9 all to this crash?

10 A: No. No.

11 Q: All right. And, Ms. Ray, would you agree
12 with me that a driver has a duty to
13 maintain a proper lookout?

14 A: Yes.

15 Q: And would you agree with me that the
16 driver has a duty to yield the right-of-
17 way?

18 A: Yes.

19 Q: And would you agree with me that a driver
20 has a duty to yield the right-of-way to
21 pedestrians?

22 A: Yes.

23 Q: All right. Ms. Ray, is there anything at
24 all that we haven't yet discussed that
25 you think is important for me to know?

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1 questions. Ms. Ray, at the location
2 where the impact occurred, were there any
3 crosswalks or anything like that in the
4 road?

5 A: No. There is a corner that, that you're
6 supposed to cross at, is the only thing.

7 Q: Okay. And the accident did not occur at
8 the corner?

9 A: No, it was, you know, like halfway to the
10 street there.

11 Q: Are there any signs indicating that
12 there's a pedestrian crossing nearby?

13 A: No. No.

14 Q: That's all I have.

15 MS. VANCAMP: PATRICK, DO YOU HAVE
16 ANY FOLLOW-UP
17 QUESTIONS?

18 **RE-EXAMINATION**

19 **BY MR. NAPOLSKI:**

20 Q: Ms. Ray, you said a moment ago that
21 there's a corner that you're supposed to
22 cross at, what's the authority that you
23 cite saying that you're supposed to cross
24 at that corner?

25 A: Well, I don't know of any authority.

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1 pedestrian crossings?
2 A: Just the one at the corner.
3 Q: So, is my understanding correct that if
4 someone were to be at your home and park
5 in front of your home, they need to walk
6 all the way to the corner where Causeway
7 Grill & Bar is in order to cross the
8 street?
9 A: That's kind of a hard question to ask at
10 the -- because we don't have any
11 sidewalks on Dogwood, so it's, you know,
12 my home is about a full block down from
13 Atlantic Avenue, so I, I don't know an
14 answer that, you know, people cross the
15 street if there's nothing coming or you
16 can walk to the corner and cross the
17 street.
18 Q: And, Ms. Ray, do you ever go to the
19 beach, ever walk to the beach from your
20 home?
21 A: On occasion, yes.
22 Q: And do you ever walk to the corner where
23 Causeway Grill & Raw Bar is in order to
24 get to the beach?
25 A: I -- no, I can get access to the beach

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1 before that.

2 Q: Do you have to cross South Dogwood Drive

3 in order to get to the beach?

4 A: Yes, at the corner, you turn right on, I

5 think it's called Yaka Street and walk

6 over to the beach. There's a, you know,

7 a public access at the end of that

8 street.

9 Q: And is there a pedestrian crossing at the

10 corner of South Dogwood and Yaka Avenue?

11 A: No. No, there's no pedestrian. The only

12 pedestrian -- no, there wouldn't be any

13 markings, we, we just cross the street.

14 Q: So, when you're going to the beach, you

15 typically cross South Dogwood Drive, not

16 at a pedestrian crossing; is that my

17 understanding?

18 A: Yes. Yes.

19 Q: Ms. Ray, I don't have any further

20 questions for you.

21 A: Okay.

22 MS. VANCAMP: I DON'T HAVE ANYMORE

23 QUESTIONS EITHER.

24 MS. RAY: ALL RIGHT.

25 (The deposition concluded at 10:48 a.m.)

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Chelsea Abdelgheny f/k/a Chelsea Jackson, Appellant,

v.

Gerald L. Moody, Respondent.

Appellate Case No. 2018-000102

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

Opinion No. 5780
Heard September 10, 2020 – Filed October 28, 2020

REVERSED

Raymond Talmage Wooten, of Smith, Jordan and
Lavery, P.A., of Easley, for Appellant.

Thomas Frank Dougall, of Dougall & Collins, of Elgin;
Chad McQueen Graham, of The Ward Law Firm, P.A.,
of Spartanburg; and Langdon Cheves, III, of Turner
Padgett Graham & Laney, P.A., of Greenville, all for
Respondent.

HILL, J.: A little before 8:00 p.m. on October 26, 2015, Chelsea Abdelgheny had just finished teaching a Zumba class at Mission Fitness in Easley when her boss asked her to check on an order he had placed at the sign store across the street. Wearing a neon pink hooded sweatshirt and bright blue exercise pants, Chelsea

State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
Plaintiff,)
vs.)
Diane W. Ray,)
Defendant.)

**THE DEPOSITION OF
DIANE RAY**

Monday, June 1, 2020
10:02 a.m. - 10:48 a.m.

The deposition of DIANE RAY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 190

REMOTE APPEARANCES:

THE WITNESS:

Diane Ray
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

FOR THE PLAINTIFF:

Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

FOR THE DEFENDANT:

Marissa VanCamp, Esquire
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

Sharon Brock Court Reporting

Post Office Box 32157
Myrtle Beach, South Carolina 29588
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DIANE RAY

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Examination by Ms. VanCamp 32
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Certificate of Court Reporter 37

EXHIBITS

(No exhibits were marked during this proceeding.)

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STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

1

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1 DIANE W. RAY HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 **EXAMINATION**

4 **BY MR. NAPOLSKI:**

5 Q: Good morning, Ms. Ray. My name is
6 Patrick Thomas Napolski, and I'm an
7 attorney with George Sink's office in
8 Charleston, South Carolina. I am,
9 though, not there right now, I am in the
10 spare bedroom here taking your deposition
11 this morning. Have you ever been deposed
12 before?

13 A: No.

14 Q: Okay. Well, as I mentioned a moment ago,
15 I'm an attorney, and I represent Ronald
16 Mims with regard to injuries sustained in
17 a June 20th of 2019 automobile collision.
18 What we're doing today is taking your
19 deposition which is my opportunity to ask
20 you questions about your background and
21 about this particular incident; do you
22 understand that?

23 A: Yes.

24 Q: Okay. The difference between this being
25 a casual interview and a deposition is

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1 two main things; first, you've been put
2 under oath to tell the truth, the whole
3 truth, and nothing but the truth; do you
4 understand that?

5 A: Yes.

6 Q: Okay. And the second difference between
7 this being a casual interview and a
8 deposition is that we have a court
9 reporter taking down everything that we
10 say, both stenographically and on audio
11 recording; therefore, it's very important
12 that you and I try our best not to speak
13 over one another. If you give me the
14 courtesy of allowing me to fully ask my
15 question, I'll give you the courtesy of
16 fully answering the question before I ask
17 a follow-up question; is that fair?

18 A: Yes.

19 Q: Because this is being taken down
20 stenographically and on an audio
21 recording, I'm going to ask that you
22 continue to do what you've been doing
23 thus far, and that's been verbal
24 responses. Try to avoid shaking your
25 head, if you do, I'm going to ask you,

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1 "Is that a yes or a no." Understand, I'm
2 not being rude, I'm just trying to make
3 sure that Marissa and I have a nice,
4 clean record so that we don't have to get
5 in a fight in front of a judge later on
6 as to whether shaking your head or
7 nodding your head is a yes or a no, okay?

8 A: Yes.

9 Q: Same thing goes for avoiding the use of
10 uh-huh (affirmative response) or huh-uh
11 (negative response), again, I'll probably
12 just ask you, "Is that a yes or a no,"
13 just to make sure that we've got a nice,
14 clean record, understand?

15 A: Yes.

16 Q: Okay. Ms. Ray, are you under the
17 influence of any drugs or alcohol which
18 may impair your ability to give truthful
19 answers his morning?

20 A: No.

21 Q: Okay. I want you to know that you are in
22 complete control of this deposition this
23 morning, okay? If at any moment you need
24 to take a break, we'll go ahead and take
25 that break, if you need a bottle of water

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1 or if you need to use the restroom. The
2 only thing that I ask is that if I've
3 posed a question that you answer that
4 question before we take a break; is that
5 okay?

6 A: Yes.

7 Q: And the second thing that I ask is that
8 you not communicate with your attorney
9 while this deposition is going on. You
10 are here to give your testimony this
11 morning, not your attorney. There may be
12 times where I ask a question that is
13 worded a little funny or I use some
14 legalese, your attorney may step in and
15 say, "Patrick, I object to the form of
16 the question." I get the opportunity to
17 rephrase that question, but if I think
18 the question is posed just fine, then I'm
19 going to ask you to answer that question
20 as it's been worded, okay?

21 A: Okay.

22 Q: And one final thing, Ms. Ray, the
23 assumption is going to be made that if
24 you answer a question that you understood
25 that question; therefore, it's very

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1 important if you don't understand a
2 question, go ahead and ask me to either
3 rephrase the question or clarify and I'll
4 do my best to do that for you. Under no
5 means am I trying to trick you or hide
6 the ball or play any games with you.
7 This is simply my opportunity to ask you
8 questions about your background and about
9 this accident, fair enough?

10 A: Yes.

11 Q: All right. Ms. Ray, could you please
12 give your full legal name?

13 A: Diane Watson Ray.

14 Q: And, Ms. Ray, what's your address?

15 A: 1216 Lakeland Drive, Conway, South
16 Carolina 29526.

17 Q: And was that the same address that you
18 had on the date of the accident that
19 we're here for today?

20 A: I stay at 642 South Dogwood in Garden
21 City, because it's so close to my
22 business, a lot.

23 Q: Do you own that residence as well?

24 A: Yes.

25 Q: All right. And, Ms. Ray, does anyone

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1 live with you at the 1216 Lakeland Drive
2 address?
3 A: My husband.
4 Q: And what's his name?
5 A: Charlie Ray.
6 Q: And how long have you and Mr. Ray been
7 married?
8 A: About fifty-two years. Let's see, we got
9 married in '69, so yeah, a long time, a
10 long time.
11 Q: You wouldn't have thought that was going
12 to be the most difficult question of the
13 morning.
14 A: Yeah. Oh, me.
15 Q: And does Mr. Ray also live with you at
16 the 642 South Dogwood address as well?
17 A: Yes.
18 Q: Anyone else live with you and Mr. Ray at
19 either of those addresses?
20 A: No.
21 Q: And, Ms. Ray, do you have any relatives
22 over the age of eighteen with a last name
23 other than Ray that live in Horry County?
24 And let me tell you why I'm asking that.
25 If Marissa and I need to impanel a jury

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1 for a trial in this case, I want to make
2 sure that I'm not putting any of your
3 family members on the jury, so I'm
4 looking for anyone that has a last name
5 other than Ray that lives in Horry County
6 that's over the age of eighteen.

7 A: We have some cousins around somewhere,
8 but not very close with them, so I, I, I
9 would probably say, no. As far as close
10 family, I do not, so.

11 Q: And, Ms. Ray, what's your maiden name?

12 A: Watson, W-A-T-S-O-N.

13 Q: Did you grow up in the Grand Strand area?

14 A: I grew up in Conway.

15 Q: In Conway, okay.

16 A: Uh-huh (affirmative response), yeah.

17 Q: Are there some Watsons in Horry County,
18 living in Conway?

19 A: Marion County is where most of the
20 relatives are from, and, gee, I can't
21 think of anybody else close around here.

22 Q: That's fair enough. If you think of
23 someone, just interrupt me any time
24 during this deposition.

25 A: Okay. I'll have to think on that, too.

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1 Q: Sure, sure. And what's your date of
2 birth?
3 A: 5/14/47.
4 Q: And what's the highest level of education
5 that you completed?
6 A: College.
7 Q: Where did you attend college?
8 A: Winthrop.
9 Q: What was your degree?
10 A: Education.
11 Q: I think most people from Winthrop are
12 Education majors, if I'm not mistaken,
13 right?
14 A: Right. I did teach school a couple of
15 years before I started working at the
16 furniture store. It was a good
17 experience, it taught me a lot of
18 patience.
19 Q: Where was it that you taught?
20 A: I'm sorry, what?
21 Q: Where was it that you taught?
22 A: Repeat that one more time.
23 Q: Where was it that you were a teacher?
24 A: Oh, in Conway, at Conway -- I think it
25 was called Conway Elementary at that

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1 time. I taught one year at Waccamaw
2 Elementary, and then the rest of the time
3 I was at Conway Elementary on 12th
4 Avenue.

5 Q: And when did you stop being -- what was
6 your last year teaching?

7 A: '74. I taught from '69 through '74.

8 Q: What did you do after you left teaching?

9 A: Well, I have a child, and then I went to
10 work at the furniture store, at Garden
11 City Furniture, when she was around two
12 and a half or three.

13 Q: Okay. And are you the owner of Garden
14 City Furniture?

15 A: It's a family corporation. I am one of
16 the owners, and my husband is part-owner
17 and my two children.

18 Q: You said your husband, and then there's
19 another ---

20 A: Owns a percentage. He has a small
21 percentage. My two children have a
22 percentage of the stock of Garden City.
23 I run the store, so.

24 Q: What is your title?

25 A: President.

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1 Q: And is that an hourly position or are you
2 salary?

3 A: Salaried.

4 Q: And what's your salary?

5 A: For the year or ---

6 Q: Correct.

7 A: For the year would be sixty, sixty
8 thousand. All this Direct Deposit, you
9 don't even get to look at your salary
10 anymore.

11 Q: Sure, sure. Other than working as
12 president at Garden City Furniture, have
13 you had any other jobs in the past ten
14 years?

15 A: None.

16 Q: What's the address of the Garden City
17 Furniture store?

18 A: 2444 Highway 17 South, and they use
19 Murrells Inlet, because Garden City
20 doesn't have a zip code, and it'd be
21 29576.

22 Q: And what type of vehicle were you driving
23 on the date of this incident?

24 A: A X5 BMW.

25 Q: And am I correct in saying that vehicle

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1 was owned by Garden City Furniture?
2 A: It is, yes. Yes.
3 Q: Do you still own that vehicle or does
4 Garden City Furniture still own that
5 vehicle?
6 A: Yes.
7 Q: Does Garden City Furniture own any other
8 vehicles?
9 A: We have -- my son has a truck he drives,
10 and we have the vehicles, the delivery
11 vehicles at the store.
12 Q: So, the BMW X5, the truck that your son
13 drives, and delivery vehicles?
14 A: And, then, we have three of the, what we
15 call, what we call box trucks, three box
16 trucks that we deliver in. We have a
17 pickup truck and a small service van.
18 Q: Ms. Ray, have you ever been arrested?
19 A: No.
20 Q: Have you ever been involved in any other
21 motor vehicle crashes?
22 A: I, I mean, I was involved in a chain
23 reaction thing back in the -- gosh, that
24 was forty years ago, I reckon, you know,
25 where you were stopped at a stop light

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1 and somebody hits and it goes down, I did
2 that, and other than that, no other
3 accident.

4 Q: And the way you described it, it sounds
5 like you weren't placed at fault for that
6 chain reaction ---

7 A: No.

8 Q: --- accident; is that correct?

9 A: No, I was not.

10 Q: And you have a valid driver's license?

11 A: Yes.

12 Q: And did you at the time of this accident?

13 A: Yes.

14 Q: Are there any restrictions on that
15 driver's license?

16 A: I wear glasses.

17 Q: And were you wearing glasses at the time
18 of this accident?

19 A: Yes.

20 Q: Do you have an optometrist?

21 A: Yes.

22 Q: And what's that optometrist's name?

23 A: When I get my eyes checked, I go to the
24 -- I go to Duke University for my
25 physicals, and I can't remember the name,

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1 but I use 20/20 Vision to do my glasses.
2 Q: Why is it that you go to Duke University
3 for your physicals?
4 A: I've been doing this for twenty years
5 now. I go up and -- we have a history of
6 cancer in our family and I go there and
7 get all my checkups done, and I continue
8 to do it.
9 Q: I'm sorry, it broke up right when you
10 told me the history of your family.
11 A: My family has a history of cancer and I
12 chose to go to this clinic at Duke and I
13 go once a year for a complete physical
14 even though I still have a doctor here
15 locally.
16 Q: Do you see a particular doctor at Duke
17 University?
18 A: Yes, it's called Duke Executive Health,
19 Dr. Orlando is her name.
20 Q: Orlando like the City in Florida?
21 A: Yes, Orlando.
22 Q: And what's the name of your doctor
23 locally?
24 A: Well, it's not really a doctor. I go to
25 Conway Physicians Group, and I see, you

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1 know, what, what they call a part-time
2 person?
3 Q: Is it a physician's assistant?
4 A: Conway Physicians, in fact, I have my
5 first appointment with her since they
6 changed over. The office I was going to,
7 the doctor retired, and then I was put in
8 this clinic, so now I'm going to her for
9 the first time. I'm very rarely sick,
10 so.
11 Q: At the time of this accident, were you
12 prescribed any prescription medications?
13 A: The only prescription that I take is
14 Ambien, and that's a half tablet at night
15 to sleep, and that's not an every night,
16 when I feel like I need it to go to
17 sleep.
18 Q: Do you recall whether or not you took a
19 half of Ambien on the evening prior to
20 this wreck?
21 A: I do not.
22 Q: You do not recall?
23 A: I do not recall, no.
24 Q: Has your driver's license ever been
25 revoked or suspended for any reason?

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1 A: No.

2 Q: And you said that you, and I see that you
3 wear glasses, do you have difficulty
4 seeing far away or close up or both?

5 A: Close up.

6 Q: Ms. Ray, do you have any social media
7 accounts like Twitter, Facebook or
8 Instagram?

9 A: Yes.

10 Q: Can you please list those accounts?
11 Well, let me ask you this, on any of
12 those accounts, have you posted anything
13 about this accident?

14 A: No.

15 Q: And up to this point when I've said,
16 "This accident," do you understand that
17 I'm referring to a June 20th, 2019 crash
18 that took place on South Dogwood Drive in
19 Surfside Beach?

20 A: Yes.

21 Q: All right. And do you recall that crash?

22 A: Yes.

23 Q: Can you tell me where you were coming
24 from and where you were going to?

25 A: I had left my son's house. I was coming

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1 down Atlantic Avenue turning right on
2 Dogwood to go home.
3 Q: And what's your son's address?
4 A: 568 Mt. Gilead Road.
5 Q: Is that in Murrells Inlet or Garden City,
6 Murrells Inlet?
7 A: That's Murrells Inlet. Garden City is
8 next door to Murrells Inlet?
9 Q: Do you recall what the weather was like?
10 A: It was getting ready to storm.
11 Q: Was it raining yet?
12 A: Not at the time of the accident. It
13 started shortly thereafter.
14 Q: Was it sunny or cloudy?
15 A: I would say cloudy.
16 Q: Do you recall whether or not you had your
17 windshield wipers on?
18 A: I do not recall.
19 Q: Do you recall whether or not you had your
20 headlights on?
21 A: They're on all, all the time on my car.
22 Q: Was there any other traffic, any other
23 vehicles in front of you after you made
24 the right turn?
25 A: I'm sure there was. There's a lot of

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1 traffic going.

2 Q: Do you recall any detail, any of the
3 vehicles that were on that road with you?

4 A: When I went to make the right turn onto
5 Dogwood, there was a tractor-trailer food
6 truck, I can't think of the name of it,
7 partially in the road and sitting off the
8 road, and I had to stop when I started
9 going around, to make sure there was no
10 oncoming traffic, that I had enough room
11 to get through.

12 Q: I'm sorry, that broke up. Can you say
13 that one more time?

14 A: Do you want me to repeat?

15 Q: Yeah, could you repeat that? It was kind
16 of choppy there.

17 A: Okay. When I got ready to turn right
18 onto Dogwood, I had to stop because there
19 was a food service truck simply -- it was
20 a small delivering food to some
21 restaurant. I stopped, I looked and
22 eased around to make sure there was
23 nothing coming in my lane so I could get
24 by, you know, the truck, and proceed down
25 Dogwood, and that's when the accident

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1 happened. When I got level at the end
2 of the truck, the man stepped out in
3 front of the truck.

4 Q: And did you come to understand that that
5 man was Ronald Mims?

6 A: I didn't know at the time 'til after the
7 accident.

8 Q: Okay. Had you passed the semi-truck?

9 A: No, I was kind of dead even with the
10 front end.

11 Q: When is the first time that you saw Mr.
12 Mims?

13 A: When he hit the side of the car.

14 Q: What side of your vehicle -- What part of
15 your vehicle hit Mr. Mims?

16 A: The right front fender area, what you
17 call it.

18 Q: Was there any damage to your vehicle?

19 A: None.

20 Q: Do you know how many lanes there are
21 there on Dogwood Drive?

22 A: Just two, just a regular road.

23 Q: And were you in the right-hand lane or
24 the left-hand lane?

25 A: Going south, I was in the right-hand

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1 lane.

2 Q: And when you took that right-hand turn,
3 had you ever crossed into the -- did you
4 ever cross into the left-hand lane?

5 A: I don't recall. I would probably be very
6 close to it, because it was very narrow
7 through there.

8 Q: And did you speak to Mr. Mims after the
9 crash?

10 A: Yes, I went up to him and told him, you
11 know, I apologized for it happening, and
12 then, you know, that was all. We, we
13 didn't exchange any names or have any
14 conversation.

15 Q: Okay. And do you take responsibility for
16 causing this crash?

17 A: No.

18 Q: You said a moment ago you apologized to
19 Mr. Mims, what did you ---

20 A: That it happened, that the crashed
21 happened.

22 Q: Do you think there's anyone else to blame
23 for this crash other than you?

24 A: I would say he, Mr. Mims, contributed to
25 the crash. Is that what you're asking?

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1 Q: Correct, yes, ma'am. Do you recall how
2 fast you were driving once you turned
3 onto Dogwood Drive?

4 A: Well, like I said, I come to a full stop
5 when I realized the truck was partially
6 in the road, and it couldn't have been
7 more than past the first little notch
8 there on your speedometer. I think it
9 has ten on mine, couldn't have been going
10 past that.

11 Q: I'm sorry, we cut out for a moment there.
12 Can you repeat that?

13 A: You know, as you stop and then you start
14 to accelerate, I -- if I had to look at a
15 speedometer, I would say it wouldn't be
16 past that first mark on mine, which is a
17 ten on it or something. It would be less
18 than that. I would say less than a mile,
19 two miles an hour, if you want to put a
20 number to it, just kind of rolling along,
21 as they say.

22 Q: Did you see Mr. Mims at all prior to
23 impact?

24 A: No.

25 Q: Had you driven down Dogwood Drive before?

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1 A: Every day.

2 Q: And have you ever seen pedestrians in the
3 general vicinity where this accident took
4 place?

5 A: You know how the beach is, you could walk
6 all over the place.

7 Q: And I apologize, Ms. Ray, so is that a
8 yes, ---

9 A: Yes.

10 Q: --- you are aware that pedestrians are in
11 that area?

12 A: Yes.

13 Q: Do you have any reason or any explanation
14 as to why you didn't see Mr. Mims prior
15 to the impact?

16 A: Well, because the truck was parked on the
17 right-hand side and he stepped out in
18 front of that truck.

19 Q: And you said that you drive down Dogwood
20 Drive every day, have you ever seen a
21 truck, a delivery truck like that parked
22 in that same location?

23 A: Yes.

24 Q: So, you're aware that there's pedestrians
25 that cross in that general area and that

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1 there have been a delivery truck in that
2 general area previously; is my
3 understanding correct?

4 A: Yes.

5 Q: And did you receive a ticket for this
6 crash?

7 A: No.

8 Q: Other than apologizing to Mr. Mims, did
9 you speak with anyone else at the scene
10 of the crash?

11 A: No, I didn't, except the fire people that
12 were at the fire station. They were the
13 ones that came over when it happened.

14 Q: Did you ever speak with the police
15 officer that responded to the crash?

16 A: When he got there, yes.

17 Q: Do you remember what, if anything, you
18 said to the employees at the fire
19 station?

20 A: No.

21 Q: Do you remember what you said to the
22 police officer?

23 A: Only that -- I responded only to the
24 questions he asked me about the accident.

25 Q: At any time at the scene of the crash,

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1 did you see the police officer speaking
2 with Mr. Mims?

3 A: After he spoke with me, he went to speak
4 to Mr. Mims at the hospital, and the
5 officer was two hours getting to the
6 scene of the accident.

7 Q: It took the police officer two hours
8 after the accident took place to arrive
9 at the accident scene?

10 A: Yes.

11 Q: And did you wait there until the police
12 officer arrived?

13 A: What I did, the fire marshal, I reckon
14 you'd call him, the fire chief, came from
15 the, over there when it happened, and so,
16 I was sitting in the road, of course, you
17 know, and he said, "I want you to pull
18 your car over to the shoulder of the road
19 toward the firehouse, but do not leave,"
20 and that's what I did, I pulled over
21 there and sat. So then he came back to
22 the car sometime later on, I don't
23 remember how long, and he said, "It's
24 going to be a while before the policemen
25 get here, I want you to pull your car up

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1 to the fire station and come inside and
2 wait with us because you can't leave the
3 scene." Of course, it was pouring down
4 rain by then, too, so that's what I did.
5 I just sat at the police station until
6 the officer arrived to do the report.

7 Q: Okay. Did you ever follow up with Mr.
8 Mims to find out the extent of his
9 injuries?

10 A: No.

11 Q: Okay. At the time of this crash, did you
12 have a cell phone?

13 A: Yes.

14 Q: Do you recall what the phone number was
15 for that cell phone?

16 A: Yes, it's my same one, 843-997-6861.

17 Q: Do you know who the carrier is for that
18 phone?

19 A: Oh, gee, it's not Spectrum, Verizon, and
20 the phone is owned by the store, also.

21 Q: And immediately before the impact, were
22 you talking on your cell phone?

23 A: No.

24 Q: Were you distracted by anything inside
25 your vehicle immediately prior to the

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1 impact?

2 A: No.

3 Q: Were you distracted by anything outside
4 your vehicle immediately before the
5 impact?

6 A: Well, of course, I was, you know,
7 observing what was going on with traffic.

8 Q: Where were you looking, observing that
9 traffic?

10 A: Everywhere there. You have to watch when
11 you're in the beach area.

12 Q: Including looking to your right?

13 A: Well, I would be looking to the right and
14 to the left.

15 Q: And Mr. Mims came from your right, is
16 that my understanding?

17 A: Came from my right, yes.

18 Q: After the crash and then the two hours
19 before the police officer got there, did
20 you make any phone calls from your cell
21 phone?

22 A: No.

23 Q: Did you send any text messages?

24 A: Not to my knowledge.

25 Q: Other than your attorney, and I don't

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1 want to know anything about that
2 conversation, but other than your
3 attorney, have you spoken to anybody else
4 about this crash?

5 A: Well, of course, I told my husband, and I
6 -- we had let my son know at the store
7 what had happened. Other than that, no,
8 no one else.

9 Q: What's your son's name?

10 A: Joey Ray.

11 Q: Does Joey have a cell phone?

12 A: Yes.

13 Q: What's his phone number?

14 A: I knew you would ask me that.

15 Q: And I'm going to ask you your husband's
16 as well, so if you're ---

17 A: You know you just hit the number. Hold
18 on just a minute.

19 Q: Sure.

20 A: I, I want to give it to you correct. I
21 don't want to give it to you wrong, so.
22 This is terrible. We just depend on this
23 all the time. All right. My son's phone
24 number is 843-877-2496, and Charlie's
25 mobile number is 843-222-3144.

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1 Q: And, Ms. Ray, I'm almost done, I just got
2 a couple of questions left for you, okay?
3 Were there any mechanical problems with
4 that BMW X5 that you were driving on the
5 date of the accident?

6 A: No.

7 Q: Did any issues with that vehicle's
8 maintenance or mechanics contribute at
9 all to this crash?

10 A: No. No.

11 Q: All right. And, Ms. Ray, would you agree
12 with me that a driver has a duty to
13 maintain a proper lookout?

14 A: Yes.

15 Q: And would you agree with me that the
16 driver has a duty to yield the right-of-
17 way?

18 A: Yes.

19 Q: And would you agree with me that a driver
20 has a duty to yield the right-of-way to
21 pedestrians?

22 A: Yes.

23 Q: All right. Ms. Ray, is there anything at
24 all that we haven't yet discussed that
25 you think is important for me to know?

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1 A: Not at this -- I, I just, you know, I
2 can't think of anything, right off the
3 top of my head, unless, you know, Mr.
4 Mims was not paying attention, didn't see
5 me or what. I don't know what his
6 thoughts were.

7 Q: All right. Ms. Ray, just give me one
8 moment to go through my notes and then we
9 may be almost squared away with you,
10 okay? Ms. Ray, where were you prior to
11 your son's house?

12 A: I would've been at work.

13 Q: All right. Ms. Ray, I don't have any
14 further questions for you, but your
15 attorney may have some additional
16 questions for you, okay?

17 A: Okay.

18 Q: Thank you very much for your time this
19 morning. It was a pleasure to speak with
20 you. I appreciate you making yourself
21 available.

22 A: Thank you.

23 **EXAMINATION**

24 **BY MS. VANCAMP:**

25 Q: I think I just have two follow-up

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1 questions. Ms. Ray, at the location
2 where the impact occurred, were there any
3 crosswalks or anything like that in the
4 road?

5 A: No. There is a corner that, that you're
6 supposed to cross at, is the only thing.

7 Q: Okay. And the accident did not occur at
8 the corner?

9 A: No, it was, you know, like halfway to the
10 street there.

11 Q: Are there any signs indicating that
12 there's a pedestrian crossing nearby?

13 A: No. No.

14 Q: That's all I have.

15 MS. VANCAMP: PATRICK, DO YOU HAVE
16 ANY FOLLOW-UP
17 QUESTIONS?

18 **RE-EXAMINATION**

19 **BY MR. NAPOLSKI:**

20 Q: Ms. Ray, you said a moment ago that
21 there's a corner that you're supposed to
22 cross at, what's the authority that you
23 cite saying that you're supposed to cross
24 at that corner?

25 A: Well, I don't know of any authority.

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1 It's -- you always go to the corner and
2 cross the street, is what I was taught,
3 you know, there's a sidewalk there and it
4 ends and the road, you know, a sidewalk
5 picks up the next block, and I would just
6 think that people that were crossing the
7 street in that area would go to the
8 corner and do it.

9 Q: Okay. Just give me one more moment.

10 A: I'm sorry?

11 Q: Just give me one moment here. Ms. Ray,
12 am I understanding correctly this
13 accident took place near the same corner
14 as the Causeway Grill & Raw Bar?

15 A: Yes, you cross the Causeway, it's the
16 first street to the right, South Dogwood.

17 Q: And you said that you take South Dogwood
18 Drive every day to get home; is that
19 correct?

20 A: Yes.

21 Q: Do you ever see vehicles parked alongside
22 South Dogwood Drive?

23 A: Yes. Yes.

24 Q: And anywhere between Atlantic Avenue on
25 South Dogwood Drive, are you aware of any

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1 pedestrian crossings?
2 A: Just the one at the corner.
3 Q: So, is my understanding correct that if
4 someone were to be at your home and park
5 in front of your home, they need to walk
6 all the way to the corner where Causeway
7 Grill & Bar is in order to cross the
8 street?
9 A: That's kind of a hard question to ask at
10 the -- because we don't have any
11 sidewalks on Dogwood, so it's, you know,
12 my home is about a full block down from
13 Atlantic Avenue, so I, I don't know an
14 answer that, you know, people cross the
15 street if there's nothing coming or you
16 can walk to the corner and cross the
17 street.
18 Q: And, Ms. Ray, do you ever go to the
19 beach, ever walk to the beach from your
20 home?
21 A: On occasion, yes.
22 Q: And do you ever walk to the corner where
23 Causeway Grill & Raw Bar is in order to
24 get to the beach?
25 A: I -- no, I can get access to the beach

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1 before that.

2 Q: Do you have to cross South Dogwood Drive
3 in order to get to the beach?

4 A: Yes, at the corner, you turn right on, I
5 think it's called Yaka Street and walk
6 over to the beach. There's a, you know,
7 a public access at the end of that
8 street.

9 Q: And is there a pedestrian crossing at the
10 corner of South Dogwood and Yaka Avenue?

11 A: No. No, there's no pedestrian. The only
12 pedestrian -- no, there wouldn't be any
13 markings, we, we just cross the street.

14 Q: So, when you're going to the beach, you
15 typically cross South Dogwood Drive, not
16 at a pedestrian crossing; is that my
17 understanding?

18 A: Yes. Yes.

19 Q: Ms. Ray, I don't have any further
20 questions for you.

21 A: Okay.

22 MS. VANCAMP: I DON'T HAVE ANYMORE
23 QUESTIONS EITHER.

24 MS. RAY: ALL RIGHT.

25 (The deposition concluded at 10:48 a.m.)

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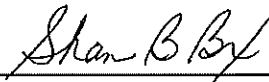
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **DIANE RAY**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **THIRTY-SEVEN (37)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020**.



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

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State of South Carolina) In the Court of Common Pleas
County of Horry) Case No: 2019-CP-26-05892

Ronald L. Mims,)
Plaintiff,)
vs.)
Diane W. Ray,)
Defendant.)

**THE DEPOSITION OF
RONALD MIMS**

Monday, June 1, 2020
10:53 a.m. - 2:21 p.m.

The deposition of RONALD MIMS, taken on behalf of the Defendant, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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MIMS v. RAY - RECORD ON APPEAL: 227

REMOTE APPEARANCES:

THE WITNESS:

RONALD MIMS
722 6th Avenue
Surfside Beach, South Carolina 29575

FOR THE PLAINTIFF:

Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

FOR THE DEFENDANT:

Marissa VanCamp, Esquire
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

Sharon Brock Court Reporting

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EXHIBITS

(No exhibits were marked during this proceeding.)

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STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

1

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1 RONALD MIMS HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 **EXAMINATION**

4 **BY MS. VANCAMP:**

5 Q: Thank you, Mr. Mims. My name is Marissa
6 VanCamp. I represent Diane Ray, and
7 we're here so that I can ask you some
8 questions about yourself and about an
9 accident that occurred back in 2019.
10 Have you ever had your deposition taken
11 before?

12 A: No, ma'am.

13 Q: Okay. I'm going to go over a few rules
14 and guidelines right now. If at any
15 point you don't hear me, please feel free
16 to interrupt and I'll rephrase or restate
17 my question or try to speak louder, okay?

18 A: Yes, ma'am.

19 Q: And since we're all on video today, if
20 you can wait until I'm done asking my
21 question before you give your answer, I
22 will do my very best not to interrupt you
23 before I ask my next question. You know,
24 normal conversation it's easy to kind of
25 anticipate where the question is going

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1 and you start your answer, but if you
2 could please try not to do that just so I
3 can hear you, Patrick can hear you, and
4 most importantly Sharon can hear you
5 since she's recording everything that's
6 being said, okay?

7 A: Yes, ma'am.

8 Q: Along those same lines, if you could keep
9 all of your answers verbal just as you're
10 doing, yeses and noes. Even though I can
11 see you, if you're nodding your head or
12 shaking your head and I'm going to
13 probably know what you're saying, I'll
14 ask you, "Is that a yes or a no," and I'm
15 not trying to be rude or ugly or anything
16 like that, I just want to make sure we
17 have a clean record; does that make
18 sense?

19 A: Yes, ma'am.

20 Q: Okay. And same thing with uh-huh
21 (affirmative response) and huh-uh
22 (negative response), if I ask you, "Is
23 that a yes or no," I'm not trying to be
24 rude or anything like that. Do you
25 understand that the court reporter is

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1 recording everything that's being said?

2 A: Yes, ma'am.

3 Q: And do you understand that you're
4 testifying under oath and there's
5 penalties that come along with lying or
6 being dishonest?

7 A: Yes, ma'am.

8 Q: Okay. If you need to take a break at any
9 point, let me know. I'm going to try to
10 get through this as quickly as we can. I
11 don't want to keep you any longer than
12 necessary, but if you need to take a
13 break to stretch your legs or get some
14 air, feel free to let me know. I'll tell
15 you, one thing about breaks is it's one
16 of the only times in the case when the
17 attorney-client privilege doesn't apply,
18 which basically means if we take a break
19 and you speak with your attorney during
20 the break, once we come back on the
21 record, I can ask you about that
22 conversation; does that make sense?

23 A: Yes, ma'am.

24 Q: Are you under the influence of any
25 medications or alcohol or anything like

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1 that, that could inhibit your ability to
2 answer my questions today?
3 A: No, ma'am.
4 Q: Okay. And if you do give me an answer to
5 my question, I'm going to assume that you
6 heard my question and that you understood
7 it; does that make sense?
8 A: Yes, ma'am.
9 Q: Okay. So, feel free to have me restate
10 or rephrase at any time. We're going to
11 go ahead and get started. Could you
12 state your full name for the record, Mr.
13 Mims?
14 A: Yes. Ronald Lee Mims, Jr.
15 Q: What's your date of birth?
16 A: 5/6/83.
17 Q: Were you born here in South Carolina?
18 A: Yes, ma'am.
19 Q: Which city?
20 A: Georgetown, Georgetown County.
21 Q: What's your current address?
22 A: 722 6th Avenue South, Surfside Beach
23 29575.
24 Q: Do you know approximately how long you've
25 been living at that address?

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1 A: About two and a half years, three.
2 Q: And I know these questions are difficult,
3 but do you remember where you were living
4 prior to the 6th Avenue Address?
5 A: Yes, I was living on 2nd Avenue South, I
6 meant, North, excuse me, ---
7 Q: Second Avenue.
8 A: --- in Surfside Beach.
9 Q: Do you know approximately how long you
10 lived at the 2nd Avenue address?
11 A: Just about two years.
12 Q: Besides South Carolina, have you lived in
13 any other states?
14 A: No, ma'am.
15 Q: All right. Are you on any social media
16 websites like Facebook or Instagram?
17 A: I have Facebook. I rarely mess with it.
18 Q: Okay. Have you ever made any posts
19 related to the accident that we're going
20 to talk about today?
21 A: No, ma'am.
22 Q: What's your phone number?
23 A: 843-315-5140.
24 Q: Do you know who the carrier is?
25 A: Straight Talk.

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1 Q: Would you walk me through your
2 educational background, starting with
3 where you went to high school?
4 A: Yes, I went to Socastee High School for
5 ninth and tenth grade, and then I went to
6 the Academy For Arts Science & Technology
7 for eleventh and twelfth, graduated.
8 Q: Do you remember which year you graduated?
9 A: 2001.
10 Q: After graduating, did you pursue any
11 additional education?
12 A: Some college at Horry-Georgetown
13 Technical.
14 Q: Okay. How long did you attend Horry-
15 Georgetown?
16 A: About three semesters.
17 Q: What program were you in or what was your
18 major?
19 A: Golf Course Management and Horticulture.
20 Q: All right. And after you stopped taking
21 those courses, did you attend any other
22 colleges or institutions?
23 A: No, ma'am.
24 Q: Do you have any professional licenses or
25 certifications?

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1 A: No, ma'am.

2 Q: Okay. Are you currently employed?

3 A: Yes, ma'am.

4 Q: Where do you work?

5 A: Save More Super Store.

6 Q: What's your position?

7 A: Basically, bicycle mechanic, and we
8 assemble, you know, furniture, pool
9 tables, you know, it's a surplus store.

10 Q: Okay. Approximately how long have you
11 been doing that?

12 A: About a month and a half, maybe two
13 months.

14 Q: Where were you working prior to that
15 position?

16 A: I was with the family business called
17 SpruceUp.

18 Q: SpruceUp?

19 A: Yes, ma'am, SpruceUp.

20 Q: What was your position there?

21 A: Landscaping and irrigation.

22 Q: Do you know roughly how long you were
23 working at SpruceUp?

24 A: I would say twelve years.

25 Q: Were you working at SpruceUp at the time

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1 of the accident in 2019?
2 A: Yes, ma'am.
3 Q: Okay. And while we're on that subject,
4 I'll go ahead and ask you now, are you
5 making a claim for lost wages or income
6 as a result of the accident in 2019?
7 A: I'm sorry?
8 Q: Are you making a claim for lost wages or
9 income as a result of the accident in
10 2019?
11 A: I'm not sure, I presume.
12 Q: Usually, it's kind of a claim that, due
13 to the accident, you missed work or you
14 lost income because you weren't able to
15 work; does that sound like something
16 you're claiming? I'll tell you, I do see
17 that claim in your discovery responses.
18 A: Yes, ma'am.
19 Q: Could you tell me about how much income
20 you're claiming you lost?
21 A: Well, at the time I've, I've been getting
22 -- the pay fluctuated. It was \$13 an
23 hour or if we had big jobs, it was by the
24 job.
25 Q: Do you have any documentation from your

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1 employer that would show the jobs you
2 missed, the wages you would've earned if
3 you had been working, anything like that?

4 A: Yes, ma'am.

5 Q: Do you have documentation that shows the
6 days of work you missed?

7 A: Yes, ma'am.

8 Q: Do you know the estimate of what your
9 lost wages claim is, what amount of
10 money?

11 A: Not at the exact moment, but I can get it
12 to you as soon as possible.

13 Q: If you can get that information to your
14 attorney, he can give it to me.

15 A: Yes, ma'am.

16 Q: And I'm not going to hold you to
17 specifics, but do you know, roughly, how
18 many days you missed from work?

19 A: It was about -- it was seven, eight
20 months.

21 Q: Okay. During that time period, at the
22 end of eight months, were you able to
23 work at all?

24 A: No, ma'am, I was -- no, ma'am.

25 Q: So that would've been seven to eight

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1 months, starting in June 2019, when the
2 accident occurred?
3 A: Correct.
4 Q: Were you able to return to work,
5 eventually?
6 A: Yes. That's why I got this new job, it's
7 easy on my body.
8 Q: Did you go back to SpruceUp at all after
9 the accident or did you immediately stop?
10 A: No, ma'am.
11 Q: Okay. So, once you were able to start
12 working, you were working in your new
13 position?
14 A: Yes, ma'am.
15 Q: And I think you were starting to say
16 something along the lines of the job at
17 Save More is easier on your body; is that
18 right?
19 A: Yes, ma'am.
20 Q: Can you tell me more about that?
21 A: Yes. Well, everything -- they know my
22 situation, and everything is like
23 lightweight, light work, you know, it's
24 nothing strenuous.
25 Q: Okay. Are you working full-time or part-

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1 time?
2 A: Full-time.
3 Q: Do you know the name of your supervisor
4 at Save More?
5 A: Jimmy and Andrea, but I don't know their
6 last name at the moment.
7 Q: Do you remember who your supervisor was
8 when you were working at SpruceUp?
9 A: Yes, it was my father, Ronald Mims, and
10 my mother, Fran Mims. My father passed
11 away.
12 Q: And I'm sorry, what was your mother's
13 name?
14 A: Fran Mims.
15 Q: Is your mother still working at SpruceUp?
16 A: No, ma'am.
17 Q: Do you know of a supervisor or an
18 employee that's currently working at
19 SpruceUp?
20 A: No, ma'am.
21 Q: I hope this question doesn't offend you,
22 I have to ask this of everyone, but have
23 you ever been arrested or convicted of
24 any crimes?
25 A: Yes, ma'am.

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1 Q: Could you tell me what year you remember
2 that occurring?

3 A: I couldn't -- you want me to go with the
4 most recent?

5 Q: Sure.

6 A: Okay. That was early 2019, and I am
7 currently in Mental Health Court, and
8 will be graduating in August, and it is a
9 program that is amazing. It has changed
10 my entire outlook upon life and just
11 really has turned any kind of negative
12 into a positive thought.

13 Q: That's good to hear.

14 A: Yes.

15 Q: And I don't want to dig too much into
16 this, could you tell me what the charge
17 was?

18 A: Yes, it was drugs, methamphetamine.

19 Q: Possession charge?

20 A: No, ma'am, distribution.

21 Q: Okay. And, then, walking back, it sounds
22 like you had been arrested prior to 2019
23 or is there another ---

24 A: Yes, ma'am, I had a --- I'm sorry?

25 Q: Sorry, I didn't mean to interrupt you,

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1 just want to make sure if there was more
2 than one, that we heard them all.
3 A: Yeah, DUI. I can't remember the exact
4 date, but it was a long -- it was a while
5 ago. It's six, six years, seven.
6 Q: Do you remember if that took place in
7 Horry County or Georgetown or somewhere
8 else?
9 A: Horry County.
10 Q: Okay. Do you remember how that charge
11 was resolved?
12 A: Yes, ma'am. I took the classes at -- on
13 Wise Road at Shoreline, Shoreline
14 Behavioral Health Services.
15 Q: Okay. Besides the 2019 charge and then
16 the DUI charge that was about six years
17 ago, can you think of any other charges?
18 A: A DUS, driving under suspension, a while
19 ago, as well.
20 Q: Okay. Would that have been sometime
21 after the DUI?
22 A: Yes, ma'am.
23 Q: And what happened with that charge?
24 A: I paid the fine and yeah.
25 Q: Has your driver's license been revoked at

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1 any point?

2 A: It had been.

3 Q: And, then, has it been reinstated since
4 then?

5 A: Yes, ma'am.

6 Q: Okay. Are there any other criminal
7 charges that you can recall?

8 A: No, ma'am.

9 Q: Prior to the accident in June 2019, do
10 you recall ever being involved in any
11 other motor vehicle accidents either as a
12 driver, a passenger, or a pedestrian?

13 A: No, ma'am.

14 Q: And, then, can you recall any accidents
15 after that 2019 accident?

16 A: No, ma'am.

17 Q: Before I get into the actual accident and
18 your treatment, I'm going to ask you a
19 little bit about your past medical
20 history. Do you suffer from any chronic
21 condition like diabetes or high blood
22 pressure or anything like that?

23 A: No, ma'am.

24 Q: Have you ever been hospitalized prior to
25 the 2019 accident?

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1 A: Yes, ma'am.

2 Q: Do you remember what year or roughly when
3 it was?

4 A: 2018, maybe early 2019, around in there.

5 Q: And I've looked through your medical
6 record and it looks like, correct me if
7 I'm wrong, was that for alcohol
8 withdrawals and things like that?

9 A: Yes, ma'am.

10 Q: And it looked like as part of that
11 history you suffered from some seizures;
12 is that right?

13 A: Yes, ma'am.

14 Q: Do you currently suffer from any
15 seizures?

16 A: No, ma'am.

17 Q: Besides that treatment, have you ever
18 been hospitalized for anything else,
19 surgeries, anything like that?

20 A: I'm sorry, you broke up a little bit.

21 Q: Besides the seizures and alcohol
22 withdrawal issues, have you ever been
23 hospitalized for anything else like any
24 other surgeries or illnesses?

25 A: No, ma'am.

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1 Q: Okay. Do you have a primary care
2 physician or a family doctor that you
3 see?
4 A: Yes, ma'am.
5 Q: What's the doctor's name?
6 A: Dr. Archambeau.
7 Q: Do you know what practice that doctor is
8 with?
9 A: No, ma'am, he's just a primary care
10 physician.
11 Q: Do you know, like, where the location is;
12 is that ---
13 A: Pawleys Island.
14 Q: Okay. Roughly, how long have you been
15 seeing that doctor?
16 A: Roughly, five years.
17 Q: Did you see that doctor for anything
18 related to this accident in 2019?
19 A: No, ma'am.
20 Q: I just want to make sure I wasn't missing
21 anything, because I didn't see his name
22 or her name. All right. Have you ever
23 suffered from neck or back pain prior to
24 the 2019 accident?
25 A: Yes, ma'am.

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1 Q: Can you tell me when that was?
2 A: That was about the same time, 2018, '19,
3 from seizures.
4 Q: And I guess, just to be clear, is that
5 neck pain or back pain or both?
6 A: Back pain.
7 Q: And that would occur whenever you had
8 seizures?
9 A: Yes, ma'am, I fell.
10 Q: Okay. Was there a serious injury to your
11 back?
12 A: No, ma'am, no surgery.
13 Q: No surgery, did you have treatment for
14 it?
15 A: Yes, ma'am.
16 Q: Do you remember where you treated?
17 A: Tideland Health.
18 Q: Do you remember if that was all over your
19 back or upper back, lower back, mid-back?
20 A: Mid to lower.
21 Q: And what was the pain like, can you
22 describe it for me?
23 A: Yeah, it was very -- it was more stabbing
24 and shooting pains. It would go down my
25 left leg sometimes and right.

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1 Occasionally, it was like the sciatica
2 nerve, and like certain positions, I
3 couldn't, I couldn't do, you know, as far
4 as lifting, bending. I couldn't sit for
5 a while without being uncomfortable.

6 Q: Was that constant pain or did it come and
7 go, do you remember?

8 A: It was pretty constant, and certain
9 things would alleviate it temporarily.

10 Q: What kind of things would alleviate it?

11 A: Laying in certain positions, sometimes
12 just walking would help it.

13 Q: Do you remember if you took any pain
14 medications or prescriptions or anything
15 to help with the back pain?

16 A: I can't recall, except for Ibuprofen
17 800s. I'm not really sure. I don't
18 think so.

19 Q: What was your treatment like at
20 Tideland's, was it like physical therapy
21 where you would do stretches and
22 exercises or do you remember what that
23 treatment was?

24 A: Yes, ma'am, it was physical therapy.

25 Q: Okay. Did that back pain resolve prior

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to the 2019 motor vehicle accident?
A: I'm sorry?
Q: Do you remember if that back pain resolved or went away before you were involved in the accident in 2019 with Ms. Ray?
A: Yes, ma'am, it got much better.
Q: Were you still experiencing pain at that point in time?
A: Only if I did something extreme and then that'd be immediately quick.
Q: Okay. Do you know when you stopped going to Tideland's for PT prior to the accident?
A: A year and a half ago-ish.
Q: Was it close in time to the accident or had it been a few months, do you remember? And, again, I won't hold you to specific dates, I'm just trying to get an idea.
A: It was months, it was months before.
Q: Okay. Prior to the 2019 accident, had you ever experienced any pain or issues with your right wrist?
A: No, ma'am.

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1 Q: Besides the physical therapy we've
2 already talked about, have you ever
3 completed any chiropractic treatment or
4 other physical therapy before that 2019
5 accident with Ms. Ray?

6 A: No, ma'am.

7 Q: All right. Before I start asking you
8 about the accident, I just have a quick
9 follow-up to your background questions.
10 Are you currently married?

11 A: No, ma'am.

12 Q: Have you ever been married?

13 A: Yes, ma'am.

14 Q: Okay. What was your spouse's name?

15 A: Tina Clifford.

16 Q: Do you remember what year you were
17 divorced?

18 A: About four years ago.

19 Q: Okay. And, then, if we do go to trial at
20 some point down the road when we're
21 looking at a jury, I'm going to avoid
22 putting any family members on the jury,
23 so do you have any relatives that are
24 over the age of eighteen that currently
25 reside in Horry County?

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1 A: No, ma'am.
2 Q: Do you know if Tina is still in Horry
3 County?
4 A: I don't.
5 Q: Okay. Do you live with anyone right now?
6 A: My mother.
7 Q: Do you have any siblings that are over
8 the age of eighteen that live in this
9 county?
10 A: No, ma'am.
11 Q: The date of the accident that I have is
12 June 20th, 2019; does that sound about
13 right to you?
14 A: Yes, ma'am.
15 Q: Do you remember what time of day the
16 accident occurred?
17 A: It was afternoon.
18 Q: Do you remember what the weather was
19 like?
20 A: Yeah, it was sunny.
21 Q: Tell me what you remember ---
22 A: And it rained.
23 Q: It was ---
24 A: It was like a popcorn, excuse me, it was
25 like a popcorn shower, typical summer

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1 stuff.

2 Q: At the time of the accident, was it

3 raining?

4 A: Not at the time.

5 Q: Do you remember if it rained at all

6 before the accident?

7 A: Maybe a little. Like I say, it was the

8 summertime hit and miss storms.

9 Q: Do you remember if it rained after the

10 accident?

11 A: Yes, ma'am.

12 Q: All right. And just to start off, I want

13 to be clear, you were a pedestrian at the

14 time of the accident, correct?

15 A: Yes, ma'am.

16 Q: Do you remember where you were walking

17 from?

18 A: Yes. I was walking across the street

19 from the fire station, going to cross the

20 street, go towards the beach.

21 Q: Was the beach your destination?

22 A: Yes, ma'am.

23 Q: All right. And you were coming from the

24 fire station?

25 A: Across the street from the fire station,

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yes, ma'am, Dogwood.

Q: Had you been at your home or is there a business you were at?

A: No, ma'am, I had parked my car.

Q: Where had you been prior to parking your car?

A: My house.

Q: All right. If you could tell me, what do you remember from the minutes leading up to the accident?

A: I left my house, parked my car, went to go to the beach across the street, and that's when it happened.

Q: Okay. Just to get a little more detail, can you describe what the road is like in that area?

A: Describe the road?

Q: Do you know, is it one lane in each direction, is it multiple lanes in each direction, is there ---

A: Yeah, one in ---

Q: --- an intersection?

A: One in each direction.

Q: Were you crossing near an intersection?

A: I was crossing to another street, not off

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1 of the main street, Atlantic, the
2 secondary street.
3 Q: Do you know if there's any traffic
4 signals or stop signs or anything like
5 that at the spot where you were crossing
6 or nearby?
7 A: Nearby.
8 Q: About how far away?
9 A: Maybe fifty to eighty feet.
10 Q: Is that a traffic signal or a stop sign?
11 A: No, it's the direct turn off of Atlantic.
12 Q: Okay. Do you remember what traffic was
13 like that day?
14 A: Typical summer traffic.
15 Q: Prior to crossing the street, do you
16 remember, you know, checking for traffic
17 and things like that?
18 A: Yes, ma'am.
19 Q: Tell me what you remember about that.
20 Did you see vehicles in the road?
21 A: Not at the time, no, ma'am.
22 Q: From either direction?
23 A: No, ma'am.
24 Q: Were any vehicles parked alongside the
25 road?

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1 A: Yes, ma'am.

2 Q: What kind of vehicle, do you remember?

3 A: A delivery truck and other regular cars.

4 Q: Where were those vehicles parked in
5 relation to where the accident occurred?

6 A: They were parked at the corner by
7 Atlantic coming off of that turn from
8 Atlantic.

9 Q: Were there any vehicles parked near,
10 right near where the accident occurred or
11 were they all closer to Atlantic?

12 A: They were closer to Atlantic and spread
13 along, along the other side of the
14 street.

15 Q: Was the delivery truck parked nearby
16 where the accident occurred or was that
17 close to Atlantic?

18 A: Right in between.

19 Q: Okay. So, am I correct that there are
20 vehicles parked along the road, but no
21 moving traffic that you saw along
22 Dogwood?

23 A: Yes, ma'am.

24 Q: Okay. Do you know, roughly, how long you
25 paused to check for traffic before you

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1 crossed the street?
2 A: Yes, maybe five seconds, looked both
3 ways, checked, you know.
4 Q: Is there a crosswalk or anything like
5 that at the area where you cross the
6 street?
7 A: No, ma'am, they're all eroded.
8 Q: They were eroded?
9 A: Yes, ma'am.
10 Q: Could you see lines in the road for a
11 crosswalk that had been there before?
12 A: No, ma'am.
13 Q: What makes you say they're eroded?
14 A: Well, the one -- that's what I mean. The
15 one at Atlantic, it used to be yellow
16 years and years ago. I've lived here my
17 whole life, and it hasn't been painted
18 in, I don't think ever.
19 Q: At Atlantic where the intersection is?
20 A: Yes, ma'am.
21 Q: Okay. Tell me what you remember about
22 the actual impact.
23 A: The actual impact, I just heard the
24 engine, looked over, saw a blue hood, and
25 I don't remember anything after that.

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1 Q: Do you know if you lost consciousness?
2 A: Yes, ma'am.
3 Q: And just to backtrack, did you say you
4 heard the engine or you heard a car?
5 A: Yes, ma'am, it was real quick.
6 Q: What do you remember or what's the first
7 thing you remember when you came to after
8 losing consciousness?
9 A: Just shaky and, you know, in shock,
10 freaked out, stood up, went to kind of
11 shake off, you know, like, "Whoa," and
12 that's when I noticed my arm, and went
13 over to the firehouse.
14 Q: All right. When you say you noticed your
15 arm, I just want to be clear about what
16 that means. Is that your right arm or
17 your left arm?
18 A: My right arm was completely broke.
19 Q: Were you experiencing any pain at that
20 point in time?
21 A: (Audio was muted.)
22 Q: I couldn't hear you. Try to say
23 something now.
24 A: Okay, sorry.
25 Q: That's okay. I can hear you now. I'll

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1 repeat that question. Were you
2 experiencing any pain in your arm at that
3 point in time?

4 A: Yes, ma'am, once I started coming to.

5 Q: Besides your arm, do you recall
6 experiencing pain in any other areas of
7 your body?

8 A: Yes, ma'am. Oh, I am so sorry. Can --
9 may we please continue shortly?

10 Q: Do you need to take a short break or do
11 you need to step away for a longer period
12 of time?

13 A: Maybe -- how about one o'clock. I am so
14 sorry.

15 Q: Do you need to leave for a meeting or a
16 class or something?

17 A: Yes, ma'am. I had a meeting and it's
18 starting a little early. That's why it
19 was breaking through on me, they're
20 telling me to come in.

21 Q: Okay.

22 MS. VANCAMP: SHARON, ARE YOU
23 AVAILABLE THIS
24 AFTERNOON?

25 COURT REPORTER: I AM.

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1 MS. VANCAMP: OKAY. AND, PATRICK, IS
2 THAT OKAY WITH YOU IF
3 WE TAKE A BREAK AND
4 RESUME AT ONE?

5 MR. NAPOLSKI: YEAH. THAT WORKS JUST
6 FINE FOR ME IF THAT'S
7 OKAY WITH EVERYONE
8 ELSE.

9 MS. VANCAMP: THAT WORKS FOR ME. MR.
10 MIMS, IF YOU CAN SIGN
11 BACK ON AROUND 1:00
12 P.M., I'LL SIGN BACK
13 ON, TOO.

14 ****OFF THE RECORD****

15 11:33 a.m. - 1:46 p.m.

16 (ON THE RECORD.)

17 MS. VANCAMP: I KNOW WE JUST TOOK A
18 LONG BREAK. SHARON, IF
19 YOU WOULDN'T MIND JUST
20 READING INTO THE RECORD
21 THE LAST QUESTION SO
22 THAT WE CAN KIND OF
23 START WHERE WE LEFT
24 OFF.

25 (COURT REPORTER COMPLIES WITH REQUEST).

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1 **MS. VANCAMP CONTINUES:**

2 Q: Okay. So, circling back to where we're
3 talking about the accident, Mr. Mims,
4 could you tell me what areas of your body
5 you started feeling pain in immediately
6 after the impact?

7 A: My left leg, it, it triggered my sciatic
8 nerve, and my lower back.

9 Q: And I apologize, I might ask you some
10 repeat questions, but ---

11 A: That's okay.

12 Q: --- I believe you said you did lose
13 consciousness; is that right?

14 A: Yes, I did.

15 Q: Do you have any idea how long?

16 A: Honestly, I'm not too sure. It wasn't,
17 you know, terribly long, maybe thirty
18 seconds to a minute, maybe, somewhere
19 around in there.

20 Q: And, then, you were able to stand up; is
21 that right?

22 A: Yeah. It took, it took me a second, but
23 I, you know, got up, a little dizzy,
24 shaken.

25 Q: All right. And, then, I believe you had

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1 said you spoke with the Defendant; is
2 that right, just briefly?
3 A: I'm not sure, maybe briefly.
4 Q: And, then, you walked over to the fire
5 station?
6 A: Yes, I just went straight there.
7 Q: Did any of the firefighters come to you
8 or did you go straight over there?
9 A: A gentleman helped me to walk over there.
10 Q: Do you know who he was?
11 A: I do not.
12 Q: Do you know if he was a firefighter?
13 A: No, sir, I mean, no, no, he was not.
14 Q: Okay. Tell me what you remember from
15 your time at the fire station.
16 A: They put a temporary sling on my arm,
17 like, I believe some kind of wrap just
18 to, you know, give it a little help so I
19 didn't have to keep holding it, like a
20 little sling, and that was when, you
21 know, they stayed with me, and my mother
22 came to take me to the hospital.
23 Q: Do you know how long after the accident
24 it was before she arrived?
25 A: Oh, it wasn't that long, maybe ten

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1 minutes-ish.

2 Q: Do you remember if you called your mom or

3 if one of the firefighters did or

4 somebody else?

5 A: I -- I'm pretty sure I did.

6 Q: Do you remember calling anyone besides

7 your mother?

8 A: No, just my mother.

9 Q: Okay. And you said that she took you to

10 the hospital?

11 A: Yes, ma'am.

12 Q: So, no ambulance showed up at any point

13 that you remember?

14 A: No, ma'am, because my mother was right

15 there.

16 Q: Do you remember if you spoke with the

17 Defendant at any point before you left

18 for the hospital once you're at the fire

19 station?

20 A: The only thing I recall was her

21 apologizing, and that was it.

22 Q: Do you remember which hospital you went

23 to?

24 A: Tideland's Health.

25 Q: And tell me what you remember from your

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1 treatment there.

2 A: They took me into the emergency room, put
3 me on -- I'm not sure what it's called,
4 but I have a picture of it, but it looked
5 like Chinese handcuffs like they attach
6 to my fingers and attached something to
7 my bicep muscle and pulled down as those
8 -- they were trying to gently let the
9 bone come back together, which it didn't,
10 you know, and then they sent me home in a
11 sling, and then that's when I -- after
12 that, a little bit of time passed, I went
13 to Dr. Lewis to have surgery.

14 Q: All right. Going back to the ER
15 treatment, do you remember if they did
16 any x-rays or diagnostic scans when you
17 were at the hospital?

18 A: Yes, they did.

19 Q: Do you remember speaking with a doctor
20 about the results?

21 A: Not, I mean, not really. I was pretty --
22 I'm not sure. I was kind of, you know, I
23 was just shaken up.

24 Q: And you said they put you in a sling and
25 sent you home?

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1 A: That, I do remember.
2 Q: Do you know if they gave you any pain
3 medication?
4 A: I refused. I, I just -- like Ibuprofen.
5 Q: Can you tell me why you refused the pain
6 medication?
7 A: Yes, 'cause I don't like -- I don't take
8 drugs. I'd, I'd rather be clean and deal
9 with it.
10 Q: All right. After you were released from
11 the hospital, did you just go home that
12 night, do you remember anything specific
13 about what you did that night?
14 A: Just went home.
15 Q: And I believe you said you saw Dr. Lewis
16 next?
17 A: Yes, ma'am.
18 Q: Do you know when that was?
19 A: I don't have the paper in front of me,
20 no, ma'am.
21 Q: Was it shortly after the accident, was it
22 a couple weeks later, do you have any
23 estimate?
24 A: It was, you know, a week or two,
25 something like that. That's when he told

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1 me, you know, for sure I needed surgery.
2 I was like, "Well, yeah, it's hanging
3 out."
4 Q: Do you know what practice Dr. Lewis is
5 with?
6 A: He's with Tideland Health. He's -- he
7 does arms and wrists and stuff, you know,
8 bone, ortho -- orthopaedic.
9 Q: I think the first date that I have with
10 Tideland Health Orthopaedics is July
11 2nd; does that maybe sound about right?
12 A: Okay, yes.
13 Q: Do you remember any treatment between the
14 date of the accident on June 20th and
15 then that visit with Dr. Lewis on July
16 2nd?
17 A: Any treatment, no.
18 Q: And was Dr. Lewis the one that performed
19 the surgery?
20 A: Yes, ma'am.
21 Q: Were there any complications from the
22 surgery?
23 A: No, ma'am.
24 Q: All right. Will you tell me about the
25 treatment you remember having after your

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1 surgery was completed?
2 A: Yes, ma'am. I had two months' worth of
3 physical therapy for my right arm and for
4 my back. That was from December to
5 January.
6 Q: December 2019 to January 2020?
7 A: Yes, ma'am.
8 Q: Have you had any treatment since that
9 ended in January 2020?
10 A: I went to Dr. Yee's office and got a
11 epidural, a shot in the spine.
12 Q: Could you say the doctor's name? Did you
13 say Yee with a "Y"?
14 A: Yeah, Y-E-E.
15 Q: Do you know which practice -- Which
16 practice is Dr. Yee with?
17 A: It's Pain Management with Tideland's
18 Health.
19 Q: And you said you had an epidural
20 injection?
21 A: Yes, ma'am.
22 Q: And I'm assuming that was in your back?
23 A: Yes, and -- yes, ma'am.
24 Q: Have you just had one injection?
25 A: I had two.

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1 Q: Is there any other treatment since
2 January 2020 that you can think of
3 besides those two injections?

4 A: No, ma'am.

5 Q: Do you have any additional injections
6 planned or additional appointments set
7 up?

8 A: No, ma'am, just a follow up.

9 Q: I want to circle back to the physical
10 therapy you had right after your surgery.
11 Do you feel like that physical therapy
12 helped with your issues or how would you
13 describe your progress?

14 A: You broke up a little.

15 Q: How would you describe your progress
16 during your therapy right after your
17 surgery; do you feel like you improved?

18 A: You know, it was getting there, you know,
19 there was, there was a little progress,
20 you know, they told me it'd take a while.
21 My hand doctor or the physical therapy
22 said I had about forty-six percent, kind
23 of wish I could've got a little bit more,
24 but, you know, it was all I could do at
25 the time.

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1 Q: At this point in time, are you still
2 experiencing any pain in your right arm?

3 A: Yes, ma'am.

4 Q: How often do you experience the pain?

5 A: Pretty much, every day.

6 Q: Is it constant pain or does it come and
7 go?

8 A: Comes and goes.

9 Q: And how would you describe it, like
10 stabbing, or how would you describe it?

11 A: It's, it's just sharp, you know, bad
12 pain. That, that extreme pain is, you
13 know, very short-lived and then it hurts,
14 you know, mildly after that for a while.

15 Q: All right. At this point in time when
16 you get that pain, how do you treat it?

17 A: I put my brace back on, you know, I, I
18 keep it on most of the time anyway, but
19 it just -- it doesn't matter, but I, you
20 know, I keep it super tight, you know,
21 just to try to limit any kind of tweaking
22 of it, you know.

23 Q: Are you wearing your brace right now?

24 A: No, ma'am.

25 Q: How often do you wear your brace?

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1 A: When I go to work, whenever I'm doing
2 anything with my hands, I've always got
3 it handy.

4 Q: Okay. At this point in time, are you
5 still experiencing back pain?

6 A: Yes, ma'am.

7 Q: How often do you feel that pain?

8 A: Once, again, when it's just something,
9 you know, that would tweak it, you know,
10 just certain movements, you know, lifting
11 certain things, you know, just difficult.
12 Sitting too long, it starts, you know,
13 cramping up and everything, it starts
14 getting real painful, you know, just
15 twisting, bending, lifting.

16 Q: Do you feel like the injections helped
17 with your pain?

18 A: Yes, strongly.

19 Q: Sounds like that pain is not constant; is
20 that right?

21 A: No, ma'am.

22 Q: And that's a no, it's not constant? I
23 just want to make sure I'm clear.

24 A: Yes.

25 Q: Earlier, you had said that your back pain

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1 would radiate into one of your legs, is
2 it one leg or the other or the both legs?

3 A: The left leg.

4 Q: Does it still do that to this day?

5 A: Yes.

6 Q: All right. When you have back pain at
7 this point in time or pain that radiates
8 into your legs, do you have any treatment
9 that you're doing for it?

10 A: No, just personal things that I can do to
11 alleviate it, not professional.

12 Q: Like stretches and things like that?

13 A: Yes, ma'am.

14 Q: And I know you said you didn't want to
15 take any medications before, but do you
16 have any medications that you take now
17 for your pain?

18 A: Gabapentin.

19 Q: Do you remember when you first started
20 taking that?

21 A: Not really, maybe October-ish of last
22 year, maybe.

23 Q: How often do you take it?

24 A: In the morning and in the late afternoon,
25 evening.

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1 Q: Is that every day?
2 A: Yes, ma'am.
3 Q: Do you have a pharmacy that you regularly
4 refill that prescription at?
5 A: Yes, ma'am.
6 Q: Where's that at?
7 A: The Wal-Mart Pharmacy in Garden City.
8 Q: Okay. Do you know if that's prescribed
9 by your primary care physician or is it
10 the Pain Management doctor?
11 A: Pain Management.
12 Q: Besides the Gabapentin, are you taking
13 any other medications right now?
14 A: Yes.
15 Q: Medications for pain?
16 A: No, ma'am, for sleep. It's been tough
17 to, you know, sleep, tossing and turning.
18 Q: Do you know what medication you take for
19 sleep?
20 A: Trazadone.
21 Q: Do you take that every night?
22 A: Yes, ma'am.
23 Q: Are there any other medications you're
24 currently taking?
25 A: I take Lexapro as well, once in the

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1 morning.

2 Q: All right. And since you've told me you
3 still have pain at this point in time,
4 can you tell me, is there anything that
5 you absolutely can no longer do following
6 the accident?

7 A: Yes, you know, like the work I used to
8 do, landscaping, irrigation, because I
9 can't use any force, you know, like as
10 far as digging, moving plants, pruning
11 trees, you know, 'cause all those
12 movements, I, I just can't do it, it
13 hurts too bad, you know, having to lift,
14 so I can't do that. Leisurely, sports-
15 wife, I used to surf a lot, haven't
16 tried, but I don't see how I could do
17 that, because my wrist does not bend
18 back, nor, you know, fishing kind of, you
19 know, that hurts. I've tried that twice.
20 Yeah, it's knocked out a couple of things
21 out of my life.

22 Q: And you said you haven't tried surfing
23 since the accident; is that right?

24 A: Correct. I doubt I could, I mean, you
25 know, I don't know if you know anything

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1 about surfing, but, you know, you got to
2 pop up, and my wrist doesn't bend back.
3 That's all it does, it goes straight,
4 maybe two degrees.
5 Q: Can you estimate for me how often you
6 would go surfing before the accident?
7 A: Any time there was waves.
8 Q: That sounds like a surfer answer.
9 A: I mean, you know.
10 Q: Are there any areas of your body that we
11 haven't talked about yet that you're
12 claiming were affected in the accident?
13 I know we've talked about your right
14 wrist and your back and kind of your leg.
15 Is there any other area we haven't
16 covered?
17 A: No, ma'am.
18 Q: Okay. In one of your, I think it was
19 your final note from your therapy in
20 January 2020, it said that you were
21 planning on joining a gym and starting
22 Yoga because you were feeling better;
23 were you able to do that?
24 A: No, ma'am, because Covid 19, everything,
25 you know.

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1 Q: At the time you stopped therapy, were you
2 feeling like your issues were resolving?

3 A: I mean, like I say, they, they weren't
4 getting worse. There was slow
5 improvement, but it was an improvement.

6 Q: Okay, that's fair. Do you remember
7 anything about the conversation you had
8 with the police officer at the hospital?

9 A: Not really, no, ma'am.

10 Q: Do you remember that a police officer
11 came?

12 A: Yes. I, I vaguely remember that, yes, I
13 remember that, uh-huh (affirmative
14 response).

15 Q: Besides the brace that you've been
16 talking about, do you have any other
17 devices or other braces that you use for
18 your arm or anything for your back?

19 A: I just have a heating pad for when I lay
20 down for my back.

21 Q: Okay. At one point, I think you
22 mentioned photos, do you have photos that
23 you took after the accident?

24 A: Yes, ma'am.

25 Q: What are they photos of? Is it of your

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1 arm or things like that?
2 A: Yeah, it's just a picture of the break
3 and the Chinese handcuff hookup they had
4 at the hospital.
5 Q: Do you know if you've given all those
6 photos to your attorney?
7 A: I'm not sure, but I sure can.
8 Q: Okay. I think I have some, but I don't
9 know if I have all of those. Let's see.
10 A: And I have some as well from doing the
11 stim, the electrode shock stim in my
12 back, too. That was interesting.
13 Q: And I promise I'm just about done, but I
14 do have some follow-up, so I apologize
15 for being ---
16 A: Okay.
17 Q: --- all over the place. Prior to the
18 accident in 2019, do you remember if
19 you'd ever made any Workers' Compensation
20 claims?
21 A: No, ma'am.
22 Q: Have you ever made any other personal
23 injury claims?
24 A: No, ma'am.
25 Q: I do not want to know anything that

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1 you've discussed with your attorney, but
2 do you remember when you first contacted
3 an attorney after the accident?

4 A: It was very shortly.

5 Q: Okay. I have a damages summary. This
6 was produced to me in the discovery
7 responses that your attorney sent me, and
8 I apologize, I don't have a way to get it
9 to you right this second, but it lists,
10 kind of, the different damages you're
11 claiming.

12 MS. VANCAMP: AND, I BELIEVE,
13 PATRICK, YOU PROBABLY
14 HAVE THIS.

15 Q: I just want to ask you about a few of
16 these. One of the ones that I see is
17 deprivation of normal life expectancy,
18 can you tell me about that claim?

19 A: Yes. Like I mentioned before, everything
20 up until then, you know, I, I lost my
21 work, I lost my personal hobbies, and
22 like I say, everything that I love is
23 physical and involves my right hand. I'm
24 right-handed, for one thing, you know, it
25 just, it disables every part of my life

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1 that I've known and grown to love.

2 Q: Okay. Another one on here, and I'm not
3 trying to embarrass you at all, but these
4 are claims that are listed, so I want to
5 ask you about them. One of them listed
6 is sexual dysfunction, can you tell me
7 about that claim?

8 A: Yes. Well, something has -- okay, how do
9 I -- okay. It's not getting proper blood
10 flow, like even when, after I sleep, I
11 mean, I'll get kind of technical, you
12 know, usually when you wake up there's
13 blood, you know, flow, nothing.

14 Q: Had that ever happened prior to the
15 accident in 2019?

16 A: No. I kind of had some issues a while
17 back, but that got resolved.

18 Q: When you say a while back, do you know,
19 roughly, how long ago you're talking
20 about?

21 A: Probably ten years.

22 Q: Were you seeing a doctor to help resolve
23 that?

24 A: I saw a doctor one time.

25 Q: Do you remember the name of the doctor or

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1 where that was?
2 A: No, I, I do not. It was such a long time
3 ago, I don't.
4 Q: And you said it resolved?
5 A: Yes. Yes.
6 Q: How long after the accident did you start
7 having this issue?
8 A: Immediately.
9 Q: Like the next morning?
10 A: Every morning.
11 Q: Starting back since the accident?
12 A: Yes, a little awkward, but it's okay.
13 Q: And like I said, I'm not trying to
14 embarrass you, but this is my only chance
15 to really ask you questions, and that's
16 part of your claim, so I just want to
17 make sure that I am clear.
18 A: No, that's fine, I get it.
19 Q: Let's see. And, again, I'm not trying to
20 embarrass you or make you uncomfortable,
21 but some of the other ones I see are
22 mental anguish, mental distress,
23 apprehension and depression. Can you
24 tell me how those things are related to
25 the accident?

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1 A: Okay. Could you start with one at a
2 time?
3 Q: Sure. We can start with mental anguish.
4 A: Yeah, the mental anguish is, you know,
5 the daily frustrations, you know, from
6 being limited to what I, you know, am
7 able to do well and enjoy, you know, it's
8 quite frustrating.
9 Q: Okay. Mental distress, kind of same
10 thing?
11 A: Along those same lines, yes, ma'am.
12 Q: And, then, there's apprehension?
13 A: Apprehension?
14 Q: Yes.
15 A: Elaborate.
16 Q: It just says apprehension, and I just
17 want to know what that means to you.
18 A: Would you mind elaborating, please?
19 Q: Well, what do you think of when you hear
20 apprehension?
21 A: Apprehension basically, to me, sounds
22 like, you know, everything, you know,
23 that I love was stripped from me as far
24 as like I, I would love to hopefully say
25 that I could be able to do a few of them.

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1 I'm sorry, I'm, I'm kind of drawing a
2 blank at the moment.

3 Q: It's okay, and like I said, I just want
4 to get your perspective on these. Well,
5 I do want to ask you, though, about
6 depression. Can you tell me about how
7 that's related to this car accident?

8 A: Yes, you know, the depression part, it's,
9 it's -- like I say, it's another daily
10 feat that I, I have to try to overcome,
11 you know, by, you know, I, I just don't
12 see anything else that I would love
13 nearly as much as everything I used to
14 do. You know, I was really, really well
15 at it, you know, it took my confidence
16 down tremendously, that sucks. You know,
17 just basically trying to, trying new
18 things, and, and it gets, it gets very
19 aggravating, just, you know, even trying
20 to talk about it, because I had such love
21 and passion for what I did. I took pride
22 in everything I did, you know, and pride
23 was huge for me, you know. You know, as,
24 as, as far as my work ethics go and, you
25 know, making people happy by doing what I

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1 did, knowing now I can't, so that would,
2 you know, it just, it puts me in a dump
3 once in a while, you know, it's just --
4 and then I hear people talking about this
5 job or that and then the waves are good,
6 and I'm like, "Yeah, cool, must be nice."

7 Q: Are you seeking any treatment for
8 depression or for your mental anguish and
9 distress at this point in time?

10 A: I talk with my counselor through Mental
11 Health Court, which is amazing, by the
12 way.

13 Q: Outside of the Mental Health Court, do
14 you have any psychiatrists or therapists
15 that you go to?

16 A: Not at the moment.

17 Q: All right. Just to circle back to the
18 accident, Mr. Mims, I'm just going to put
19 you on the spot. Do you take any
20 responsibility for the accident?

21 A: Do I take any responsibility?

22 Q: Yes, sir.

23 A: I, I was just trying to go check the
24 babes.

25 Q: Is that a no?

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1 A: That would be a no.
2 Q: Okay. Do you understand that the police
3 officer that investigated the accident
4 determined that you were at fault?
5 A: Don't see how.
6 Q: So, you disagree with that finding?
7 A: Right. Yes, ma'am.
8 Q: Can you just explain to me a little bit
9 more about why you would disagree with
10 that finding?
11 A: Well, because I was a pedestrian, for
12 one. She should've been paying attention
13 coming off around a, you know, a turn
14 like that, for one. She had to be, I
15 mean, I know she was going fast. It
16 wasn't -- I'm six, three. It wouldn't
17 have knocked me out and sent me flying
18 and broke bones if she was putting.
19 Q: When you say it sent you flying, can you
20 tell me how far away from the vehicle you
21 landed?
22 A: Honestly, I couldn't tell you, because it
23 knocked me out, so I, I don't, you know.
24 Q: When you stood up, how far away from the
25 vehicle were you?

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1 A: I'm -- honestly, there, again, I couldn't
2 really tell you. I just remember being
3 dirty, you know, off in the sand and
4 rocks, and I was kind of just looking at
5 myself first, you know, I wasn't worried
6 about where the car was. I was trying to
7 -- I was -- had to make sure I was okay.
8 I wasn't worried about where the car was
9 and this, that, and the other, you know,
10 I was in shock. I don't know.

11 Q: Okay. I just want to make sure I
12 understand since you had testified that
13 it kind of knocked you. It sounded like
14 you were saying it knocked you far away.
15 Now, I want to make sure I understand. I
16 think earlier you had said you did not
17 see her vehicle prior to the accident; is
18 that right?

19 A: That is correct. All I remember, like I
20 say, is blue hood, and that was it, okay,
21 that's it.

22 Q: Okay. Mr. Mims, I think that's all I
23 have for you today. Thanks for coming
24 back after your meeting and making the
25 time to finish this. If your attorney

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **RONALD MIMS**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **FIFTY-NINE (59)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020**.



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires: 5/31/2021

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(843) 685-7179

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2019-CP-26-05892

Ronald L. Mims,)
)
 Plaintiff,) **Transcript of Record**
)
 vs.)
) **JANUARY 20, 2021**
 Diane W. Ray,)
)
 Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S :

Patrick T. Napolski, Esquire
Attorney for Plaintiff

Marissa A. VanCamp, Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

1 **THE COURT:** All right. Next is 2019-CP-26-05892, Ronald
2 L. Mims versus Diane W. Ray.

3 All right. Can everyone see and hear me?

4 **MR. NAPOLSKI:** Yes, Your Honor.

5 **MS. VANCAMP:** Yes, Your Honor.

6 **THE COURT:** All right. This is 2 ---

7 **REPORTER'S NOTE:** (Break in internet connection.

8 Reporter was dropped from the hearing.)

9 **THE COURT:** Ms. Todd, are you back with us?

10 **REPORTER:** Yes, Judge. I don't know what happened. It
11 completely shut me down.

12 **THE COURT:** Yes. It said it lost band strength, but you
13 were the only one that went out. So we'll go ahead and we'll
14 start all over on this one. Okay.

15 **REPORTER:** All right. Thank you.

16 **THE COURT:** All right. This is 2019-CP-26-05892, Ronald
17 L. Mims versus Diane W. Ray. According to my roster the
18 matter is before the Court on a motion for summary judgment.
19 Appearing on behalf of the plaintiff is Attorney Patrick
20 Thomas Napolski. Appearing on behalf of the defendant is
21 Attorney Marissa Ann VanCamp.

22 All right. Ms. VanCamp, this is your motion?

23 **MS. VANCAMP:** Yes, Your Honor.

24 **THE COURT:** All right. Let me hear from you.

25 **MS. VANCAMP:** Your Honor, this is a motion for summary

1 judgment in a case involving a negligence action arising out
2 of a motor vehicle accident that occurred between a defendant
3 driver and a plaintiff pedestrian.

4 So the basic facts of our case are that the accident
5 occurred in June 2019 around 5:45P.M. on Dogwood Drive in
6 Surfside Beach. The defendant was driving on Dogwood Avenue
7 and she saw a delivery van parked up ahead to the right that
8 was still partially in the roadway. So she came to a stop and
9 tried to look and see if it was safe for her to pass because
10 she knew she would have to go over a little bit into the
11 opposite lane. She didn't see any vehicles, so she proceeded
12 to pass the truck. As she reached about the front of the
13 truck and was about to be even with the front, the plaintiff
14 appeared from the right and basically walked into her vehicle
15 from her perspective.

16 The plaintiff testified in his deposition that he was
17 attempting to cross the street and seen some vehicles parked
18 along the side, including the delivery truck, but did not see
19 any vehicles approaching so he started to walk out into the
20 street and almost immediately the impact occurred. The
21 defendant testified that she was going slow, and she had been
22 at a stop. She was paying attention, watching for pedestrians
23 and vehicles.

24 The weather conditions were that it was cloudy but not
25 quite raining. It did end up start raining later on, but at

1 the time of the impact, no rain from either perspective.

2 All parties that have been deposed so far are the
3 plaintiff and defendant and also the investigating officer.
4 The defendant did testify that there was no crosswalk at the
5 location where the impact occurred. The plaintiff testified
6 that there was no crosswalk where he was attempting to cross
7 the street. And the investigating officer also testified that
8 he was not -- the plaintiff was not attempting to cross the
9 street at a crosswalk.

10 The investigating officer did his investigation and
11 determined that the plaintiff was at fault for the accident
12 because he was illegally in the roadway and was attempting to
13 cross the road where there was no crosswalk.

14 The motion is made on the grounds of comparative
15 negligence and that the plaintiff's own negligence exceeds
16 that of the defendant's, and that no reasonable jury could
17 find otherwise. So there is a line of cases that are directly
18 on point with this. The main one that I will address is
19 called Bloom v Ravoira. It's a South Carolina Supreme Court
20 case, Your Honor. I'll get into the facts of them in a
21 second, but the Supreme Court found in that case that even
22 though comparative negligence is typically deemed to be a jury
23 issue, Courts have granted summary judgment to a defendant
24 based on comparative negligence for the sole reasonable
25 inference which may be drawn from the evidence that the

1 plaintiff's negligence exceeded 50 percent.

2 Like I said, the facts in Bloom are that there was a
3 defendant driver proceeding in Charleston. There was a light
4 rain that day and it was around 6:30P.M. That accident
5 occurred in the winter, so the lighting conditions were
6 probably a bit different. But the defendant was driving down
7 the street, he was going slow because he was looking for an
8 intersecting street where he needed to turn. The plaintiff in
9 that matter was attempting to cross the street to get to his
10 car. And the testimony is that he glanced both ways, did not
11 see any oncoming traffic and went out into the street. Almost
12 immediately that impact occurred and there was an accident.
13 The trial court in that matter, it was a Circuit Court in that
14 matter, granted the defendant's summary judgment on this same
15 argument. The Court of Appeals reversed that decision, but
16 then the Supreme Court of South Carolina reversed the Court of
17 Appeals decision and said that summary judgment was proper to
18 the defendant in that case. The Bloom case also distinguished
19 the duties between a driver and a pedestrian in that instance
20 and said that a driver is charged with the duty to exercise
21 due care to avoid colliding with any pedestrian. That was
22 pursuant to South Carolina Code 56-5-3230. Whereas a
23 pedestrian is charged with a duty to yield to all vehicles on
24 the roadway when they are crossing on a roadway at any point
25 other than within a marked crosswalk. That is pursuant to

1 South Carolina Code section 56-5-3150 (a).

2 Now in the plaintiff's reply and I think his subsequent
3 reply where he has pointed out caselaw, he referenced a Court
4 of Appeals case from, I might pronounce this wrong, Abdelgheny
5 v Moody. Your Honor, the facts that I will argue in Moody are
6 vastly different from those in our case and in the Bloom case.
7 Plaintiff argues that the Moody facts align more with ours
8 than the Bloom do. But just to point out some of the major
9 differences, in our matter the accident occurred around
10 5:45P.M., cloudy but no rain, rain later on. I'm not looking
11 to debate the timeline of that. But in Bloom, 6:30P.M. in the
12 winter and there was a light misty rain. In the Moody case
13 the accident occurred around 8P.M. where it was very dark and
14 a very heavy rain downpour.

15 The speed of the vehicles, in our case the defendant was
16 driving slow. She testified she believes around 10 miles per
17 hour, that's what the police officer determined her speed to
18 have been. She had been stopped to make sure she could get
19 around the truck and was proceeding carefully. In the Bloom
20 matter the defendant driver was also proceeding carefully and
21 watching the road. The testimony was that he was driving
22 around 20 miles per hour. In the Moody case the testimony is
23 that the defendant driver was traveling approximately 25 to 30
24 miles per hour. But his testimony was that he looked up and
25 the plaintiff was in the road. So there's debate as to

1 whether he was paying attention to the roadway when the
2 accident occurred.

3 As far as the actual road goes, in our case Dogwood Drive
4 is a basic road, one lane on each side of the line. There was
5 a delivery van parked off to the right side of the road. And
6 in the Bloom case there's also testimony that there were
7 parked vehicles along the roadway. Where the plaintiff would
8 have entered the roadway there was an SUV parked to his left,
9 so very similar to the way the layout was for our case with
10 the delivery van. In the Moody case the plaintiff was
11 crossing the road on a 4-lane open highway where there were no
12 parked vehicles on the side. And she had already, in fact,
13 made it across two lanes and was in the median before she
14 attempted to continue going across additional lanes.

15 The time of the impact, so in our case and in the Bloom
16 case the pedestrian crosses into the roadway and almost
17 immediately the accident occurs. The Moody case, like I said,
18 the pedestrian had already crossed two lanes of traffic
19 without difficulty and was attempting to cross two more lanes.

20 And as far as citations go or the investigating officer's
21 determinations, in our case the defendant was not cited for
22 any violations. And in fact, the officer determined that the
23 plaintiff was at fault. In the Bloom case the South Carolina
24 Supreme Court case doesn't make it clear what the testimony is
25 that there was no fault on the part of the defendant's or no

1 evidence that the defendant was driving in any negligent way.
2 In the Moody case the defendant was cited for driving too fast
3 for conditions and was found at fault.

4 So there are some great differences between our case and
5 the Moody case that the plaintiff points to. And I would
6 argue that our case is very closely in line with the Bloom
7 case in which the Supreme Court stated that summary judgment
8 is proper in this case.

9 So I'm asking you today to find that summary judgment is
10 appropriate. There is no reasonable jury that could find that
11 the plaintiff's negligence did not exceed the defendant's. So
12 we would ask you to grant our summary judgment motion.

13 **THE COURT:** All right.

14 All right. Mr. Napolski, let me hear from you.

15 **MR. NAPOLSKI:** Sure, Your Honor.

16 As the defendant has argued, they're trying to take the
17 position that plaintiff is barred by comparative negligence.
18 As you're aware, comparative negligence is a question reserved
19 for a jury. The reason for that is that more than one
20 reasonable inference can be raised by this set of facts which
21 causes it to be an issue to be heard by a jury.

22 In the Bloom case the Court had decided that matter on a
23 very narrow set of specific facts. The defendant has taken
24 the position that the facts in Bloom are indistinguishable
25 from the facts in the case at bar. In fact the facts are

1 incredibly different in our matter versus in the Bloom matter.

2 In Bloom, which the defendant failed to point out, there
3 was a crosswalk on each end of the block on Meeting Street
4 where the plaintiff was struck. Here there is not a crosswalk
5 on the 1.1 mile stretch on Dogwood Avenue in Surfside Beach,
6 so the entire length of the street doesn't have a crosswalk
7 anywhere. Plaintiff has provided photographs going all of the
8 way back to 2008 showing the intersection nearest where this
9 accident took place that there is no crosswalk.

10 In Bloom there was a misty rain, it was dark, and the
11 plaintiff was wearing a dark coat. In our case, by way of
12 plaintiff's testimony, it was clear, and it was daylight.

13 In the Bloom matter the defendant was -- both the
14 plaintiff and defendant were visitors to Charleston,
15 unfamiliar with the area. In our case Defendant Ray lives on
16 Dogwood Avenue. She lives past the point of impact. She
17 testified that she was aware of the location of those delivery
18 trucks that was present on the date of this crash. She says
19 that she's aware that pedestrians typically cross Dogwood
20 Avenue where this accident took place.

21 In Bloom defendant is correct in saying that the accident
22 took place almost immediately after the plaintiff started
23 crossing the street. The Court pointed out that the plaintiff
24 ran into the street in Bloom. In this matter plaintiff
25 testified he had waited five seconds and looked both ways

1 before crossing the street.

2 Further, Defendant Ray who lives on Dogwood Avenue, or
3 has a beach home here on Dogwood Avenue, testified that she
4 lives on the same side of the street where the impact took
5 place, that she often goes to the beach, and that she doesn't
6 use any sort of pedestrian crosswalk in order to cross Dogwood
7 Avenue in order to get to the beach.

8 The Abdelgheny case that was decided back in October of
9 2020 by the Court of Appeals I think is correcting the
10 decision of the Supreme Court in the Bloom case. I think the
11 point of that case is to show that there is a very specific
12 set, narrow set of facts in which, as extreme as it may be,
13 that no more than one reasonable inference can be made. In
14 this case more than one reasonable inference can be made and
15 that question needs to go to the jury. And for those reasons
16 the plaintiff asks that defendant's motion for summary
17 judgment be denied.

18 **THE COURT:** All right. Ms. VanCamp, anything in reply?

19 **MS. VANCAMP:** Yes, just briefly, Your Honor.

20 I think the second to last paragraph in the Moody case
21 lays it out very well. I'm not going to read the paragraph to
22 you at this time. But the very first sentence is that Moody
23 sees little difference between his facts and those justifying
24 summary judgment to the driver who struck a pedestrian in
25 Bloom versus Ravoira. We see many. And then it goes on to

1 talk about those differences again. So I don't know that I
2 agree with the plaintiff's position that the Moody case is an
3 attempt to correct the Bloom versus Ravoira case. It does
4 point out all of the stark differences between the facts and
5 why they reached different conclusions.

6 Also, Your Honor, even if the plaintiff is right and that
7 there was not a crosswalk convenient to him, that does not
8 change his statutory duty to yield to oncoming vehicles when
9 he's attempting to cross the street at an area outside of a
10 crosswalk.

11 So, Your Honor, I think no matter how you look at the
12 facts if you shine the light -- the facts in the light most
13 favorable to the plaintiff, the bottom line is that he crossed
14 the roadway at a spot where there is no crosswalk and the
15 accident occurred. The defendant was driving carefully and
16 was looking for vehicles. So again, Your Honor, I don't think
17 a reasonable jury would find that her negligence exceeded that
18 of the plaintiff's.

19 **THE COURT:** All right.

20 **MR. NAPOLSKI:** Your Honor, briefly?

21 **THE COURT:** No. She argues, you argue against, and then
22 she gets a reply.

23 I'm going to take it under advisement. I need to check
24 these cases. I'll read the cases and I'll let you know my
25 decision. I'll probably just issue a Form 4 that either

1 grants or denies the motion. It sounds like from your
2 arguments that if I grant the motion it's going to be on the
3 Bloom case; if I deny the motion, it's probably because I see
4 a distinction and that there is a dispute as to a material
5 fact. Okay.

6 **MS. VANCAMP:** Thank you, Your Honor.

7 **MR. NAPOLSKI:** Thank you, Your Honor.

8 **THE COURT:** Thank you.

9 (END OF HEARING)

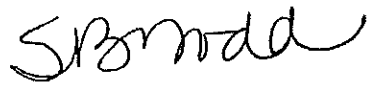
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C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Ronald L. Mims versus Diane W. Ray in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 20, 2021.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR
Official Reporter

February 10, 2022.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Ronald L. Mims,)
)
) Plaintiff,)
)
v.)
)
Diane W. Ray,)
)
) Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2019-CP-26-05892

**PLAINTIFF’S MEMORANDUM IN SUPPORT
OF HIS MOTION TO ALTER OR AMEND
AND/OR RECONSIDER**

Plaintiff submits this memorandum in Support of His Motion to Alter or Amend and/or Reconsider:

FACTS

Plaintiff Ronald L. Mims was severely injured at the hands of Defendant Diane W. Ray who was not paying attention when she struck Plaintiff Mims while he was crossing the roadway on June 20, 2019.

At approximately 5:45 P.M., in clear and daylight conditions, Ronald L. Mims was crossing South Dogwood Drive near the intersection of Atlantic Avenue in Murrell’s Inlet when Defendant Ray, traveling east on Atlantic Avenue turned south onto South Dogwood Drive heading towards her beach house and slammed into Ronald L. Mims. As a result of the collision, Plaintiff Mims suffered injuries to his back and right upper extremity.

Plaintiff Mims filed suit alleging Defendant Ray was negligent in failing to keep a proper lookout; in failing to maintain proper control over her vehicle; in failing to yield the right-of-way to Plaintiff; in striking Plaintiff with her vehicle; in failing to take advantage of any last clear chance to avoid striking Plaintiff; in failing to properly observe the road and traffic conditions; in failing to exercise due care in the safe operation of a vehicle; in failing to equip and/or apply

adequate brakes; in failing to equip and/or apply a proper steering mechanism; and in failing to equip and/or apply an adequate signaling device or horn.

Defendant Ray answered and raised the following defenses: failure to state a claim pursuant to SCRPC 12(b)(6); unconstitutionality of punitive damages; comparative negligence; and failure to mitigate damages.

ARGUMENT

1. **SUMMARY JUDGMENT WAS INAPPROPRIATE AS A JURY COULD REASONABLY CONCLUDE THAT DEFENDANT'S NEGLIGENCE EXCEEDED PLAINTIFF'S NEGLIGENCE**

“Summary judgment is a drastic remedy that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues.” *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 22, 649 S.E.2d 181, 183 (Ct. App. 2007). Rule 56(c), *SCRPC* provides that a trial court may grant a motion for summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” “In determining whether any triable issue of fact exists, the evidence and all inference which can be reasonably drawn from the evidence must be viewed in that light most favorable to the nonmoving party.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock*, 381 S.C. 330, 673 S.E.2d at 803.

It has recently been established that,

Because reasonableness depends upon the evidence and the rational inferences that may be drawn from them in their context, granting summary judgment in a negligence case is infrequent, for the court's duty at this stage is to presume the credibility of the evidence. When inferences conflict as to a material fact in a comparative negligence

case, choosing between them – that is, choosing the facts that bear upon the percent of negligence attributable to the plaintiff and to the defendant – is up to the jury, whose duty is to decide what the facts are, not what they are presumed to be. If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. It is only in the “rare” instance – when the evidence generates only a single inference – that summary judgment is proper in a comparative negligence action.

Abdelgheny v. Moody, No. 5780 (S.C. Cot. App., Oct. 28, 2020) (internal citations omitted).

“Ordinarily, comparison of the plaintiff’s negligence with that of the defendant is a question of fact for the jury to decide.” *Bloom v. Ravoira*, 529 S.E.2d 710, 713 (S.C. 2000). Further, “summary judgment is generally not appropriate in a comparative negligence case.” *Bloom*, 529 S.E.2d at 713.

The South Carolina Supreme Court has held,

[Q]uestions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury, as to which the trial court’s only function is to inquire whether particular conclusions are or not the only reasonable inference to be drawn from the evidence. If the facts in controversy and the inferences deducible therefrom are doubtful, or if they tend to show both parties guilty of negligence or willfulness, and there may be a fair difference of opinion as to whose act or whose acts produced or contributed to the injury complained of as a direct and proximate cause, questions of negligence, proximate cause and contributory negligence should be submitted to the jury.”

Wilson v. Marshall, 195 S.E.2d 610, 611 (S.C. 1973).

Bloom, the case upon which Defendant’s Motion for Summary Judgement was granted, found a narrow exception to the general rule that negligence is a question for the jury. The *Bloom* court stated that “[i]n a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” *Bloom*, 339 S.C. at 422. The court went on to say that “[t]herefore, summary judgement is generally not appropriate in a comparative

negligence case.” *Id.* Summary judgment was not appropriate in the present case because, when viewed in a light most favorable to the Plaintiff, a jury could reasonably conclude that Plaintiff’s negligence was less than fifty percent.

a. **The Present Case is Factually Distinguishable from *Bloom*.**

The facts in the case at bar are distinguishable from the narrow set of facts which led to *Bloom*’s conclusion. In *Bloom*, both Bloom, a pedestrian, and Ravoira, a driver, were visiting Charleston. *Bloom*, 339 S.C. at 421. Ostensibly, both visitors were unfamiliar with the area and vicinity. Pedestrian Bloom was crossing Meeting Street in Charleston, between Market and Cumberland Streets in front of the Meeting Street Inn. *Id.* at 420. At both ends of this block of Meeting Street, there were crosswalks, traffic lights, and walk/don’t walk signals. *Id.* Bloom, while carrying a taxidermically stuffed pig in the rain, “ran” across the street between two parked cars. *Id.* at 419-21. At the time, there was misty rain and it was dark. *Id.* Bloom was wearing a navy-colored overcoat. *Id.*

In the present case, Defendant Diane Ray was not a visitor to the area, rather she was intimately familiar with the location and owns a second home on Dogwood Avenue past where the crash took place and where she frequently stays. (Depo. of Ray, 9:17-22). Ray testified that she drives on Dogwood Avenue everyday (Depo. of Ray, 24:25-25:1) and is aware pedestrians and delivery trucks are often in the vicinity (Depo. of Ray, 25:2-26:4). Ray estimates her speed at the time of the crash to be anywhere between one and ten miles per-hour (Depo. of Ray 24:1-21). Unlike Bloom, Plaintiff Mims waited five seconds and checked both directions before crossing the road (Depo. of Mims 29:24-30:3). After checking, Plaintiff did not see any traffic on Dogwood Avenue (Depo of Mims 28:19-21). At the time of the crash, the weather was clear and it was daylight outside (Depo. of Mims 25:18-26:4).

The key point in *Bloom* is that the pedestrian ran from in between a parked car wearing a dark jacket, in the dark, and in the rain directly into the path of a car. Under these narrow and specific circumstances, the driver could neither see the pedestrian approaching nor have any time to react to him entering the road before he was hit given the driver's speed. Therefore, there was nothing the driver in *Bloom* could do to avoid hitting the pedestrian, even if he had been keeping a proper lookout and driving at an appropriate speed. In the present case, Mims waited five seconds and checked both directions before he began to cross the street.¹ Ray on the other hand, despite driving significantly slower than the driver in *Bloom*, and fully expecting pedestrians and delivery trucks at this location at the beach, failed to see Plaintiff Mims before striking him. Mims' choice to cross the street where he did does not excuse Ray from her urgent duty to not only look, but to see. *See Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002) (whether driver kept a proper lookout is a jury question if the evidence yields multiple inferences); *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975) ("It is inescapable that the respondent was in the road to be seen. Whether the driver-appellant should have seen him in time to stop or slow down to avoid the accident was a question of fact for the jury."); *see also* S.C. Code 56-5-3230 (2018) ("[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian . . .").

Considering Defendant Ray's speed, the weather, Plaintiff's caution, and Defendant's failure to avoid striking Plaintiff, Defendant's behavior cannot be described other than negligent. Comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide. Because the facts in the case at bar are distinguishable from the narrow circumstances in *Bloom* and because those facts could lead a jury to reasonably conclude Plaintiff's negligence did

¹ At most, a jury could reasonably absolve Mims of any liability based on this fact alone. At a minimum, it is a mere scintilla of evidence of Mims' appropriate actions and behavior in seeking to avoid a collision at all costs.

not exceed that of the Defendant, the Court should alter or amend and/or reconsider its Order granting summary judgment.

2. PLAINTIFF NOT CROSSING THE ROAD AT A DESIGNATED CROSS WALK IS NOT A PROPER GROUNDS FOR SUMMARY JUDGMENT

In its Order, the court references S. C. Code § 56-5-3150(a) (“every pedestrian crossing a roadway at any point other than within a marked crosswalk . . . shall yield the right-of-way to all vehicles on the roadway”) as authority for granting Defendant’s Motion for Summary Judgment. However, “[t]he fact that a motorist, by statute, has the right-of-way over a pedestrian does not relieve the motorist of the duty to use reasonable care for the safety of such pedestrian.” § 28-36 Motor Vehicles – Pedestrians on Highway, Anderson, S.C. Requests to Charge – Civil, § 28-36. While it may be that a driver does have the right of way when a pedestrian is crossing the road somewhere other than a designated crosswalk, S.C. Code § 56-5-3230 provides that “[n]otwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.” This statute applies in situations where a pedestrian is crossing the road outside of a crosswalk such as the present case. These duties are noted in *Bloom*, and the fact that the plaintiff did not cross the road in a crosswalk in *Bloom* did not serve as the basis for summary judgment.

Additionally, in the case at bar, there are no crosswalks, traffic light, or walk/don’t walk signal in the immediate proximity of where Plaintiff Mims was crossing Dogwood Drive. As evidenced by Exhibit C, Dogwood Drive, an approximate 1.1 mile road that runs along the South Carolina coast in Garden City from Cyprus Road to Moonfish Lane, does not have a single crosswalk, traffic light, or walk/don’t walk signal. Plaintiff had no choice but to cross where he

did, and in fact adequately fulfilled his duty to yield the right-of-way to all vehicles in the roadway by way of pausing for five seconds, looking both ways, and crossing the street after not seeing any moving traffic along Dogwood Drive (Depo. of Mims 29:19-30:3).

Finally, by way of the Court granting Defendant’s Motion for Summary Judgment it is encouraging Defendant Ray to argue “do as I say, not as I do.” By her testimony, when Ray walks to the beach from her beach house, she does not use the non-existent crosswalk either. Rather, she too crosses Dogwood Drive not using a pedestrian crossing. (Depo of Ray, 35:-3-36:18).

Plaintiff Mims’ decision to not use a non-existent crosswalk is an improper bases for this Court’s conclusion, as to find so would ignore Defendant’s responsibilities pursuant to S.C. Code § 56-5-3230.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests and Order of this Court vacating its prior Order, and/or altering its prior Order, and/or amending its prior Order, and/or denying Defendant’s Motion for Summary Judgement.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

s/ Patrick T. Napolski
Robert E. Treacy, Jr. SC Bar#12102
Patrick T. Napolski SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 294016
P: (843) 569-1700
E: RTreacy@Sinklaw.com
E: PNapolski@Sinklaw.com

Attorneys for Plaintiff

January 29, 2021
North Charleston, South Carolina

Exhibit A
(Deposition of Plaintiff Ronald L. Mims)

1 A: No, ma'am.
2 Q: Do you know if Tina is still in Horry
3 County?
4 A: I don't.
5 Q: Okay. Do you live with anyone right now?
6 A: My mother.
7 Q: Do you have any siblings that are over
8 the age of eighteen that live in this
9 county?
10 A: No, ma'am.
11 Q: The date of the accident that I have is
12 June 20th, 2019; does that sound about
13 right to you?
14 A: Yes, ma'am.
15 Q: Do you remember what time of day the
16 accident occurred?
17 A: It was afternoon.
18 Q: Do you remember what the weather was
19 like?
20 A: Yeah, it was sunny.
21 Q: Tell me what you remember ---
22 A: And it rained.
23 Q: It was ---
24 A: It was like a popcorn, excuse me, it was
25 like a popcorn shower, typical summer

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1 stuff.
2 Q: At the time of the accident, was it
3 raining?
4 A: Not at the time.
5 Q: Do you remember if it rained at all
6 before the accident?
7 A: Maybe a little. Like I say, it was the
8 summertime hit and miss storms.
9 Q: Do you remember if it rained after the
10 accident?
11 A: Yes, ma'am.
12 Q: All right. And just to start off, I want
13 to be clear, you were a pedestrian at the
14 time of the accident, correct?
15 A: Yes, ma'am.
16 Q: Do you remember where you were walking
17 from?
18 A: Yes. I was walking across the street
19 from the fire station, going to cross the
20 street, go towards the beach.
21 Q: Was the beach your destination?
22 A: Yes, ma'am.
23 Q: All right. And you were coming from the
24 fire station?
25 A: Across the street from the fire station,

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1 of the main street, Atlantic, the
2 secondary street.
3 Q: Do you know if there's any traffic
4 signals or stop signs or anything like
5 that at the spot where you were crossing
6 or nearby?
7 A: Nearby.
8 Q: About how far away?
9 A: Maybe fifty to eighty feet.
10 Q: Is that a traffic signal or a stop sign?
11 A: No, it's the direct turn off of Atlantic.
12 Q: Okay. Do you remember what traffic was
13 like that day?
14 A: Typical summer traffic.
15 Q: Prior to crossing the street, do you
16 remember, you know, checking for traffic
17 and things like that?
18 A: Yes, ma'am.
19 Q: Tell me what you remember about that.
20 Did you see vehicles in the road?
21 A: Not at the time, no, ma'am.
22 Q: From either direction?
23 A: No, ma'am.
24 Q: Were any vehicles parked alongside the
25 road?

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1 A: Yes, ma'am.

2 Q: What kind of vehicle, do you remember?

3 A: A delivery truck and other regular cars.

4 Q: Where were those vehicles parked in
5 relation to where the accident occurred?

6 A: They were parked at the corner by
7 Atlantic coming off of that turn from
8 Atlantic.

9 Q: Were there any vehicles parked near,
10 right near where the accident occurred or
11 were they all closer to Atlantic?

12 A: They were closer to Atlantic and spread
13 along, along the other side of the
14 street.

15 Q: Was the delivery truck parked nearby
16 where the accident occurred or was that
17 close to Atlantic?

18 A: Right in between.

19 Q: Okay. So, am I correct that there are
20 vehicles parked along the road, but no
21 moving traffic that you saw along
22 Dogwood?

23 A: Yes, ma'am.

24 Q: Okay. Do you know, roughly, how long you
25 paused to check for traffic before you

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1 crossed the street?

2 A: Yes, maybe five seconds, looked both

3 ways, checked, you know.

4 Q: Is there a crosswalk or anything like

5 that at the area where you cross the

6 street?

7 A: No, ma'am, they're all eroded.

8 Q: They were eroded?

9 A: Yes, ma'am.

10 Q: Could you see lines in the road for a

11 crosswalk that had been there before?

12 A: No, ma'am.

13 Q: What makes you say they're eroded?

14 A: Well, the one -- that's what I mean. The

15 one at Atlantic, it used to be yellow

16 years and years ago. I've lived here my

17 whole life, and it hasn't been painted

18 in, I don't think ever.

19 Q: At Atlantic where the intersection is?

20 A: Yes, ma'am.

21 Q: Okay. Tell me what you remember about

22 the actual impact.

23 A: The actual impact, I just heard the

24 engine, looked over, saw a blue hood, and

25 I don't remember anything after that.

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Exhibit B
(Deposition of Defendant Diane W. Ray)

1 important if you don't understand a
2 question, go ahead and ask me to either
3 rephrase the question or clarify and I'll
4 do my best to do that for you. Under no
5 means am I trying to trick you or hide
6 the ball or play any games with you.
7 This is simply my opportunity to ask you
8 questions about your background and about
9 this accident, fair enough?

10 A: Yes.

11 Q: All right. Ms. Ray, could you please
12 give your full legal name?

13 A: Diane Watson Ray.

14 Q: And, Ms. Ray, what's your address?

15 A: 1216 Lakeland Drive, Conway, South
16 Carolina 29526.

17 Q: And was that the same address that you
18 had on the date of the accident that
19 we're here for today?

20 A: I stay at 642 South Dogwood in Garden
21 City, because it's so close to my
22 business, a lot.

23 Q: Do you own that residence as well?

24 A: Yes.

25 Q: All right. And, Ms. Ray, does anyone

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1 Q: Correct, yes, ma'am. Do you recall how
2 fast you were driving once you turned
3 onto Dogwood Drive?
4 A: Well, like I said, I come to a full stop
5 when I realized the truck was partially
6 in the road, and it couldn't have been
7 more than past the first little notch
8 there on your speedometer. I think it
9 has ten on mine, couldn't have been going
10 past that.
11 Q: I'm sorry, we cut out for a moment there.
12 Can you repeat that?
13 A: You know, as you stop and then you start
14 to accelerate, I -- if I had to look at a
15 speedometer, I would say it wouldn't be
16 past that first mark on mine, which is a
17 ten on it or something. It would be less
18 than that. I would say less than a mile,
19 two miles an hour, if you want to put a
20 number to it, just kind of rolling along,
21 as they say.
22 Q: Did you see Mr. Mims at all prior to
23 impact?
24 A: No.
25 Q: Had you driven down Dogwood Drive before?

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1 A: Every day.
2 Q: And have you ever seen pedestrians in the
3 general vicinity where this accident took
4 place?
5 A: You know how the beach is, you could walk
6 all over the place.
7 Q: And I apologize, Ms. Ray, so is that a
8 yes, ---
9 A: Yes.
10 Q: --- you are aware that pedestrians are in
11 that area?
12 A: Yes.
13 Q: Do you have any reason or any explanation
14 as to why you didn't see Mr. Mims prior
15 to the impact?
16 A: Well, because the truck was parked on the
17 right-hand side and he stepped out in
18 front of that truck.
19 Q: And you said that you drive down Dogwood
20 Drive every day, have you ever seen a
21 truck, a delivery truck like that parked
22 in that same location?
23 A: Yes.
24 Q: So, you're aware that there's pedestrians
25 that cross in that general area and that

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1 there have been a delivery truck in that
2 general area previously; is my
3 understanding correct?

4 A: Yes.

5 Q: And did you receive a ticket for this
6 crash?

7 A: No.

8 Q: Other than apologizing to Mr. Mims, did
9 you speak with anyone else at the scene
10 of the crash?

11 A: No, I didn't, except the fire people that
12 were at the fire station. They were the
13 ones that came over when it happened.

14 Q: Did you ever speak with the police
15 officer that responded to the crash?

16 A: When he got there, yes.

17 Q: Do you remember what, if anything, you
18 said to the employees at the fire
19 station?

20 A: No.

21 Q: Do you remember what you said to the
22 police officer?

23 A: Only that -- I responded only to the
24 questions he asked me about the accident.

25 Q: At any time at the scene of the crash,

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pedestrian crossings?

A: Just the one at the corner.

Q: So, is my understanding correct that if someone were to be at your home and park in front of your home, they need to walk all the way to the corner where Causeway Grill & Bar is in order to cross the street?

A: That's kind of a hard question to ask at the -- because we don't have any sidewalks on Dogwood, so it's, you know, my home is about a full block down from Atlantic Avenue, so I, I don't know an answer that, you know, people cross the street if there's nothing coming or you can walk to the corner and cross the street.

Q: And, Ms. Ray, do you ever go to the beach, ever walk to the beach from your home?

A: On occasion, yes.

Q: And do you ever walk to the corner where Causeway Grill & Raw Bar is in order to get to the beach?

A: I -- no, I can get access to the beach

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1 before that.

2 Q: Do you have to cross South Dogwood Drive
3 in order to get to the beach?

4 A: Yes, at the corner, you turn right on, I
5 think it's called Yaka Street and walk
6 over to the beach. There's a, you know,
7 a public access at the end of that
8 street.

9 Q: And is there a pedestrian crossing at the
10 corner of South Dogwood and Yaka Avenue?

11 A: No. No, there's no pedestrian. The only
12 pedestrian -- no, there wouldn't be any
13 markings, we, we just cross the street.

14 Q: So, when you're going to the beach, you
15 typically cross South Dogwood Drive, not
16 at a pedestrian crossing; is that my
17 understanding?

18 A: Yes. Yes.

19 Q: Ms. Ray, I don't have any further
20 questions for you.

21 A: Okay.

22 MS. VANCAMP: I DON'T HAVE ANYMORE
23 QUESTIONS EITHER.

24 MS. RAY: ALL RIGHT.

25 (The deposition concluded at 10:48 a.m.)

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Exhibit C
(Overhead View of Dogwood Drive)

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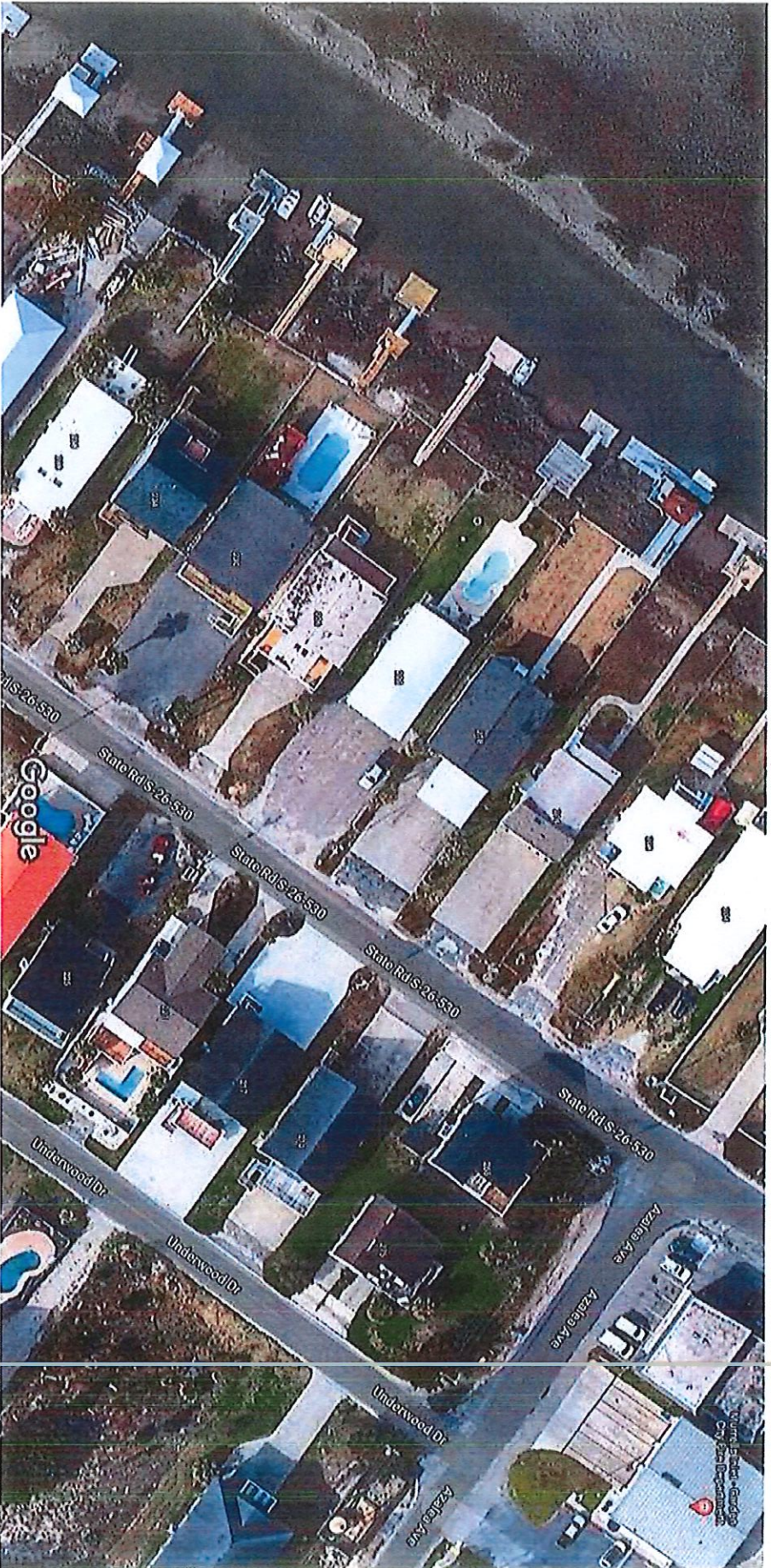
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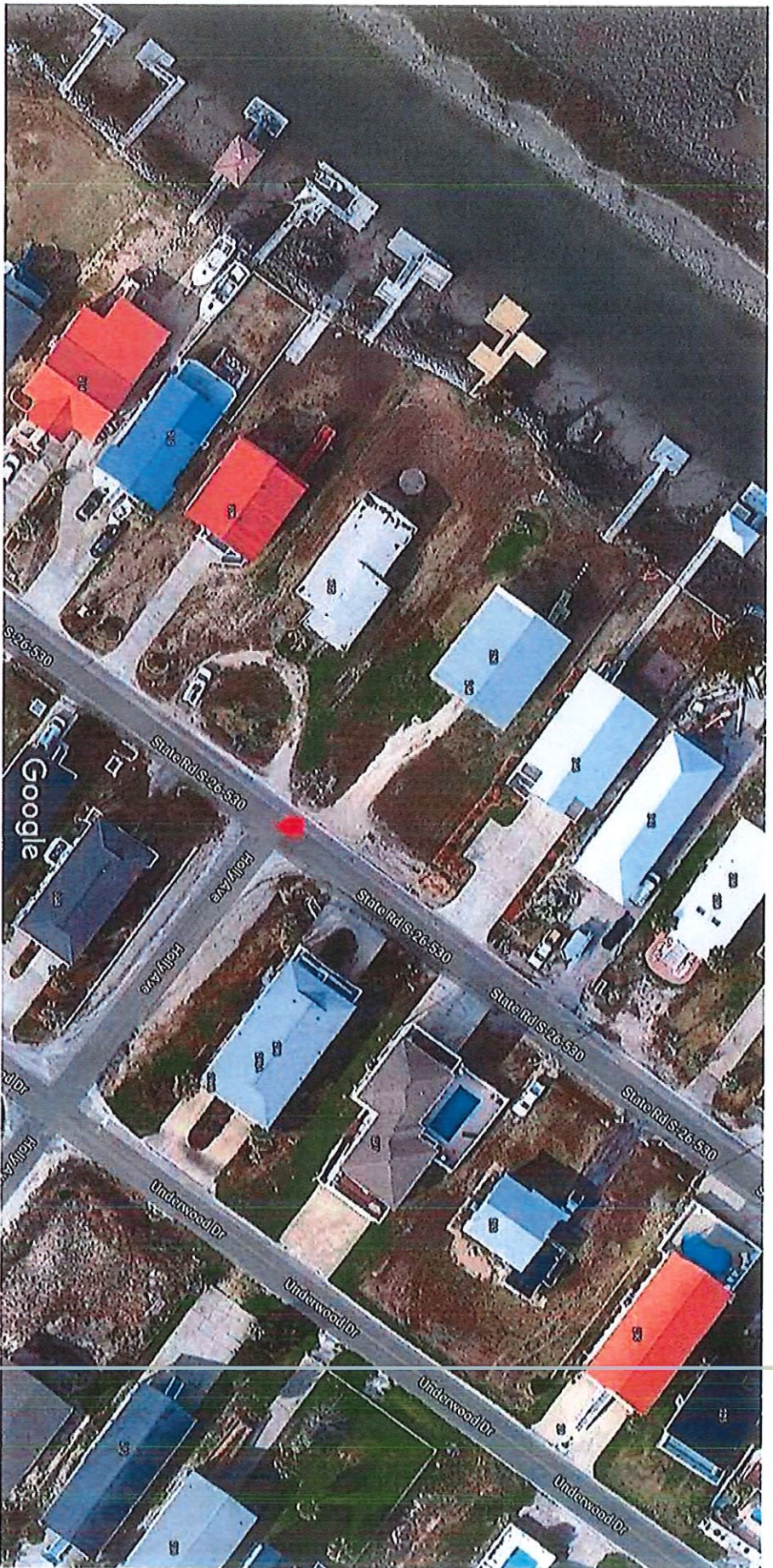
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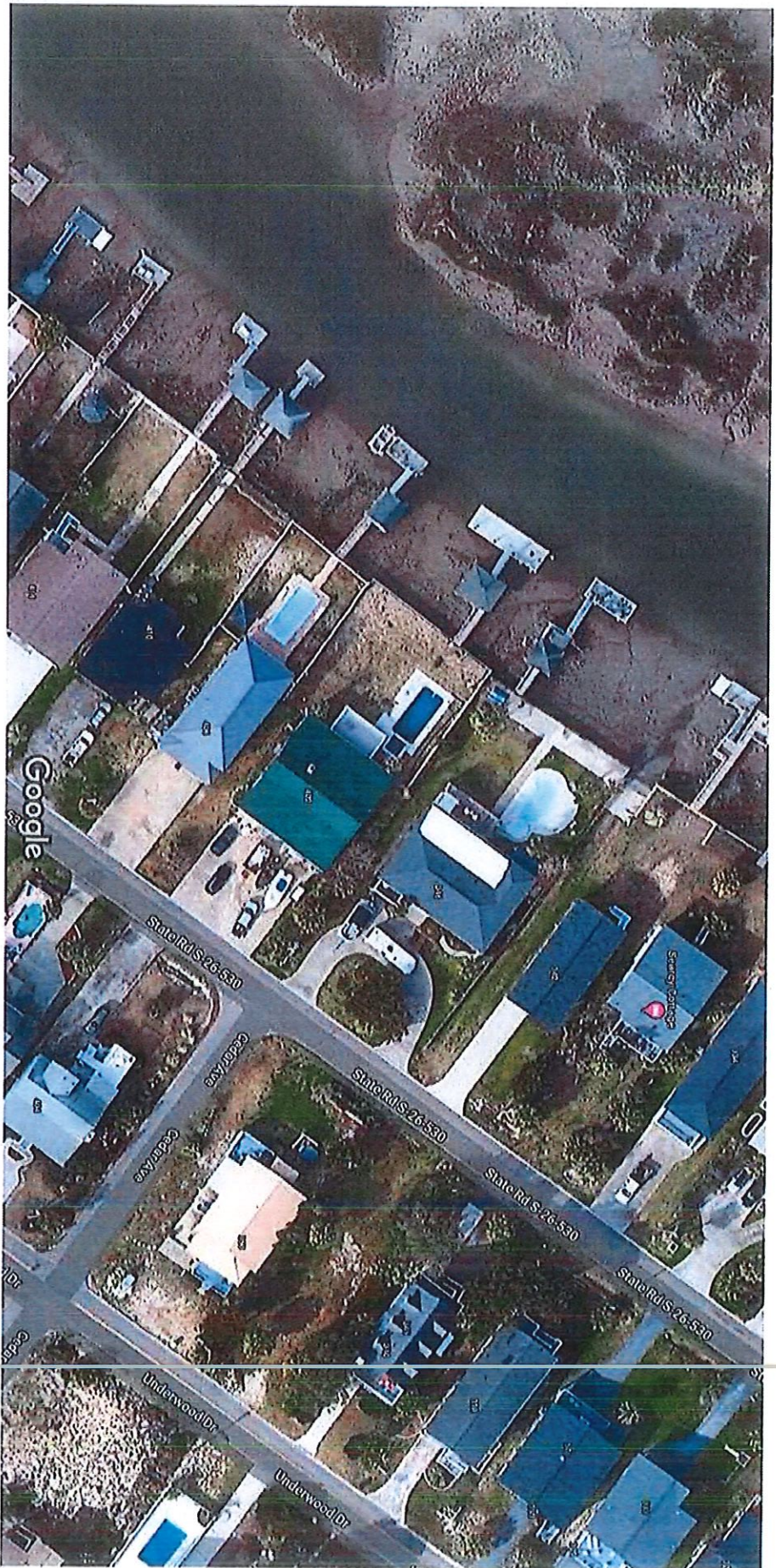
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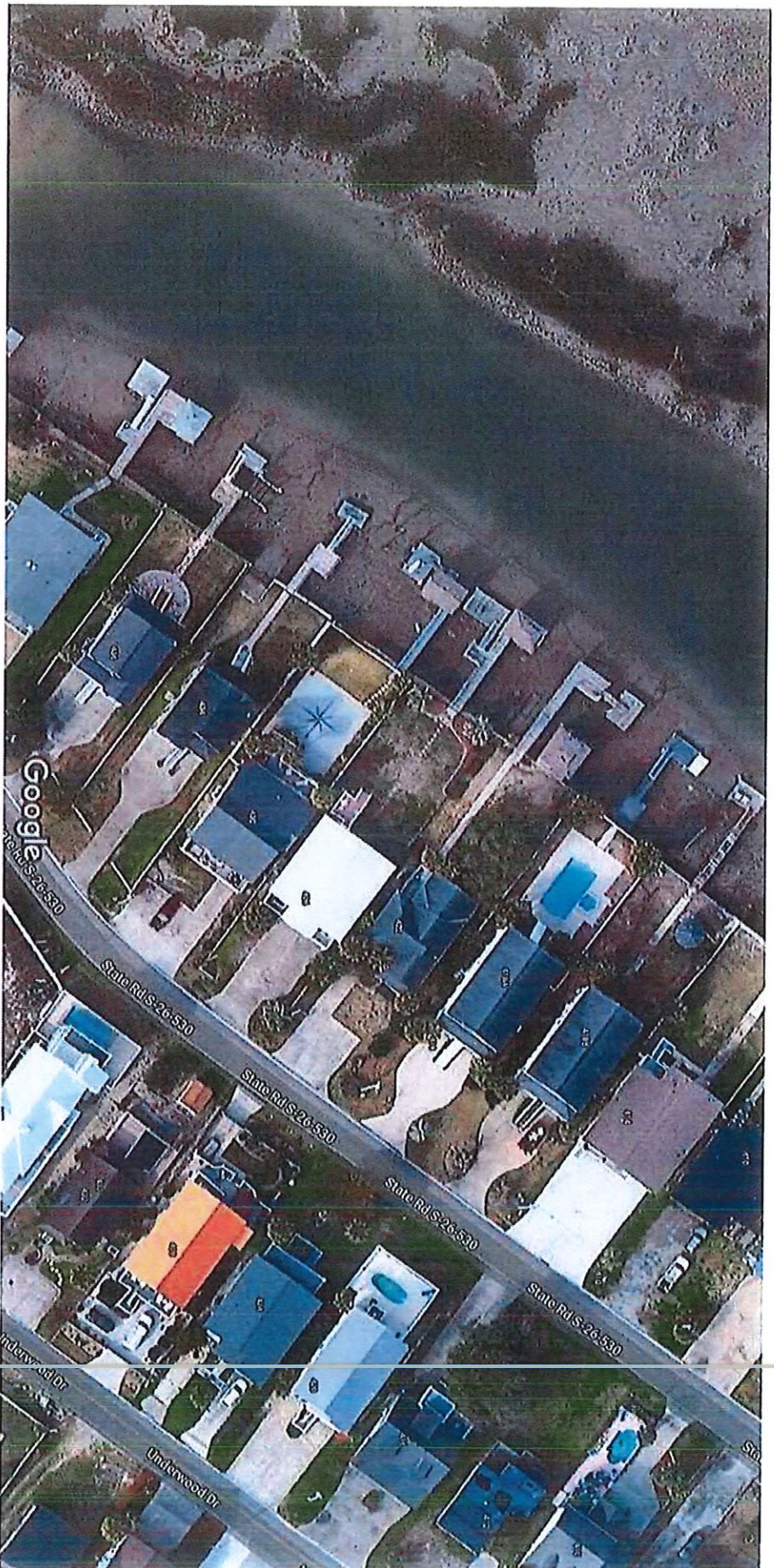
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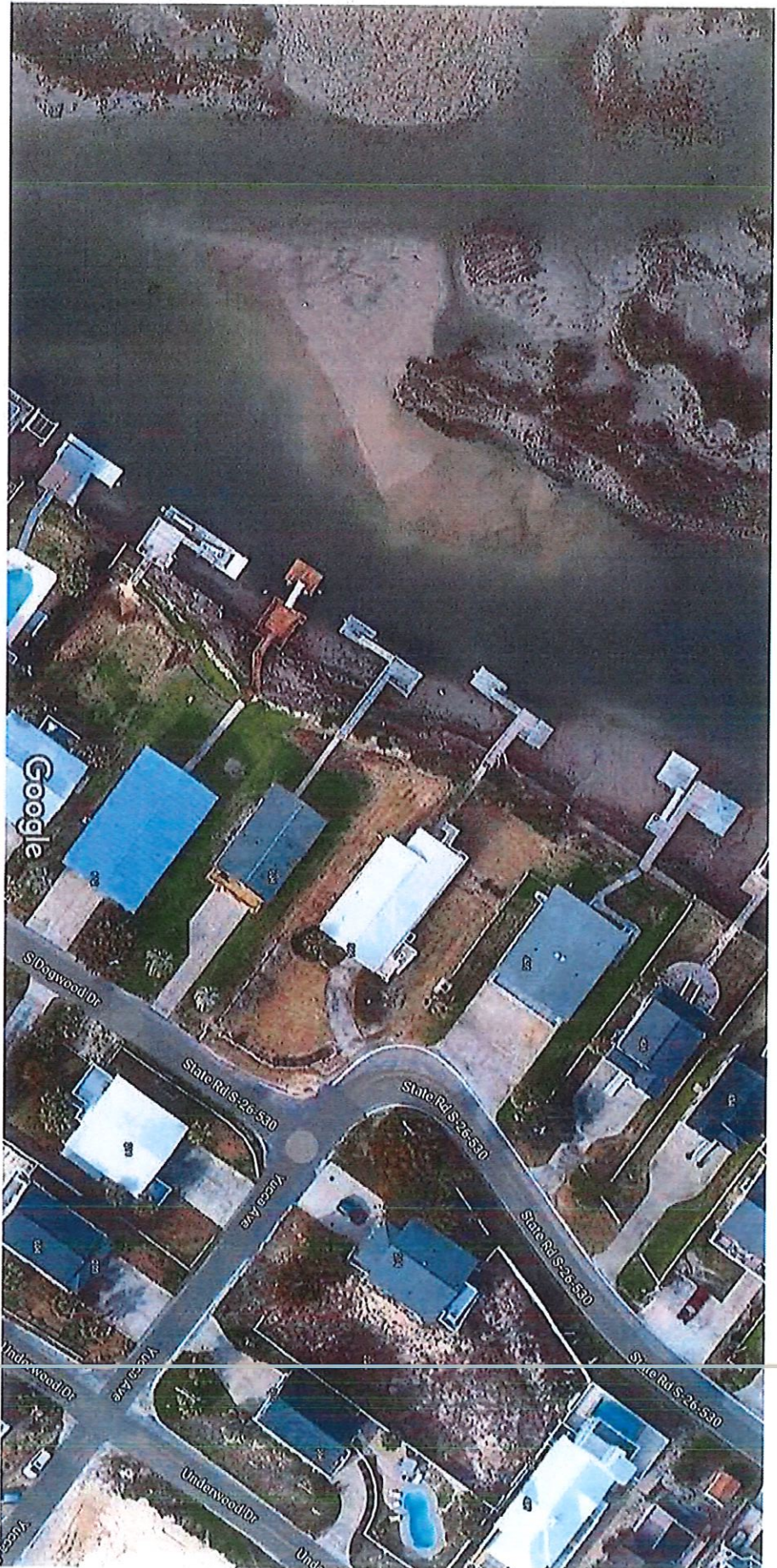
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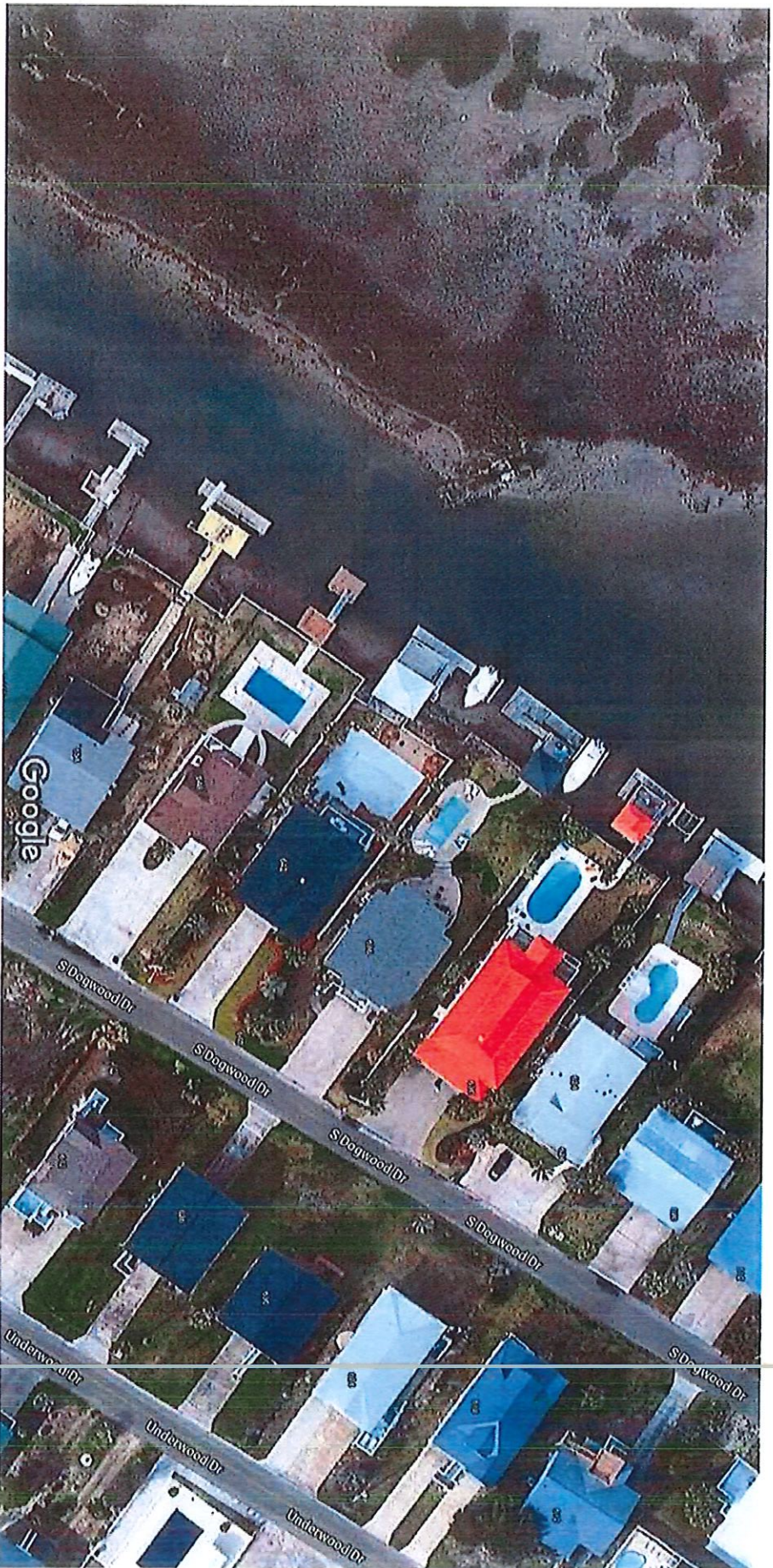
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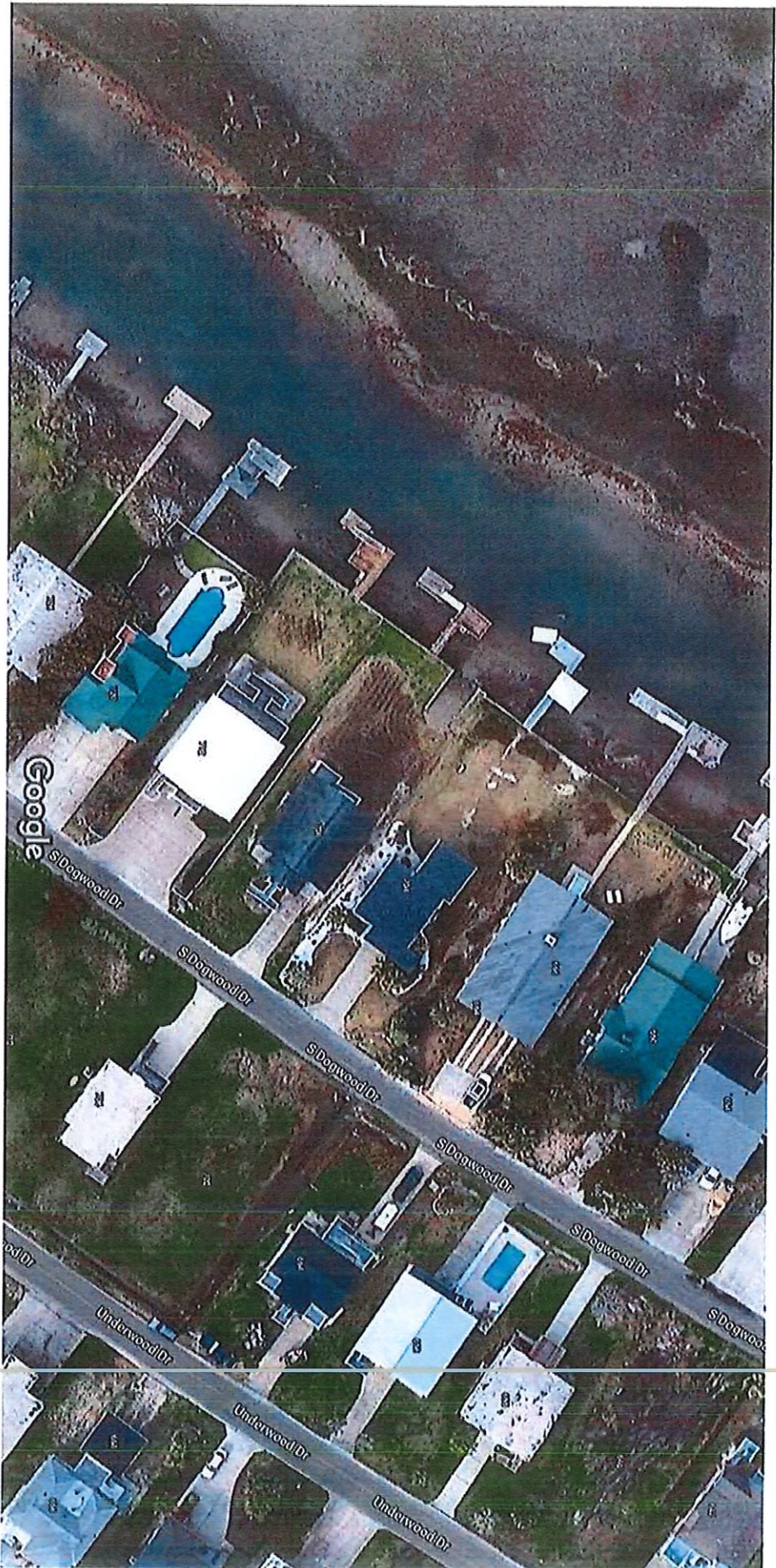
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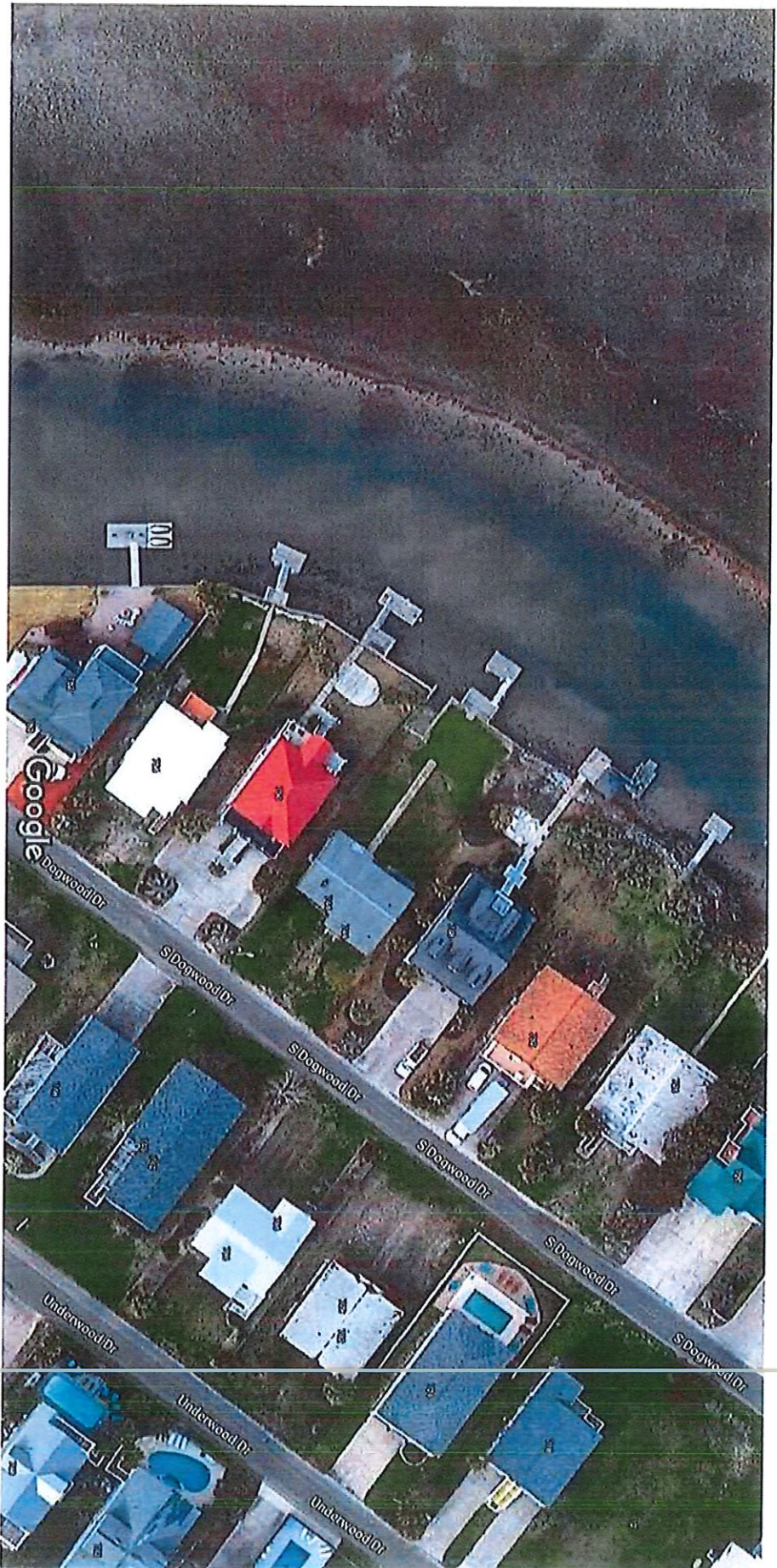
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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

C/A No.: 2019-CP-26-05892

Ronald L. Mims,

Plaintiff,

vs.

Diane W. Ray,

Defendant.

**DEFENDANT’S MEMORANDUM IN
OPPOSITION TO PLAINTIFF’S MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59, *SCRPC*, AND
MOTION TO RECONSIDER PURSUANT
TO RULE 52, *SCRPC***

Defendant Dianne W. Ray, improperly identified as Diane W. Ray, by and through the undersigned counsel and pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (“SCRPC”) hereby submits this Memorandum in Opposition to Plaintiff’s Motion to Alter or Amend Judgment Pursuant to Rule 59, SCRPC, and Motion to Reconsider Pursuant to Rule 52, SCRPC. This Court should deny Plaintiff’s Motion as the Court has previously considered all arguments presented therein and appropriately granted Defendant summary judgment in this action.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant incorporates the factual background as outlined in Defendant’s Motion for Summary Judgment and further contends the following:

Defendant filed her Motion for Summary Judgment on the grounds that Plaintiff’s own negligence bars him from recovery against Defendant under the theory of comparative negligence, as no reasonable jury could find that Plaintiff’s own negligence in failing to yield to vehicles while attempting to cross a street at an area outside of a designated pedestrian crossing did not exceed any negligence on the part of Defendant. After oral arguments on January 20, 2021, the Court

issued a Form 4 Order granting Defendant summary judgment, specifically referencing S.C. Code Ann. § 56-5-3150(a) and Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). Plaintiff subsequently filed his Motion to Alter or Amend Judgment Pursuant to Rule 59, SCRPC, and Motion to Reconsider Pursuant to Rule 52, SCRPC (as the Motion were filed collectively, Defendant refers to them to herein collectively as Plaintiff's "Motion for Reconsideration").

STANDARD OF REVIEW

Rule 59(c), SCRPC, permits a party to request a court "reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). As indicated in the "Notes" to Rule 59(e), SCRPC, it is "substantially" the same as the Federal Rule. Rule 59 permits a court to amend a judgment for three reasons: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." See E.E.O.C. v. Lockheed Martin Corp., 116 F.3d 110, 112 (4th Cir. 1997).

Rule 52(b), SCRPC, allows a party to request a court "amend its findings or make additional findings" and amend the judgment.

ARGUMENT

As argued in Defendant's Motion for Summary Judgment, under the doctrine of comparative negligence a plaintiff's recovery is barred if his negligence is greater than that of the defendant. See Hopson v. Clary, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996) (holding that plaintiff's claim was barred under comparative negligence doctrine because plaintiff's own negligence was, as a matter of law, greater than any negligence attributable to defendant and the more determinative factor in causing the accident). Though comparative negligence is typically deemed to be a jury question, courts have granted summary judgment to a defendant based on comparative negligence where the sole reasonable inference which may be drawn from the

evidence is that the plaintiff's negligence exceeded fifty percent. See Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000); see also Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created"), and Creech v. S.C. Wildlife and Marine Resources Dep't, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997) (discussing directed verdict standard).

In her Motion for Summary Judgment, Defendant cited Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710, a South Carolina Supreme Court case in which the Court upheld the circuit court's decision to grant the defendant's motion for summary judgment based on the plaintiff's comparative negligence. The basic facts in Bloom are that a pedestrian entered the street outside of a designated crosswalk and from in between two parked vehicles and ran into the side of the Defendant driver's vehicle. The driver had no warning of the pedestrian's attempt to cross the street, was driving no more than 25 miles per hour, and was not driving recklessly at the time of the impact. Ultimately, the Supreme Court of South Carolina affirmed the circuit court's decision to grant the defendant driver's motion for summary judgment and held that the only reasonable inference was that the pedestrian's own negligence was more than fifty percent, thus precluding his recovery in a negligence action against the motorist.

As argued in her Motion for Summary Judgment, a driver has a duty to exercise due care to avoid colliding with any pedestrian. See S.C. Code Ann. § 56-5-320 (1976, as amended). Defendant testified that at the time of the accident, she was watching the roadway for traffic and was proceeding around the parked delivery truck at a slow speed to make sure she had enough room to get through. Additionally, Plaintiff also had a duty to yield: "[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." See S.C. Code Ann.

§ 56-5-3150(a) (1976, as amended). Plaintiff does not dispute that he did not use a crosswalk or other pedestrian crossing when he entered the street. Because he was not crossing within a marked crosswalk or within an unmarked crosswalk at an intersection, Plaintiff should have yielded the right-of-way to Defendant.

Even if there was some evidence that indicated Defendant contributed to the accident, the conclusion that Plaintiff's fault exceeded fifty percent is inescapable. Therefore, the circuit court's decision to grant the Defendant's Motion for Summary Judgment was proper. Plaintiff has not raised and Defendant is unaware of any intervening change in controlling law since the date of the Form 4 Order, Plaintiff has not presented any new evidence, and Defendant sees no clear error of law in the Court's decision to grant Defendant's Motion for Summary Judgment. Therefore, the Court should deny Plaintiff's Motion for Reconsideration.

CONCLUSION

Based on the above, Defendant contends that the Court made no error in determining that summary judgment was proper, as no reasonable jury could find that Plaintiff's negligence was not greater than any negligence on the part of Defendant. Additionally, Plaintiff's Motion for Reconsideration appears to be a mere re-argument of his opposition to Defendant's Motion for Summary Judgment and asserts no new facts or controlling law for the Court to consider. Therefore, Defendant respectfully requests that this Court deny Plaintiff's Motion for Reconsideration.

[SIGNATURE PAGE TO FOLLOW]

THE PEARCE LAW GROUP, P.C.

By: /s/ Marissa A. VanCamp
Christopher H. Pearce, Esquire
S.C. Bar No. 71083
E-mail: cpearce@pearcelawgroup.com
Marissa A. VanCamp, Esquire
S.C. Bar No. 103766
E-mail: mvancamp@pearcelawgroup.com
Pamela Ansari-Cobiella, Esquire
S.C. Bar No.: 103369
E-Mail: pcobiella@pearcelawgroup.com
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

ATTORNEYS FOR DEFENDANT

February 16, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

NOTICE OF APPEAL

Ronald L. Mims appeals the order of the Honorable Benjamin H. Culbertson dated and filed January 20, 2021 as well as the order dated January 4, 2022 and filed January 5, 2022. Appellant received written notice of entry of the order denying his Motion to Reconsider on January 5, 2022.

January 19, 2022

GEORGE SINK, P.A. INJURY LAWYERS

By: s/ Patrick T. Napolski
Robert E. Treacy, Jr., SC Bar#12102
Patrick T. Napolski, SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29406
P: (843) 569-1700
Attorneys for Appellant

Other Counsel of Record:

Christopher H. Pearce
Marissa A. VanCamp
Pamela Ansari-Cobiella
The Pearce Law Group, P.C.
1314 Professional Drive
Myrtle Beach, SC 29577
P: (843)839-3210
F: (843) 839-3214
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RECEIVED

Aug 12 2022

SC Court of Appeals

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

CERTIFICATE OF COUNSEL

Appellant's counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

GEORGE SINK, P.A. INJURY LAWYERS

s/ Patrick T. Napolski

Robert E. Treacy, Jr., SC Bar#12102

Patrick T. Napolski, SC Bar#100966

7011 Rivers Ave., Ste. 105

North Charleston, SC 29406

P: (843) 569-1700

Attorneys for Appellant

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Aug 11 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

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Respondent.

FINAL BRIEF OF APPELLANT

GEORGE SINK, P.A. INJURY LAWYERS
Robert E. Treacy, Jr., SC Bar#12102
Patrick T. Napski, SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29406
P: (843) 569-1700
Attorneys for Appellant

TABLE OF AUTHORITIES

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STATEMENT OF THE ISSUE ON APPEAL

- I. THE LOWER COURT ERRED IN DETERMINING THE EVIDENCE GENERATED ONLY A SINGLE INFERENCE—THAT PLAINTIFF’S NEGLIGENCE AMOUNTED TO MORE THAN FIFTY PERCENT OF THE TOTAL FAULT

STATEMENT OF THE CASE

Ronald L. Mims filed the Summons and Complaint in this action on September 18, 2019. Defendant Diane W. Ray was served with the Summons and Complaint on September 28, 2019. Ronald Mims brought this action for negligence seeking damages for injuries sustained in a June 20, 2019 motor vehicle versus pedestrian collision. Diane W. Ray served her Answer on October 23, 2019.

Diane W. Ray filed her Motion for Summary Judgment on July 15, 2020 and Ronald L. Mims served his Memorandum in Opposition to Defendant’s Motion for Summary Judgment on October 20, 2020. Ronald L. Mims filed Recent Legal Authority in Support of Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment on October 30, 2020 in light of this Court’s October 28, 2020 opinion in *Abdelgheny v. Moody*, 432 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020). The parties have polarized arguments as to whether Diane W. Ray was negligent in the subject motor vehicle versus pedestrian collision and whether Ronald L. Mims’ own negligence amounted to more than fifty percent of the total fault.

On January 20, 2021, the Honorable Benjamin H. Culbertson heard the parties’ arguments on Diane W. Ray’s Motion for Summary Judgment via WebEx.

The trial court’s Order was filed January 20, 2021. The trial court ruled in favor of Diane W. Ray. Ronald L. Mims received written notice of the entry of the Order on January 20, 2021. Ronald L. Mims filed his Notice of Motion and Motion to Alter or Amend Judgment Pursuant to

Rule 59, *SCRCP*, and Motion to Reconsider Pursuant to Rule 52, *SCRCP* on January 29, 2021. Diane W. Ray filed her Memorandum in Response to Plaintiff's Motion to Alter or Amend Judgment Pursuant to Rule 59, *SCRCP*, and Motion to Reconsider Pursuant to Rule 52, *SCRCP* on February 16, 2021.

Ronald L. Mims' Motion to Reconsider was denied without oral arguments on January 5, 2022. Thereafter, Ronald L. Mims filed and served his Notice of Appeal on January 19, 2022.

FACTS

Ronald L. Mims was a pedestrian crossing South Dogwood Drive near the intersection of Atlantic Avenue in Murrell's Inlet, South Carolina on June 20, 2019 when he was struck by a vehicle driven by Diane W. Ray (Depo. of Ray 19:23-20:2, Depo. of Mims 26:12-15, 25:11-14, R.p. 208, line 23-p.209, line 2; p.252, lines 12-15; p. 251, lines 11-14). The parties dispute whether it was cloudy (Depo. of Ray 20:14-15, R.p. 209, lines 14-15) or sunny (Depo. of Mims 25:18-20, R.p. 251, lines 18-20). The parties agree Ray apologized after the crash (Depo. of Ray 23:8-14, Depo. of Mims 36:16-21, R.p. 212, lines 8-14; p. 262, lines 16-21).

Ray was unable to see Mims prior to the impact because of a delivery truck parked along Dogwood Drive (Depo. of Ray 25:13-18, R.p. 214, lines 13-18). Ray was familiar with the roadway and owns a second home on Dogwood Drive (Depo. of Ray 9:17-22, R.p. 198, lines 17-22). Ray's passage around the delivery truck was very narrow (Depo. of Ray 24:1-21, R.p. 213, lines 1-21) but she nonetheless passed the delivery truck parked partially in the road and partially off the road (Depo. of Ray 20:22-22:3, R.p. 209, line 22-p.211, line 3).

Mims was set to cross Dogwood Drive to go to the beach (Depo. of Mims 26:16-22, R.p. 250, lines 16-22). Prior to crossing the street, Mims did not see any traffic (Depo. of Mims

28:15-23, R.p. 254, lines 15-23) and paused for five seconds to look both ways (Depo. of Mims 29:24-30-3, R.p. 255, line 24-p.256, line 3).

Ray and Mims agree there are no signs directing pedestrians to any pedestrian crossing (Depo. of Ray 33:11-13, R.p. 222, lines 11-13) and that there is no painted crosswalk on Dogwood Drive (Depo. of Mims 30:13-18, R.p. 256, lines 13-18).

As a result of Ray striking Mims with her vehicle, Mims lost consciousness and suffered injuries to his back and right upper extremity requiring surgery (Depo. of Mims 31:1-2, 31:14-18, 34:2-19, 39:18-20, R.p. 257, lines 1-2, lines 14-18; p. 260, lines 2-19; p. 18-19).

STANDARD OF REVIEW

Rule 56(c) SCRPC provides that a trial court may grant a motion for summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) SCRPC. “In determining whether any triable issues of facts exists, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in that light most favorable to the nonmoving party.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 329-30, 673 S.E.2d 801, 802 (2009). “At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” *S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock*, 381 S.C at 330, 673 S.E.2d at 803.

“Since it is a drastic remedy, summary judgment ‘should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.’” *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 337 (S.C. 1990).

“Because reasonableness depends upon the evidence and the rational inferences that may be drawn from them in their context, granting summary judgment in a negligence case is infrequent, for the court’s duty at this state is to presume the credibility of the evidence.” *Abdelgheny v. Moody*, 432 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020). When inferences conflict as to a material fact in a comparative negligence case, choosing between them—that is, choosing the facts that bear upon the percent of negligence attributable to the plaintiff and to the defendant—is up to the jury, whose duty is to decide what the facts are, not what they are presumed to be. *Berberich v. Jack*, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011). If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). It is only in the “rare” instance—when the evidence generates only a single inference—that summary judgment is proper in a comparative negligence action. *Bloom v. Ravoir*, 339 S.C.417, 424-25, 529 S.E.2d 710 , 714 (2000).

LEGAL ARGUMENT

I. THE LOWER COURT ERRED IN DETERMINING THE EVIDENCE GENERATED ONLY A SINGLE INFERENCE—THAT PLAINTIFF’S NEGLIGENCE AMOUNTED TO MORE THAN FIFTY PERCENT (50.00%) OF THE TOTAL FAULT

The lower court erred in determining the evidence presented by Plaintiff and Defendant in arguing Defendant’s Motion for Summary Judgment led only to a single inference—that Plaintiff’s negligence amounted to more than fifty percent (50.00%) of the total fault. When presented with a choice of conflicting inferences, a jury must determine the respective degree of each party’s negligence. Appellant requests the South Carolina Court of Appeals reverse the lower Court’s decision granting Respondent Ray’s Motion for Summary Judgment as more than a single inference could be generated from the evidence presented and, as such, the allocation of comparative negligence is the job of the jury.

a. Negligence

To establish a cause of action for negligence, a plaintiff must show three elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) damages proximately resulting from the breach of duty. *South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1886).

For the first element, and at a minimum, Respondent Ray owed Appellant Mims a duty of care to keep a proper lookout. See S.C. Code Ann. § 56-5-3230 (2018) “[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian . . . “. In her deposition, Respondent Ray indicated that she understood this duty:

- Q: All right. And, Ms. Ray, would you agree with me that a driver has a duty to maintain a proper lookout?
A: Yes.
Q: And would agree with me that the driver has a duty to yield the right-of-way?
A: Yes.

Q: And would you agree with me that a driver has a duty to yield the right-of-way to pedestrians?

A: Yes.

(Depo. of Ray 31:11-22, R.p. 220, lines 11-22)

Second, the duty owed to Mims by Ray was breached when Ray failed to see Mims. By her own testimony, Ray never saw Mims until her vehicle made contact with him:

Q: Did you see Mr. Mims at all prior to impact?

A: No.

(Depo. of Ray 24:22-24, R.p. 213, lines 22-24)

Q: When was the first time that you saw Mr. Mims?

A: When he hit the side of the car

(Depo. of Ray 22:11-13, R.p. 211, lines 11-13)

Similar to this Court's eloquent statement in *Abdelgheny v. Moody*, Mims' unfortunate choice to not use the [nonexistent] crosswalk did not excuse Ray from her urgent duty to not only look, but to see. *Abdelgheny v. Moody*, 432 S.C. 346, 350, 852 S.E.2d 225, 228 (Ct. App. 2020) citing *Thomasko v. Poole*, 349 S.C. 7, 11-12, 561 S.E.2d 597, 599 (2002) ("whether driver kept a proper lookout is a jury question if the evidence yields multiple inferences.")

As a proximate result of Ray's breach, Mims suffered serious bodily injury requiring surgery. Mims' was questioned about some of his injuries in his deposition:

Q: Do you know if you lost consciousness [after the crash]?

A: Yes, ma'am.

(Depo. of Mims 31:1-2, R.p. 257, lines 1-2)

Q: All right. When you say you noticed your arm, I just want to be clear about what that means. Is that your right arm or your left arm?

A: My right arm was completely broke.

(Depo. of Mims 31:14-18 R.p. 257, lines 14-18)

Q: Okay. So, circling back to where we're talking about the accident, Mr. Mims, could you tell me what areas of your body you started feeling pain in immediately after the impact?

A: My left leg, it triggered my sciatic nerve, and my lower back.

Q: And I apologize, I might ask you some repeat questions, but ---

A: That's okay.

Q: --- I believe you said you did lose consciousness, is that right?

A: Yes, I did.

Q: Do you have any idea how long?

A: Honestly, I'm not too sure. It wasn't, you know, terribly long, maybe thirty seconds to a minute, maybe, somewhere around there.

(Depo. of Mims 34:2-19, R.p. 260, lines 2-19)

As evidenced above, Mims developed sufficient facts to satisfy the three elements of a negligence cause of action.

b. Comparative Negligence

In 1991, the South Carolina Supreme Court adopted, but did not define, the doctrine of comparative negligence. *See Nelson v. Concrete Supply Co.* 303 S.C. 243, 399 S.E.2d 783 (1991). Under this doctrine, a plaintiff “. . . in a negligence action may recover damages if his or her negligence is not greater than that of the defendant. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her [own] negligence.” *Id.*, 303 S.C. at 245, 399 S.E.2d at 784.

The Court adopted a modified version of the traditional comparative negligence standard known as a the “less than or equal to” approach, by which the plaintiff in a negligence action could recover damages if his or her negligence in causing a tortious incident is fifty percent (50%) or less. Stated another way, the plaintiff's cause of action will be successful so long as their negligence does not exceed fifty percent (50%), or the combined total negligence of the

other parties. *Singleton v. Sherer*, 377 S.C. 185, 205, 659 S.E.2d 196, 206 (Ct. App. 2008). “The determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn.” *Hurd v. Williamsburg County*, 363 S.C. 421, 429, 611 (S.E.2d 488, 492 (2005). “Summary judgment is generally not appropriate in a comparative negligence case.” *Bloom v. Ravora*, 339 S.C. 417, 422, 529 S.E.2d 710 (2000).

c. ***Bloom v. Ravora***

Ray’s motion for summary judgment argument centered around the fact specific case of *Bloom v. Ravora*, 339 S.C. 417, 529 S.E.2d 710 (2000). *see also* Def. MSJ, R.pp. 17-153. Ray contended the facts in *Bloom* are analogous to those in this case, and consequently that Mims’ recovery should be barred by the doctrine of comparative negligence. Mims responded that summary judgment was improper as *Bloom* was decided on a specific, narrow set of facts. (“[I]n the rare case where a verdict is not reasonably possible under the facts presented, summary judgment is proper.”) *Bloom*, 339 S.C. at 425. Further, Mims argued to the lower Court “. . . comparative negligence is a question reserved for a jury.” (MSJ Hearing Transcript 9:18-19, R.p. 293, lines 18-19)

In *Bloom*, both Bloom and Ravora were visiting Charleston, South Carolina. *Id.* at 421. Bloom was running between two parked cars in an attempt to cross Meeting Street between Market and Cumberland Streets. *Id.* at 419- 421. At both ends of this block, there were crosswalks, traffic lights, and walk/don’t walk signals. *Id.* at 420. A witness testified that Bloom hesitated for a “split-second” and then ran across the street. *Id.* at 421. At the time, it was dark and there was a misty rain. *Id.* at 420. Bloom was wearing a navy-colored overcoat. *Id.* Ravora testified that his car’s lights and windshield wipers were on at the time of the wreck. *Id.* Witnesses testified that there were cars parked in front of where Bloom was crossing the street,

and therefore, Bloom must have entered the street from between parked cars or in front of a parked car. *Id.* at 421.

Here, Mims crossed Dogwood Drive near a parked truck, but that is where the similarities between the two matters ends. Unlike in *Bloom*, there were no crosswalks, traffic lights, or walk/don't walk signals in the immediate proximity of where Mims was crossing Dogwood Drive. In fact, Dogwood Drive, an approximately 1.1 mile road that runs parallel to the South Carolina coast in Garden City from Cyprus Road to Moonfish Lane, does not have a single crosswalk, traffic light, or walk/don't walk signal. (Memo. In Opp. to MSJ, Exhibits 1-6, R.pp. 159-170). Plaintiff testified that he does not recall there ever being a painted crosswalk on Dogwood Drive throughout the duration of his life. (Depo. of Mims 30:13-18, R.p. 256, lines 13-18). Further, Google Maps satellite images demonstrate there has not been a painted crosswalk, traffic light, or walk/don't walk sign at or near the subject location since at least 2008. (Memo. In Opp. to MSJ, Exhibits 1-6, R.pp. 159-170).

Unlike *Bloom*, Ray was not a visitor to the area. Instead she was intimately familiar with the roadway and owns a second home on Dogwood Drive where she frequently stays. (Depo. of Ray 9:17-22, R.p. 198, lines 17-22). Ray testified that she was unable to see because of a delivery truck parked along Dogwood Drive. (Depo. of Ray 25:13-18, R.p. 214, lines13-18). In the same breath, Respondent Ray testified that she drives on Dogwood Drive everyday (Depo. of Ray 24:25-25:1, R.p. 213, line 25-p. 214, line 1) and is aware that pedestrians and delivery trucks are often in the vicinity (Depo of Ray 25:2-26:4, R.p. 214, line 2-p.215, line 4). Ray stated she remained in her lane as she passed a semi-truck that was parked partially in the road and partially off the road. (Depo. of Ray 20:22-22:3, R.p. 209, line 22-p. 211, line 3). Ray admits it was "very narrow through there" and that she was "just kind of rolling along." (Depo. of Ray 23:2-24:21, R.p. 212, line 2-p.213, line 21).

In further contrast to *Bloom*, Mims testified that he waited five seconds and looked both ways before crossing the street. (Depo. of Mims 29:24-30:3, R.p. 255, line 24-p. 256, line 3). *Bloom*, however, hesitated only for a “split-second” and then “ran” across Meeting Street. *Bloom* 339 S.C. at 421. Ray goes on to mention that there are no signs directing pedestrians to a pedestrian crossing, presumably because there are no pedestrian crossings to which pedestrians should be directed (Depo. of Ray 33:11-13, R.p. 222, lines 11-14). It is illogical to think that Garden City beach patrons are prohibited from crossing Dogwood Drive to go to the beach because of the lack of painted pedestrian crossings. If this were the case, every visitor or resident who parks or lives west of Dogwood Drive must violate the law to enjoy the beach. Interestingly, Ray admits that when she walks to the beach from her home on Dogwood Drive, she does not go to the corner of Dogwood Drive and Atlantic Avenue like she argues is the duty of Mims, and instead crosses Dogwood Drive absent a pedestrian crossing (Depo. of Ray 35:18-36:21, R.p. 224, line 18-p.225, line 21). Ray looks to this Court to excuse and endorse her negligence in failing to keep a proper lookout for pedestrians that she knew or should have known would be present.

Mims emphasized the factual differences between *Bloom* and this case to the lower Court while arguing that summary judgment is improper due to the existence of genuine issues of material fact (Memo In Opp. to MSJ, R.pp. 154-187) and maintain that a jury is the proper trier of fact when apportioning fault among the parties when a comparative negligence defense is raised. (MSJ Hearing Transcript 9:18-19, R.p. 293, lines 18-19).

d. ***Abdelgheny v. Moody***

After Mims’ Memorandum in Opposition to Ray’s Motion for Summary Judgment was submitted to the lower court on October 20, 2020, this Court issued its opinion in *Abdelgheny v. Moody* on October 28, 2020. A copy of *Abdelgheny v. Moody* was provided to the lower court by

Mims in support of his position on October 30, 2020 well in advance of the January 20, 2021 oral arguments regarding Ray's motion for summary judgment.

Just as Ray argued in this case, Moody too saw little difference between his facts and those supporting summary judgment in *Bloom v. Raviora*. This Court, however, saw many differences, and concluded that it, “. . . underst[ood] how the trial court could have concluded Chelsea's negligence exceeded Moody's and amounted to more than fifty percent of the comparative fault. But arriving at the conclusion required choosing between the multiple inferences emerging from the evidence. Rule 56, SCRPC, reserves that choice to the jury.” *Abdelgheny v. Moody*, 432 S.C. 346, 351, 852 S.E.2d 225, 228 (Ct. App. 2020).

In *Moody*, this Court compared the duties owed by Chelsea Abdelgheny and Gerald Moody to each keep a proper lookout. This Court agreed that Chelsea was negligent by crossing the highway outside a crosswalk but did not agree that the only inference a reasonable juror could make is Chelsea's own negligence accounted for more than fifty percent of the fault. *Id.* at 227-228.

Here, a reasonable juror could interpret Ray's testimony that she never saw Mims until she made contact with him as incompatible with a careful lookout. Another reasonable juror may think that a careful and prudent driver would have swung out further from the parked delivery truck to give her a better view of any pedestrians crossing Dogwood Drive adjacent to the truck as opposed to driving through a narrow pathway. This is especially true since Ray testified she was aware trucks and pedestrians were often present in the vicinity of the crash site. See Depo. of Ray 24:25-25:12, R.p. 213, line 25-p. 214, line 12. A third reasonable juror may question how a driver who claims to have been “just kind of rolling along” could have struck Mims with enough force to cause his serious injuries.

Any number of reasonable jurors could conceive more than the single inference from the evidence relied upon by the lower court in granting Ray's motion for summary judgment. The lower court was forced to choose between multiple inferences emerging from the evidence in reaching its conclusion, a task which should be reserved exclusively for a jury, and as such, Ray's motion for summary judgment should have been denied.

CONCLUSION

The trial court erred in granting Defendant's Motion for Summary Judgment. The lower court's determination that Mims' negligence exceeded Ray's and amounted to more than fifty percent of the comparative fault required choosing between multiple inferences from the presented evidence. The decision to choose between multiple inferences is one that must be left to a jury and thus, the trial court's granting of Defendant's Motion for Summary Judgment was improper.

For the foregoing reasons set forth above, Appellant asks this Court to reverse the trial court's decision to grant Defendant's Motion for Summary Judgment.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

s/ Patrick T. Napolski

Robert E. Treacy, Jr., SC Bar#12102

Patrick T. Napolski, SC Bar#100966

7011 Rivers Ave., Ste. 105

North Charleston, SC 29406

P: (843) 569-1700

Attorneys for Appellant

Dated: August 10, 2022
North Charleston, South Carolina

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Aug 11 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

CERTIFICATE OF COUNSEL

Appellant's counsel certifies that the Final Brief of Appellant complies with Rule 211, SCACR.

GEORGE SINK, P.A. INJURY LAWYERS

s/ Patrick T. Napski

Robert E. Treacy, Jr., SC Bar#12102

Patrick T. Napski, SC Bar#100966

7011 Rivers Ave., Ste. 105

North Charleston, SC 29406

P: (843) 569-1700

Attorneys for Appellant

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appellate Case No.: 2022-000082

Case No.: 2019-CP-26-005892

Ronald L. Mims.Appellant

v.

Diane W. Ray Respondent

FINAL BRIEF OF RESPONDENT

Christopher H. Pearce, Esquire,
SC Bar No. 71083
Charles B. Jordan, Jr., Esquire,
SC Bar No. 11708
L. Raymond Wells, Esquire
SC Bar No. 102622
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210

ATTORNEYS FOR RESPONDENT,
DIANE W. RAY

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Trial Court Properly Apply the Rules of Comparative Negligence in Finding that the Facts Supporting a Single Inference and that Summary Judgement under Rule 56, SCRCP, was Proper?

STATEMENT OF THE CASE

This appeal arises from a negligence action brought by Appellant Ronald L. Mims (“Mims”) against Respondent Diane W. Ray (“Ray”). Mims’ Complaint was filed on or about September 18, 2019, and Ray’s Answer was filed on October 23, 2019. Ray’s Answer included an affirmative defense of comparative negligence.

Ray’s motion for summary judgment was heard before the Honorable Benjamin H. Culbertson on January 20, 2021, via web-ex. The trial court issued an Order, dated January 20, 2021, granting Ray’s motion for summary judgment. (R.p. 5, Summary Judgement Order). The decision was a Form 4 Order and cited the statutory and caselaw relied upon by Ray in her motion for summary judgment. Thereafter, Mims filed a motion to reconsider and/or alter and/or amend the Order, pursuant to Rules 52 and 59, SCRCP. Ray opposed the motion. The Court denied Mims’ motion on January 5, 2022, without oral argument, by a Form 4 Order dated January 5, 2022. (R.p. 2, Reconsideration Order).

Mims filed his Notice of Appeal, on January 20, 2022.

STATEMENT OF FACTS

This is a negligence action arising out of an accident involving an automobile and a pedestrian that occurred on June 20, 2019, on South Dogwood Drive in Garden City. Ray testified in her deposition that she was driving east on Dogwood when she saw a delivery truck parked ahead of her on the right side of the road and partially in her lane. As Ray

approached the truck, she stopped to look for traffic and proceeded with caution. As the front of Ray's vehicle began to pass the front of the truck, Mims walked into the passenger side of her vehicle after hearing an engine or car. Ray testified she was familiar with the area where the accident occurred and that there was no cross-walk in the immediate area where the accident occurred.

Similarly, in his deposition, Mims testified that he did not cross the street using a crosswalk at the time of the accident. His testimony is as follows:

Q. Is there a crosswalk or anything like that at the area where you cross the street?

A. No, ma'am, they're all eroded.

Q. They were eroded?

A. Yes, ma'am.

Q. Could you see lines in the road for a crosswalk that had been there before?

A. No, ma'am.

Q. What makes you say they're eroded?

A: Well, the one – that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.

Q. At Atlantic where the intersection is?

A. Yes, ma'am.

(R.p. 256, lines 4-20). Mims testified he paused and saw no traffic before crossing the street. (R.p. 254, lines 15-23).

Mims also testified as follows:

Q: Were you crossing near an intersection?

A: I was crossing to another street, not off of the main street, Atlantic, the secondary street.

Q: Do you know if there's any traffic signals or stop signs or anything like that at the spot where you were crossing or nearby?

A: Nearby.

Q: About how far away?

A: Maybe fifty to eight feet.

Q: Is that a traffic signal or a stop sign?

A: No, it's the direct turn off of Atlantic.

(R.p. 253, line 24 – p. 254, line 11).

The investigating police officer, Trooper Brendan Delaney, testified that after speaking with both parties and observing the scene of the accident, he determined that Mims contributed to the accident and Ray did not. Regarding the issue of whether Mims attempted to use a crosswalk when crossing the street at the time of the accident, Trooper Delaney testified as follows:

Q. And are you familiar with that area where this crash had taken place?

A. Yes, sir.

Q. And when you arrived on the scene of this crash, had you observed any crosswalks?

A: The only crosswalk is when you turn right off, and I can't

remember the, the main road that feeds into that area, but off Dogwood Drive there's a crosswalk on that corner.

Q. On the corner of Dogwood Drive and Atlantic Avenue?

A. I think it's Atlantic Avenue, yes, sir, 'cause I think there's a row of restaurants and stuff right there.

Q. And is that a painted pedestrian walkway? When you say the pedestrian crosswalk, what are you referring to?

A. The crosswalk.

Q. Well, what is a crosswalk?

A. Painted crosswalk.

Q. Was there a painted crosswalk at the corner of Dogwood Drive and Atlantic Avenue on the date of this crash?

A. To my knowledge, yes.

(R.p. 100, line 25 – p.101, line 24). Regarding who he determined at fault, Trooper Delaney testified as follows:

Q. And I think you said a moment ago you marked Mr. Mims as contributing to that crash; is that correct?

A. Yes, sir.

Q. What evidence did you use to reach that conclusion?

A. With where the driver of the BMW stated she hit the pedestrian was outside the crosswalk and where Fire –

Q. So ---

A. Sorry, where Fire and EMS said they – where Fire and EMS treated him, also, we put all that together. Well, I put it all together.

(R.p. 103, lines 9-21).

Q. So just to be clear, the reason you marked Mr. Mims as contributing to this crash is because he was outside the painted crosswalk there on South Dogwood Drive; is that correct?

A. Yes, sir. Yes, sir.

(R.p. 105, lines 3-8).

Trooper Delaney similarly testified that:

Q: And when you arrived on the scene of this crash, had you observed any crosswalks?

A: The only crosswalk is when you turn right off, and I can't remember the, the main road that feeds into that area, but off Dogwood Drive there's a crosswalk on that corner.

Q: On the corner of Dogwood Drive and Atlantic Avenue?

A: I think it's Atlantic Avenue, yes, sir, 'cause I think there's a row of 13 restaurants and stuff right there.

Q: And is that a painted pedestrian walkway? When you say the pedestrian crosswalk, what are you referring to?

A: The crosswalk.

Q: Well, what is a crosswalk?

A: Painted crosswalk.

Q: Was there a painted crosswalk at the corner of Dogwood Drive

and Atlantic Avenue on the date of this crash?

A: To my knowledge, yes.

(R.p. 101, lines 3-24).

Ray testified that she did not receive a ticket from this crash. (R.p. 142, lines 5-7). Ray further testified that there were no crosswalks in the road where the impact occurred but that “there is a corner that you’re supposed to cross at.” (R.p. 149, lines 1-6).

The only testimony as to how quickly Ray was driving was by Ray – who stated she was driving maybe 1 or 2 miles an hour. (R.p. 140, lines 17-21).

Based on the undisputed testimony of Ray, the investigating officer, Trooper Delaney, and Mims, the accident occurred outside of a legal pedestrian crossing. Ray filed a motion for summary judgment based on the comparative negligence of Mims in failing to cross the street within a crosswalk. The Court granted this motion.

ARGUMENT

STANDARD OF REVIEW OF SUMMARY JUDGMENT

“Summary judgment is warranted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. *Bloom v. Ravoira*, 339 S.C. 417, 421, 529 S.E.2d 710, 712 (2000). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994) *citing* *Hamilton v. Miller*, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990). “Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Id.*

However, a “court cannot ignore facts unfavorable to [the non-moving party] and [the court] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” *Bloom v. Ravoira*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) *citing* *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996). “If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created, and a directed verdict motion is properly granted.” *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000) *quoting* *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996) (internal citations omitted).

I. COMPARATIVE NEGLIGENCE IS A BAR TO APPELLANT’S RECOVERY

To establish a cause of action in negligence, a plaintiff must prove the following elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *See, Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998). Assuming, *arguendo*, that Ray owed a duty to Mims, Mims’ recovery is barred under the doctrine of comparative negligence. *See, Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000). *See, also, Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996) (holding that plaintiff’s claim was barred under comparative negligence doctrine because plaintiff’s own negligence was, as a matter of law, greater than any negligence attributable to defendant and the more determinative factor in causing the accident.)

In this case, Mims argues that Ray had a duty to yield the right of way to pedestrians pursuant to S.C. Code Ann § 56-5-5230 (2018). (“...[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-

powered vehicle...). Mims uses this statute and his injuries caused by the impact to show a duty was owed by Ray. As an initial matter, any injuries are irrelevant to this appeal as the appeal's basis is comparative negligence – not injuries. While citing the statute requiring a driver to yield, Mims fails to mention another salient statute - “[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.” S.C. Code Ann. § 56-5-3150 (2018).

In this case, Mims testified he heard the engine or car prior to impact. He was the one that had the ability to avoid the impact.

Q: ...Tell me what you remember about the actual impact.

A: The actual impact, I just heard the engine, looked over, saw a blue hood...

...

Q: And just to backtrack, did you say you heard the engine or you heard a car?

A: Yes, ma'am, it was real quick.

(R.p. 256, line 21 – p. 257, line 5). Thus, Mims had the opportunity to avoid the impact as he heard the car or engine. Conversely, Ray stated she did not see Mims until “[w]hen he hit the side of the car.” (R.p. 138, lines 11-13). Her testimony as to her speed was uncontradicted. Ray testified that she was driving “... less than a mile, two miles an hour, if you want to put a number to it, just kind of rolling along, as they say.” (R.p. 140, lines 17-21). She specifically noted that she had not passed the first mark on her speedometer, which was 10 miles an hour. (R.p. 149, line 17). She also stated that she stopped when she

drove around the truck to make sure that there was no oncoming traffic and that she had enough room to get through. (R.p. 137, lines 2-21). The testimony of Ray and Trooper Delaney is that she did exercise due care pursuant to S.C. Code Ann. § 56-5-5230 (2018). Ray was driving slowly. Trooper Delany did not give her a ticket for failing to yield the right of way or any moving violation. Ray could not yield to a pedestrian that she could not observe.

However, Mims could have avoided the accident as he heard the car approaching. Regardless of whether Ray breached her duty to yield to pedestrians, Mims breached his duty to yield the right of way to traffic. *Cf.* S.C. Code Ann. § 56-5-5230 (2018), S.C. Code Ann. § 56-5-3150 (2018). Notably, Mims ignores the plain language reading of the statute regarding Ray's duty – while operating a motor vehicle Ray "...shall exercise due care to avoid colliding with any pedestrian." There is no testimony that she did not utilize due care to avoid the collision. Moreover, the statute does not require avoiding the collision. The undisputed facts are that she did exercise due care and, thus, fulfill her statutory obligation whereas Mims did not as he failed to yield the right of way outside a crosswalk. The facts in this case support a conclusion that summary judgment is appropriate on comparative negligence. The only reasonable inference is that Mims is liable for more than fifty percent of this accident.

"In *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 244, 399 S.E.2d 783, 784 (1991), the South Carolina Supreme Court adopted a modified version of comparative negligence known as the "less than or equal to" approach. Under this version, for all causes of action ... a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of defendant." *Singleton v. Sherer*, 377 S.C. 185, 205 659 S.E.2d 196, 206

(Ct.App.2008) (internal citations and quotations omitted). Courts have granted summary judgment to defendants based on comparative negligence where the sole reasonable inference which may be drawn from the evidence is that plaintiff's negligence exceeded fifty percent. If only a single inference can be drawn, there is no jury issue *See, Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App.1996). In this case, despite comparative negligence generally being a jury question, there is no jury question as to whether Mims' negligence exceeded fifty percent. *See, inter alia., Hopson v. Clary*, 321 S.C. 312, 468 S.E.2d 305 (Ct.App.1996) (affirming trial court's grant of directed verdict on the issue of comparative negligence where plaintiff was driving down the street, pulled over, and attempted to make a U-turn when she was struck by the defendant who was traveling behind her); *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct.App.2008) (affirming summary judgment where a racoon bit the plaintiff based on plaintiff's comparative negligence); *Estate of Haley v. Brown*, 370 S.C. 240, 243 634 S.E.2d 62, 63 (Ct.App.2006) (directed verdict proper where the "only reasonable inference that can be drawn from the evidence is that [plaintiff's] negligence in running into the side of [defendant's] truck outweighed any possible negligence by [defendant] and was the more determinative factor in causing the collision.")

The *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000) case is directly on point. In that case, the South Carolina Supreme Court upheld the circuit court's decision to grant the defendant's motion for summary judgment based on the plaintiff's comparative negligence. In that case, in an attempt to cross a street, the plaintiff, a pedestrian entered the street between two parked vehicles and ran into the side of the defendant driver's vehicle. *Id.* The plaintiff pedestrian did not enter the street at a crosswalk or any other

pedestrian crossing, so the driver had no warning of the impact. *Id.* Additionally, the evidence showed that the driver was driving no more than 25 miles per hour and was not driving recklessly at the time of the impact. *Id.* The Supreme Court affirmed the Circuit Court's decision to grant the defendant driver's motion for summary judgment and held that the only reasonable inference was that the plaintiff pedestrian's own negligence was more than fifty percent, thus precluding his recovery in a negligence action against the motorist. *Id.* Specifically, the Supreme Court held the following:

Here, the undisputed facts establish that [the pedestrian] attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues that might exist as to [the motorist's] fault in this accident cannot alter the inescapable conclusion that, as a matter of law, [the pedestrian's] fault exceeded fifty percent. Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury. *Id.* 339 S.C. at 424, 529 S.E.2d at 714.

The instant case is analogous to *Bloom*. Mims similarly attempted to cross the street in an unsafe manner and any factual issues that may exist regarding Ray's fault do not alter the conclusion that as a matter of law, Mims's negligence was greater than fifty percent. In this case, Mims breached his statutory duty and contributed negligently to the impact as "[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." S.C. Code Ann. § 56-5-3150 (2018). It is undisputed that he was not within a marked crosswalk or an unmarked crosswalk at an intersection. It is undisputed that he did not walk to an intersection to cross the street in an unmarked crosswalk. It is undisputed that he heard an engine or car before the impact.

Mims attempts to set up dueling authority on whether his comparative negligence is more than fifty percent as a matter of law by citing to the recent Court of Appeals' decision in *Abdelgheny v. Moody*, 432 S.C. 346, 852 S.E.2d 225, 228 (Ct.App.2020). In *Abdelgheny*, a pedestrian was struck by a car while crossing a four lane road while not in a crosswalk. The Court of Appeals determined that the facts of *Abdelgheny* were sufficiently different from *Bloom* to preclude the grant of summary judgment, and specifically that a reasonable juror could conclude that the driver in *Abdelgheny* could have avoided the accident whereas the driver in *Bloom* could not have. *Id.*, 432 S.C. at 351, 852 S.E.2d at 228. In *Blum*, the pedestrian ran into a narrow urban street between two parked cars so that the driver had no opportunity to observe and avoid the pedestrian. Whereas in *Abdelgheny*, the pedestrian was crossing a broad upland expanse of a four lane highway and had already managed to cross the first two lanes and into the median. Under these circumstances, the Court of Appeals reasoned that a juror could find that had the driver maintained a sufficient lookout, that the accident may have been avoided.

The instant case is almost identical to *Bloom* and wholly unlike *Abdelgheny*. Here, Ray was driving on a two-lane neighborhood road, not a broad four-lane rural highway. Just like in *Bloom*, there was a vehicle parked on the side of the road, and the accident occurred when the pedestrian (in this case Mims) walked out into the roadway in front of the parked vehicle just as the traveling vehicle (in this case Ray) was passing the parked vehicle. Just as in *Blume*, and just as unlike in *Abdelgheny*, the driver, Ray, had no opportunity to see and avoid the pedestrian, Mims.

Further, the investigating officer that investigated the collision did not find Ray at fault or issue her any moving violation. Instead, the investigating officer found Mims at fault.

Mims decided to cross the street in a place where he knew the view was obstructed by the truck. He could not be bothered (i) to walk fifteen feet away so that he had an unobstructed view of the street, (ii) to even poke his head out to make sure he was clear to cross once he was level with the truck's driver's side, or (iii) to walk to the corner and cross in an unmarked crosswalk. Instead, he chose to walk outside a crosswalk and "paused." Pausing does not equate to yielding. He heard an engine or car and then continued to walk into it. He had the duty and opportunity to yield to that Ray's vehicle.

While the testimony as to where there was a crossing or a cross-light or crosswalk was not clear, Mims asks this Court to disregard the testimony in its entirety and instead review the Google maps images that were attached to Mims Memorandum in Opposition for Summary Judgment. No one testified as to the authenticity of the images or as to whether they represented a true and accurate depiction of the location of any intersection or crosswalk. Accordingly, Ray asks this Court to ignore the Google maps image and review the salient portions quoted regarding the crosswalks. Similarly, Mims asks that this Court disregard the length of Dogwood Drive and its depiction as stated in the Appellant's brief as it does not cite to any testimony. It is a lawyer describing purported facts that were not elicited during discovery despite every witness being asked about crosswalks and the layout. Respectfully, Ray asks that the Court disregard that portion of Appellant's brief as well.

CONCLUSION

For the foregoing reasons, Respondent Diane W. Ray requests the Court affirm the lower court's decision.

[SIGNATURE ON NEXT PAGE].

THE PEARCE LAW GROUP, P.C.

By: /s/ Christopher H. Pearce
Christopher H. Pearce, Esquire,
SC Bar No. 71083
Charles B. Jordan, Jr., Esquire,
SC Bar No. 11708
L. Raymond Wells, Esquire
SC Bar No. 102622
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
*ATTORNEYS FOR RESPONDENT,
DIANE W. RAY*

August 12, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
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Ronald L. Mims, Appellant,

v.

Diane W. Ray, Respondent.

Appellate Case No. 2022-000082

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2023-UP-179
Submitted March 1, 2023 – Filed May 11, 2023

AFFIRMED

Robert Emmet Treacy, Jr. and Patrick Thomas Napolski,
both of George Sink, PA Injury Lawyers, of North
Charleston, for Appellant.

Christopher H. Pearce, Laurence Raymond Wells, IV,
and Charles B. Jordan, Jr., all of The Pearce Law Group,
P.C.; Marissa VanCamp Singleton, of Campbell &
Associates, P.A.; and Pamela Ansari Cobiella, all of
Myrtle Beach, for Respondent.

PER CURIAM: Ronald L. Mims appeals a circuit court order granting summary judgment to Diane W. Ray. On appeal, Mims argues the court erred in granting summary judgment because more than one inference could arise from the evidence regarding fault. We affirm pursuant to Rule 220(b), SCACR.

We hold the circuit court did not err in granting summary judgment to Ray because only one inference could emerge from the facts presented—Mims's negligence exceeded any potential negligence of Ray and Mims was therefore barred from recovery. *See Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011) ("When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court"); *id.* at 122, 708 S.E.2d at 769 ("Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law."); *id.* ("When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." (quoting *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002))); *Abdelgheny v. Moody*, 432 S.C. 346, 349, 852 S.E.2d 225, 227 (Ct. App. 2020) ("Summary judgment is a drastic remedy to be invoked cautiously and must be denied if [the non-moving party] demonstrates a scintilla of evidence in support [his or] her claims."); *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998) ("To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty."); *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712-13 (2000) ("[U]nder South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant."); *id.* at 422, 529 S.E.2d at 713 ("Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide."); *id.* ("In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent."); S.C. Code Ann. § 56-5-3230 (2018) (providing "every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian"); S.C. Code Ann. § 56-5-3150(a) (2018) (stating "[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway"); *Bloom*, 339 S.C. at 424, 529 S.E.2d at 714 (finding the court properly granted summary judgment when the facts presented overwhelmingly showed the plaintiff's fault exceeded the defendant's potential fault); *Est. of Haley ex rel. Haley v. Brown*, 370

S.C. 240, 243, 634 S.E.2d 62, 63 (Ct. App. 2006) (concluding the trial court did not err in granting a directed verdict because the "only reasonable inference" from the evidence was that the pedestrian's negligence "outweighed any possible negligence by" the driver).

AFFIRMED.¹

KONDUROS and VINSON, JJ., and LOCKEMY, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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May 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

PETITION FOR REHEARING

The Appellant requests a rehearing of the decision in this appeal on the following grounds:

This Court was asked to review the lower court's conclusion that the evidence generated only a single inference – that Appellant's negligence amounted to more than fifty percent (50.00%) of the total fault. Appellant presented evidence from which a jury could draw multiple conclusions to the contrary. The lower court improperly chose among those inferences, rather than leaving it to a jury, the exclusive decision maker when multiple inferences emerge from the evidence.

South Carolina has adopted a modified version of the traditional comparative negligence standard known as the "less than or equal to" approach. In this version, the plaintiff's cause of

action will be successful so long as their negligence does not exceed fifty percent (50.00%), or the combined total negligence of the other parties. *Singleton v. Sherer*, 377 S.C. 185, 205, 659 S.E.2d 196, 206 (Ct. App. 2008). “The determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn.” *Hurd v. Williamsburg County*, 363 S.C. 421, 429, 611 S.E.2d 48, 492 (2005).

The lower court examined the evidence and took it upon itself to choose among several inferences to reach its conclusion, rather than allowing those conflicts to be resolved by a jury. Respondent testified she understood drivers have a duty to maintain a proper lookout, to yield the right-of-way, and to yield the right-of-way to pedestrians (R. p. 211, lines 11-22). A reasonable juror could conclude despite understanding these duties, Respondent violated these duties by failing to keep a proper lookout when she testified she did not see Appellant until she made contact with him (R. p. 211, lines 11-13). Respondent further testified that she drives on the street where the crash takes place every day (R. p. 213, line 25-p. 214, line 1) and is aware delivery trucks and pedestrians are often in the vicinity (R. p.214, line 2-p.215, line 4). A second juror could conclude a driver with this knowledge should have driven cautiously wide of the delivery truck to give her a better view of any potential pedestrians crossing adjacent to the same delivery truck. The same juror could conclude not doing so is a duty violation. These are only two simple, reasonable, alternative inferences a jury could reach from the evidence presented. It was improper for the lower court to do the job of a jury and select its own inferences to reach its conclusion.

CONCLUSION

Arriving at its conclusion that Appellant’s negligence amounted to more than fifty percent (50.00%) of the total fault required choosing between multiple inferences emerging from the

evidence. A jury is the exclusive decision maker when presented with multiple inferences. The lower court took it upon itself to usurp this power and it is the imperative this Court correct this injustice.

For the foregoing reasons, Appellant respectfully requests rehearing in this matter.

GEORGE SINK, P.A. INJURY LAWYERS

By: *s/ Patrick T. Napolski*
Robert E. Treacy, Jr., SC Bar#12102
Patrick T. Napolski, SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29406
P: (843) 569-1700
Attorneys for Appellant

May 26, 2023
North Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2022-000082

Case No. 2019-CP-26-005892

RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Rehearing on Diane Ray by depositing a copy of it in the United States mail, postage prepaid, on May 26, 2023 addressed to its attorneys of record as follows:

Christopher H. Pearce, Esq.
L. Raymond Wells, Esq.
Charles B. Jordan, Esq.
The Pearce Law Group, P.C.
1314 Professional Driver
Myrtle Beach, SC 29577
Attorneys for Respondent

Dated: May 26, 2023
North Charleston, South Carolina

RECEIVED

May 26 2023

SC Court of Appeals

GEORGE SINK, P.A. INJURY LAWYERS

By: *s/ Patrick T. Napolski*
Robert E. Treacy, Jr., SC Bar#12102
Patrick T. Napolski, SC Bar#100966
7011 Rivers Ave., Ste. 105
North Charleston, SC 29406
P: (843) 569-1700
Attorneys for Appellant

The South Carolina Court of Appeals

Ronald L. Mims, Appellant,

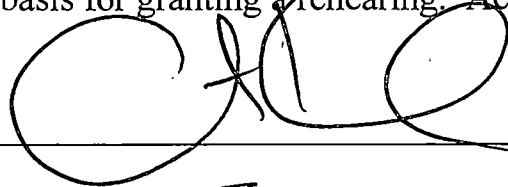
v.

Diane W. Ray, Respondent.

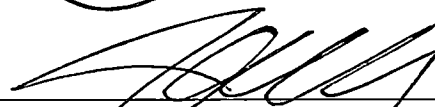
Appellate Case No. 2022-000082

ORDER

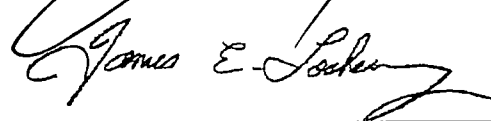
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Patrick Thomas Napolski, Esquire
Christopher H. Pearce, Esquire
Marissa Ann VanCamp, Esquire
Pamela Ansari Cobiella, Esquire
Robert Emmet Treacy, Jr., Esquire
Charles B Jordan, Jr., Esquire

FILED
Jul 05 2023

Laurence Raymond Wells, IV, Esquire
The Honorable Benjamin H. Culbertson