THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Circuit Court Judge
Patrick C. Fant III, Circuit Court Judge
Trial Court Case No. 2024-CP-23-04370

Appellate Case No. 2025-002181

Kathryn Corbett Hallman and Mark Kevin Hart,
As Co-Personal Representatives of the Estate of
Emanuel Addison Hart,

Appellants,

v.

7-Eleven, Inc. and Greer Bowling Corporation d/b/a
Peach Bowl Lanes,

Respondents.

RESPONDENT 7-ELEVEN INC.'S INITIAL BRIEF

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II. Did the circuit court correctly find that, even if Appellants have asserted a recognized cause of action, the doctrine of comparative negligence prohibits their recovery?

III. Does Appellants' challenge to the circuit court's denial of their motion to compel warrant reversal?

INTRODUCTION

The legal question involved in this tragic matter is whether South Carolina law permits Appellants Kathryn Corbett Hallman and Mark Kevin Hart (collectively, Appellants) to hold Respondents 7-Eleven, Inc. (7-Eleven) and Greer Bowling Corporation d/b/a Peach Bowl Lanes (collectively, Respondents) liable for selling alcohol notwithstanding nineteen-year-old Emanual Addison Hart's (Decedent) subsequent unlawful acts that resulted in his death. It does not.[1]

Appellants seek recognition of a novel first-party dram shop claim that would allow Decedent to recover after he used a false driver's license to obtain alcohol from a commercial vendor, unlawfully consumed the alcohol at another premises, illegally furnished the alcohol to other underage persons, operated a motor vehicle while intoxicated, and drove at excessive speeds (more than 100 miles per hour), which ultimately culminated in a fatal crash. South Carolina has never recognized such a claim, and the Court should decline to do so now.

[1] Peach Bowl Lanes was named as a defendant in this action based on allegations that it "sold and served" alcohol to Decedent on August 13, 2021. Am. Compl. ¶ 12. Peach Bowl Lanes filed a motion for summary judgment on September 8, 2025, asserting the same grounds as those included in the circuit court's order granting summary judgment to 7-11. Def.'s Mot. For Summ. J. That motion remains pending.

The circuit court properly granted summary judgment in favor of 7-Eleven because Appellants' theory of liability is contrary to settled principles of state law and public policy. The Supreme Court has consistently refused to allow an intoxicated person to shift responsibility for injuries caused by his own intoxication to others. That principle applies with even greater force here, where Decedent did not merely consume alcohol while underage but affirmatively procured it through a fraudulent identification and thereafter committed multiple unlawful acts, tragically causing his own death.

Even if Appellants' cause of action were permitted, the Court would still be required to affirm the circuit court on the independent ground that the evidence in the record allows only one reasonable inference: Decedent's fault exceeded fifty percent as a matter of law, thus Appellants are barred from recovery.

Appellants' remaining argument regarding the circuit court's denial of their motion to compel also fails to warrant reversal. Appellants neither preserved their claim that summary judgment was premature due to outstanding discovery nor furnished a record adequate for this Court to meaningfully review the circuit court's denial.

In short, Appellants request this Court create a novel first-party cause of action in a heavily regulated field and relieve Decedent of the consequences of his own deliberate, unlawful, and reckless conduct. The circuit court properly declined to do so and therefore granted 7-Eleven's motion for summary judgment. For these same reasons, this Court should affirm the circuit court's orders.

STATEMENT OF THE CASE

In the early morning hours of August 14, 2021, Decedent and Dalton Lewis (Lewis) left Decedent's apartment in Greenville County, South Carolina, to purchase alcohol at a nearby 7-

Eleven. Ex. 3 to Def.'s Mot. for Summ. J. at 52 ll. 4–24. Decedent was nineteen years old at the time. Ex. 4 to Def.'s Mot. for Summ. J. at 12 ll. 1–6. Nevertheless, Decedent knowingly chose to present a false driver's license to the cashier. Def.'s Mot. for Summ. J. at 14; Ex. 2 to Def.'s Mot. for Summ. J.; Ex. 3 to Def.'s Mot. for Summ. J. at 34 ll. 20–24. The license bore Decedent's actual photograph and full legal name, but it listed an inaccurate date of birth portraying him to be at least twenty-one years old. *See* Ex. 2 to Def.'s Mot. for Summ. J.; Ex. 3 to Def.'s Mot. for Summ. J. at 34 ll. 12–25. He thus used affirmative, knowing deception to illegally obtain alcohol. *See* Ex. 3 to Def.'s Mot. for Summ. J. at 52 ll. 4–24.

Decedent and Lewis then returned to Decedent's apartment to socialize with some friends. *See* Ex. 3 to Def.'s Mot. for Summ. J. at 62 ll. 5–24. At the apartment, Zachary Billings (Billings) witnessed Decedent consume two or three alcoholic beverages. Ex. 1 to Def.'s Mot. for Summ. J. at 62 ll. 2–5. Thereafter, the group decided to leave the apartment so Decedent could drive them to Poinsett Bridge. *Id.* at 62 ll. 8–24.

At first, Decedent drove normally. *See id.* at 66 ll. 11–14. Later, however, Decedent began driving at speeds of over 100 miles per hour while loud music blared through the speakers. *Id.* at 66 ll. 14; *id.* at 67 ll. 5–15. Lewis and Billings repeatedly asked Decedent to slow down, but he refused. *Id.* at 66 ll. 14–23. Decedent soon struck another vehicle from behind and crashed. *Id.* at 76 ll. 4–7. He died as a result of his injuries. *See id.* at 13 ll. 11–19.

Appellants filed this lawsuit against Respondents, seeking damages for wrongful death and survival. Am. Compl. ¶ 4. Appellants advance claims of negligence, negligence *per se*, gross negligence, gross negligence *per se*, recklessness, and recklessness *per se*. *Id.* ¶¶ 26–50.

During discovery, Appellants moved to compel 7-Eleven to respond to certain interrogatories and requests for production. 7-Eleven filed a written opposition, and the circuit

court (Judge Gravely) held a hearing. As to the response to Interrogatory No. 5, which Appellants challenge here, the circuit court found "the referenced response was prepared by General Counsel for [7-Eleven] and thus any additional information would be protected by the work product doctrine as set forth in [7-Eleven]'s supplemental answer." Order Den. Pls.' Mot. to Compel at 2.

Later, 7-Eleven moved for summary judgment. Appellants did not file a written opposition. At the hearing, Appellants neither challenged the earlier order of Judge Gravely nor argued summary judgment was premature because of outstanding discovery. The circuit court (Judge Fant) ultimately granted summary judgment on two independent grounds: (1) South Carolina does not recognize Appellants' first-party claim and (2) alternatively, the only reasonable inference from the record is that Decedent's fault exceeded fifty percent.

Only after the circuit court entered its summary judgment order did Appellants file a motion to reconsider stating summary judgment was improper due to ongoing discovery. The circuit court denied the motion, and this appeal followed.

STANDARD OF REVIEW

"In reviewing the grant of summary judgment, this Court applies the same standard as the circuit court." *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 190, 886 S.E.2d 674, 684 (2023). Summary judgment is warranted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

Although "the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party[,]" *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997), "it is not sufficient for a party to create an inference that is not

reasonable or an issue of fact that is not genuine[,]" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

When a defendant files a motion for summary judgment, the plaintiffs "may not rest upon the mere allegations or denials of [their] pleadings" but instead "must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e), SCRCP. If the plaintiffs do not do so, "summary judgment, if appropriate, shall be entered against [them]." *Id.*

ARGUMENT

I. South Carolina Has Not Recognized a First-Party Dram Shop Claim by an Underage Purchaser Against a Commercial Vendor.

This Court should affirm the circuit court's grant of summary judgment because Appellants seek to assert a claim South Carolina has not recognized.

Although the Supreme Court has established limited third-party liability for commercial vendors, it has continually declined to recognize any claim that would permit a person to recover for injuries caused by his own intoxication. Here, Appellants are not asking the Court to apply settled law; they are asking it to extend tort liability within a heavily regulated field to a new area despite repeated caution by the Supreme Court.

The relevant precedent begins with *Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991). In *Whitlaw*, a commercial vendor sold alcohol to the decedent's underage friend. The decedent consumed the alcohol, drove while intoxicated, lost control of his vehicle, struck a tree, and died as a result. The plaintiff, as personal representative of the decedent's estate, later sued the commercial vendor for wrongful death.

The *Whitlaw* Court explained statutes prohibiting the sale of alcohol to underage persons[2] "give rise to civil liability only where the violation is used to establish negligence *per se*[] and where the violation is the proximate cause of the minor's injury." *Id.* at 52, 410 S.E.2d at 252. The Court's analysis concerned whether a commercial vendor can be liable to a non-purchasing minor (i.e., a third party) who obtained alcohol from an underage purchaser and who seeks to recover for injuries arising from his intoxication. The Court therefore addressed the existence of a cause of action for a non-purchasing minor, not for the underage purchaser himself.

The *Whitlaw* Court did not hold that an underage purchaser who unlawfully procures alcohol from a commercial vendor and later suffers injuries related to his own intoxication can recover from the commercial vendor. Hence, *Whitlaw* does not support extending liability to cover a claim brought by an underage purchaser for his own injuries.

The Supreme Court addressed first-party liability directly in *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 504 S.E.2d 318 (1998). In *Tobias*, the Court held "South Carolina does not recognize a 'first party' cause of action against [a] tavern owner by an intoxicated adult predicated on an alleged violation of [statutes prohibiting the knowing sale of alcohol to an intoxicated person]." *Id.* at 91, 504 S.E.2d at 319. The Court expressly retained the right of an injured third party to sue but opined "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." *Id.* at 92, 504 S.E.2d at 320. More importantly, the Court appropriately did not treat *Whitlaw* as having recognized first-party liability for a minor

[2] At the time, S.C. Code Ann. § 61-9-40 provided, "It is unlawful for any person to sell beer to a person . . . under twenty-one years of age." Further, S.C. Code Ann. § 61-9-410 stated, "No 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: (1) sell beer or wine to a person . . . under twenty-one years of age . . . ." (emphasis added). The current iterations of these statutes are found at S.C. Code Ann. §§ 61-4-50(A) and 61-4-580(A), respectively.

against a commercial vendor. Instead, it "le[ft] for another day the issue whether [the Court] will recognize a first party action brought by a minor." *Id.* at 93, 504 S.E.2d at 320.

Appellants rely heavily on *Marcum v. Bowden*, 372 S.C. 452, 643 S.E.2d 85 (2007), but *Marcum* also does not answer the question presented here.

Marcum concerned an adult social host who knowingly and intentionally served alcohol to a nineteen-year-old guest. The Court recognized a limited common law duty in that context and expressly confined its holding to knowing and intentional service to a known underaged guest. *Id.* at 455 & n.1, 643 S.E.2d at 86 & n.1. The Court did not overrule *Tobias*. The Court did not state it was answering the question "le[ft] for another day" in *Tobias* (namely, whether to recognize a first-party action brought by a minor). As is relevant here, *Marcum* did not involve either a commercial vendor, an underage purchaser, or an underage person using false identification to obtain alcohol.

To be sure, the *Marcum* Court included some broad language describing the duty of a commercial vendor.[3] But that broad language cannot be read to have silently accomplished what *Tobias* expressly "le[ft] for another day," especially given *Marcum* did not at all involve a first-party claim by a minor.

[3] The *Marcum* Court in *dicta* misstated a description of *Whitlaw* as standing for the broad proposition that S.C. Code Ann. §§ 61-4-50(A) and 61-4-580(A) "place[] a duty on a commercial vendor[,]" and "[a] vendor who violates this duty and sells to a person under [twenty-one years of age] may be liable *to the unlawful purchaser*[] and to third parties harmed by the purchaser's consumption of the alcohol." *Id.* at 459, 643 S.E.2d at 88 (emphasis added). As noted above, however, *Whitlaw* did not involve a commercial vendor's liability to an underage purchaser.

Appellants' entire argument hinges upon the *Marcum* Court's overreading of *Whitlaw*. Yet the Court in *Tobias*—which was decided seven years after *Whitlaw*—failed to construe *Whitlaw* as imposing such expansive first-party liability. The *Tobias* Court instead "le[ft] for another day the issue [of] whether [it would] recognize a first party action brought by a minor." *Tobias*, 332 S.C. at 93, 504 S.E.2d at 320.

Hence, the controlling holdings remain: *Whitlaw* did not consider a commercial vendor's liability to an underage purchaser but instead considered third-party liability; *Tobias* rejected first-party commercial liability to an intoxicated adult and reserved for later the issue of first-party commercial liability to a minor; and *Marcum* addressed a different type of defendant, an alternative duty, and materially distinguishable facts in the social host setting. This Court should follow those prior holdings and decline to transform the broader *dicta* language of *Marcum* into a novel first-party cause of action by an underage purchaser against a commercial vendor.

Appellants attempt to distinguish the dispositive portion of *Tobias* by insisting *Marcum* removed any confusion by "expressly pronounc[ing] that the standard for commercial vendors is at least as great as the standard for a social host, who owes a first-party duty of care to an underage drinker who then drives and is injured or killed." Appellants' Initial Br. at 18. But, as explained above, the *Marcum* Court restricted its holding to instances where an adult social host knowingly and intentionally serves alcohol to an underaged person.

The facts here also underscore why this appeal is an especially poor vehicle for creating a novel cause of action. This is not a case in which a commercial vendor knowingly served an underage purchaser despite his truthful presentation of accurate identification. Instead, it is a case in which an underage purchaser affirmatively presented a fraudulent driver's license bearing his own photograph and full legal name with a fabricated date of birth. Appellants seek to advance a new first-party claim in favor of persons over the age of eighteen[4] who knowingly procure alcohol through deception and illegality and then subsequently cause their own injuries through a series of unlawful acts. This Court should reject such an expansion of the law.

[4] There is nothing in the record that demonstrates Decedent's appearance reflected that he was "obviously" a minor.

Appellants maintain purchasers between the ages of eighteen and twenty should be treated as minors for alcohol-related purposes. Although it is true that South Carolina law prohibits the sale of alcohol to all persons under the age of twenty-one, that prohibition alone does not create a cause of action enabling an underage purchaser to recover for self-inflicted injuries. This is especially true where, as here, the underage purchaser—who is an adult for purposes of the criminal statutes—(1) used a false driver's license to fraudulently procure alcohol, in violation of S.C. Code Ann. § 61-4-60;[5] (2) consumed the alcohol below the legal age for doing so, in violation of S.C. Code Ann. § 63-19-2440(A);[6] (3) provided the alcohol to underage persons, in violation of S.C. Code Ann. § 61-4-90(A);[7] (4) operated a vehicle while intoxicated, in violation of S.C. Code Ann. § 56-5-2930(A);[8] and (5) drove at excessive speeds, in violation of S.C. Code Ann. § 56-5-2920.[9]

South Carolina courts have consistently emphasized a statutory violation may not support a negligence claim where the plaintiff seeks to shield himself from the consequences of his own illegality. *See, e.g.*, *Lydia v. Horton*, 355 S.C. 36, 42–43, 583 S.E.2d 750, 754 (2003) ("We disagree

[5] "It is unlawful for a person to whom beer or wine cannot be lawfully sold to knowingly give false information concerning his age for the purpose of purchasing beer or wine." S.C. Code Ann. § 61-4-60.

[6] "It is unlawful for a person under the age of twenty-one to purchase, attempt to purchase, consume, or knowingly possess beer, ale, porter, wine, or other similar malt or fermented beverage." *Id.* § 63-19-2440(A).

[7] "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 of beer or wine in the State[.]" *Id.* § 61-4-90(A).

[8] "It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired[.]" *Id.* § 56-5-2930(A).

[9] "Any person who drives any vehicle in such a manner as to indicate either a wil[l]ful or wanton disregard for the safety of persons or property is guilty of reckless driving." *Id.* § 56-5-2920.

with the Court of Appeals' conclusion that *Tobias*['s] public policy considerations . . . have no bearing on whether or not to impose an outright bar to a first party negligent entrustment cause of action. The essence of this case and the *Tobias* case are the same, for in both cases, the plaintiff, who was voluntarily intoxicated when the accident occurred, is attempting to deflect the responsibility that should be imposed upon himself towards another.").

In this case, Decedent committed the very acts the alcohol control statutes seek to deter. He used a false driver's license to purchase alcohol, consumed alcohol while underage, furnished alcohol to his underage friends, operated a vehicle while under the influence of alcohol, and drove in a reckless manner. Allowing a first-party claim to proceed under these circumstances would invert the statutory framework and permit an individual to profit civilly from his participation in indisputably unlawful conduct.

Moreover, Appellants' arguments rest upon public policy considerations—capacity, deterrence, and fairness—that are properly directed to the legislature, not the judiciary. The Supreme Court has advised against expanding tort liability in areas involving complex social issues and extensive regulation. *See, e.g.*, *Whitlaw*, 306 S.C. at 55, 410 S.E.2d at 253; *Tobias*, 332 S.C. at 93, 504 S.E.2d at 320; *Marcum*, 372 S.C. at 455, 643 S.E.2d at 86. The Court has further highlighted in other contexts that the legislature is better equipped to assess whether and how to create new remedies in such heavily regulated fields.[10]

[10] *Cf. Huggins v. Citibank, N.A.*, 355 S.C. 329, 334, 585 S.E.2d 275, 277–78 (2003) ("[W]e note that various state and national legislation provides at least some remedy for victims of credit card fraud. While these regulations may not fully compensate victims of identity theft for all of their injury, we conclude the legislative arena is better equipped to assess and address the impact of credit card fraud on victims and financial institutions alike." (internal citations omitted)); *Gladden v. Boykin*, 402 S.C. 140, 739 S.E.2d 882 (2013) ("Although the General Assembly declined to require [home inspectors to carry errors and omissions liability insurance], it did not leave residential home buyers without remedy. The Residential Property Condition Disclosure Act ensures that buyers are informed of defects of which the seller has knowledge . . . . [and] imposes

The legislature has enacted a comprehensive statutory scheme governing alcohol sales, penalties, insurance requirements, and liability. *See* S.C. Code Ann. §§ 61-2-10 to 61-12-70 (containing seven chapters within the title "Alcohol and Alcoholic Beverages"). Yet it has neither created nor endorsed a cause of action that would allow an underage purchaser who used a false identification to recover for injuries flowing from his own intoxication. If such a remedy is to exist, it should be created by the legislature, not this Court.

Appellants contend South Carolina appellate courts have already expanded commercial liability to permit their cause of action. Not so. As set forth herein, the question of such an expansion should be left to the legislature for consideration. The circuit court therefore correctly granted summary judgment on the basis that South Carolina has not recognized the first-party dram shop claim Appellants assert.

To the extent this Court would determine that it, rather than the legislature, should grapple with the question of adopting such an expansion of liability, it should join the overwhelming majority of states that decline to do so.

Twenty-two states expressly forbid an underage purchaser from asserting a first-party claim against a commercial vendor, whether via statute or the common law.[11] Moreover, even in the

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liability on a seller if she knowingly withholds such information. Thus, the General Assembly has already provided specific protection for the consumer risks associated with undisclosed defects, and we must defer to its judgment." (internal citations omitted)).

[11] *See Parker v. Miller Brewing Co.*, 560 So. 2d 1030, 1034 (Ala. 1990) ("Plaintiff urges us to adopt a common law negligence cause of action that would impose liability for the distribution of alcoholic beverages to minors. We decline to do so."); Colo. Rev. Stat. Ann. § 44-3-801(3)(b) ("No civil action may be brought [against a licensee for the sale of alcohol to a person under the age of twenty one] by the person to whom the alcohol beverage was sold or served or by his or her estate, legal guardian, or dependent."); *Gregg v. Univ. of Del.*, No. 88C-JN-79, 1992 WL 1364261, at *1 (Del. Super. Ct. 1992) ("Delaware does not recognize a cause of action against a commercial supplier of alcohol to an underage person for resulting injury."); Ga. Code Ann. § 51-1-40 (declining to recognize first-party liability for alcohol purchases); *Winters v. Silver Fox Bar*, 797 P.2d 51, 56 (Haw. 1990) (rejecting an extension of the common law that would allow a minor to

remaining states where such a claim *may* be permitted—either because the issue has yet to be directly addressed or because such claims have been explicitly allowed—the majority nevertheless prohibits recovery in a case like this.[12]

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bring a first-party claim against a commercial vendor); Idaho Code Ann. § 23-808(4)(a) (prohibiting first-party claims); 235 Ill. Comp. Stat. Ann. 5/6-21(a) (same); Iowa Code Ann. § 123.92(1)(a) (same); *Mills v. City of Overland Park*, 837 P.2d 370, 376 (Kan. 1992) ("The repeal of the dram shop act coupled with the enactment of laws criminalizing the minor's purchase, possession, and consumption do not support the argument that it was the legislative intent that the sale of liquor to a minor gives rise to civil liability for injury to the minor from the sale or furnishing of the liquor."); Me. Rev. Stat. Ann. tit. 28-A, § 2504 (prohibiting a person who is eighteen or older from bringing a first-party claim against a seller of alcohol); *State ex rel. Joyce v. Hatfield*, 78 A.2d 754, 756 (Md. 1951) (stating, in the context of a minor purchaser, that "the common law knows no right of action against a seller of intoxicating liquors . . . for 'causing' intoxication of the person whose negligent or wil[l]ful wrong has caused injury"); Minn. Stat. Ann. § 340A.90 subdiv. 1(c) ("An intoxicated person under the age of [twenty-one] years who caused the injury has no right of action under this section."); *Snodgras v. Martin & Bayley, Inc.*, 204 S.W.2d 638, 640 (Mo. 2006) (en banc) (concluding state law prohibits a cause of action by a minor against a commercial vendor that sells alcohol for off-premises consumption); Nev. Rev. Stat. Ann. § 41.1305(3) (explaining a statutory cause of action arising from the knowing provision of alcohol to an underage person does not apply to the sale of alcohol during the course of business); *Rudden v. Bernstein*, 61 A.D.3d 736, 738 (N.Y. App. Div. 2009) (explaining state law "does not provide a right of recovery for injuries suffered by intoxicated minors as a result of their own intoxication"); N.C. Gen. Stat. Ann. § 18B-120(1) (defining "aggrieved party" for purposes of the state statutes governing the sale of alcohol to underage persons to exclude the underage person himself); N.D. Cent. Code Ann. § 5-01-06.1(3) (prohibiting a first-party claim); *Klever v. Canton Sachsenheim, Inc.*, 715 N.E.2d 536, 540 (Ohio 1999) ("[I]n Ohio there is no cause of action against a liquor permit holder by a voluntarily intoxicated patron (or his representative) who is [under the age of twenty one] . . . but who has attained the age of majority[] for self-inflicted injury (or death) due to being intoxicated."); *Smith v. Harms*, 865 P.2d 486, 496–500 (Or. Ct. App. 1993) (declining to permit a first-party claim by an underage purchaser against a commercial vendor); Utah Code Ann. § 32B-15-201 (establishing only third-party liability for the sale of alcohol to an underage person and further stating such liability does not extend to a business licensed to sell beer at retail for off-premises consumption); *Mueller v. McMillan Warner Ins. Co.*, 704 N.W.2d 613, 617 (Wis. Ct. App. 2005) (explaining a principal, or first party, to a transaction who violates the state statute restricting sales to underage persons is exempt from civil liability); *White v. HA, Inc.*, 782 P.2d 1125, 1132 (Wyo. 1989) (stating the holding in a third-party case "did not create a cause of action on behalf of intoxicated minors in general against a tavern keeper for its sale of alcohol to them").

[12] *See* Alaska Stat. Ann. §§ 04.21.020(a)(1) (indicating a commercial vendor cannot be held liable for the sale of alcohol to an underage purchaser if the purchaser presents a driver's license made of, or encased in, plastic that contains his photograph and date of birth); *Strang v. Cabrol*, 691 P.2d 1013, 1014 (Cal. 1984) (indicating civil liability for personal injuries can only be predicated upon the sale of alcohol to a minor who is obviously intoxicated); Fla. Stat. Ann. § 562.11(c) (providing

In any event, if this Court were to expand liability sufficient to allow a first-party claim by an underage purchaser against a commercial vendor despite the overwhelming refusal of states to permit these claims, any such expansion would be prospective only. *See Marcum*, 372 S.C. at 458

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a complete defense to civil liability where an underage purchaser falsely evidences he is of legal age, his appearance is such that a reasonable person would believe him, the seller carefully checks his driver's license, and the seller acts in good faith reliance); *Pelzek v. Am. Legion*, 463 N.W.2d 321, 323 (Neb. 1990) ("[S]elling liquor to a minor . . . is not the proximate cause of any injuries that the minor might suffer."); *Robinson v. Matt Mary Moran, Inc.*, 525 S.E.2d 559, 562 (Va. 2000) ("The responsibility of individuals for torts they commit does not change because they are [nineteen] or [twenty] years of age, rather than [twenty-one] years of age."); Wis. Stat. Ann. § 125.035 (establishing civil immunity if an underage purchaser falsely represents he is of legal drinking age, supports his representation with documentation, the seller relies in good faith on the purchaser's representation, and the appearance of the purchaser is such that a reasonable person would believe he is of legal age); *see also* Ariz. Rev. Stat. Ann. § 4-241(A) (providing a defense to criminal liability where a seller procures identification from an underage purchaser, examines the identification and photograph to determine their validity, and determines the date of birth listed indicates the purchaser is of legal age); Conn. Gen. Stat. Ann. § 30-86(b)(3)(B) (exempting an alcohol seller from criminal liability where a sale is "made in good faith to a minor . . . who uses or exhibits [an] identity card that has been altered or tampered with in any way[]"); *Millenium Club, Inc. v. Avila*, 809 N.E.2d 906, 915 (Ind. App. 2004) (indicating that imposing civil liability where an underage purchaser acquired alcohol through the use of a false identification would contravene public policy); Ky. Rev. Stat. Ann. § 244.080 (recognizing a defense to prosecution where a sale is induced by the use of false, fraudulent, or altered documents; the appearance and character of the underage purchaser is such that his age cannot be ascertained by other means; and his appearance and character strongly indicates he is of legal age); Mich. Comp. Laws Ann. § 436.1701(8) (stating a defense to prosecution exists where a seller demands and is shown, before providing alcohol to an underage purchaser, a driver's license showing the age and identity of the purchaser); Miss. Code Ann. § 67-3-69 (finding "the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person"); Mont. Code Ann. § 16-3-301 (establishing a defense to prosecution where an underage purchaser falsely represents with documentary evidence that he was of legal age, the appearance of the purchaser is such that a reasonable person would believe he is of legal age, and the sale is made in good faith reliance on the purchaser's representation and appearance); N.J. Stat. Ann. § 33:1-77 (providing a defense to prosecution where an underage purchaser falsely produces a driver's license with his photograph that states he is of legal age, the purchaser's appearance is such that a reasonable person would believe he is of legal age, and the sale is made in good faith reliance on the driver's license and in reasonable belief the purchaser is of legal age); S.D. Codified Laws § 35-11-1 (finding "the consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of any injury inflicted upon another by an intoxicated person").

n.5, 643 S.E.2d at 88 n.5. Accordingly, the Court should affirm the circuit court's grant of summary judgment in favor of 7-Eleven.

II. The Circuit Court Correctly Found That, Even If Appellants Have Asserted a Recognized Cause of Action, the Doctrine of Comparative Negligence Prohibits Their Recovery.

Even if this Court were to recognize Appellants' theory of liability, the Court would still be required to affirm the circuit court's grant of summary judgment against Appellants, as the doctrine of comparative negligence[13] bars their recovery.

A. The Court Should Reject Appellants' Argument That the Alcohol Exception Formerly Contained in S.C. Code Ann. § 15-38-15(F) Abrogated the Doctrine of Comparative Negligence in Alcohol-Related Cases.

Appellants initially argue the alcohol exception formerly contained in S.C. Code Ann. § 15-38-15(F) abrogated the doctrine of comparative negligence in alcohol-related cases. That argument is incorrect.

Section 15-38-15 governs joint and several liability and the allocation of fault among multiple defendants. Subsection (A) establishes the general rule of liability in cases where damages are caused by more than one defendant. It provides:

> [I]f indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (*comparative negligence*), if any, of plaintiff. A defendant whose conduct

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[13] The Supreme Court adopted the doctrine of modified comparative negligence in 1991. *See Nelson v. Concrete Supply Co.*, 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991) ("For all causes of action arising on or after July 1, 1991, a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence. If there is more than one defendant, the plaintiff's negligence shall be compared to the combined negligence of all defendants." (footnote omitted)).

> is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

S.C. Code Ann. § 15-38-15(A) (amended 2026) (emphasis added). In other words, if a particular defendant is less than fifty percent at fault considering *both* the fault of the defendants *and* the comparative negligence of the plaintiff, then that defendant is not jointly and severally liable and is instead liable only for its share of liability.

Subsections (B) and (C) govern the apportionment of fault among multiple defendants. Subsection (B) points to subsection (C), noting "[a]pportionment of percentages of fault among defendants is to be determined as specified in subsection (C)." *Id.* § 15-38-15(B) (amended 2026). Subsection (C) more specifically directs the trier of fact to "determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages *under applicable rules concerning comparative negligence*[.]" *Id.* § 15-38-15(C)(2) (amended 2026) (emphasis added) (internal quotation marks omitted). The statute therefore incorporates, and does not displace, the doctrine of comparative negligence.

The alcohol exception in subsection (F) states S.C. Code Ann. § 15-38-15 "does not apply to . . . conduct involving the use, sale, or possession of alcohol . . . ." *Id.* § 15-38-15(F) (amended 2026). Properly understood, subsection (F) preserves joint and several liability for qualifying defendants and does not repeal the doctrine of comparative negligence adopted in *Nelson*. Absent from subsection (F) is any indication the plaintiff's fault becomes irrelevant when alcohol is involved or any prohibition forbidding the trier of fact from considering the plaintiff's negligence. Moreover, nothing in subsection (F) purports to overrule *Nelson*.

Appellants' reading of the statute would lead to an absurd result that could not have been intended by the legislature. Under their approach, all claims tangentially related to alcohol would proceed without a fault determination on the part of the plaintiff. This directly contravenes state

law, which requires an assessment of fault and causation, and would lead to the absurd result of automatic liability notwithstanding substantial negligence by the plaintiff. *See, e.g.*, *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [l]egislature or would defeat the plain legislative intention." (quoting *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000))).

Appellants are also incorrect to the extent they posit "the Supreme Court's pronouncement in *Marcum*[] demonstrates that an underage drinker, i.e., one under the age of [twenty-one] cannot as a matter of law assume the risk of dying or being injured in an alcohol related matter." Appellants' Initial Br. at 24. Appellants are wrong to imply *Marcum* somehow establishes an underage drinker cannot, as a matter of law, be negligent in an alcohol-related case. *Marcum* says no such thing. Indeed, the circuit court in *Marcum* ***applied*** the doctrine of comparative negligence, and the Supreme Court affirmed this application. *See Marcum v. Bowden*, No. 02-CP-40-5305, 2004 WL 4963023, at *1 (S.C. Ct. C.P. Mar. 26, 2004) (finding the decedent's negligence exceeded any negligence of the defendants and thus concluding the defendants were entitled to summary judgment); *Marcum*, 372 S.C. at 462, 643 S.E.2d at 90 (affirming the circuit court's order granting summary judgment); *see also Lydia*, 355 S.C. at 40, 583 S.E.2d at 752–53 (applying the doctrine of comparative negligence and "agree[ing] with the trial judge that [the plaintiff]'s admission that he was 'appreciably impaired' and that he lost control of the vehicle supports only one conclusion, that [the plaintiff]'s negligence exceeded [the defendant]'s").

The circuit court therefore correctly held the doctrine of comparative negligence applies as a matter of law.

B. The Only Reasonable Inference to Be Deduced from the Record Is That the Negligence of Decedent in Causing the Accident Exceeded Fifty Percent.

Even if Appellants are correct about the availability of their claim under existing law, the record supports only one reasonable inference: that Decedent's unlawful conduct predominated in causing the fatal accident.

Although the issue of comparative negligence is admittedly *ordinarily* for the jury, the circuit court may "determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000). This is such a case.

The record reflects a chain of deliberate, illegal, and extremely dangerous acts by Decedent that directly produced the fatal harm. Decedent presented a false driver's license to fraudulently procure alcohol in violation of S.C. Code Ann. § 61-4-60. Def.'s Mot. for Summ. J. at 14; Ex. 1 to Def.'s Mot. for Summ. J. at 67 ll. 11–15. Decedent then consumed the alcohol, despite being underage, in violation of S.C. Code Ann. § 63-19-2440(A). Ex. 1 to Def.'s Mot. for Summ. J. at 62 ll. 2–5; Ex. 3 to Def.'s Mot. for Summ. J. at 34 ll. 9–11; Ex. 4 to Def.'s Mot. for Summ. J. at 12 ll. 1–6. Decedent also provided alcohol to his underage friends in contravention of S.C. Code Ann. § 61-4-90(A). Appellants' Br. at 8. Additionally, Decedent operated a motor vehicle while under the influence and drove at speeds exceeding 100 miles per hour in violation of S.C. Code Ann. §§ 56-5-2930 and 56-5-2920, respectively. Ex. 1 to Def.'s Mot. for Summ. J at 62 ll. 2–5; *id.* at 67 ll. 11–15. Decedent's acts were not ancillary to the accident but were instead the immediate and predominant cause of it.

Appellants cite *Roddey v. Wal-Mart Stores, East, L.P.*, 415 S.C. 580, 784 S.E.2d 670 (2016), in support of their assertion the issue of comparative negligence is a question of fact for the jury. But *Roddey* is materially different.

In *Roddey*, the jury heard conflicting testimony about whether the defendant's employees instructed an independently contracted security guard to pursue a suspected shoplifter; hence, the Court was unable to say the decedent was more than fifty percent negligent as a matter of law. *Roddey*, 415 S.C. at 582 n.4, 784 S.E.2d at 677 n.4. Here, by contrast, the record does not present a close question. Instead, it demonstrates a series of intentional, criminal, and reckless acts by Decedent culminated in the fatal crash. Notwithstanding any purported oversight[14] at the point of sale, Decedent's conduct is the only conduct in the record that is both illegal in multiple respects and that directly produced the harm for which Appellants seek to recover.

Steele v. Rogers, 306 S.C. 546, 413 S.E.2d 329 (Ct. App. 1992), is also unhelpful for Appellants. In *Steele*, the question was whether the plaintiff's injury was foreseeable, not whether the plaintiff was negligent. *Id.* at 551, 413 S.E.2d at 332. Moreover, in reversing the circuit court's grant of summary judgment, the *Steele* Court acknowledged the plaintiff's claim would remain subject to affirmative defenses, including contributory negligence. *Id.* at 552, 413 S.E.2d at 333. *Steele* thus undermines, rather than supports, Appellants' contentions.

Appellants evidently rely upon *Steele* to support their allegation "the obviously young Decedent had an obvious underage passenger seated in his vehicle in front of the store in view of the cashier." Appellants' Br. at 30. But unlike the record in *Steele*, this record does not support a reasonable inference the cashier could see an "obviously underage" passenger in Decedent's vehicle. Nor does it support a rational deduction that Decedent appeared "obviously young." The portions of the transcript Appellants cite merely set forth arguments by counsel indicating Lewis

[14] The Court can take judicial notice that there are indeed at times various errors on the face of legitimate driver's licenses, and there is a process one can undertake to correct such errors, including address misspellings etc. *See* S.C. Dep't of Motor Vehicles Form 4057 (May 2022). An apostrophe in the political subdivision "Taylors," however, is not evidence that an identification is fake.

was fifteen years old and remained in Decedent's vehicle during the transaction. *See* Summ. J. Hr'g Tr. at 5 ll. 22–25 & 6 l. 1 (7-Eleven's counsel stating Decedent went on a "beer run" with "one of his buddies" who "remain[ed] in the vehicle"); *id.* at 25 ll. 19–26 & 26 l. 1 (Appellants' counsel arguing "the fact that there's a [fifteen]-year-old in the car would have also blocked this sale to [Decedent] on this night[] because . . . this kid was obviously underage"). There is nothing in the record indicating Lewis appeared to be a minor, that he could see the cashier from Decedent's vehicle, or that Decedent appeared to be underage.

Even if the Court were to accept as true Appellants' allegations regarding 7-Eleven's cashier practices and corporate policies, the sale of alcohol to Decedent did not compel him to drink the alcohol, provide it to minors, drive while intoxicated, ignore passenger warnings, or drive at excessive speeds. The fatal risk materialized only because Decedent himself elected to engage in conduct that is universally recognized as extraordinarily dangerous and independently unlawful, including crimes for which he could be charged as an adult.

In sum, the only reasonable inference is that Decedent's fault exceeded fifty percent, which bars Appellants' recovery as a matter of law. This Court should thus affirm the circuit court's order granting summary judgment in favor of 7-Eleven.

III. Appellants' Challenge to the Circuit Court's Denial of Their Motion to Compel Does Not Warrant Reversal.

Appellants further maintain the circuit court erred in denying their motion to compel a response to Interrogatory No. 5. This argument provides no basis for reversal.

First, Appellants never preserved their argument that the circuit court should have denied summary judgment due to outstanding discovery. In their brief, Appellants posit discovery was ongoing in this case and, as a result, summary judgment was improper as premature. *See* Appellants' Initial Br. at 26, 31. However, Appellants did not file a written opposition to 7-

Eleven's motion for summary judgment, nor did Appellants advance this argument at the summary judgment hearing. Appellants also failed to supply the circuit court with an affidavit pursuant to South Carolina Rule of Civil Procedure 56(f).[15]

Appellants stated in their motion for reconsideration that summary judgment was improper in light of ongoing discovery, but it is well established "[a] party cannot for the first time raise an issue by way of a Rule 59(e) motion [when it could have been raised earlier]. . . ." *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Further, this Court has repeatedly held that where a party fails to seek a continuance or otherwise object on the basis of outstanding discovery, the issue is unpreserved for appellate review. *See, e.g., Mixson, Inc. v. Am. Loyalty Ins. Co.*, 349 S.C. 394, 401, 562 S.E.2d 659, 663 (Ct. App. 2002); *Pryor v. Nw. Apartments, Ltd.*, 321 S.C. 524, 529, 469 S.E.2d 630, 633 (Ct. App. 1996).

Second, the record is insufficient to permit intelligent review of the circuit court's denial of Appellants' motion to compel. "The appealing party has the burden of furnishing a sufficient record from which [an appellant] court can make an intelligent review." *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984). When an appellant fails to carry this burden, the Court is unable to permit intelligent review of the issue, and the appeal should be dismissed. *See id.*

Appellants' motion to compel is devoid of any substantive analysis. Moreover, Appellants failed to designate the transcript from the motion to compel hearing as part of the record on appeal. Even if Appellants had designated the transcript, however, 7-Eleven has learned that the audio

[15]"Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just." Rule 56(f), SCRCP.

became indiscernible when the second speaker began his argument. Therefore, the only available version of the transcript excludes 7-Eleven's arguments, and this Court lacks the complete record necessary to evaluate the basis for the circuit court's denial.

Additionally, if this Court affirms summary judgment on either of the independent grounds discussed above, any challenge to the circuit court's prior ruling on Appellants' motion to compel will necessarily be rendered moot. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999); *Whiteside v. Cherokee Cnty. Sch. Dist. No. One*, 311 S.C. 335, 340–341, 428 S.E.2d 886, 889 (1993); Rule 220(b)(2), SCACR.

Finally, in any event, the order denying Appellants' motion to compel was correct, and it should be affirmed. The circuit court properly held information prepared by, or at the direction of, the General Counsel for 7-Eleven was protected under the work-product doctrine and need not be produced. *See Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010) (indicating documents prepared or obtained because of the prospect of litigation are protected by the attorney work product doctrine).

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court affirm the circuit court's order granting 7-Eleven's motion for summary judgment and further affirm the circuit court's order denying Appellants' motion to compel as moot or unpreserved for appellate review.

Respectfully submitted,

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May 6, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Perry H. Gravely, Circuit Court Judge
The Honorable Patrick C. Fant, III, Circuit Court Judge
Trial Court Case No. 2024CP2304370

Appellate Case No. 2025-002181

Kathryn Corbett Hallman and Mark Kevin Hart,
As Co-Personal Representatives of the Estate of
Emanuel Addison Hart, Appellants,

v.

7-Eleven, Inc. and Greer Bowling Corporation d/b/a
Peach Bowl Lanes, Respondents.

PROOF OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent 7-Eleven, Inc., do hereby certify that I have served all counsel of record in this action with a copy of the document(s) set forth below under Supreme Court Order dated April 24, 2024.

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