

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Sep 18 2023**

APPEAL FROM  
GREENVILLE COUNTY COURT OF COMMON PLEAS

**SC Court of Appeals**

The Honorable Letitia H. Verdin, Circuit Court Judge

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Appeal No.: 2022-000440

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Kevin Dwayne Chavis, .....Appellant,

v.

Vansy Saensane and Ra Cha Inc.

d/b/a Bangkok Tokyo Restaurant

a/k/a Bangkok Thai Restaurant..... Respondents.

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**MOTION TO STRIKE PORTIONS OF  
INITIAL BRIEF OF APPELLANT AND  
APPELLANT’S DESIGNATION OF MATTER**

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Pursuant to Rules 208, 209 and 240, SCACR, Respondent Ra Cha Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant (“Bangkok”) hereby moves this Court to strike portions of the Initial Brief of Appellant (“Initial Brief”), and Appellant’s Designation of Matter to be Included in Record on Appeal (“Designation”) No. 13, both dated September 5, 2023.

Pursuant to Rule 208(b)(4), SCACR, a party’s brief “shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.” Rule 210(c), SCACR, provides that the Record on Appeal “shall not ... include matter which was not presented to the lower court or tribunal.” Accordingly, Rule 209(b),

SCACR, provides that “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)].”

Appellant has designated as Designation No. 13, “Plaintiff’s Exhibits 1, 2, 3, 6, 7, 8, 10, and 11” for inclusion in the Record on Appeal. Appellant’s Initial Brief cites to and substantively relies on these exhibits. However, Appellant has not and cannot show that these materials ever were presented to the circuit court. As a result, they cannot be included in the Record on Appeal, nor can they be substantively relied on in Appellant’s Brief. Rules 208(b)(4), 209(b) & 210(c), SCACR.

Upon this Court’s notice on April 4, 2023 that Appellant needed to order the transcript of the motions hearing below, he sent the Court a letter dated April 6, 2023 indicating that he had ordered the transcript. However, on April 18, 2023, Appellant advised the Court that the motions hearing had not been recorded. Accordingly, by Order dated May 9, 2023, this Court remanded to the circuit court for reconstruction of the record.

Appellant forwarded this Court’s order to Judge Verdin, (Exh A), who advised the parties that she would be happy to “instruct the court to go on briefs alone, reconstruct the hearing from affidavits, or schedule a new hearing,” asking the parties to express their preference. (Exh. B). In response, Appellant’s counsel advised Judge Verdin, “[f]rankly, I do believe that our briefs essentially covered our oral arguments. There were some anecdotal discussions and finer points of the law arguments, but the substance of those I believe is contained within the briefs. Frankly, I could not recall everything that was stated to the court beyond what is in my brief and in my Motion to Reconsider. I believe

the court could go on the briefs submitted and the motion to reconsider and reply.” Respondent’s counsel agreed. (Exh. C). Consequently, on May 11, 2023, Judge Verdin advised this Court that the parties had agreed to proceed with the appeal on the briefs alone, without recreating the transcript of the motions hearing below.

None of Appellant’s filings with the circuit court include any of these exhibits. Appellant filed a Memorandum in Opposition to Respondent’s Motion for Summary Judgment, which contained one exhibit only, a report by Dr. David Eagerton, along with Dr. Eagerton’s CV. (Exh. D). Appellant also filed a Motion for Reconsideration to which he attached one exhibit as well, which consisted of a February 7, 2023 email from Brian L. Johnson, CPA to Appellant’s counsel and a purported IRS Form 1125-E for Respondent. (Exh. E).

The undersigned reached out to Appellant’s counsel in an effort to resolve this issue. In response, Mr. Draisen could only state that he “believes” he handed the designated exhibits to Judge Verdin and that she “might have handed them” back to him, but he does not “recall at this time.” (Exh. F). This is insufficient evidence that “Plaintiff’s Exhibits 1, 2, 3, 6, 7, 8, 10, and 11” were presented to the lower tribunal. As such, they cannot be included in Appellant’s Designation and/or substantively relied on in his Brief.

### **CONCLUSION**

Respondent requests that this Court strike Appellant’s Initial Brief and Designation of Matter, and order that they be revised to omit any reference to Designation No. 13, “Plaintiff’s Exhibits 1, 2, 3, 6, 7, 8, 10, and 11.” Respondent also

requests that the deadline for filing its Initial Brief and Designation of Matter be suspended until this Court resolves this Motion.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

September 18, 2023

*s/Helen F. Hiser*

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Helen F. Hiser

S.C. Bar No.: 76124

735 Johnnie Dodds Blvd., Suite 200

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

*Attorneys for Respondent Ra Cha Inc. d/b/a  
Bangkok Tokyo Restaurant a/k/a Bangkok Thai  
Restaurant*

## Helen Hiser

---

**From:** Daniel Draisen <daniel@Injuredsc.com>  
**Sent:** Wednesday, May 10, 2023 9:18 AM  
**To:** Helen Hiser; Verdin, Letitia; Verdin, Letitia Law Clerk ()  
**Cc:** 'steve@krauselaw.org'; Zachary S. Brown; Chris Wray  
**Subject:** RE: Kevin Dwayne Chavis v. Vansy Saensane and Ra Cha, Inc. d/b/a Bangkok (2021-CP-23-01487)  
**Attachments:** Chavis v. Saensane - Out.pdf  
**Importance:** High

Dear Judge Verdin, Helen, Zach, and Chris: Pursuant to the attached Order from the Court of Appeals, I am reaching out to you and ask that Judge Verdin schedule such hearings as she deems appropriate to reconstruct the record in this matter. If Judge Verdin determines that reconstruction is not possible, the Order instructs that she is to notify the Clerk of the Court of Appeals.

I would ask that opposing counsel and Judge Verdin CONFIRM receipt of this email communication.

With kind regards, Daniel

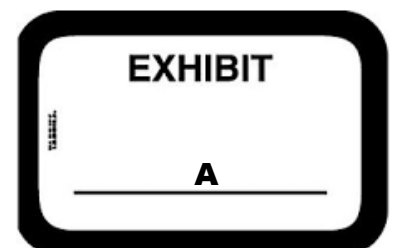
Daniel L. Draisen. Esq.  
Attorney



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**Cc:** Daniel Draisen; Helen Hiser; Verdin, Letitia Law Clerk (); steve@krauselaw.org; Chris Wray  
**Subject:** Re: Kevin Dwayne Chavis v. Vansy Saensane and Ra Cha, Inc. d/b/a Bangkok (2021-CP-23-01487)

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Sent from my iPhone

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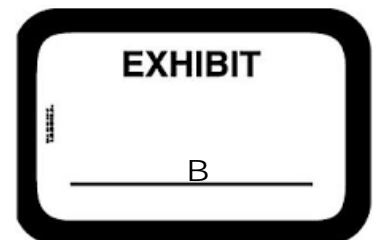
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Good Morning Judge Verdin,

In light of the Court of Appeals Order, would you like the parties to submit affidavits of their recollections of the summary judgment motion hearing and the arguments presented? Let us know how you would like us to help reconstruct the record.

Thank you,  
Zach Brown

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Zachary Brown, Attorney  
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55 E. Camperdown Way Suite 300  
Greenville, SC 29601  
Main:864-239-4000 | Direct:864-239-4021 | Fax:864-242-3199  
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With kind regards, Daniel

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Attorney

<image001.jpg>

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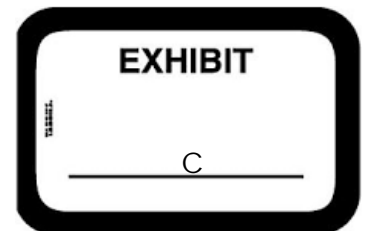
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|   |                              |
|---|------------------------------|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | IN THE COURT OF COMMON PLEAS |
|---|------------------------------|

|   |  |
|---|--|
| <b>KEVIN DWAYNE CHAVIS,</b><br><br>Plaintiff(s),<br><br>-vs-<br><br><b>VANSY SAENSANE and RA CHA, INC.</b><br><b>d/b/a BANGKOK TOKYO RESTAURANT</b><br><b>a/k/a BANGKOK THAI RESTAURANT,</b><br><br>Defendants. | <b>MEMORANDUM IN OPPOSITION<br/> TO DEFENDANT’S MOTION FOR<br/> SUMMARY JUDGMENT</b><br><br>C/A No. 2021-CP-23-01487 |
|---|--|

**TO: DEFENDANT RA CHA, INC. d/b/a BANKOK TOKYO RESTAURANT, and its attorney, ZACHARY S. BROWN, ESQ.**

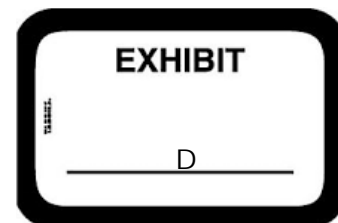
**COMES NOW** the Plaintiff, by and through his undersigned attorneys, and hereby files his Memorandum in Opposition to Defendant’s Motion for Summary Judgment.

**STANDARD FOR SUMMARY JUDGMENT**

South Carolina Rules of Civil Procedure, Rule 56, provides that summary judgment:

shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, 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.”

“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.” *Marietta Garage, Inc. v. South Carolina Dept. of Public Safety*, 337 S.C. 133, 522 S.E.2d 605 (S.C. App. 1999), citing *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (S.C. App. 1998). Even where there is no dispute as to evidentiary fact, but only as to the conclusions or inferences to be drawn from them, summary



judgment should be denied. *Etheredge v. Richland School District*, 330 S.C. 447, 449 S.E.2d 238 (S.C. App. 1998).

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial. *Id.* At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Tanner v. Florence City-County Bldg. Com'n*, 333 S.C. 549, 511 S.E.2d 369 (S.C. App. 1999). It is not for the Court to weigh the evidence, as such is strictly the province of the jury.

South Carolina case law is clear that “the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party.” *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495 (S.C. App. 1994). *See also Etheredge v. Richland School District, supra; City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994); *Thomas v. Waters*, 445 S.E.2d 659 (S.C. App. 1994); *State Farm Fire & Casualty Co. v. Breazell*, 324 S.C. 228, 478 S.E.2d 831(1996). All ambiguities, conclusions, and inferences must be construed most strongly against the movant, and the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Etheredge v. Richland School District, supra.*

### **LEGAL ARGUMENT**

#### **I. Defendant makes only one (1) assertion as the basis for its Motion for Summary Judgment, and that assertion in the instant case is incorrect.**

In its Motion for Summary Judgment, Defendant Ra Cha, Inc. asserts that Plaintiff’s causes of action against the Defendant “all stem from the allegation that Defendant Bangkok violated S.C. Code §61-4-580 (2)...” This is simply incorrect.

In fact, in Plaintiff's Second Amended Complaint Plaintiff asserts causes of action against Defendant Ra Cha, Inc. for 1) Dram Shop Liability; 2) Negligence *Per Se*; 3) Negligent Hiring and Retention; and 4) Vicarious Liability. However, in the Amended Complaint the Plaintiff does not cite to any specific SC Code section that creates the Dram Shop or Negligence *Per Se* liability. In fact, the duties owed to the Plaintiff by the Defendant arise out of the S.C. Code of Laws, Ann., 1976, as amended, and as those statutes have been interpreted and applied by the Courts of this State.

In her deposition, Defendant Saensane testified, in part:

4 Q. Okay. I've been provided some documents, just a  
little

5 bit of information about, um, Ra Cha, Incorporated.  
Can

6 you tell me who the shareholders -- and when I say  
7 "shareholders," that's the legal term for the owners  
of

8 the company -- are?

9 A. One of the shareholder is myself and part of it's Chai  
and

10 Allison is the big holder.

---

8 Q. Well, the -- let me ask the -- let me rephrase the  
9 question. As I understand it from the corporate  
records

10 that I see, uh, currently, and at least back in 2018,  
um,

11 Allison owns fifty percent (50%), you have twenty-five  
12 percent (25%) and Chai has twenty-five percent (25%);  
is

13 that right?

14 A. Yes, sir.

This testimony establishes that Defendant Saensane was, at all times relevant hereto, a shareholder and owner of Defendant Ra Cha, Inc.

24 Q. Okay. All right. Now, let me ask you this: Are you, are  
25 you an employee of Bangkok Tokyo?

1 A. Yes, sir.

This testimony establishes that Defendant Saensane was, at all times relevant hereto, a servant or employee of Defendant Ra Cha, Inc.

18 Q. Do you know what happened that evening before the wreck?

19 A. No, sir, 'cause I, I do the same thing all the time, like,  
20 do the paperwork, get home. That's all I remember.

21 Q. Well, well, I mean -- let me ask you this: Do you drink  
22 alcohol every night before you go home?

23 A. Not every day. I drink a glass of wine or two (2), like I  
24 ---

25 Q. A glass of wine or two (2)?

---

3 Q. So, you -- okay. On September 26th, 2019, did you  
drink

4 alcohol that evening after close?

5 A. I do, sir. I drink alcohol that day.

6 Q. Okay. And what did you drink?

7 A. I drink some wine.

8 Q. Do you drink red or white or blush?

9 A. A red wine.

10 Q. Red?

11 A. Yes, sir.

12 Q. And do you have a particular brand that you like or a  
13 particular bottle that you like to drink?

14 A. No. I just drink whatever we have in there that open.

15 Q. And do you know how many glasses of wine you drank on  
16 September 26th, 2019?

17 A. That day, I don't remember, but, you know, if I drink, I  
18 don't do past one (1) or two (2). But I don't drink  
19 often, like I told you. But I don't remember that day. I  
20 don't know.

This testimony by Defendant Saensane establishes that she, as an owner and employee of the Defendant, served herself and consumed wine on the premises of Defendant Ra Cha, Inc.

2 Q. Was the wine that you drank at the restaurant, was it part  
3 of your stock?

4 A. Yes, sir.

5 Q. Let me ask you this: Is that the same red wine that  
6 you  
7 would serve to customers?

7 A. Yes, sir. It's the same red wine.

This testimony by Defendant Saensane establishes that she, as an owner and employee of the Defendant, served herself and consumed wine purchased and stocked by the Defendant Ra Cha, Inc. for sale to its customers.

22 Q. Okay. On September the 26th, 2019, that evening after

23 close, was anybody there drinking wine with you?

24 A. No, sir.

25 Q. You'd been drinking by yourself?

---

1 A. I just drink by myself and do the paperwork. That's -- I  
2 remember.

---

18 Q. What I'm asking you is, from 2017 through September 26th,  
19 2019 at closing, has Allison been there at times when  
20 you've had a glass of wine and you were doing the  
21 paperwork?

22 A. Sometimes she saw and then she left, say, "Good-bye. I've  
23 gotta go," okay? 'Cause she have kid. So, she leave  
24 before me. But, you know, but most of the time, she not  
25 with me.

---

1 Q. Yeah. So, the question I'm asking you is, is Allison has  
2 seen that you drink wine sometimes in the evenings while  
3 you're doing paperwork, right?

4 A. Yes, sir, sometime.

This testimony by Defendant Saensane establishes that she, as an owner and employee of the Defendant, was aware that she served herself and consumed alcohol on the premises, and also that Allison, the permittee and one of the other owners, was also aware that Defendant Saenesane was serving herself and consuming alcohol on the premises of Defendant Ra Cha, Inc.

It is undisputed based on this testimony that on the evening of the wreck at issue in this matter Defendant Saensane, who is a shareholder, owner and employee of Defendant Ra Cha, Inc., served herself and consumed alcohol from the bar inventory of the Defendant on Defendant's premises. After consuming the alcohol, Defendant Saensane was allowed to leave and did leave the Defendant's premises in her automobile and soon thereafter collided with the Plaintiff causing him severe, painful and permanent injuries. It is also undisputed that this conduct was known and sanctioned by the major shareholder who Defendant Saensane testified permitted her to drink as she observed her doing so on previous occasions.

Based upon the retrograde analysis performed by David Eagerton, Ph.D., F-ABFT, Defendant Saensane had a whole blood alcohol concentration (BAC) level of 0.273 g/100 mL at the time of the collision. This level is more than 3x the legal limit of 0.08 g/100 mL and is indisputable evidence that Defendant Saensane was intoxicated when she left the Defendant's premises and was grossly intoxicated at the time of the wreck (copy of Dr. Eagerton's report and CV is attached hereto and incorporated by reference thereto).

In her further testimony, Defendant Saensane stated:

24 Q. Okay. So, what I want to know is, is I want to know  
from

25 10:30-ish to 12:56 a.m., what you did.

1 A. I don't know. I don't remember, sir. I just know I  
get

2 in the car and drive. That's it.

3 Q. Okay. So, when you left the restaurant that night,  
did

4 you go somewhere else?

5 A. I don't remember, sir. I don't know.

12 Q. Okay. All right. So, is it correct that your testimony  
13 today, under oath, is, is that you can't tell me, at all,  
14 what you did from around 10:30 p.m. on September 26th,  
15 2019 until the wreck at 12:56 a.m. on the 27th; is that  
16 right?

17 A. Yes, sir.

18 Q. So, we just have about, uh, three (3) hours of  
unaccounted

19 time? You have three (3) hours that you can't tell  
me

20 anything about what happened?

21 A. I don't remember, sir.

22 Q. I, I -- I'm, I'm making sure I understand your  
testimony

23 that you, you have no recollection of that three-hour

24 period of time between, say, 10:30 p.m. and 12:56  
a.m.; is

25 that right?

---

1 A. Yes. I don't remember.

2 Q. Okay. Is it possible that you went to a bar?

3 A. I don't know, sir. I don't go out m- -- far as I

4 remember. I don't really go places that much. I just

5 work, come home. That's it. That's all I remember.

This testimony by Defendant Saensane establishes that she does not know what she did from the time she left the Defendant's premises and the time of the collision. The Defendants have provided no evidence establishing that Defendant Saensane consumed additional alcohol at any other location.

## LEGAL ARGUMENT

There are a number of SC Code sections that have been enacted by the SC Legislature related to the sale, distribution and consumption of alcohol that are penal in nature, but which have been interpreted to impose civil liability upon those that violate these statutes.

In Tobias v. Sports Club, Inc., 474 S.E.2d 450, 323 S.C. 345 (S.C. App. 1996) the Court of Appeals held:

At common law, a tavern owner had no liability for serving alcohol to an intoxicated person who later injured himself or others. See 45 Am.Jur.2d Intoxicating Liquors § 553 (1969). The rationale for this rule was that consuming, not supplying, the alcohol was the proximate cause of intoxication. *Id.* Many jurisdictions, however, have departed from this common law view. In an effort to deter drunk driving and to compensate innocent victims injured by drunk drivers, many state legislatures have enacted “dram shop acts.” These statutes impose civil liability on tavern owners under various circumstances, such as supplying alcoholic beverages to minors or to obviously intoxicated persons. In states where dram shop legislation has not been enacted, some courts have imposed liability on vendors of alcoholic beverages using principles of negligence, often basing a private cause of action on the violation of beverage control statutes. At least three jurisdictions have refused to interpret their penal statutes to create a civil cause of action, while others believe that such public policy decisions should be made by the legislature. Still other jurisdictions, embracing the common law view, have enacted legislation which renders servers of alcohol immune from liability.

**South Carolina is among those jurisdictions that have recognized a civil cause of action based upon the violation of a penal statute.** Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (Ct.App.1985), cert. denied, S.C. Sup. Ct. order dated June 27, 1985. In Christiansen, as here, the plaintiff, who was also the intoxicated person, brought a private cause of action relying on S.C. Code Ann. § 61-9-410 (1976) which provides, in part:

"[n]o holder of a permit authorizing the sale of beer or wine or any servant, agent, or employee of the permittee shall knowingly do any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to any person while the person is in an intoxicated condition;"....

Appellants also base their action on S.C. Code Ann. § 61-5-30 (1990) which reads:

It shall be unlawful for any person to possess or consume any alcoholic liquors upon any premises where such person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

No person or establishment licensed to sell alcoholic beverages pursuant to this article shall sell such beverages to persons in an intoxicated condition and such sales

shall be deemed violations of the provisions thereof and subject to the penalties contained herein.

No person, corporation or organization for whose premises a license is required shall knowingly allow the possession or consumption of any alcoholic liquors upon such premises unless a valid license issued pursuant to subsection (3) or (4) of § 61-5-20 has been obtained and is properly displayed.

**Since this cause of action was judicially created** in South Carolina, we have no statutory guidance on the class of persons who may recover or on the availability of defenses. In many states where such a cause of action is statutorily authorized, the dram shop act or cases interpreting it have specifically precluded the intoxicated person from that class of plaintiffs who may bring suit. In addition, many courts in jurisdictions with penal statutes, including most of those relied upon by the Court in Christiansen, have precluded first party recovery. Christiansen, however, clearly extended the cause of action to the intoxicated person himself. Therefore, our only inquiry today is whether defenses may be asserted against the intoxicated person by the tavern owner.

Appellants argue that to permit a tavern owner to raise traditional tort defenses in a suit against it would undermine the cause of action recognized in Christiansen, asserting this cause of action is more in the nature of one grounded in strict liability. We cannot accept this characterization. The cause of action recognized in Christiansen sounds in negligence. Under Christiansen, the jury must determine if the statutory violation is a proximate cause of the alleged injury. **Subsequent decisions of the Supreme Court and the Court of Appeals have held the South Carolina liquor control statutes also create a private cause of action in favor of injured minors who were unlawfully served alcohol as well as innocent third parties injured by the inebriant.** See Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (1991) ( sections 61-9-40 and 61-9-410 give rise to civil liability if third party plaintiff can establish negligence per se. After establishing negligence per se, plaintiff must prove the violation of the statute was causally linked, both in fact and proximately, to the injury); Jamison v. The Pantry, Inc., 301 S.C. 443, 392 S.E.2d 474 (Ct.App.1990) (third party plaintiff has cause of action under sections 61-9-40 and 61-9-410); Daley v. Ward, 303 S.C. 81, 399 S.E.2d 13 (Ct.App.1990) (third party and intoxicated minor have cause of action under section 61-9-410); cf. Garren v. Cummings & McCrady, Inc., 289 S.C. 348, 345 S.E.2d 508 (Ct.App.1986) (social host incurs no common law liability to third party plaintiffs when he serves alcohol to his adult guests). **Thus, Christiansen and the decisions which followed it clearly indicate liability should be predicated upon a negligence standard,** i.e., "whether the bartenders negligently served alcoholic beverages to a person who, by his appearance or otherwise, would lead a prudent man to believe that person was intoxicated." Daley, 303 S.C. at 87, 399 S.E.2d at 16.

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se. Norton v. Opening Break of Aiken, Inc., 443 S.E.2d 406, 313 S.C. 508 (S.C. App. 1994)

Likewise, S.C. Code §61-4-580 (2) states:

No holder of a permit authorizing the sale of beer or wine or a servant, agent or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to an intoxicated person;

In the instant case, Plaintiff asserts that (1) the penal statutes which govern the sale, distribution and consumption of alcohol were enacted essentially for the purpose of protecting the citizens of South Carolina from the kind of harm the Plaintiff has suffered; and (2) that the Plaintiff is a member of the class of persons the statutes are intended to protect. Undoubtedly, penal statutes that prohibit the permittee, owners, servants and employees from "selling" alcohol to a person that known to be intoxicated (to protect the general public from the consequences of same) likewise prohibit the permittee, owner, servants and employees from a) "giving" alcohol at no charge to a person (i.e., free shots, drinks on the house, etc.) or b) allowing a person to acquire alcohol from the licensed premises when such person is intoxicated.

In Richland County Sch. Dist. Two v. S.C. Dep't of Educ., 335 S.C. 491, 517 S.E.2d 444 (Ct.App.1999), the Court of Appeals held:

The primary rule of statutory construction requires that legislative intent prevail if it can reasonably be discovered in language used construed in light of intended purpose. The legislature's intent should be ascertained primarily from the plain language of the statute. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation, and the court has no right to look for or impose another meaning.

Furthermore, even though penal statutes are to be strictly construed, "the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context." State v. Standard Oil Co. of N.J., 195 S.C. 267, 288, 10 S.E.2d 778, 788 (1940). We should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. See S.C. Coastal Council v. S.C. State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

The applicable South Carolina Code sections govern the sale, service, and consumption of alcohol on the licensed premises by the permittee, the owner, operator, or person in charge of the premises, by their servants or employees, and by consumers of the alcohol.

### **CONCLUSION**

Based upon the undisputed testimony of Defendant Saensane and a lack of any evidence to the contrary, there is nothing to suggest that Defendant Saensane was sold, served, or that she consumed alcohol at any location other than upon the licensed premises of Defendant Ra Cha, Inc., that she was sold, served, or consumed any alcohol after she left the Defendant's premises, or that she did not consume sufficient amounts of alcohol to achieve the level of her intoxication while upon the Defendant's licensed premises. In addition, Defendant Saensane consumed the alcohol with the owner's express knowledge and consent (she, being one of those owners, and one of the other owners having express knowledge of such conduct) thereby imputing liability for Plaintiff's injuries and damages to Defendant Ra Cha, Inc. Further, Defendant's Motion for Summary Judgment does not address Plaintiff's causes of action for negligent hiring and retention or for vicarious liability.

Accordingly, viewing the facts and inferences that can be drawn from them most favorably to the Plaintiff (the non-moving party), Defendant's Motion for Summary Judgment should respectfully be **DENIED.**

Respectfully submitted,

**THE INJURY LAW FIRM, P.C.**

s/Daniel L. Draisen

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Anderson, South Carolina 29621  
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and

**LAW OFFICES OF STEVEN M. KRAUSE, P.A.**

s/ Steven M. Krause

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Anderson, SC 29621

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**ATTORNEYS FOR THE PLAINTIFF**

January 13, 2023  
Anderson, South Carolina

|   |                              |
|---|------------------------------|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | IN THE COURT OF COMMON PLEAS |
|---|------------------------------|

|   |  |
|---|--|
| <b>KEVIN DWAYNE CHAVIS,</b><br><br>Plaintiff(s),<br><br>-vs-<br><br><b>VANSY SAENSANE and RA CHA, INC.</b><br><b>d/b/a BANGKOK TOKYO RESTAURANT</b><br><b>a/k/a BANGKOK THAI RESTAURANT,</b><br><br>Defendants. | <b>AFFIDAVIT OF DAVID H. EAGERTON,</b><br><b>Ph.D., F-ABFT</b><br><br>C/A No. 2021-CP-23-01487 |
|---|--|

1. My name is David H. Eagerton.
2. I am a forensic toxicologist. I received my Doctorate in Pharmacology in 1992 from the University of South Carolina. In February of 1993, I joined the South Carolina Law Enforcement Division (SLED) as a Forensic Toxicologist, was promoted to Lieutenant in August 1997, and served as Chief Toxicologist, overseeing the SLED Toxicology Department, until my retirement in September 2009. I joined the founding faculty of the Presbyterian College School of Pharmacy (PCSP) in October 2009 and was promoted to Associate Professor with tenure in 2015. In June 2017, I joined the faculty at Campbell University College of Pharmacy and Health Sciences as Associate Professor and Chair of the Department of Pharmaceutical Sciences. In January 2022, I joined the faculty of the Edward Via College of Osteopathic Medicine. I am a graduate of the South Carolina Criminal Justice Academy and am Board Certified in Forensic Toxicology (Current CV is attached hereto).
3. I have been qualified in South Carolina Courts as an expert witness in the fields of Forensic Toxicology and Pharmacology and have provided opinion testimony on numerous occasions. I believe I am qualified to give opinions regarding the subject matter at issue in this litigation.
4. I have reviewed a number of records including the Traffic Collision Report, the deposition testimony of Vansy Saensane, and medical records from Prisma Health for the medical treatment rendered to Vansy Saensane after the collision.
5. My opinions are to a reasonable degree of scientific certainty based on the foregoing records. My opinions are also based on my education, training and experience. I do not intend, however, to limit my opinions regarding this matter and I expressly reserve the right, based on any information which becomes available, to alter or modify my opinions and conclusions.

A. Factual Basis for Claim

On or about September 27, 2019, at approximately 12:56 a.m., Kevin Chavis was operating his 2017 Ford automobile in a southerly direction on N. Pleasantburg Drive in Greenville, South Carolina. At the same time and place, Vansy Saensane was operating a 2019 Lexus automobile in a northerly direction in the south bound lane of traffic on N. Pleasantburg Drive in Greenville, South Carolina while under the influence of alcohol and/or other intoxicating substances.

Suddenly and without any warning whatsoever, Ms. Saensane, while traveling in the wrong direction in the south bound lane of travel while under the influence of intoxicating substances, struck the Chavis vehicle head-on thereby causing great bodily injury and harm to Mr. Chavis.

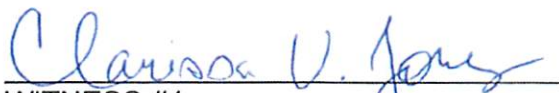
Ms. Saensane was transported via EMS to Prisma Health, Greenville Hospital, in Greenville South Carolina. During the course of her medical treatment, blood was collected at 1:34 a.m. from which it was determined that she had a serum alcohol level of 310 mg/dL, which is equivalent to a whole blood-alcohol level of 0.263 g/100mL.

B. Blood-Alcohol Retrograde Analysis.

Starting with a whole blood BAC level of 0.263 g/100mL at 1:34 a.m., Ms. Saensane's BAC level at 12:56 a.m., the time of the collision, would have been 0.273 g/100 mL. This is the equivalent of the level of intoxication a person such as Ms. Saensane would obtain after consuming seven (7) standard drinks (4 oz of 12% ABV wine) over a two-hour time period. Further analysis indicates that if as Ms. Saensane indicates in her deposition, she stopped drinking and left work at 10:30 p.m., and allowing one hour for complete absorption, Ms. Saensane's BAC level at 11:30 p.m. would have been 0.296 g/100 mL which rises to the level of gross intoxication. Ms. Saensane would most probably have been visibly and appreciably impaired at the time she left work at around 10:30 p.m.

FURTHER AFFIANT SAYETH NOT.

  
DAVID H. EAGERTON, Ph.D., F-ABFT

  
WITNESS #1

  
WITNESS #2/NOTARY

PERSONALLY appeared before me Maria Isabel Smith and made oath that

(s)he witnessed DAVID H. EAGERTON, Ph.D., F-ABFT, sign the foregoing Affidavit and that

(s)he saw Clarissa Jones witness the execution thereof.

[Signature]  
WITNESS #1

Clarissa V. Jones  
WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE  
ME THIS 12<sup>th</sup> DAY OF January, 2023.

Maria Isabel Smith

NOTARY PUBLIC FOR South Carolina  
My Commission Expires: 12/3/2029

**David H. Eagerton, Ph.D., F-ABFT**

C: (803) 543-7444  
W: (864) 327-9831

1855 E Main Street, Ste. 14 #112  
Spartanburg, SC 29307

1/22

**PROFESSIONAL EXPERIENCE**

- Jan. 2022-  
Present      **Associate Professor of Pharmacology**  
Biomedical Sciences  
Edward Via College of Osteopathic Medicine  
Spartanburg, South Carolina  
Design, coordinate, and teach Pharmacology and Clinical Toxicology to medical students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Osteopathic Medicine students.
- April 2019-  
Present      **Laboratory Director**  
LifeHope Laboratories  
Sandy Springs, Georgia  
Serve as Laboratory Director for LifeHope laboratory which performs clinical testing including toxicology and pharmacogenetics, and testing for criminal justice programs; Responsible for the overall operation of the laboratory and the competency of all laboratory personnel. Duties include review and approval of all procedures, quality assurance and quality control documentation; review of all proficiency test data; and maintenance of accreditation.
- June 2017-  
Dec. 2021      **Chair and Associate Professor**  
Pharmaceutical Sciences  
Campbell University, College of Pharmacy & Health Sciences  
Buies Creek, North Carolina  
Serve as the senior administrator of the department; oversee the development of the strategic vision and direction of the department; provide leadership in the recruitment, mentoring and retention of faculty and staff appointed to the department. Represent the department as a whole to the college, university, community and external stakeholders. Serve as part of the executive administrative team through service on the Executive Committee, and active participation in various institutional planning, implementation and evaluation of activities for the college and university. Design, coordinate, and teach Pharmacology, Pathophysiology, Biochemistry, and Clinical Toxicology to pharmacy, B.S, and Master's students; perform research in Clinical and Forensic Toxicology; and participate as a faculty member on committees.

**PROFESSIONAL EXPERIENCE (continued)**

- June 2017-  
Dec. 2021     **Executive Director**  
Campbell University Pharmacy Educational Research Center (PERC)  
Buies Creek, North Carolina  
Oversee activities associated with analytical laboratory and manufacturing processes of PERC, a pharmaceutical contracting organization which provides analytical, research, and formulation development and clinical manufacturing to the pharmaceutical industry, pharmacies, government agencies, and other universities.
- July 2015-  
May 2017     **Associate Professor of Pharmacology**  
Presbyterian College, School of Pharmacy  
Clinton, South Carolina  
Design, coordinate, and teach Pharmacology, Pathophysiology, Biochemistry, and Clinical Toxicology to pharmacy students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Pharmacy students.
- Nov. 2016-  
April 2019   **Laboratory Director**  
eLab Solutions  
Sandy Springs, Georgia  
Serve as Laboratory Director for eLab laboratory which performs clinical testing including toxicology and pharmacogenetics, and testing for criminal justice programs; Responsible for the overall operation of the laboratory and the competency of all laboratory personnel. Duties include review and approval of all procedures, quality assurance and quality control documentation; review of all proficiency test data; and maintenance of accreditation.
- Oct. 2009-  
June 2015    **Assistant Professor of Pharmacology**  
Presbyterian College, School of Pharmacy  
Clinton, South Carolina  
Design, coordinate, and teach Pharmacology, Pathophysiology, Biochemistry, and Clinical Toxicology to pharmacy students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Pharmacy students.
- Aug. 2011-  
April 2019   **Consultant Laboratory Director**  
eLab Solutions  
Sandy Springs, Georgia  
Serve as Laboratory Director and Technical Supervisor for COLA accredited Physician Office Laboratories who contract with eLab to perform toxicological testing. Review and approve of all procedures, quality assurance and quality control documentation; review of all proficiency test data; and maintenance of accreditation.

**PROFESSIONAL EXPERIENCE (continued)**

- Aug. 1997-  
Oct. 2009     **Chief Toxicologist**  
South Carolina Law Enforcement Division  
Columbia, South Carolina  
Plan, coordinate, and direct all operations of the SLED Forensic Toxicology Department, which includes both death investigation and DUI sections; Maintain Training, Certification, and QA/QC programs for the Toxicology Department; Serve as consultant and expert witness in regard to Forensic Toxicology.
- July 2007-  
Aug. 2009     **Preceptor**  
University of South Carolina, College of Pharmacy  
Columbia, South Carolina  
Supervise Pharmacy students in an advanced practice rotation.
- Feb. 1993-  
Aug. 1997     **Forensic Toxicologist**  
South Carolina Law Enforcement Division  
Columbia, South Carolina  
Analyze biological samples for the presence of alcohol, other drugs, or poisons; interpret the results of those analyses, and testify in a court of law regarding those analyses and as to the effects those substances may have on a person.
- Jan. 1995-  
Dec. 1998     **Adjunct Professor**  
University of South Carolina, College of Pharmacy  
Columbia, South Carolina  
Teach Pharmacology/Toxicology to pharmacy students and graduate students.
- Sept. 1986-  
Jan. 1993     **Poison Control Consultant**  
Palmetto Poison Center  
Columbia, South Carolina  
Answer emergency calls concerning toxicological exposures from both the lay public and physicians, and to recommend the appropriate treatment protocols for those exposures.
- May 1989-  
June 1992     **Research Assistant**  
University of South Carolina, College of Pharmacy  
Columbia, South Carolina  
Perform novel research in the area of cancer pharmacology for doctoral degree.
- June 1986-  
May 1989     **Teaching Assistant**  
University of South Carolina, College of Pharmacy  
Columbia, South Carolina  
Teach Pharmacology and Pharmaceutics laboratories.

**EDUCATION**

- June 1986- University of South Carolina, College of Pharmacy,  
Dec. 1992 Columbia South Carolina. Ph.D. in Pharmacology; "Biochemical Factors Influencing The Function of Thymidylate Synthase As A Target For Fluoropyrimidines"
- Aug. 1985- University of South Carolina, College of Pharmacy,  
May 1986 Columbia, South Carolina. Third Year Pharmacy School.
- Aug. 1980- University of South Carolina, Department of Biological  
Aug. 1985 Sciences, Columbia, South Carolina. B.S. in Biology.

**CONTINUING EDUCATION**

- 1993- South Carolina Law Enforcement Toxicology Lecture Series,  
2009 Columbia, South Carolina.
- 1993 South Carolina Criminal Justice Academy, Columbia, South Carolina. Basic Police Officer Training.
- 1993 Abbott Laboratories, Irving, Texas. Abbott Datatrac training.
- 1993 Forensic Toxicology workshop presented at the meeting of the Southern Association of Forensic Scientists, Savannah, Georgia.
- 1994 "Current Approaches In Forensic Toxicology" workshop presented by the Forensic Toxicologist Certification Board at the Joint Congress of The International Association of Forensic Toxicologists and The Society of Forensic Toxicologists, Tampa, Florida.
- 1995 "Rapid Drug Detection" workshop presented by ANSYS, Inc., Columbia, South Carolina.
- 1997 "Homicide by Child Abuse" workshop presented by The South Carolina Health Alliance, Charleston, South Carolina.
- 1997 "Fetal and Pediatric Pharmacology" workshop presented by The Society of Forensic Toxicologists, Snowbird, Utah.
- 1997 "The Pharmacology of Herbal Preparations" workshop presented by the Society of Forensic Toxicologists, Snowbird, Utah.
- 1997- South Carolina Law Enforcement Division Supervisor/Management Training Series,  
2009 Columbia, South Carolina.

**CONTINUING EDUCATION (continued)**

- 1997 "Leadership Skills" workshop presented in conjunction with the Moscow Police Command College, Columbia, South Carolina.
- 1998 American Society of Crime Lab Directors / Laboratory Accreditation Board (ASCLD/LAB) Inspector Training, Columbia SC.
- 1998 "Forensic Ethanol Analysis and Interpretation" workshop presented by the Forensic Toxicologist Certification Board at the Spring 1998 Meeting of the Southern Association of Forensic Scientists, New Orleans, LA.
- 1998 "Contemporary Practice in Clinical Toxicology" workshop presented by the American Association of Clinical Chemists, Baltimore, MD.
- 1998 "Medical Response to Biological Warfare and Terrorism" workshop presented by the CDC and USAMRID, Columbia, SC.
- 1998-2009 South Carolina Law Enforcement Forensic Sciences Lecture Series, Columbia, South Carolina.
- 1999 "Postmortem Pediatric Forensic Toxicology" workshop presented by the American Academy of Forensic Sciences, Orlando, Florida.
- 1999 "Fatal Child Abuse" workshop presented by The South Carolina Health Alliance, Charleston, South Carolina.
- 1999 "Hazardous Materials Technician" presented by The Columbia Fire Department, Columbia, South Carolina.
- 1999 "Supervisory/Management Training for Criminal Justice Professionals" workshop presented by Gordon Graham at Midlands Area Technical College, Columbia, South Carolina.
- 1999 "Risk Assessment/ Management" workshop sponsored by SLED, Columbia, South Carolina.
- 2000 "South Carolina Summit on Traffic Safety" workshop presented by The South Carolina Department of Transportation, Greenville, South Carolina.
- 2000 "DUI 101" workshop presented by The South Carolina Commission on Prosecution Coordination, Columbia, South Carolina.

**CONTINUING EDUCATION (continued)**

- 2000 "WMD HAZMAT Technician (COBRA)" training by The United States Department of Justice Center for Domestic Preparedness, Anniston, Alabama.
- 2000 "Counter-Terrorism for the 21st Century" workshop presented by L.E.O.S.T Inc., Columbia, South Carolina.
- 2001 "NHTSA Faculty Development Workshop" presented by The National Highway Safety Administration and the National Judicial College, Reno, Nevada.
- 2001 "TERM - Vulnerability Analysis" presented by Total Security Services International, Inc., Boston Massachusetts.
- 2001 "The Science of Solid Phase Extraction" presented by United Chemical Technologies, Inc., Columbia, South Carolina.
- 2001 "TWGFEX Symposium on Fire and Explosion Debris Analysis and Scene Investigation" presented by The National Center for Forensic Science, Orlando, Florida.
- 2001 "Weapons of Mass Destruction Technician Training" presented by The Special Operations Response Team, Columbia, South Carolina.
- 2001 "National Terrorism Response Workshop" presented by Hicks and Associates and the Terrorism Research Center, McLean Virginia.
- 2001 "Felony DUI and Accident Reconstruction" workshop presented by The South Carolina Commission on Prosecution Coordination, Columbia, South Carolina
- 2002 "Biological Sampling and Detection" 40-hour course on Detection, Sampling, and Analysis of Weapons Grade Biological Agents, West Desert Test Center, Dugway Proving Ground, Dugway, Utah.
- 2003 "WMD Tactical Operations" 40-hour course on operations level WMD Tactical Operations, Louisiana State University.
- 2003 "Agilent 5973 MSD Instrument Operations" 24-hour course presented by Agilent Technologies.
- 2003 "31<sup>st</sup> Annual Symposium on Crime Laboratory Development" presented by the FBI and the Carlsen School of Business, Minneapolis, Minnesota.
- 2003 "Forensic Toxicology Review" presented by the Society of Forensic Toxicologists and the American Association of Clinical Chemists, Raleigh, North Carolina.

**CONTINUING EDUCATION (continued)**

- 2004 “NGA Regional Bioterrorism Workshop” presented by the National Governors Association Center for Best Practices, New Orleans, Louisiana.
- 2004 “Interviewing: Identifying and Overcoming Deception” presented by the South Carolina Law Enforcement Division, Columbia, South Carolina.
- 2004 “Laboratory Symposium on Forensic Toxicology” presented by the FBI Laboratory and National Institute of Justice, Washington, DC.
- 2004 “Joint SOFT/TIAFT Meeting” presented by the FBI Laboratory and Society of Forensic Toxicologists and The International Association of Forensic Toxicologists, Washington, DC.
- 2004 “I-100 Introduction To The Incident Command System” presented by the South Carolina Forestry Commission, Columbia, South Carolina.
- 2004 “I-200 Basic Incident Command System” presented by the South Carolina Forestry Commission, Columbia, South Carolina.
- 2005 “NIMS-ICS 300 Intermediate Training Course” presented by EMAC International, Columbia, South Carolina.
- 2005 “NIMS-ICS 400 Advanced Training Course” presented by EMAC International, Columbia, South Carolina.
- 2005 “IS-00700 National Incident Management System (NIMS)” presented by FEMA, Columbia, South Carolina.
- 2005 “ISO/IEC 17025:1999” presented by the American Society of Crime Laboratory Directors Laboratory Accreditation Board, Columbia, South Carolina.
- 2005 “ASCLD/LAB International Assessor Training ” presented by the American Society of Crime Laboratory Directors Laboratory Accreditation Board, Columbia, South Carolina.
- 2005 “Forensic Toxicology of Pesticides” presented by the Society of Forensic Toxicologists, Nashville, Tennessee.
- 2005 “Receptor Site Theory and Drug Interactions” presented by the Society of Forensic Toxicologists, Nashville, Tennessee.
- 2005 “Oral Fluids – Research and Applications” presented by the Society of Forensic Toxicologists, Nashville, Tennessee.

**CONTINUING EDUCATION (continued)**

- 2006 "Method Validation and Measurement Uncertainty" presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 "Postmortem Pharmacokinetics" presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 "Addiction and Pain Management for Forensic Toxicologists" presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 "New Antidepressants and Antiepileptics: Clinical Pharmacology, Pharmacogenomics, Gene Expression, and Neurobiology of Depression and Suicide and Forensic Toxicology" presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 "BEAST LIMS Training" presented by Porter Lee, Columbia, South Carolina.
- 2006 "Supervisor Training" presented by Jack Enter and SLED, Columbia, South Carolina.
- 2007 Agilent Technologies Speed School , Charleston, South Carolina.
- 2007 "Drugs and Driving" presented by the American Academy of Forensic Sciences, San Antonio, Texas.
- 2007 "Pediatric Toxicology" presented by the American Academy of Forensic Sciences, San Antonio, Texas.
- 2007 "Public safety Sampling for WMD" presented by Louisiana State University and the Office for Domestic Preparedness, Lexington, South Carolina.
- 2007 "The Toxicology of Plants" presented by the Society of Forensic Toxicologists, Raleigh-Durham, North Carolina.
- 2007 "Toxicological Analysis of Drug-Facilitated Crimes" presented by the Society of Forensic Toxicologists, Raleigh-Durham, North Carolina.
- 2007 "LC/MS in the 21<sup>st</sup> Century" presented by the Society of Forensic Toxicologists, Raleigh-Durham, North Carolina.
- 2007 "Anti-Terrorism for SC Law Enforcement" presented by the LECC Anti-terrorism Training Subcommittee, Columbia, South Carolina.
- 2008 FirstDefender Chemical Identification System, Columbia, South Carolina.

**CONTINUING EDUCATION (continued)**

- 2008 “WMD/Terrorism Awareness For Emergency Responders”, presented by Texas A&M University and the Department of Homeland Security.
- 2008 “Botulism”, presented by Texas A&M University and the Department of Homeland Security.
- 2008 “Children and Nerve Agents”, presented by Texas A&M University and the Department of Homeland Security.
- 2009 “Best Practices for Volumetric Measurement”, presented by RTI International.
- 2010 Collaborative Institutional Training Initiative (CITI) Human Subject Protection Training Course for Clemson University, Greenville Hospital Systems, and Palmetto Health Richland.
- 2012 School on Alcoholism and Other Drug Dependencies, University of Utah School of Medicine.
- 2012 “Updating Knowledge of 17025 (1999 to 2005)” ASCLD/LAB.
- 2013 School on Alcoholism and Other Drug Dependencies, University of Utah School of Medicine.
- 2013 “BLS for Healthcare Providers” American Heart Association.
- 2013 “Theory and History of Comprehensive Multi-Dimensional Gas Chromatography (GC x GC)” LECO.
- 2013 Collaborative Institutional Training Initiative (CITI) Human Subject Protection Training Course – Update for Clemson University, Greenville Hospital Systems, and Palmetto Health Richland.
- 2014 School on Alcoholism and Other Drug Dependencies, University of Utah School of Medicine.
- 2015 APhA Institute on Alcoholism and Other Drug Dependencies, American Pharmacists Association.
- 2015 “Postmortem Toxicology: From Autopsy to Interpretation” presented by the Society of Forensic Toxicologists, Atlanta, Georgia.
- 2015 “Pharmacognosy for the Forensic Toxicologist” presented by the Society of Forensic Toxicologists, Atlanta, Georgia.

**CONTINUING EDUCATION (continued)**

- 2016 “QuEChERS as a potential extraction tool for the analysis of THC and CBD in edibles and oils” presented by the Palmetto Association of Toxicologists, Columbia, South Carolina.
- 2016 “The Toxicology of Performance Enhancing Pharmaceuticals in the Athlete” presented by the American Academy of Clinical Toxicology, Webinar.
- 2016 “Navigating the National Library of Medicine’s TOXNET Toxicology Data Network” presented by the American Academy of Clinical Toxicology, Webinar.
- 2016 “Postmortem Interpretation of Toxic Pharmacodynamic Drug Interactions” presented by the Society of Forensic Toxicologists, Dallas, Texas.
- 2016 “Opioids in DUID Investigations” presented by the Society of Forensic Toxicologists, Dallas, Texas.
- 2016 “Postmortem Cannabinoids: Issues of Analysis and Interpretation” presented by the Society of Forensic Toxicologists, Dallas, Texas.
- 2017 “Symbiosis of Core-Shell and Fully Porous Particles: Implementing Both for Better HPLC and UHPLC Results” presented by The Palmetto Association of Toxicologists, Columbia, South Carolina.
- 2017 “Definitive Drug and Metabolite Screening in Urine by UPLC-MS-MS Using a Novel Calibration Technique” by the Society of Forensic Toxicologists, Self-Study.
- 2017 “Development and Validation of a Novel LC-MS/MS Opioid Confirmation Assay” by the Society of Forensic Toxicologists, Self-Study.
- 2018 Opioid Epidemic Symposium by Campbell University College of Pharmacy and Health Sciences, Benson, North Carolina.
- 2018 “Can We Say That? – Drug Impaired Driving Testimony” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 “Effective Communication Skills for Successful Forensic Toxicology Practice” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 “How Do I Analyze for That?!?” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 “The Real C.S.I. Miami- A Collaborative Approach to Death Investigation with an Emphasis on Investigative Postmortem Toxicology” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.

**CONTINUING EDUCATION (continued)**

- 2018 AACT Section Webinar: Unexplained Death of a Healthcare Worker- Case Files from the Medical Examiner's Office presented by the American Academy of Clinical Toxicology, Webinar.
- 2019 Forensic Science Education Webinar: Efficiency and Quality in LC/MS Urine Drug Testing presented by RTI International, Webinar.
- 2019 "Best Practices for Investigation of Overdose Deaths" presented by the Society of Forensic Toxicologists, San Antonio, Texas.
- 2019 "Cannabidiol and Hemp – Separating Fact from Fiction" presented by the Society of Forensic Toxicologists, San Antonio, Texas.
- 2019 "Recommended Specimens, Scope, Cutoffs, and Strategies for DUI-D Testing and the Impact of Stop-Limit Tests" presented by the Society of Forensic Toxicologists, San Antonio, Texas.
- 2020 "Developing an Oral Fluid Drug Testing Program – Basic Considerations, Guidelines, and Implementation Strategies" presented by the Society of Forensic Toxicologists, SOFTember Workshop.
- 2021 "Toxicology in Capital Cases – Working with Clients and their Attorneys on a Death Penalty Case" presented by the American Association of Clinical Toxicologists, AACT June Section Webinar.
- 2021 "Instrumental Method Development" presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2021 "Novel Psychoactive Substances" presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2021 "Alternative Biological Specimens" presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2021 "Cannabis" presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.

**INSTRUMENTATION/EXPERIENCE**

Analysis of biological samples for the presence of drugs or poisons  
Liquid Chromatography including both High Performance Liquid  
Chromatography and Fast Protein Liquid Chromatography  
Gas Chromatography/Mass Spectrometry (both Electron Impact and  
Chemical Ionization)  
High Performance Liquid Chromatography/Atmospheric Pressure  
Ionization-Electrospray Mass Spectrometry  
High Performance Liquid Chromatography/Tandem Mass Spectrometry  
Thin Layer Chromatography (Toxilab)  
Head-space Gas Chromatography  
Antigen-Antibody based detection and quantitation techniques including Enzyme-  
Linked Immunosorbent assay, Radioimmunoassay, and Fluorescence  
Polarization Immunoassay  
Liquid/Liquid and Liquid/Solid extraction techniques  
Expert Testimony in South Carolina magistrate, general sessions, United States  
Federal, and United States military courts  
Certified Toxicologist  
Certified BAC Datamaster Operator  
Certified Law Enforcement Officer (Class 1)  
Human and bacterial protein purification monoclonal and polyclonal antibody  
development  
Mammalian and bacterial cell culture  
Biochemical analysis of intracellular folates  
Gel Electrophoresis including Western and Southern blots, Iso-  
Electric Focusing, and Two-Dimensional Gels  
Atomic Absorption spectroscopy  
Radionuclide-Linked Enzyme Assays  
*In vivo* animal research  
UV/VIS Spectrophotometry  
Fourier-Transform Infrared Spectrophotometry (FTIR)  
Raman Spectroscopy  
Polymerase Chain Reaction (PCR) Assays  
Microbiological Assays  
Analysis of Air samples with Multi-gas meters, Photo Ionization Detectors (PID),  
and Chemical Agent Monitors (CAM)  
Radiological Survey and Detection Instruments  
Diplomate of the Forensic Toxicology Certification Board  
American Society of Crime Lab Directors/Laboratory Accreditation Board  
(ASCLD/LAB) Inspector  
WMD HAZMAT Technician (COBRA)  
HAZMAT Technician  
Member of SLED WMD Response Team  
CITI Training

**PUBLICATIONS**

Carter CA, Holland MA **Eagerton DH**, King DM, Johnson PR. Comparison of the Stability of Various Oral Liquid Levothyroxine Formulations. Pediatric Endocrine Society 2021 Virtual Annual Meeting, May 1, 2021

Meyer LM, Stephens K, Carter CA, Pickard W, Johnson PR, **Eagerton DH**. Stability and consistency of compounded oral liquid levothyroxine formulations. Journal of the American Pharmacists Association, Volume 60, Issue 6, Pages e168-e172, November – December 2020. DOI: <https://doi.org/10.1016/j.japh.2020.05.014>

Ghassemi E, Stockdale M, McLendon A, **Eagerton D**, and Woodis B. Summary of Performance in a first year, integrated, Doctor of Pharmacy Course using on-campus versus on-line instruction: A curricular comparison in response to COVID-19. Presented at the American College of Clinical Pharmacy, Annual Meeting, Virtual, October 26, 2020.

Bishop-Freeman SC, Skirnick O, Noble CN, **Eagerton DH**, and Winecker RE. Effects of Bariatric Surgery Observed in Postmortem Toxicology Casework. Journal of Analytical Toxicology, 2019; 43:651-659.

Carter CA, Pickard W, Johnson PR, and **Eagerton, DH**. Stability and Consistency of Compounded Oral Liquid Formulations of Levothyroxine. Proceedings of The American Thyroid Association, Chicago, IL, 2019.

Shealy KM, Ritter MS, Wyatt AS, and **Eagerton DH**. Trends in Potentially Abused Medications Returned During Medication Take-Back Days. Journal of the American Pharmacists Association, 2019-07-01, 54:575-578.

Ritter MS, Shealy KM, Wyatt AS, and **Eagerton DH**. Trends in Commonly Abused Medications Returned During DEA Take-Back Days. 2018 ACCP Global Conference on Clinical Pharmacy, Seattle, WA, 2018.

Wyatt AS, Shealy KM, Ritter MS, and **Eagerton, DH**. Analysis of Antibiotic Disposal Practices in a Rural South Carolina Community, 2013-2017. Proceedings of The American Society of Health-System Pharmacists, Anaheim, CA, 2018.

Barnes C, **Eagerton D**, May B, and Moore M. Practice and Science: Change Creating Collaboration. Proceedings of The American Association of Colleges of Pharmacy, Boston, MA, 2018.

Sease, JM, Hampton, T., and **Eagerton, DH**. Evaluation of Student Performance of the Pharmacists' Patient Care Process Using Simulation IPPE. Proceedings of The American Association of Colleges of Pharmacy, Nashville, TN, 2017.

**PUBLICATIONS (continued)**

**Eagerton, DH.** The Toxicology of Ethanol. In: Yarborough and Savage eds. *South Carolina Dram Shop Litigation: A Practice Guide*. Columbia, SC: SC Bar Association; 2016.

Skrabal M.; Downs, G.; Carter, R.; **Eagerton, D.**; Franson, D.; Hritcko, P.; Jungnickel, P.; Kissack, J.; Ruble, J.; and Torrado, C. Marijuana Use Task Force (MUTF): Considerations for Schools Regarding Marijuana Use by Students, Faculty, and Preceptors. Proceedings of The American Association of Colleges of Pharmacy, Anaheim, California, 2016.

**Eagerton, D.H.**, Batson, C., Colvin, N., and Shealy K.M. Safe Medication Disposal – A Guide for Pharmacists & Pharmacy Personnel. *Palmetto Pharmacist* 2016.

Gumina, G.; Messersmith, A. R.; **Eagerton, D. H.**; Feske, B. D. Synthetic studies toward metabolically stable puromycin analogs. 71st Southwest/67th Southeast Regional Meeting of the American Chemical Society, November 4-7, 2015, Memphis, TN. 2015, Abstr. No. 513.

Dias, JM., and **Eagerton, DH.**, Detection and Prevention of Drug Diversion in Operating Room Pharmacies, The South Carolina Association of Health System Pharmacists, Hilton Head Island, South Carolina, 2015.

Norton, M., Al-shatnawi, S., Nash, K., **Eagerton, D.**, McGuire, M., Beggs, A., Smith, T., Seaton, V., Light, K., Riesselaman, A., Student Pharmacists and Alcohol Drinking Behavior: Findings from a Collaborative Colleges of Pharmacy in the United States, Proceedings of the College of Psychiatric and Neurologic Pharmacists (CPNP) Annual Meeting, Orlando, Florida, 2015.

Norton, M., Al-shatnawi, S., Nash, K., **Eagerton, D.**, McGuire, M., Beggs, A., Smith, T., Seaton, V., Light, K., Riesselaman, A., Perceived Stress and Impulsivity as Predictors of Substance Use Disorders: Findings from the Student Pharmacists Chemical Health Scale-III, Proceedings of the College of Psychiatric and Neurologic Pharmacists (CPNP) Annual Meeting, Orlando, Florida, 2015.

Shealy, K., **Eagerton, D.**, and Threatt, T., Engaging the Community: Presbyterian College School of Pharmacy's (PCSP) Approach, Proceedings of The American Association of Colleges of Pharmacy, Grapevine, Texas, 2014.

Huestess, A., Asbill, S., **Eagerton, D. H.**, and Arnold, J. *In Vitro* Skin Penetration and Skin Content of Progesterone from Various Topical Formulations. *International Journal of Pharmaceutical Compounding* 2014; 18 (6): 512-515.

**PUBLICATIONS (continued)**

**Eagerton, D. H.**, Goodbar, N. H., Dansby, M. C., Abel, S. N., Bell, W. C. Morphine Overdose in a 6 1/2 Week-Old Infant: A Case Report. *Austin J Pharmacol Ther* 2014; 2 (10) 4.

Shealy, K. M., O'Day, P., **Eagerton, D. H.** The Needs and Opportunities for Medication Disposal Programs. *Journal of Pharmacy Technology* 2014; 30 (5): 147-50.

**Eagerton, D. H.**, Sease, J. M. Liver Cirrhosis and Complications. In S. Scott Sutton (Ed.), *McGraw-Hill's NAPLEX Review Guide*. 2014 New York, New York: McGraw Hill.

**Eagerton, D.**, Shealy, K., and Reeder, G. Development and Implementation of a Medication Take-Back Event Led by a School of Pharmacy, Proceedings of Society of American Pharmacist's Association, Los Angeles, California, 2013.

Goodbar, N.H., Foushee, J.A., **Eagerton, D.H.**, Brush, K.C., and Johnson, A.A., Analysis of the HCG Diet on Patient Outcomes, *Ann Pharmacother*. 2013; 47(5), 5.

Farrell, C.L., Frederick-Duus, K.D., **Eagerton, D.H.**, Pedigo, N.G., Asbill, C.S. and Gouge, E., Biotechnology Lab Practicum: Preparing Pharmacy Students For The Next Generation Of Pharmacy From Pharmacogenomics To Biological Therapeutics, Proceedings of The American Association of Colleges of Pharmacy, Orlando, Florida, 2012.

**Eagerton, D.H.**, "Drug Testing in Urine" in Handling Traffic Cases in South Carolina 2<sup>nd</sup> edition, R.M. Cole, ed., South Carolina Bar Continuing Legal Education Division, Columbia SC, 1998.

McKinnon, T.A., Smith, Dustin W., and **Eagerton, D.H.**, A Comprehensive Analysis of 24 Opioid Analgesics Utilizing Liquid Chromatography-Tandem Mass Spectrometry (LC-MS/MS), Proceedings of Society of Forensic Toxicologists, Oklahoma City, Oklahoma, 2009.

McKinnon, T.A., and **Eagerton, D.H.**, A Comprehensive Analysis for Benzodiazepines in Biological Matrices Utilizing LC-MS/MS Following a Class-Specific Solid Phase Extraction, Proceedings of Society of Forensic Toxicologists, Raleigh-Durham, North Carolina, 2007.

Bell, W.C., and **Eagerton, D.H.**, Pediatric Case of Fatal Codeine / Promethazine Overdose, Proceedings of Society of Forensic Toxicologists, Austin Texas, 2006

Grambow, T.W., Shacker, L.J., Smith, D.W., and **Eagerton, D.H.**, Thiopental Levels and Distribution from South Carolina Lethal Injection Cases, Proceedings of Society of Forensic Toxicologists, Austin Texas, 2006.

**PUBLICATIONS (continued)**

**Eagerton, D.H., and Shacker, L.J.**, Case Study: DUI with Multiple Prescription Drugs, Proceeding of the American Academy of Forensic Sciences, San Antonio, Texas, 2007.

**Steven M. DuBose, David H. Eagerton, Alejandra G. Lewis, and Stephen L. Morgan**, "Forensic analysis of benzodiazepines in body fluids by multigradient High performance liquid chromatography/mass spectrometry," paper 2520-3, PittCon 2003, Orlando, FL, 10 March 2003.

**Alexander A. Nieuwland, Steven M. DuBose, David H. Eagerton, Alejandra G. Lewis, and Stephen L. Morgan**, " Forensic analysis of benzodiazepines in blood and urine samples by fastgas Chromatography/mass spectrometry," paper 2520-4, PittCon 2003, Orlando, FL, 10 March 2003.

Assistant Editor of "Current Approaches in Forensic Toxicology" Presented by the Forensic Toxicology Certification Board, Inc., Society of Forensic Toxicologists and the International Association of Forensic Toxicologists Joint Congress, Tampa, Florida, 1994.

**Eagerton, D.H., Berger, S.H., and Knapp, L.W.**, Proc. Amer. Assoc. Cancer Research. 32, 1448 (1991)

**Eagerton, D.H., Mosser, D.F., and Berger, S.H.**, Proc. Amer. Assoc. Cancer Research. 31, 2506 (1990)

**Eagerton, D.H., and Berger, S.H.** "Folinic Acid As A Source of Intracellular 5,10-Methylenetetrahydrofolate in Human Carcinoma Cells", in The Chemistry and Biology of Pteridines 1989 (Curtis and Ghisla, eds.) Walter de Gruyter and Co.

**Eagerton, D.H., and Berger, S.H.**, Bulletin of South Carolina Acad. of Science. 53, (1991)

**Eagerton, D.H., and Berger, S.H.**, Bulletin of South Carolina Acad. of Science. 52, (1990)

**Eagerton, D.H., and Berger, S.H.**, Bulletin of South Carolina Acad. of Science. 51. (1989)

**PRESENTATIONS**

"Drug Testing in Child Protection Cases" at Special Topics in Child Protection; A CLE for SC DSS Attorneys, Columbia, SC, June 2021.

"The Toxicology of Ethanol" Dram Shop Litigation CLE, November 2021.

"Pharmacology for Toxicologists Part 1" NC Forensic Laboratory, Raleigh, NC, March 6, 2020.

**PRESENTATIONS (continued)**

“Pharmacology for Toxicologists Part 2” NC Forensic Laboratory, Raleigh, NC, Virtual, April 17, 2020.

“Campbell University MSPS Program” Virtual Webinar, September 29, 2020.

“Pharmaceutical Sciences and Forensics” Campbell University Pre-Pharmacy Club, Buies Creek, NC, October 2020.

“Challenges in Forensic Toxicology” Campbell University Pre-Pharmacy Club, Buies Creek, NC, January 2020.

“Challenges in Forensic Toxicology” Campbell University Pre-Pharmacy Club, Buies Creek, NC, January 2019.

“Pharmaceutical Sciences and Forensics” Campbell University Pre-Pharmacy Club, Buies Creek, NC, February 2019.

“Drug Testing in Child Protection Cases” at Special Topics in Child Protection; A CLE for SC DSS Attorneys, Columbia, SC, April 2018.

“Shake and Bake – Amphetamines and Other Abused Stimulants” at Greenville Health System Psychiatric Grand Rounds, Greenville, SC, March 2018.

“Challenges in Forensic Toxicology” Campbell University Pre-Pharmacy Club, Buies Creek, NC, October 2017.

“The Toxicology of Ethanol” Dram Shop Litigation CLE, November 2016

“Interpreting Urine Drug Screens” at Self Regional Healthcare Noon Conference, July 2016.

“Generation Rx – Prescription Drug Abuse” Patewood Athletic Trainers, Greenville, SC, May 2016.

“Drugs of Abuse” at Self Regional Healthcare Noon Conference, March. 2016.

“Athletic Supplements” at Presbyterian College Athletic Department, February, and March 2016.

“Forensic Toxicology in Civil Cases” ABOTA Masters in Trial CE, Columbia, SC, February 2016.

**PRESENTATIONS (continued)**

“Drug Screening in Abuse and Neglect Cases” CE for Attorneys and Guardians ad Litem, Sept. 2015.

“Prescription Drug Abuse for Athletes and College Students” at Presbyterian College Athletic Department, January, February, and March 2015.

“Generation Rx - Prescription Drug Abuse” at FOCUS School, March 2015.

“Novel Techniques for the Detection of Drug Diversion in Hospital Surgical Settings” at Presbyterian College School of Pharmacy Research Symposium, January 2015.

“Forensic Toxicology in Civil Cases” at 2014 SC Trial Lawyers Association Annual Conference, December 2014.

“Generation Rx - Prescription Drug Abuse” at Presbyterian College, December 2014.

“Prescription for Disaster: Current Trends in Drug Abuse” at 2014 Annual Children’s Law Conference, October 2014.

“Drug Screening in Abuse and Neglect Cases” training for attorneys and Guardians ad Litem, September 2014.

“Forensic Toxicology 101” at Evidentiary Challenges in Child Abuse and Neglect Proceedings Workshop, September 2014.

“Prescription for Disaster: Current Trends in Drug Abuse” at 2014 Self Regional Healthcare Medical Staff Meeting, July 2014.

“Prescription for Disaster” at Presbyterian College School of Pharmacy-ASP-APhA Chapter Meeting, March 2014.

“ABCs of Drug Testing in Child Welfare Cases” at Children’s Law Center Office of Indigent Defense Workshop, February 2014.

“Prescription for Disaster” at Presbyterian College Counseling Service, November 2013.

“Drugs of Abuse” at Self Regional Healthcare Noon Conference, Sept. 2013.

“Alcohol and Social Events” at Presbyterian College School of Pharmacy LEAP Retreat, August 2013.

“Drug Testing” at American Association of Colleges of Pharmacy Annual Meeting, Substance Abuse SIG, July 2013.

**PRESENTATIONS (continued)**

“Alcohol and Other Drugs of Abuse – A Health Professional Student Perspective” at SC College of Pharmacy-MUSC Campus Workshop on Alcohol Awareness, February 2013.

“Alcohol” at Presbyterian College ADP Seminar on Alcohol Awareness, March 2013.

“ABCs of Drug Testing in Child Welfare Cases” at Children’s Law Center Workshop, December 2013.

“Drugs of Abuse” at Gateway Counseling Service, Workshop, November 2012.

“The Toxicology of Ethanol” at Presbyterian College Grand Chapter, March 2012.

“Toxicology” at Annual Public Defender Conference, September 2011.

“Grandpa’s Bottle, Wine or a Drug?” at Aging Research Symposium, February 2011.

“Challenges in Forensic Toxicology” at Presbyterian College Biology Seminar Series, March 2011.

“Toxicology” for Prosecuting The Impaired Driver, March 2011, May 2011, and June 2011.

“Toxicology and Drug Testing” at Annual Children’s Law Conference, November 2010.

“Toxicology” for The Impaired Driver: Nuts and Bolts of DUI Prosecution, February 2010, March 2010, May 2010, and June 2010.

“Challenges in Forensic Toxicology” at the Western Carolinas Section of the American Chemical Society, Newberry, South Carolina, October 2008

“Stimulants” at the Drugs and Driving Workshop sponsored by the Society of Forensic Toxicologists, West Palm Beach, Florida, May 2008.

“Alcohol and Other Drugs of Impairment” at the DUI Training Workshop sponsored by the South Carolina Commission on Prosecution Coordination, June 2008, July 2008, February 2009, June 2009, and August 2009.

“CSI - Toxicology” at Newberry College, Newberry, South Carolina, November 2007, and March 2010.

“Toxicology of Alcohol” at the ABCs of DUI Workshop sponsored by the South Carolina Commission on Prosecution Coordination, April, June July, and August 2007.

**PRESENTATIONS (continued)**

"Case Study: DUI with Multiple Prescription Drugs" at the American Academy of Forensic Sciences, San Antonio, Texas, February 2007.

"GABA Receptors" at the Receptor Site Theory Workshop sponsored by the Society of Forensic Toxicologists, October 2005.

"Toxicology in The Drugged Driver" at Prosecuting the Drugged Driver Course sponsored by the National District Attorneys Association National Advocacy Center, November 2005.

"Biological Agents Used as Weapons of Mass Destruction" at the South Carolina Law Enforcement Division Forensic Services Seminar Series, October 2001.

"Central Nervous System Depressants" at the Forensic Toxicology Review workshop presented by the Society of Forensic Toxicologists and the American Association of Clinical Chemists, October 2001.

"The Role of the Forensic Laboratory in WMD Events" at Forensic Epidemiology for Health Care Workers and Law Enforcement, 2003 through 2005.

"Toxicology of Abused Drugs" advanced training for South Carolina Criminal Justice Academy, January 2003 and June 2003.

"Date Rape and Club Drugs" workshop presented at 22nd Annual School Nurse Conference, November 2002.

"Medical Perspectives -Blood, Breath, and Urine" at the South Carolina Criminal Justice Academy Advanced DUI Training, October 2002.

"Toxicological Perspectives" at the Felony DUI and Accident Reconstruction Workshop sponsored by the South Carolina Commission on Prosecution Coordination, August 2001.

"Case Studies in Forensic Toxicology" at the South Carolina Law enforcement Division Forensic Services Seminar Series, October 2000.

"Medicolegal Perspective of DUI" at the DUI for the Prosecutor Workshops sponsored by the South Carolina Commission on Prosecution Coordination, August 2000, March 2001, and April 2001.

"The Role of SLED Toxicology in Alcohol and Drug Testing" at the BAC Workshop sponsored by the South Carolina Office of Highway Safety, May 2000.

"Challenges in Forensic Toxicology" presented to the University of South Carolina chapter of the American Chemical Society, March 2000, September 2000 and August 2001.

**PRESENTATIONS (continued)**

"Date Rape and Club Drugs" workshop presented at Sumter School District Health Fair, May 2000.

"Drug-Facilitated Rape" at the South Carolina Law enforcement Division Forensic Services Seminar Series, May 1999.

"Drug and Alcohol Analysis and DRE Evaluation" at the SC Bar Association Workshop on Handling Traffic Cases in South Carolina, August 1998.

"Toxicology of Abused Drugs" at the SC Coroner's Association meeting, October 1998.

"Forensic Toxicology of Abused Drugs" workshop presented at 1997 Fall Training Conference of the South Carolina Department of Social Services County Directors and Supervisors Association, October 1997.

"Rohypnol and Other Drugs Associated with 'Date Rape'" at the Rape Crisis Network training, October 1997.

"Rohypnol and Other Drugs Associated with 'Date Rape'" at the August Meeting of the South Carolina Campus Law Enforcement Officers Association, 1997.

"Laboratory Testing of Flunitrazepam and Other Drugs Associated with 'Date Rape'" at the Rape Crisis Council of Pickens County Rohypnol Seminar, 1997.

"Applications of High Performance Liquid Chromatography / Atmospheric Pressure Ionization - Electrospray / Mass Spectrometry in Forensic Toxicology" at the Western Carolina Chromatography Discussion Group, 1996.

"Pharmacology of Abused Drugs" at South Carolina State University C.A.D.E.P.P. training, 1996, 1997, 2000, and 2001.

"Cocaine Agitated Delirium" at South Carolina Law Enforcement Division In-Service training, 1993-1994.

"Tolerance and Dependence" at South Carolina Law Enforcement Division Toxicology In-Service Training, 1993.

"Alcohol Analysis" at Law Enforcement training on alcohol sponsored by MADD, December 1993.

"Biochemical Factors Influencing the Function of Thymidylate Synthase as a Target for Fluoropyrimidines" Seminar presented at the Duke University Department of Immunology, July 1992.

**PRESENTATIONS (continued)**

"Preparation and Characterization of Monoclonal Antibodies to Human Thymidylate Synthase" at the annual meeting of the South Carolina Academy of Science, 1991.

**HONORS**

2010 – 2011 Teacher of the Year (Presbyterian College School of Pharmacy)

2014 Friend of APhA-ASP Award (Presbyterian College School of Pharmacy)

2013 Generation Rx Champion Award (SCAPhA/APhA-ASP)

2013 APhA-APPM Presentation Merit Award

2009 Federal Bureau of Investigation recognition of Exceptional Service in the Public Interest

1991 Sigma Xi Graduate Student Research Presentation  
Award: First Place

Rho Chi Honor Society

Fellow- American Board of Forensic Toxicology (F-ABFT)

American Society of Crime Laboratory Directors - Laboratory Accreditation Board Inspector

American Society of Crime Laboratory Directors - Laboratory Accreditation Board International Assessor

Expert Witness Faculty Member of the National District Attorneys Association National Advocacy Center

"Prosecuting the Drugged Driver" 10/99, 3/01, 3/02, 1/04, 11/05, 11/08, 8/09, 3/10

"Lethal Weapon - DUI Homicide" 8/99, 8/00, 8/01, 8/02, 7/03, 7/04, 7/05

"Homicide Prosecution" 4/98 – 2001

Expert Witness Faculty Member of the National College of District Attorneys, Charleston, SC, 6/08, 6/09.

Adjunct Instructor for South Carolina Criminal Justice Academy

Member of the South Carolina Bioterrorism Advisory Committee

Founding President of the Palmetto Association of Toxicologists

**HONORS (Continued)**

Member of the American Association of Forensic Scientists Standards Board (ASB) –  
Toxicology Consensus Body

**PROFESSIONAL AFFILIATIONS**

Society of Forensic Toxicologists  
Southern Association of Forensic Scientists  
American Association of Clinical Chemists  
American Association of Clinical Toxicologists  
American Academy of Colleges of Pharmacy  
Palmetto Association of Toxicologists  
Association of Biochemistry Course Directors

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| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | IN THE COURT OF COMMON PLEAS |
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| <b>KEVIN DWAYNE CHAVIS,</b><br><br>Plaintiff(s),<br><br>-vs-<br><br><b>VANSY SAENSANE and RA CHA, INC.</b><br><b>d/b/a BANGKOK TOKYO RESTAURANT</b><br><b>a/k/a BANGKOK THAI RESTAURANT,</b><br><br>Defendants. | <b>MOTION TO RECONSIDER,<br/>ALTER, OR AMEND JUDGMENT</b><br><br>C/A No. 2021-CP-23-01487 |
|---|---|

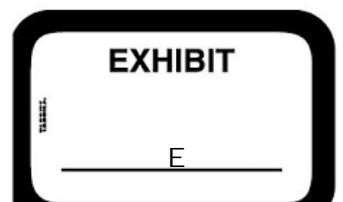
**TO: THE HONORABLE LETITIA H. VERDIN, CIRCUIT COURT JUDGE,** Thirteenth Judicial Circuit, Greenville County Courthouse, 305 E. North Street, Ste. 315, Greenville, South Carolina 29601; and

**TO: DEFENDANT RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT, and its attorney, ZACHARY S. BROWN, ESQ.**

**COMES NOW** the Plaintiff, Kevin Dwayne Chavis, and, pursuant to the South Carolina Rules of Civil Procedure, Rules 59 and 60, makes his Motion to Reconsider, Alter or Amend Judgment as follows:

**PROCEDURAL HISTORY**

This matter came on for hearing before this honorable Court pursuant to a Motion for Summary Judgment filed by Defendant Ra Cha, Inc. on January 27, 2023. An Order was issued by the Court granting Defendant's Motion for Summary Judgment as to all of Plaintiff's causes of action against Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant on February 15, 2023. In the Order, the Court makes numerous findings of fact and conclusions of law. The Plaintiff hereby files his Motion to Reconsider within ten (10) days from the date of receipt of the Order in this matter.



## QUESTIONS PRESENTED

- I. Did the Court err in dismissing Plaintiff's dram shop causes of action in the within matter?
- II. Did the Court err in dismissing Plaintiff's negligence and *negligence per se* causes of action in the within matter?
- III. Did the Court err in finding that Defendant Saensane was not hired or retained by Defendant Bangkok, and (when viewing the facts most favorably to the Plaintiff) that it had no reason to know that she created an undue risk of harm to the public?
- IV. Did the Court err in finding that Defendant Saensane was not an employee of Defendant Bangkok?
- V. Did the Court err in finding that Defendant Saensane was not acting within the scope of her employment at the time of the accident such that Defendant Bangkok cannot be vicariously liable for her acts?

## LEGAL ARGUMENT

- I. Did the Court err in dismissing Plaintiff's dram shop cause of action in the within matter?**
- II. Did the Court err in dismissing Plaintiff's negligence and *negligence per se* causes of action in the within matter?**

Based upon the undisputed testimony of Defendant Saensane, on the evening of the wreck at issue in this matter Defendant Saensane, an admitted shareholder, owner, and employee<sup>1</sup> of Defendant Ra Cha, Inc., served herself and consumed alcohol from the bar inventory of the Defendant on Defendant's premises. After consuming the alcohol, Defendant Saensane was allowed to leave and did leave the Defendant's premises in her automobile and soon thereafter collided with the Plaintiff causing him severe, painful and permanent injuries. It is further undisputed based upon Defendant Saensane's

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<sup>1</sup> The tax returns documents from Defendant Ra Cha, Inc. include a Form 1125-E. Shareholder compensation paid on a W-2 is reported here. The Form 1125-E indicates Defendant Saensane was an employee of Defendant Ra Cha, Inc., d/b/a Bangkok Tokyo Restaurant (copy of the Form 1125-E is attached hereto and incorporated by reference thereto).

testimony that Allison, the alcohol license permittee and majority shareholder, was aware that Defendant Saenesane was serving herself and consuming alcohol on the premises of Defendant Ra Cha, Inc., that Allison permitted Saensane to drink and to consume alcohol while doing the business paperwork, and that Allison had observed Saensane doing so on previous occasions.

Additionally, based upon the retrograde analysis performed by David Eagerton, Ph.D., F-ABFT, it is undisputed that Defendant Saensane had a whole blood alcohol concentration (BAC) level of 0.273 g/100 mL at the time of the collision. This level is more than 3x the legal limit of 0.08 g/100 mL and is evidence sufficient to prove that Defendant Saensane was intoxicated when she left the Defendant's premises and was grossly intoxicated at the time of the wreck. Dr. Eagerton's report and CV were attached to Plaintiffs Memorandum in Opposition.

In the *South Carolina Lawyer*, January 2006, Kevin R. Eberle published an article entitled Alcohol Liability in South Carolina: A Host of Legal Issues wherein he sets out the history and basic premise upon which alcohol liability in South Carolina is based. The article is brief and is worth setting forth herein. Mr. Eberle writes:

South Carolina was one of the early states to recognize the liability of one who provides alcohol in violation of state law to those injured by the unlawful conduct. The state first recognized such an action in a slave case decided in 1847. See *Harrison v. Berkley*, 32 S.C.L. (1 Strob.) 525 (1847). *Harrison* was an action against a saloon-keeper who illegally sold whiskey to the plaintiff's slave; an 1817 state law had made criminal the sale of alcohol to slaves. The plaintiff sought to recover for the death of the slave who had died from exposure after falling by the roadside while drunk. The court ruled for the plaintiff, holding that since the sale had been made by the defendant in violation of state law, the plaintiff was entitled to recover for the damages incurred by reason of the unlawful act. Even though the statute did not expressly provide for such relief, the court found that the plaintiff had been within the special ambit of the statute's protections and could therefore bring the action.

During the last century and a half, the support of the South Carolina courts for such actions has varied. In some cases, the courts have approved liability against those who violated state alcohol laws, while in others the plaintiffs have been denied recovery as a matter of law. In each case, the courts have recognized the viability of a negligence action in theory but have either permitted or denied relief based on the characterization of the plaintiffs (social or commercial hosts) and defendants (first-party or third-party victims). In a recent pair of cases

involving the liability of those who gratuitously provide alcohol to minors, the South Carolina Supreme Court has introduced a new and important distinction into the resulting matrix.

### **Negligence *per se***

South Carolina has never recognized a general common law duty to avoid the provision of intoxicating drinks to either incompetent adults or children. The justification has been given that it is the drinking of the alcohol and not its supply that is the intoxication. See *Tobias v. Sports Club, Inc.*, 323 S.C. 345, 348, 474 S.E.2d 450, 451 (Ct. App. 1996) (citing 45 Am. Jur. 2d *Intoxicating Liquors* § 553 (1969)) (subsequent history omitted). Nevertheless, there have been several cases imposing liability for just such conduct. The courts in those cases have relied upon the doctrine of negligence *per se*.

In a traditional negligence action, the plaintiff has the burden of proving the following: (1) a duty on the part of the defendant, (2) breach of that duty by an act or omission or commission and (3) that such breach of duty was the proximate cause of the plaintiff's injuries. *Sherrill v. Southern Bell Telephone & Telegraph Co.*, 260 S.C. 494, 197 S.E.2d 283 (1973). A negligence *per se* action is simply a subset of traditional negligence suits. The plaintiff still has the burden of proving the three essential elements, but the existence of a statute establishes a duty apart from any common law support for the duty. See *Freeman v. Colwell Mortgage Corp.*, 297 S.C. 335, 342, 377 S.E.2d 108, 110-11 (Ct. App. 1989).

The statutes that are most likely to be cited govern provision of alcohol either freely or as a sale. First, it is against the law to sell alcoholic beverages to persons "in an intoxicated condition." S.C. Code Ann. § 61-6-2220 (West Supp. 2004) ("No person or establishment licensed to sell alcoholic beverages . . . may sell these beverages to persons in an intoxicated condition . . ."); see also S.C. Code Ann. § 61-4-580(2) (West Supp. 2004). Second, despite the fact that the general age of majority is 18, it is unlawful in South Carolina to provide alcoholic beverages to those persons under the age of 21. S.C. Code Ann. § 61-4-90 (West Supp. 2004) ("It is unlawful for a person to transfer or give to a person under the age of twenty-one years for the purpose of consumption beer or wine at any place in the State."); S.C. Code Ann. § 61-6-4070 (West Supp. 2004) (same prohibition as to "alcoholic liquors"). These related statutes cover slightly different scenarios. The former are generally cited in those cases involving commercial establishments that sell alcohol to minors whether or not the minors are intoxicated at the time of sale, and the latter are generally relied upon in those cases involving social hosts who gratuitously provide alcohol to minors.

Of course, simply identifying a relevant statute does not create liability. There remain other issues including, for example, proving that the individual served alcohol in violation of § 61-6-2220 was truly intoxicated at the time of service. See *Steele v. Rogers*, 306 S.C., 546, 413 S.E.2d 329 (Ct. App. 1992) (explaining that one is under the influence of alcohol when its ingestion results in the impairment of the person's faculties and that proof of intoxication may be by either eyewitness testimony as to a person's appearance or admission of the person ingesting the alcohol that he felt its effects).

Similarly, in every negligence case, proximate causation remains a critical element of the case. The violation can result in civil liability only if "the injury is the natural and probable consequence of the unlawful sale." *Christiansen v. Campbell*, 285 S.C. 164, 170, 328 S.E.2d 351, 355 (Ct. App. 1985) (citation omitted), *overruled on other grounds by Tobias v. Sports*

*Club, Inc.*, 332 S.C. 90, 504 S.E.2d 318 (1998). This is a question for the jury unless the evidence shows that reasonable persons could not disagree. *Id.* at 170, 328 S.E.2d at 355 (citation omitted).

### **The question of duty: commercial providers**

Although *Harrison* was brought as a negligence suit for injury to a third-party slave owner, in the modern era the notion that third-parties can recover for injuries caused by the violation of alcohol laws has been recognized. In *Daley v. Ward*, 303 S.C. 81, 399 S.E.2d 13 (Ct. App. 1990), the S.C. Court of Appeals discussed whether a civil action could be maintained by a third party who was injured by the one served alcohol by a defendant. In that case, an intoxicated patron was served alcohol by the defendants at their bar. After having left the bar, the patron rear-ended the plaintiff.

The plaintiff's ensuing action was based on the defendants' having violated the state statute which prohibited the sale of beer or wine to intoxicated persons. The defendant asserted that there could be no liability to a third person injured by such a patron. The court, however, disagreed and wrote, "[w]e find no reason for which the class of persons protected by the statute should not include third parties injured by the actions of an intoxicated person served in violation of the statutes." *Daley*, 303 S.C. at 84, 399 S.E.2d at 14.

The exposure of commercial suppliers is not without limits, though. For more than 10 years, South Carolina permitted drunk patrons to recover for their own injuries from the taverns that served them. For example, in *Christiansen v. Campbell*, 285 S.C. 164, 328 S.E.2d 351 (Ct. App. 1985), a patron of a North Charleston bar was served alcohol for approximately two hours, even past the point of visible intoxication. When the patron left the bar, he walked into the road and was hit by a car. His lawsuit against the bar claimed that the bar had violated the state law against selling alcohol to an intoxicated person and that he fell within the class of persons to be protected by the statute. The court agreed that the patron was protected by the statute. The court relied on out-of-state authority for its conclusion that "[S]ection 61-9-410 clearly promotes public safety. One reason the statute exists is to protect intoxicated persons from their own incompetence and helplessness. The statute represents the legislature's judgment that an intoxicated person is a menace to himself. Indeed, a purpose in prohibiting a vendor from selling beer to one who is already intoxicated is to prevent the person from becoming even more intoxicated so that he is not a greater risk when he leaves the bar." *Id.* at 168, 328 S.E.2d at 354 (citations omitted); see also *Tobias v. Sports Club, Inc.*, 323 S.C. 345, 474 S.E.2d 450 (Ct. App. 1996).

In 1997, however, the S.C. Supreme Court agreed to hear a case involving a first-party suit by one who had been served alcohol past the point of intoxication. The Court of Appeals had, in the view of the S.C. Supreme Court, properly recognized that the statutes against such conduct were meant to protect the public in general. The Court of Appeals, though, had gone further and held that another purpose was to protect the intoxicated person from his own incompetence and helplessness. The Supreme Court disagreed and held "that public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 320 (1998). The Court expressly reversed the decision of the Court of Appeals in that case and in *Christensen* as to first-party suits and limited the exposure of bars for negligence *per se*.

## The Question of Duty: Gratuitous Providers

Social host liability is a different matter. In social host liability, the supplier of the alcohol is not a bar or other such establishment but is instead a private person who offers alcohol to his or her guests other than in expectation of payment, often at parties.

The S.C. Court of Appeals has ruled that a social host has no statutory liability to third parties injured as a result of an adult guest's intoxication. *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986). Under South Carolina common law, the driver had no cause of action in negligence against a social host who served alcohol to an intoxicated adult guest who subsequently caused an automobile collision, injuring the driver, even if host knew or ought to have known the guest intended to drive motor vehicle. In that case, the employer, Cummings & McCrady, had hosted a party where it served alcohol to a guest after he was intoxicated. The guest then collided with the plaintiff's automobile and injured the plaintiff.

Judge Bell wrote that South Carolina would adhere to the common law view of non-liability of social hosts when third parties are injured when a social host serves alcohol to an adult guest. The proper remedy for the injured third party is to sue the guest who injured him. Judge Bell specifically recognized that there was precedent in South Carolina for imposing liability on one who serves liquor to another who is already drunk. However, the state had imposed that liability only when the service of the alcohol was in violation of a state statute. Although it is unlawful to sell alcohol to an intoxicated person, it is not illegal to gratuitously serve the same individual. The judge's analysis presents the perfect distinction between social host liability and commercial provider liability. *But see Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991) (rejecting the rule of *Garren* and stating "social host is liable in negligence for automobile accident caused by intoxicated minor driver where social host has knowingly served liquor and permits liquor to be served to youths under 18 at social host's residence, social host permits minor's consumption to continue to point of intoxication, and social host allowed inebriated minors to depart from his residence in a motor vehicle").

There is some superficially inconsistent authority in South Carolina. One South Carolina case held a social host liable for injuries to a first-party adult plaintiff, but the social host was a fraternity and the guest was pledging the fraternity. *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (Ct. App. 1986). The decedent had been pledging Sigma Nu fraternity, and the pledging had culminated in one night of excessive drinking deemed "Hell Night." During Hell Night, the decedent had been given massive quantities of alcohol and forced to drink it or be ridiculed by members of the fraternity. At several times during the evening, the decedent had thrown up because he had consumed so much. Finally, the decedent passed out on a couch in the fraternity lounge. Some brothers checked on him and were concerned about his pale color and lack of responsiveness, but they did nothing to help him. The following morning the decedent was found dead. He had drowned in his own vomit. Testimony showed that, had the brothers taken him to the infirmary that night when they found him, he would have survived.

Sigma Nu owed its guest a duty but only because the Supreme Court of South Carolina had determined that a fraternal organization owes a common law and not statutory duty of care to its initiates not to cause them injury. *See Easler v. Hejaz Temple of Greenville*, 285 S.C. 348, 329 S.E.2d 753 (1985). The case, technically, was not a case of liquor liability. Rather, the duty

involved was the duty not to endanger pledges during an initiation ceremony. In other words, had the pledge injured himself doing stunts not involving alcohol, the case for liability would have been the same. In a later case, discussed below, the S.C. Supreme Court also noted this apparently inconsistent case but distinguished it not with any reference to the underlying legal theory but instead on the less satisfying factual basis that the case had involved one who had been "pressured to consume an excessive amount of alcohol" and later abandoned. *Marcum v. Bowden*, 372 S.C. 452, n.4, 643 S.E.2d 85, n.4 (2005).

In dicta, the Supreme Court of South Carolina seems to have closed the door on third-party claims brought by adult victims based on the provision of alcohol to other adult consumers in a social setting. In *Carson v. Adgar*, 326 S.C. 212, 214, 486 S.E.2d 3, 6 (1997), the respondent and friend worked together in a landscaping business. The friend was 33 years old, and his father had asked the respondent to serve alcohol to the friend. The co-workers drank many beers while they went fishing and then later in a pool hall. The respondent brought his friend more beers even after he realized his friend was "drinking pretty good." The friend grew angry when told him he did not need to drink anymore and demanded to be let out of the respondent's car. The respondent told police he had put the guest out of his vehicle knowing he was "over his limit" in alcohol consumption. The friend was then struck by an oncoming car as he attempted to cross the street.

The respondent could not be held liable for injuries sustained by his friend, even though he kept supplying him with beer after he was intoxicated, because he owed no duty of care to his friend. The respondent had not bought all the beer and had not forced his guest to drink. It was argued that the respondent had assumed the care of his friend at various stages of the evening, but the Court disagreed and ruled that the respondent had not undertaken to care for his friend at any time. In a footnote, the Court added that there could otherwise not be liability since the state does not recognize social host liability. *Carson*, 326 S.C. at 219 n.4, 486 S.E.2d at 10 n.4 ("[A] social host incurs no common law liability to third parties when he serves alcohol to his adult guests.") (citing *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 384, 345 S.E.2d 508 (Ct. App. 1986)).

### **Social hosts and minors: a new wrinkle**

Until a pair of recent cases were heard by the S.C. Supreme Court, the only reported authority in South Carolina on a social host's liability involved guests over the legal age of 21. In those cases, the rule was that no liability existed against the social host for his or her guest's later conduct. However, on August 29, 2005, the S.C. Supreme Court issued a pair of opinions that have added a new layer to the field of alcohol liability.

In *Marcum v. Bowden*, 372 S.C. 452, n.4, 643 S.E.2d 85, n.4 (2005), Justin Parks was 19 years old when he attended a cookout at the home of Donald and Gloria Bowden. Parks told another guest that he was purposefully "just trying to get a buzz" at the event. Even after leaving the party, he continued to drink alcohol from minibottles he had stashed in his pockets. Still later, he drove himself away and was fatally injured in a one-car accident. His personal representative sued the hosts of the cookout for wrongful death, but the trial court granted summary judgment to the defendants. On appeal to the S.C. Supreme Court, the Court reversed.

The Court surveyed the laws in other jurisdictions on social host liability but was unable to discern a majority rule. Instead, the Court relied on public policy rationales. First, the Court recognized a public interest in deterring the consumption of alcohol by underage persons. The imposition of liability could be expected to prompt social hosts to be "more vigilant about who is consuming alcohol at their social gatherings. A vigilant host would greatly decrease the ability of an underage person to consume alcohol at a social party." *Id.* In addition, because minors are legally incompetent to care for themselves, the imposition of liability would properly shift responsibility for their actions to others. The Court also found support for its ruling in simple negligence *per se* law. The Court noted that the essential purpose of the statute against the sale of alcohol to minors (*viz.*, S.C. Code § 61-4-90 and § 61-6-4070), is "to protect the underage person from harm, including injuries sustained or death, after imbibing alcohol provided by such person." *Id.*

The ruling in *Marcum* left the open the door for further disputes in the area. Unanswered, for instance, was the significance of the age of the *plaintiff*. What would be the outcome if, for instance, an inebriated minor killed an adult pedestrian? In the first party suit involving a minor who injured himself, the Court had justified the imposition of liability based in large part on negligence *per se*, explaining that the state laws against providing alcohol to minors were meant to protect minors from injuries to *themselves*. A savvy lawyer for the plaintiff could have argued that the Court was simply addressing the facts at hand and did not intend to eliminate all other "essential purposes" of the law, while the defense might have equally argued that there can only be one "essential purpose" and it is not to prevent injury to unknown third parties.

In a companion opinion to *Marcum*, the S.C. Supreme Court resolved that issue. In *Barnes v. Cohen Dry Wall Inc.*, Opinion No. 26036, \_\_\_ S.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (2005)<sup>2</sup>, Orin Feagin was 19 years old when he attended his employer's Christmas party where he became drunk. Later that night he was driving away from his girlfriend's place of employment when he was involved in a two-car accident that killed him and the passenger in the other car. The estate of the minor sued the employer, and the third-party's estate sued both the employer and the minor. The jury returned a verdict in favor of the company on the claims brought by the minor and in favor of the third-party victim against both the company and the minor. On appeal, the question was raised about the scope of possible plaintiffs in a suit involving the illegal provision of alcohol to minors. The S.C. Supreme Court recognized its ruling in *Marcum v. Bowden* as authority for social host liability to minor guests who suffer alcohol-related injuries after consuming alcohol knowingly and intentionally provided by the host based on public policy as well as negligence *per se*. In *Marcum*, the Court had specifically held that the statutes prohibiting the transfer or giving of alcoholic beverages to minors were enacted for the benefit of *those minors*, but the Court has also ruled in *Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991), that the purpose of laws prohibiting the sale of alcohol to minors (*i.e.*, the laws relied upon in commercial provider litigation) was to protect the minors themselves *and* the public at large. The Court squared the two purposes of the different alcohol-related laws by announcing an even broader purpose of laws against providing alcohol to minors. The Court wrote that the purpose of such laws was also "the protection of members of the public from

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<sup>2</sup> Affirming the Court of Appeals in *Barnes v. Cohen Dry Wall, Inc.*, 357 S.C. 280, 592 S.E.2d 311 (S.C. App. 2003)

harm done by persons under twenty-one who have consumed alcohol in violation of the statutes." *Barnes* at \_\_\_\_, \_\_\_\_, S.E.2d at \_\_\_\_\_. Given that broader purpose, the Court then easily ruled that a third-party adult could sue the social host of an underaged drinker.

## Conclusion

Until the release of two opinions involving negligence *per se*, social hosts in South Carolina were able to serve alcohol with little reason to be concerned about the possibility of even very serious injuries caused by their underage guests. The S.C. Supreme Court, though, recently recognized "a natural progression of our case law" despite the conflicting outcomes in other situations based on specific facts. Whether the track record for such suits constitutes a "natural progression" or a "slippery slope," the law is now settled that social hosts face new liability for permitting underage drinking.

Alcohol Liability in South Carolina: A Host of Legal Issues, Kevin R. Eberle, *South Carolina Lawyer*, January 2006.

As pointed out in the Eberle article, the S.C. Supreme Court has recognized that the outcome of these cases should be based on the specific facts and circumstances. There are a number of SC Code sections that have been enacted by the South Carolina Legislature related to the sale, distribution, and consumption of alcohol that are penal in nature, but which have been interpreted to impose civil liability upon those that violate these statutes.

In Tobias v. Sports Club, Inc., 474 S.E.2d 450, 323 S.C. 345 (S.C. App. 1996) the Court of Appeals held:

At common law, a tavern owner had no liability for serving alcohol to an intoxicated person who later injured himself or others. See 45 Am.Jur.2d Intoxicating Liquors § 553 (1969). The rationale for this rule was that consuming, not supplying, the alcohol was the proximate cause of intoxication. *Id.* Many jurisdictions, however, have departed from this common law view. In an effort to deter drunk driving and to compensate innocent victims injured by drunk drivers, many state legislatures have enacted "dram shop acts." These statutes impose civil liability on tavern owners under various circumstances, such as supplying alcoholic beverages to minors or to obviously intoxicated persons. In states where dram shop legislation has not been enacted, some courts have imposed liability on vendors of alcoholic beverages using principles of negligence, often basing a private cause of action on the violation of beverage control statutes. At least three jurisdictions have refused to interpret their penal statutes to create a civil cause of action, while others believe that such public policy decisions should be made by the legislature. Still other jurisdictions, embracing the common law view, have enacted legislation which renders servers of alcohol immune from liability.

South Carolina is among those jurisdictions that have recognized a civil cause of action based upon the violation of a penal statute. Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (Ct.App.1985), cert. denied, S.C. Sup. Ct. order dated June 27, 1985. In Christiansen, as here, the plaintiff, who was also the intoxicated person, brought a private cause of action relying on S.C. Code Ann. § 61-9-410 (1976) which provides, in part:

"[n]o holder of a permit authorizing the sale of beer or wine or any servant, agent, or employee of the permittee shall knowingly do any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to any person while the person is in an intoxicated condition;"....

Appellants also base their action on S.C. Code Ann. § 61-5-30 (1990) which reads:

It shall be unlawful for any person to possess or consume any alcoholic liquors upon any premises where such person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

No person or establishment licensed to sell alcoholic beverages pursuant to this article shall sell such beverages to persons in an intoxicated condition and such sales shall be deemed violations of the provisions thereof and subject to the penalties contained herein.

No person, corporation or organization for whose premises a license is required shall knowingly allow the possession or consumption of any alcoholic liquors upon such premises unless a valid license issued pursuant to subsection (3) or (4) of § 61-5-20 has been obtained and is properly displayed.

Since this cause of action was judicially created in South Carolina, we have no statutory guidance on the class of persons who may recover or on the availability of defenses. In many states where such a cause of action is statutorily authorized, the dram shop act or cases interpreting it have specifically precluded the intoxicated person from that class of plaintiffs who may bring suit. In addition, many courts in jurisdictions with penal statutes, including most of those relied upon by the Court in Christiansen, have precluded first party recovery. Christiansen, however, clearly extended the cause of action to the intoxicated person himself. Therefore, our only inquiry today is whether defenses may be asserted against the intoxicated person by the tavern owner.

Appellants argue that to permit a tavern owner to raise traditional tort defenses in a suit against it would undermine the cause of action recognized in Christiansen, asserting this cause of action is more in the nature of one grounded in strict liability. We cannot accept this characterization. The cause of action recognized in Christiansen sounds in negligence. Under Christiansen, the jury must determine if the statutory violation is a proximate cause of the alleged injury. Subsequent decisions of the Supreme Court and the Court of Appeals have held the South Carolina liquor control statutes also create a private cause of action in favor of injured minors who were unlawfully served alcohol as well as innocent third parties injured by the inebriant. See Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (1991) (sections 61-9-40 and 61-9-410 give rise to civil liability if third party plaintiff can establish negligence

per se. After establishing negligence per se, plaintiff must prove the violation of the statute was causally linked, both in fact and proximately, to the injury); *Jamison v. The Pantry, Inc.*, 301 S.C. 443, 392 S.E.2d 474 (Ct.App.1990) (third party plaintiff has cause of action under sections 61-9-40 and 61-9-410); *Daley v. Ward*, 303 S.C. 81, 399 S.E.2d 13 (Ct.App.1990) (third party and intoxicated minor have cause of action under section 61-9-410); cf. *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct.App.1986) (social host incurs no common law liability to third party plaintiffs when he serves alcohol to his adult guests). Thus, *Christiansen* and the decisions which followed it clearly indicate liability should be predicated upon a negligence standard, i.e., "whether the bartenders negligently served alcoholic beverages to a person who, by his appearance or otherwise, would lead a prudent man to believe that person was intoxicated." *Daley*, 303 S.C. at 87, 399 S.E.2d at 16.

**In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 313 S.C. 508 (S.C. App. 1994)**

Likewise, S.C. Code §61-4-580 (2) states:

No holder of a permit authorizing the sale of beer or wine or a servant, agent or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to an intoxicated person;

In the instant case, Plaintiff asserts that (1) the penal statutes which govern the sale, distribution, and consumption of alcohol were enacted essentially for the purpose of protecting the citizens of South Carolina from the exact kind of harm the Plaintiff has suffered (i.e., the incurring of significant medical expense, suffering severe, painful and debilitating physical injuries, and lost income); and (2) that the Plaintiff is a member of the class of persons the statutes are intended to protect (i.e., innocent third parties driving on the roadways of South Carolina). Undoubtedly, penal statutes that prohibit the permittee, owners, servants and employees from "selling" alcohol to a person that known to be intoxicated (to protect the general public from the consequences of same) should likewise prohibit the

permittee, owner, servants and employees from a) “giving” alcohol at no charge to a person (i.e., free shots, drinks on the house, etc.) b) allowing an employee to consume alcohol on the premises to the point of intoxication while working, and c) allowing a person to acquire alcohol from the licensed premises when such person is intoxicated.

In Richland County Sch. Dist. Two v. S.C. Dep't of Educ., 335 S.C. 491, 517 S.E.2d 444 (Ct.App.1999), the Court of Appeals held:

The primary rule of statutory construction requires that legislative intent prevail if it can reasonably be discovered in language used construed in light of intended purpose. The legislature's intent should be ascertained primarily from the plain language of the statute. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation, and the court has no right to look for or impose another meaning.

Furthermore, even though penal statutes are to be strictly construed, "the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context." State v. Standard Oil Co. of N.J., 195 S.C. 267, 288, 10 S.E.2d 778, 788 (1940). We should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. See S.C. Coastal Council v. S.C. State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

The applicable South Carolina Code sections govern the sale, service, and consumption of alcohol on the licensed premises by the permittee, the owner, operator, or person in charge of the premises, by their servants or employees, and by consumers of the alcohol. Based upon the undisputed testimony of Defendant Saensane and a lack of any evidence to the contrary, there is nothing to suggest that Defendant Saensane was sold, served, or that she consumed alcohol at any location other than upon the licensed premises of Defendant Ra Cha, Inc., that she was sold, served, or consumed any alcohol after she left the Defendant's premises, or that she did not consume sufficient amounts of alcohol to achieve the level of her intoxication while upon the Defendant's licensed premises.

The Plaintiff asserts that he has pled specific facts sufficient to support the application (and/or extension) of the penal statutes which govern the sale, distribution, and consumption of alcohol to the facts and circumstances of his case. The Plaintiff further asserts that these statutes were enacted for the purpose of protecting the citizens of South Carolina from the kind of harm the Plaintiff suffered, and that the Plaintiff is a member of the class of persons the statutes are intended to protect. Plaintiff believes that he has made a good faith argument for the application of law as it exists to the facts and circumstances of his case, and, alternatively, for the modification and/or expansion of the existing law to the facts and circumstances of his case. As such, summary judgment as to Plaintiff's cause of action for dram shop liability should, respectfully, be denied.

**III. Did the Court err in finding that Defendant Saensane was not hired or retained by Defendant Bangkok, and (when viewing the facts most favorably to the Plaintiff) that it had no reason to know that she created an undue risk of harm to the public?**

**IV. Did the Court err in finding that Defendant Saensane was not an employee of Defendant Bangkok?**

By her own undisputed testimony, Defendant Saensane admitted that she was not only a shareholder, but also an employee of Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant. The tax forms submitted by Defendant Ra Cha, Inc. (Form 1125-E) indicate that Defendant Saensane was an employee and was paid W-2 Wages. It is further undisputed based upon Defendant Saensane's deposition testimony that Allison, the alcohol license permittee and majority shareholder, was aware that Defendant Saensane was serving herself and consuming alcohol on the premises of Defendant Ra Cha, Inc., that Allison permitted Saensane to drink and to consume alcohol while doing the business paperwork, and that Allison had observed Saensane doing so on previous occasions.

Allison, by knowingly allowing her co-shareholder and employee to consume alcohol while working and doing the business of the corporation, and Defendant Saensane, by consuming alcohol on

the premises while doing the business of the corporation, such knowledge being imputed to Defendant Ra Cha, Inc., knew or should have known that by doing so it was creating an undue risk of harm to the public. To find otherwise, and by granting summary judgment to Defendant Ra Cha, Inc. and dismissing Plaintiff's dram shop claims and *Negligence per se* claims, the Court has to entirely disregard the corporate entity (a corporation being a legal entity that is separate and distinct from its owners), pierce the corporate veil, and declare the acts of the individual shareholder(s) and the employee to be the individual acts of the shareholder(s) and/or the individual employee, absent any factual or legal basis for doing so. There have been no facts alleged, pled, or proven in the instant case which would give rise to piercing of the corporate veil. No assertions have been made that the owners/shareholders of Defendant Ra Cha, Inc. grossly undercapitalized it when they formed it, that they failed to obtain the necessary business license or alcohol licenses, that they failed to maintain adequate and appropriate corporate records, or that they siphoned funds primarily for their personal benefit so as to make Ra Cha, Inc. the mere alter-ego of Defendant Saensane, or that there would be an element of injustice or fundamental unfairness if the acts of the corporation were not regarded as the acts of the individual. In fact, Plaintiff has asserted the contrary.

In the instant case, Defendant Saensane was consuming alcohol from the bar inventory of Defendant Ra Cha, Inc. while she was on the premises of Defendant Ra Cha, Inc., and doing its paperwork. Because the permittee and majority shareholder was aware that Defendant Saensane consumed alcohol while she did the paperwork for the business, such acts were sanctioned by the corporate defendant. By her testimony, Defendant Saensane testified that other employees of Defendant Ra Cha, Inc. were not allowed to drink or to consume alcohol while working. This is because harm to the public arising from this practice was foreseeable (and preventable). Despite this, Defendant Ra Cha, Inc. allowed Defendant Saensane to consume alcohol while working and doing its paperwork on the

Defendant's premises.

Lastly, based upon the testimony of Defendant Saensane that she was an employee of Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant, and the tax forms filed (Form 1125-E), the Court has erred in finding that Defendant Saensane was not an employee of Defendant Ra Cha, Inc. When the facts are viewed in a light most favorable to the Plaintiff, the Court should have (with due respect) concluded that she is, and was at all times relevant hereto, an employee of Defendant Ra Cha, Inc.

For the foregoing reasons, the Court should, respectfully, alter or amend its Order to reflect that Defendant Saensane was, in fact, an employee of Defendant Ra Cha, Inc., and that she was retained as an employee despite Allison knowing and being aware that Defendant Sansane did, from time to time, consume alcohol while working and doing the paperwork for Defendant Ra Cha, Inc., same creating a foreseeable and unreasonable risk of harm to the public. As such, summary judgment as to Plaintiff's claims for negligence and *negligence per se* should be denied.

**V. Did the Court err in finding that Defendant Saensane was not acting within the scope of her employment at the time of the accident such that Defendant Bangkok cannot be vicariously liable for her acts?**

Despite the Court's holding otherwise, Defendant Saensane was a shareholder (co-owner) and an employee of Defendant Ra Cha, Inc. Defendant Saensane was, in fact, acting with the scope of her employment at the time she consumed the alcohol as she was at the restaurant doing its paperwork. These facts are undisputed. Further, based upon the retrograde analysis performed by Dr. Eagerton, Defendant Saensane consumed sufficient alcohol while in the course and scope of her employment so as to be intoxicated before leaving the premises, and so as to be grossly intoxicated at the time of the collision.

While the Plaintiff concedes that Defendant Saensane was not working at the time of the collision, Plaintiff does assert that *but for* the Defendant employer allowing her to consume alcohol to

the point of intoxication while upon its premises, Defendant Saensane would not have been grossly intoxicated and collided with the Plaintiff several hours later. That is, she consumed the alcohol to the point of intoxication while performing her job, and she was allowed to do so by the other owners of the business. Defendant Saensane was also allowed to leave the business after consuming the alcohol to the point of intoxication. All of these acts occurred during the course and scope of her employment with Defendant Ra Cha, Inc. The collision was merely the natural consequence of the negligent, grossly negligent, careless and reckless conduct of the corporate defendant in allowing its employee (Saensane) to consume an amount of alcohol, from the Defendant's bar inventory, so as to become intoxicated while working, and by allowing her to leave the premises in an intoxicated state.

Accordingly, even if Defendant Ra Cha, Inc. is not liable to the Plaintiff by virtue of vicarious liability, which is denied, then it should be liable to the Plaintiff for its actual negligence, gross negligence, recklessness as alleged in Plaintiff's THIRD CAUSE OF ACTION by allowing its employee to consume alcohol while working to the point of intoxication, and by allowing the employee to leave the premises in such a state so as to cause injury to the Plaintiff. By dismissing all of Plaintiff's causes of action against the corporate Defendant, the Plaintiff has no remedy at law or in equity against such Defendant for its negligent acts or omissions. As such, summary judgment as to Plaintiff's cause of action should be denied.

### **CONCLUSION**

Accordingly, based upon the above, the Plaintiff respectfully requests that the Court review and give careful reconsideration to its Order, and that the Court alter or amend its ruling on Plaintiff's causes of action against Defendant Ra Cha, Inc. For the foregoing reasons, the Plaintiff asserts that the Court should reinstate Plaintiff's causes of action for dram shop liability, for negligence, for negligence *per se*, for negligent, hiring, retention and supervision and for vicarious liability, and deny Defendant's Motion

for Summary Judgment as to those causes of action.

Respectfully submitted,

**THE INJURY LAW FIRM, P.C.**

s/Daniel L. Draisen

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**LAW OFFICES OF STEVEN M. KRAUSE, P.A.**

s/ Steven M. Krause

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**ATTORNEYS FOR THE PLAINTIFF**

February 20, 2023  
Anderson, South Carolina

# EXHIBIT TO MOTION TO RECONSIDER

**Daniel Draisen**

---

**To:** Brian Johnson  
**Subject:** RE: Question about K1

**From:** Brian Johnson  
**Sent:** Tuesday, February 07, 2023 5:42 PM  
**To:** Daniel Draisen <daniel@Injuredsc.com>  
**Subject:** RE: Question about K1

Hey Daniel,

Statement A is reporting the shareholder's allocable share of all wages paid by the company, so it would NOT indicate that she takes a salary. That statement is there because the QBI deduction is limited to 50% of wages paid by the company, so it informs the shareholder the amount of wages (times there ownership percentage) for purposes of being able to take the QBI deduction.

**However, the 1125-E (page 2 of the pdf) reports compensation paid to her. This is generally where shareholder compensation paid on a W-2 is reported. So it does indicate that she is an employee.**

Brian L. Johnson, CPA  
**SuggsJohnson, LLC**  
107 Edgebrook Drive (29621)  
P.O. Box 102  
Anderson, SC 29622

Direct (864) 965-9616 | Office (864) 226-0306 | Fax (864) 231-0789  
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## Helen Hiser

---

**From:** Daniel Draisen <daniel@Injuredsc.com>  
**Sent:** Monday, September 11, 2023 8:59 AM  
**To:** Helen Hiser  
**Cc:** Steven Krause; John Nichols; Zachary S. Brown; Chris Wray  
**Subject:** RE: Chavis v. Vansy Saensane, et al. 2023-000440

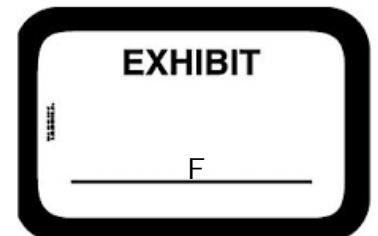
Helen: Exhibits 1-11 were Plaintiff's discovery documents produced to the Defendants. I believe I handed copies of them up to the Court, along with the original deposition of Vansy Saensane, to Judge Verdin at the hearing. I had cited numerous excerpts from her deposition in my Memo in Opposition. Judge Verdin might have handed those back to me, but I do not recall at this time. They would have only been provided in further support of the fact that Ms. Saensane's testimony was and is undisputed at this time.

-  Exhibit 1 - South Carolina Traffic Collision Rep...
-  Exhibit 2 - Bangkok Tokyo Retail License
-  Exhibit 3 - Bangkok Beer and Wine License
-  Exhibit 4 - To Go Orders 9.27.19
-  Exhibit 5 - Dine In Orders 9.27.19
-  Exhibit 6 - Food and Beverage Receipts 9.27.19
-  Exhibit 7 - Bangkok Menu
-  Exhibit 8 - Stock Purchase Agreement Thamm...
-  Exhibit 9 - Stock Purchase Agreement Wannar...
-  Exhibit 10 - Partnership-Stock Purchase Agree...
-  Exhibit 11 - Insurance Declarations

Daniel L. Draisen. Esq.  
Attorney



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---

**From:** Helen Hiser  
**Sent:** Sunday, September 10, 2023 7:46 PM  
**To:** Daniel Draisen <daniel@Injuredsc.com>  
**Cc:** Steven Krause <steve@krauselaw.org>; John Nichols <john@bluesteinattorneys.com>; Zachary S. Brown <Zachary.Brown@mgclaw.com>; Chris Wray <Chris.Wray@mgclaw.com>  
**Subject:** RE: Chavis v. Vansy Saensane, et al. 2023-000440

Hi Daniel, I am just beginning to look at this, as I trial for two weeks as appellate counsel. I see that, on your Designation of Matter, you have designated as No. 13, "Plaintiff's Exhibits 1, 2, 3, 6, 7, 8, 10, and 11." Can you please explain to me what exhibits are being referenced and, in addition, when and where they were submitted to the circuit court?  
Thanks,  
Helen



Helen Hiser, Attorney  
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**From:** Daniel Draisen <[daniel@Injuredsc.com](mailto:daniel@Injuredsc.com)>  
**Sent:** Tuesday, September 5, 2023 3:44 PM  
**To:** Court Of Appeals Filings <[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)>  
**Cc:** Helen Hiser <[helen.hiser@mgclaw.com](mailto:helen.hiser@mgclaw.com)>; Zachary S. Brown <[Zachary.Brown@mgclaw.com](mailto:Zachary.Brown@mgclaw.com)>; Chris Wray <[Chris.Wray@mgclaw.com](mailto:Chris.Wray@mgclaw.com)>; Steven Krause <[steve@krauselaw.org](mailto:steve@krauselaw.org)>; John Nichols <[john@bluesteinattorneys.com](mailto:john@bluesteinattorneys.com)>  
**Subject:** Chavis v. Vansy Saensane, et al. 2023-000440

Dear Madame Clerk: Attached hereto for filing on behalf of the Appellant please find the following:

- Cover Letter to the Court of Appeals
- Cover Letter to Opposing Counsel
- Proof of Service
- Initial Brief of Appellant
- Appellant's Designation of Matter to be Included in the Record on Appeal (with certification)

Please let me know if you require anything else. Thanks, Daniel

Daniel L. Draisen. Esq.  
Attorney



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Sep 18 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM  
GREENVILLE COUNTY COURT OF COMMON PLEAS

The Honorable Letitia H. Verdin, Circuit Court Judge

Appeal No.: 2022-000440

Kevin Dwayne Chavis, .....Appellant,

v.

Vansy Saensane and Ra Cha Inc.  
d/b/a Bangkok Tokyo Restaurant  
a/k/a Bangkok Thai Restaurant..... Respondents.

**PROOF OF SERVICE**

I certify that on the 18th day of September 2023, I served Respondent Ra Cha Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant’s **Motion to Strike Portions of Initial Brief of Appellant and Appellant’s Designation of Matter** on Appellant Kevin Dwayne Chavis by emailing a copy of it to his counsel of record as follows:

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*Counsel for Appellant Kevin Dwayne Chavis*

*s/Helen F. Hiser*

Helen F. Hiser

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*Attorneys for Respondent Ra Cha Inc. d/b/a  
Bangkok Tokyo Restaurant a/k/a Bangkok Thai  
Restaurant*



**Reply To**

HELEN F. HISER  
Direct Dial: (843) 576-2930  
helen.hiser@mgclaw.com

September 18, 2023

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Sep 18 2023

SC Court of Appeals

**Via S.C. Courts E-Filing & U.S. Mail**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: Kevin Dwayne Chavis v. Vansy Saensane and Ra Cha, Inc. d/b/a  
Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant  
Civil Action No.: 2021-CP-23-01487 (Greenville)  
Date of Incident: September 27, 2019  
Carrier Claim No.: FQN0510  
MGC File No.: 20527.20784  
Appeal No.: 2023-000440

Dear Ms. Kitchings:

Enclosed please find the original of Respondent's Motion to Strike Portions of Initial Brief of Appellant and Appellant's Designation of Matter, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email. We will send our firm's check in the amount of \$50 for filing the motion via U.S. Mail with a copy of this letter.

If you have any questions, please contact me.

Yours truly,

McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Daniel L. Draisen, Esq. (via email only)  
Steven M. Krause, Esq. (via email only)  
John S. Nichols, Esq. (via email only)