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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean Hoefer Toal, Circuit Court Judge

Appellate Case No.: 2023-000060
Trial Court Case No.: 2021-CP-40-03672

Bill R. Sharpe and Angela Sharpe, ... Petitioners,

v.

Rocky Rutherford, Legacy Equipment, Inc., and G.A. West and
Company, Inc., ... Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Whether the Court of Appeals correctly reversed summary judgment as to the issue of liability in this auto accident case where the other driver testified that the Petitioner was traveling at an excessive rate of speed and failed to keep a proper lookout.

COUNTER-STATEMENT OF THE CASE

In their Petition, Bill Sharpe and Angela Sharpe ("Petitioners" or "Plaintiffs") challenge the Court of Appeals' reversal of summary judgment on the issue of liability for an auto accident. This action arises out of a May 2, 2019 auto accident involving vehicles operated by Plaintiff Bill Sharpe ("Sharpe") and Rocky Rutherford ("Rutherford"). Sharpe alleges that Rutherford caused the accident. Rutherford alleges that Sharpe caused the accident. Based on Defendant Rocky Rutherford's deposition testimony, there is at least a scintilla of evidence that Mr. Sharpe was excessively speeding and that his speeding was a causative factor of the accident. There is also at least a scintilla of evidence that Mr. Sharpe failed to keep a proper look-out and such failure was a causative factor for the accident. Despite the foregoing, the Circuit Court granted summary judgment in favor of the Sharpes. As the Court of Appeals properly recognized, evidence in the record presents a "classic case" of conflicting witness testimony and raises colorable questions of comparative negligence. (Court of Appeals' Order, p. 3). Consequently, the Court of Appeals reversed the Circuit Court's grant of summary judgment and remanded the case for further proceedings. (*Id.* at p. 5).

COUNTER-STATEMENT OF THE FACTS

On May 2, 2019, Bill Sharpe was operating a vehicle heading North on Bluff Road when he collided with a vehicle operated by Rocky Rutherford. (R. p. 7 ¶ 4). The accident occurred at the intersection of Bluff Road and South Beltline Boulevard in Columbia, South Carolina. *See* (R. p. 238, line 21-p. 239, line 21). Sharpe testified that he was coming from I-77 South before the accident and got off the I-77 ramp onto Bluff Road. (R. p. 127, lines 8-17). The section of the

roadway from the interstate ramp to the intersection at issue is straight. Sharpe testified that it was a dry and beautiful day. (R. p. 127, lines 18-21).

At the time of the accident, Rutherford was in the left turn lane on Bluff Road and turning left into the Petro Truck Stop. (R. p. 238, line 21-p. 239, line 12). Defendant Rutherford testified that the road was clear when he began his left turn and while he was turning "out of nowhere Mr. Sharpe came." (R. p. 239, lines 13-21). Defendant Rutherford also testified that Mr. Sharpe did not slow down before hitting him. (*Id.*). He testified that Sharpe caused the accident by "[t]raveling way too fast" and that Sharpe's speed "had to have been pretty extensive." (R. p. 240, lines 10-14; p. 241, lines 5-7). When Defendant Rutherford began his turn Sharpe was not visible on the straight roadway, but Sharpe slammed into the right front passenger side of Rutherford's vehicle before Rutherford had even crossed two of the four lanes required to complete the turn. *See* (R. p. 240, lines 8-9).

On July 23, 2021, the Sharpes filed suit against Rutherford and his alleged employers. (R. pp. 7-9). On September 3, 2021, the Defendants filed an Answer wherein they alleged Billy Sharpe negligently caused the accident by failing to keep a proper lookout and in failing to act as a reasonable and prudent person would have acted under the same or similar circumstances. (R. pp. 11-12 ¶ 7). On January 28, 2022, the Sharpes filed a Motion seeking summary judgment on the issue of liability alone. (R. p. 15). On November 2, 2022, the Defendants filed a Memorandum in Opposition to such Motion and Defendant Rutherford's deposition transcript. (R. pp. 28-32). On December 9, 2022, the Circuit Court filed a form 4 Order granting Plaintiffs' Motion for Summary Judgment as to the issue of liability alone. (R. pp. 1-3).

On December 19, 2022, the Defendants filed a Motion to Reconsider and Memorandum of Law in support of such Motion. (R. pp. 33-39). On January 10, 2023, the Circuit Court filed a

three-sentence Order denying the Defendants' Motion to Reconsider. (R. pp. 4-5). The Defendants appealed.

On December 11, 2024, the Court of Appeals issued a *per curiam* opinion reversing the grant of summary judgment and remanding the case. (Court of Appeals' Order). The Court of Appeals' opinion recognized that it is only in the "rare" instance – when the evidence generates only a single inference – that summary judgment is proper in a comparative negligence case. (*Id.* at p. 2) (citing *Bloom v. Ravoira*, 339 S.C. 417, 424-25, 529 S.E.2d 710, 714 (2000)). The Court of Appeals reversed because: (1) there is competing testimony about who caused the accident; and (2) questions of comparative negligence are typically left for the factfinder. (*Id.* at pp. 3-5). As the Court explained:

> As outlined below, the scant evidence in the record presents a classic case of conflicting witness testimony and raises colorable questions of comparative negligence.
>
> Rutherford claimed that he waited for traffic to clear before beginning his left turn and said Sharpe "came out of nowhere." Rutherford stated that at that point, the collision was unavoidable. Rutherford believed Sharpe's speed "had to have been pretty excessive" based on how hard the collision shook his truck. Rutherford's account requires an inference that Sharpe was driving at such a significant speed that he was not visible when Rutherford initiated his turn but came fast enough to strike Rutherford's vehicle before Rutherford could complete the turn. His account also requires the inference that Sharpe was not properly looking out before entering the intersection.
>
> Sharpe asserted that he was driving at or under the speed limit when he arrived at the intersection and saw Rutherford stopped in the turn lane. Sharpe said that Rutherford did not start his turn until after Sharpe arrived at or had already begun driving through the intersection. Sharpe said that he did not have time to avoid the collision because Rutherford turned in front of him so quickly. This account requires an inference that Rutherford's vehicle—an eighteen-wheeler, which, according to Sharpe, was stationary when Sharpe entered the intersection—accelerated, crossed over multiple traffic lanes, and ended up directly in front of and perpendicular to Sharpe's oncoming vehicle within a few seconds.
>
> There is also a direct conflict as to how far along Rutherford was in his turn when the collision occurred. Sharpe said he hit the "tail end" of Rutherford's truck and

> "the front of the trailer [Rutherford] was toting." This would suggest that Rutherford was decently far along in his turn at the time of the collision. Rutherford stated that Sharpe hit the front tire and front bumper on Rutherford's passenger side, which would indicate the opposite. The only photographic evidence before us captures the damage to Sharpe's vehicle but does not show the point of impact on Rutherford's eighteen-wheeler.
>
> We read the conflicting deposition testimonies as pointing to opposing inferences about how the accident occurred and which party is at fault. We emphasize that we make no determination as to the weight of either party's testimony. *See David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006) ("A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony . . . ."); *cf. Abdelgheny*, 432 S.C. at 349–50, 852 S.E.2d at 227 ("[T]he court's duty at [the summary judgment] stage is to presume the credibility of the evidence."). Instead, we have summarized the testimony only to illustrate why summary judgment was inappropriate. *See Standard Fire Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990) ("All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment."); *id.* ("The grant of summary judgment is appropriate only if it is clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that the movant is entitled to judgment as a matter of law.").
>
> The second reason we find summary judgment should not have been granted is that questions of comparative negligence are typically left for the factfinder....

(*Id.*). The Plaintiffs now petition for a writ of certiorari to reverse the Court of Appeals' decision.

STANDARD OF REVIEW

The Court "will grant certiorari to the Court of Appeals only where special reasons justify the exercise of that power." *Haggins v. State*, 377 S.C. 135, 136, 659 S.E.2d 170 (2008) (citation omitted); *South Carolina Dep't of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236, 844 S.E.2d 373 (2020). Pursuant to Rule 242 of the South Carolina Appellate Court Rules, reasons for granting certiorari include "novel questions of law," "[w]here there is a dissent in the decision of the Court of Appeals," "where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court," where substantial constitutional issues are directly involved, or where federal questions are included. Rule 242(b), SCACR. None of these situations applies here. The standards

at issue are well established, the Court of Appeals' decision had no dissent, and the Court of Appeals faithfully applied prior decisions of this Court. Likewise, this case does not involve any substantial constitutional issues or federal questions.

ARGUMENT

Petitioners' Petition for Writ of Certiorari should be denied because there are no "special reasons" justifying the Court's review in this case. The unanimous decision of the Court of Appeals is in full accord with the rulings of this Court and does not involve a novel question of law. Under the standards set forth by this Court, this summary judgment liability issue does not merit this Court's review.

I. The Court Appeals' decision faithfully applied this Court's summary judgment standards.

"In reviewing the grant of a summary judgment motion, this Court applies the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when 'there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (quoting *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Id.* "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for

summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009); *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (same); *Zurich Am. Ins. Co. v. Tolbert*, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010) ("Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence."). "'When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.'" *Turner*, 392 S.C. at 122, 708 S.E.2d at 769 (quoting *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002)).

At the time of the collision, Rutherford was making a left turn on a blinking yellow traffic light across Bluff Road onto South Beltline Boulevard when Billy Sharpe traveled through the same intersection and collided with the passenger side of Rutherford's tractor trailer. On November 2, 2022, the Defendants filed Defendant Rutherford's deposition transcript with the court. In his deposition, Defendant Rutherford testified that the road was clear when he began his left turn and while he was turning "out of nowhere Mr. Sharpe came." (R. p. 239, lines 13-21). Defendant Rutherford also testified that Mr. Sharpe did not slow down before hitting him. (*Id.*). He testified that Sharpe caused the accident by "[t]raveling way too fast" and that Sharpe's speed "had to have been pretty extensive." (R. p. 240, lines 10-14; p. 241, lines 5-7).

Viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party, as the Court of Appeals was required to do, Sharpe was excessively speeding at the time of the accident. He was speeding enough to not even be visible on the straight roadway when Defendant Rutherford began his turn and to then slam into the right front passenger side of Rutherford's vehicle before Rutherford had even crossed two of the four lanes required to complete the turn. *See* (R. p. 240, lines 8-9).

Based on Mr. Rutherford's testimony that the roadway was clear when he began his turn, there is also a reasonable inference that Mr. Sharpe had the entire length of the visible Bluff roadway from the I-77 ramp to see Mr. Rutherford turning but failed to keep a proper lookout. Defendant Rutherford pled Mr. Sharpe's failure to keep a proper lookout as a defense in his Answer. (R. pp. 11-12 ¶ 7). Even a party who "had the right of way…owe[s] a duty of due care to maintain a proper lookout under all of the circumstances." *Blanding v. Hammell*, 267 S.C. 352, 357, 228 S.E.2d 271, 273 (1976).

In a similar case, *Clark v. Cantrell*, "[a]s Anderson turned left across a four-lane road into a gas station's service area, Cantrell, who was traveling in her car from the opposite direction, hit the rear passenger side of" Anderson's vehicle. 332 S.C. 433, 439, 504 S.E.2d 605, 608 (Ct. App. 1998), *aff'd as modified on other grounds*, 339 S.C. 369, 529 S.E.2d 528 (2000). Despite Cantrell having the right of way, the jury found Cantrell eighty-four percent (84%) at fault for the accident because she was excessively speeding. *Id.* at 438–39, 504 S.E.2d at 608. Cantrell challenged the denial of her directed verdict and JNOV motions. She argued that "she was entitled to a directed verdict or JNOV because her speed was not the proximate cause of the accident." *Id.* at 443, 504 S.E.2d at 611. The court disagreed and stated that only in "rare cases" involving "entry of a vehicle from a servient roadway onto the main highway in such an abrupt fashion that an accident could not have been avoided, notwithstanding the excessive speed of the oncoming vehicle," is the question of whether speed contributed to the accident not for the jury. *Id.* at 444, 504 S.E.2d at 611. ***"[I]n most automobile accident cases, speed creates imponderable issues of time and distance which must be resolved by the jury."*** *Id.* (citations omitted) (italics emphasis in orig.).

This is not one of those "rare cases." Rutherford was not entering "from a servient roadway onto the main highway." *See id.* He was already in the turn lane on Bluff Road before the accident,

a clear indication to drivers paying attention that he intended to turn across the intersection. (R. p. 239, lines 5-17). Consequently, this is a case where "*speed created imponderable issues of time and distance which must be resolved by the jury*." *See Clark*, 332 S.C. at 444, 504 S.E.2d at 611 (emphasis in orig.). As such, this case should not have been decided on summary judgment.

Moreover, according to this Court, the doctrine of "last clear chance has been subsumed by adoption of comparative negligence such that it remains a factor for the jury's consideration in comparing the parties' fault…." *Spahn v. Town of Port Royal*, 330 S.C. 168, 173, 499 S.E.2d 205, 208 (1998). It is properly stated as a jury instruction as follows:

> In determining the relative percentages of negligence for the plaintiff and the defendant, you should consider, as a factor relevant to the [plaintiff]'s share of negligence, whether the [defendant] was in peril and unable to extricate himself from the peril. If the [defendant] was in peril, you should also consider whether the [plaintiff] was aware of that peril and if he was, whether the [plaintiff] could have then avoided the injury to the [defendant] if the [plaintiff] had used due care at that point.

Id. at 174, 499 S.E.2d at 208. Here, Defendant Rutherford testified that he began his left turn when the road was clear. He testified that Sharpe came "out of nowhere," was traveling way too fast, and did not slow down before hitting him. Thus, the jury should have been able to compare the parties' fault under the last clear chance factor. There was at least a scintilla of evidence that Plaintiff Sharpe could have avoided the accident had he used due care.

II. Petitioners' reliance on the *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (1962) line of cases is misplaced.

Petitioners' sole argument in their Petition is that the Court of Appeals erred by failing to apply *Horton* and its progeny in this case. *See* (Pet. for Writ of Cert. pp. 2-7). This Court has consistently limited *Horton* and its progeny to a specific factual scenario that is not present here. In *Tubbs by Duren v. Bowie*, 308 S.C. 155, 158, 417 S.E.2d 550, 552 (1992), this Court made the distinction between a *Horton* case and "*most automobile accident cases*." As this Court explained:

> Reliance by [Petitioner] upon our opinions in *Blanding v. Hammell, Odom v. Steigerwald*, and *Horton v. Greyhound*, is misplaced. Each of those cases involved entry of a vehicle from a servient roadway onto the main highway, in such an abrupt fashion that an accident could not have been avoided, notwithstanding the excessive speed of the oncoming vehicle. In *Blanding*, we noted
>
>> In those rare cases ... where speed has not been a causative factor, the court has focused on the *inevitability of the accident*, irrespective of the defendant's speed, due to an unexpected entry of the plaintiff into the defendant's right of way. Of course, *in most automobile accident cases, speed creates imponderable issues of time and distance which must be resolved by the jury.* 267 S.C. at 357, 228 S.E.2d at 272–273. (Emphasis supplied).
>
> Here, we cannot hold as a matter of law that the accident was inevitable. Accordingly, the case was for the jury's determination and JNOV was properly denied.

Id. (emphasis in orig.). In *Bowie*, although there was competing evidence, there was at least some evidence "from which the jury could infer that Bowie, travelling at a high and excessive speed, failed to take appropriate action upon seeing the Glasscock truck entering the highway at a distance of some 350 feet." *Id.* at 157, 417 S.E.2d at 552. This Court stated: "Clearly, the issue of liability was one for the jury." *Id.*

Likewise, this is not a *Horton* case with "entry of a vehicle from a servient roadway onto the main highway." *Id.* at 158, 417 S.E.2d at 552. Both parties agree that Rutherford was in the left turn lane on the road at issue before making his turn. (R. p. 129, lines 6-12; p. 239, lines 5-17). This would be a clear indication to drivers paying attention that he intended to turn across the intersection. According to Rutherford's testimony, the roadway was clear when he began his turn. (R. p. 239, lines 13-21). This testimony creates the inference that Sharpe had the entirety of the distance between I-77 and the South Beltline Boulevard intersection to notice Rutherford's large vehicle turning and avoid the accident.[1] Consequently, this is a case like "*most automobile accident*

[1] According to Google Maps, this is a distance of over 500 feet.

cases", including *Bowie*, where "*speed creates imponderable issues of time and distance which must be resolved by the jury.*" *See Bowie*, 308 S.C. at 158, 417 S.E.2d at 552 (emphasis in orig.). As such, this case should not have been decided on summary judgment.

Other decisions from this Court have similarly distinguished *Horton* on the facts. *See, e.g., Wilson v. Marshall*, 260 S.C. 271, 276, 195 S.E.2d 610, 612 (1973) ("The plaintiff relies strongly on *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776, and asserts that such was relied upon by the trial judge. Suffice it to say that we think that decision is clearly distinguishable on the facts."); *Roumillat v. Keller*, 252 S.C. 512, 517, 167 S.E.2d 425, 428 (1969). Following this Court's lead, the South Carolina Court of Appeals has also recognized this distinction:

> The *Horton* court found excessive speed was the only evidence of the bus driver's negligence, and concluded such evidence,
>
> > although sufficient to support an inference of concurrent negligence by the defendant, is insufficient to support a reasonable inference that without such negligence the collision would not have occurred. Our conclusion does not and need not rest on a certainty that, if the bus had been operated at a reasonable speed, the collision would have happened anyway. It does rest on the absence of evidence sufficient to raise a reasonable inference that it would not have occurred but for the negligence of the bus driver, which amounts to a failure of proof of an essential element of plaintiff's cause of action.
>
> *Id.* at 441, 128 S.E.2d at 782. The cases that have relied on *Horton* in order to find a party's negligence was not a concurring cause of the collision have similarly found speed to be the only evidence of such party's negligence. *Odom v. Steigerwald*, 260 S.C. 422, 196 S.E.2d 635 (1973); *Kennedy v. Carter*, 249 S.C. 168, 153 S.E.2d 312 (1967); *Guyton v. Guyton*, 244 S.C. 357, 137 S.E.2d 273 (1964); *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 417 S.E.2d 631 (Ct.App.1992); *see also Gunnels v. Roach*, 243 S.C. 248, 133 S.E.2d 757 (1963) (the collision could not have been avoided even if the defendant had seen the plaintiff at the instant he became visible).
>
> **These principles, however, do not apply when there is evidence of additional negligence or that speed was a causative factor. In such cases, the court cannot, as a matter of law, find no liability.** *See Tubbs by Duren v. Bowie*, 308 S.C. 155, 417 S.E.2d 550 (1992) (where there was evidence that the speeding defendant failed to take appropriate evasive action, liability was an issue for the jury); *Wilson v. Marshall*, 260 S.C. 271, 195 S.E.2d 610 (1973) (although decedent was clearly

> negligent in failing to yield the right of way, plaintiff's failure to keep a proper lookout and driving at a reduced speed inferred plaintiff's negligence was a contributing proximate cause of the collision); *Roumillat v. Keller*, 252 S.C. 512, 167 S.E.2d 425 (1969) (the nature of the impact could lead the jury to conclude that, if not for defendant's excessive speed, his auto could have been controlled as to avoid the collision); *Clark v. Cantrell*, 332 S.C. 433, 504 S.E.2d 605 (Ct.App.1998) (evidence of defendant's excessive speed and recklessness supported the jury's finding that her speed contributed to the accident); *see also Player v. Thompson*, 259 S.C. 600, 193 S.E.2d 531 (1972) (where there was additional evidence of negligence, dog running out in front of car could not be held as a matter of law to be the sole proximate cause of the collision).

Davis v. Tripp, 338 S.C. 226, 235–36, 525 S.E.2d 528, 532–33 (Ct. App. 1999) (emphasis added); *see also State v. Dantonio*, 376 S.C. 594, 606, 658 S.E.2d 337, 344 (Ct. App. 2008) ("[T]he application of *Horton* is limited to cases with specific factual scenarios."); *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989) ("The facts and inferences to be drawn from the facts in this case are readily distinguishable from those in *Horton*.... If more than one reasonable inference can be drawn from the evidence on an issue the trial judge is required to submit the issue to the jury."). Based on Defendant Rutherford's testimony, there are reasonable inferences that Sharpe's speed was a causative factor and that Sharpe was also negligent in failing to maintain a proper lookout. Consequently, the *Horton* line of cases is inapplicable.

"'Only in rare or exceptional cases may the issue of proximate cause be decided as a matter of law.'" *Gause v. Smithers*, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013) (quoting *Bailey v. Segars*, 346 S.C. 359, 367, 550 S.E.2d 910, 914 (Ct. App. 2001)). This is not one of those cases. This case is much more similar to *Bowie* and *Cantrell* where the courts submitted the liability issues to the jury. Thus, contrary to Petitioners' argument, the Court of Appeals did not err by failing to apply *Horton* and its progeny to this case. *See* (Pet. for Writ of Cert. pp. 2-7). Rather, the Court of Appeals properly recognized that this case does not come within the scope of *Horton*, which this Court has consistently limited to its specific facts.

CONCLUSION

This case does not present any "special reasons" justifying the Court's review. The Court of Appeals faithfully applied this Court's summary judgment standards. Therefore, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

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s/Phillip Florence, Jr.

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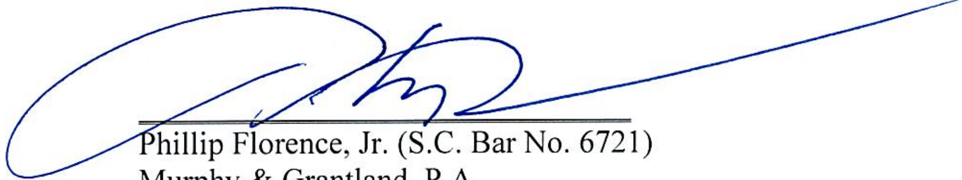
PROOF OF SERVICE

I certify that I have served one (1) copy of the **Respondents' Return to Petition for Writ of Certiorari** by emailing to their attorneys of record as follows: Gary W. Popwell, Jr., Esquire (gary@leiplaw.com) – Post Office Box 1505, Columbia, South Carolina 29202.

February 25, 2025



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