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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Patrick C. Fant, III, Circuit Court Judge
Perry H. Gravely, Circuit Court Judge

Case No. 2024-CP-23-04370

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.

INITIAL REPLY BRIEF

John S. Nichols, (SC Bar No. 4210)
john@bluesteinattorneys.com
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599

Mark B. Tinsley (SC Bar No. 15597)
mark@goodingandgooding.com
H. Woodrow Gooding (S.C. Bar No. 2180)
woody@goodingandgooding.com
Gooding and Gooding, PA
P.O. Box 1000
Allendale, SC 29810
(803) 587-7676

Attorneys for Appellants

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ARGUMENTS

RESPONDENTS' CITED AUTHORITIES ARE MEANINGFULLY DISTINCT FROM THIS CASE

Appellants stand on the arguments they made in their opening brief that: (1) the circuit court should have granted the motion to compel; (2) South Carolina does, in fact, recognize a first-party negligence claim for an underage person to whom a vendor sold alcohol for the injuries resulting therefrom; (3) comparative negligence was statutorily eliminated in alcohol-related matters; and (4) comparative fault is a jury question in this case. Appellants are compelled, however, to distinguish numerous authorities Respondents included in their brief. Every statute or case cited in two lengthy footnotes in the brief are meaningfully distinct from this case and do not assist this Court in resolving this matter. Appellants file this Reply Brief to address those authorities.

A. Authorities in Footnote 11 on pp 11-12

Respondents assert "[t]wenty-two states expressly forbid an underage purchaser from asserting a first-party claim against a commercial vendor, whether via statute or the common law." (Respondents' Br. p. 11). Respondents include Footnote 11 with string-cites to cases or statutes from other jurisdictions and with parenthetical quotes taken out of context to support this argument. (Id, n. 11). Even a cursory examination of each of those cases or statutes demonstrates they are meaningfully distinct from this case and should not be persuasive.

For instance, in *Parker v. Miller Brewing Co.*, 560 So.2d 1030 (Ala. 1990), the narrow issue was whether a commercial vendor could be held liable for the death of a minor who drove while intoxicated and died in a one-car wreck when the sale of two kegs of beer was made to two

other minors, not the decedent. The Supreme Court of Alabama held that under Alabama's Civil Damages Act, the plaintiff had to be someone to whom the defendant actually sold the alcohol. The Court stated "[t]he sellers cannot be said to have furnished beer to [decedent] by selling beer to two other minors." *Id.*, at 1032. The Court also held that the defendants could not be liable under Alabama's Dram Shop Act because "[t]hese defendants did not provide the alcoholic beverages to the intoxicated person, nor was there a sale by these defendants to the intoxicated person." *Id.*, at 1034.

As for the language Respondents cite parenthetically in footnote 11, what the Alabama Court actually said was:

> 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. It has been a principle of long standing in Alabama that one cannot recover for negligence in the dispensing of alcohol.

Id. at 1034. The Court then cited to case law from 1886 forward in which the Court reaffirmed this principle and found "no compelling reason" for the Court to depart from the common law English rule.

Interestingly, three members of the Court dissented. Chief Justice Hornsby surveyed nine (9) states that "have recognized at least the liability of the store that sells alcoholic beverages to minors." *Id.*, at 1034-1035 (Hornsby, CJ, dissenting). Justice Kennedy wrote "[t]o rely on precedent that was established over a century ago, and then to buttress that reliance on an adherence to technical definitions that are no longer commonly accepted, would visit great injustice on the law." *Id.*, at 1038 (Kennedy, J, dissenting). Also, no court in the United States, including the Alabama courts, have cited favorably to *Parker* in 30 years.

The Washington Court of Appeals expressly declined to follow *Parker*, holding that the sale to a "minor," which the Court defined as anyone under 21 years of age, would result in liability for injuries to another minor to whom the purchaser provided alcohol. *Schooley v. Pinch's Deli Mkt., Inc.*, 912 P.2d 1044 (Wash. App. Div. 2 1996). The Washington Court added:

> Our holding is consistent with the view of a majority of other jurisdictions. [footnoting cases from Wisconsin, Jew Jersey, West Virginia, Alaska, Pennsylvania, and Oregon]. We are aware of three jurisdictions that may have ruled to the contrary, but their statutes are different or their opinions not persuasive.

Schooley, at 1050 n. 40 (citing to *Parker*).

Unlike Alabama, South Carolina does not have an express Dram Shop Statute. *E.g.*, *Hartfield v. Getaway Lounge & Grill*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010) ("Because South Carolina does not have a Dram Shop Act, our civil remedy arises out of criminal statutes."). Furthermore, unlike the holding in *Parker*, South Carolina recognizes a common law action for negligence arising out of the violation of the alcohol statutes. *See, e.g.,Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998) (holding injured third parties may bring a negligence suit against the tavern owner based on a violation of the alcohol control statutes). *Parker* does not advance Respondents' arguments nor does it support the trial court's ruling.

Respondents next cite Colorado Rev. Stat. Ann. § 44-3-801 (Colorado's Dram Shop Act) for the parenthetical rule "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."). (Respondent's Brief, p. 11, n. 11). This incomplete statement of the text of that statute mischaracterizes its operation. What the statute actually provides is this:

(1) The general assembly hereby finds, determines, and declares that this section shall be interpreted so that *any common law cause of action against a vendor of alcohol beverages is abolished* and that in certain cases the consumption of alcohol beverages rather than the sale, service, or provision thereof is the proximate cause of injuries or damages inflicted upon another by an intoxicated person, except as otherwise provided in this section.

(2) As used in this section, "licensee" means a person licensed under the provisions of this article 3 or article 4 or 5 of this title 44 and the agents or servants of the person.

(3)(a) No licensee is civilly liable to any injured individual or his or her estate for any injury to the individual or damage to any property suffered because of the intoxication of any person due to the sale or service of any alcohol beverage to the person, except when:

> (I) It is proven that the licensee willfully and knowingly sold or served any alcohol beverage to the person *who was under the age of twenty-one years* or who was visibly intoxicated; and
>
> (II) The civil action is commenced within one year after the sale or service.

(b) No civil action may be brought pursuant to this subsection (3) by the person to whom the alcohol beverage was sold or served or by his or her estate, legal guardian, or dependent.

> * * *

(4)(a) No social host who furnishes any alcohol beverage is civilly liable to any injured individual or his or her estate for any injury to the individual or damage to any property suffered, including any action for wrongful death, because of the intoxication of any person due to the consumption of such alcohol beverages, except when:

> (I) It is proven that the social host knowingly served any alcohol beverage to the person who was under the age of twenty-one years or knowingly provided the person under the age of twenty-one a place to consume an alcoholic beverage; and
>
> (II) The civil action is commenced within one year after the service.

(b) No civil action may be brought pursuant to this subsection (4) by the person to whom the alcohol beverage was served or by his or her estate, legal guardian, or

dependent.

(Emphasis added). Thus, by statute, Colorado has abolished common law dram shop liability and limited recovery to third parties injured due to the sale of alcohol to a person under 21-years old who actually consumes the alcohol. *See Milton v. Danimaxx of Colorado, Inc.*, 530 P.3d 421 (Colo. Ct. App. 2023) (finding no liability under Colorado's Dram Shop Act for a store that sold alcohol to an obviously drunk person who killed two people in a wreck but before the intoxicated person could open or consume the alcohol she purchased from defendant).

Unlike Colorado, South Carolina does not have a Dram Shop Statute. Furthermore, under South Carolina law, vendors have first-party liability for sales to minors, *Whitlaw v. Kroger Co.*, 306 S.C. 51, 54-55, 410 S.E.2d 251, 253 (1991) ("the [beverage control] statutes in this case are designed *to prevent harm to the minor who purchased the alcohol* and to members of the public harmed by the minor's consumption of that alcohol"), and social hosts have first-party liability for providing alcohol to underaged persons (*i.e.*, persons under 21 years old). *Marcum v. Bowden*, 372 S.C. 452, 643 S.E.2d 85 (2007). The Colorado Dram Shop Act, therefore, also provides no guidance to the issues before this Court.

Respondents cite to *Gregg v. Univ. of Delaware*, No. 88C-JN-79, 1992 WL 1364261 (De. Super. Ct. 1992) for the rule "Delaware does not recognize a cause of action against a commercial supplier of alcohol to an underage person for resulting injury." (Respondents' Brief p. 11, n. 11). *Gregg*, however, is distinct from this case in very meaningful ways.

First, *Gregg* is an unpublished opinion from the Superior Court of Delaware, which is the trial court and not binding authority. Second, although Delaware Supreme Court Rules permit citation to unpublished opinions, Del. Sup. Ct. R. 14(g)(ii), the Court allows publication to

ensure consistency but those opinions are not binding precedent; even so, *Gregg* has been cited nowhere in the 34 years since its promulgation. Third, *Gregg* involved a fraternity that provided alcohol to an 18-year old who was visiting and who fell from a dorm window; the trial court cited the language Respondents included and added, "[t]he same rule doubtless applies to non-commercial suppliers"; South Carolina follows a different rule as set forth in *Marcum*. Fourth, *Gregg* cited to cases in which the Supreme Court of Delaware noted that there is no statutory or common law dram shop claims available in Delaware; of course, South Carolina fully recognizes common law dram shop liability grounded in violations of the alcoholic beverage statutes as well as in negligence. *Compare Barnes v. Hooper*, 341 A.3d 1006 (Del. 2025) (noting Delaware has "dram shop immunity" for businesses and social hosts who sell or serve alcohol; the Court has long left it to the legislature to adopt dram shop liability, which the legislature has not done). *Gregg* offers this Court no useful guidance.

Respondents cite Ga. Code Ann. § 51-1-40 as "declining to recognize first-party liability for alcohol purchases." (Resp. Br. p. 11, n. 11). This statute is distinct from South Carolina's law in meaningful ways. Georgia's Dram Shop Act declares the common law rule against liability, but then enacts dram shop liability for sales to underage persons the seller knows will be driving. OCGA § 51-1-40. The statute adds, "[n]othing contained in this Code section shall authorize the consumer of any alcoholic beverage to recover from the provider of such alcoholic beverage for injuries or damages suffered by the consumer." OCGA § 51-1-40(b) (final sentence). Of course, South Carolina has no Dram Shop Act or a statutory provision similar to the Georgia statute. Instead, South Carolina recognizes first-party claims for violation of the alcoholic beverage control statutes. *Whitlaw*; *Marcum*. The Georgia statute does not aid this Court in this case.

Respondents next cite *Winters v. Silver Fox Bar*, 797 P.2d 51 (Haw. 1990) with the parenthetical "rejecting an extension of the common law that would allow a minor to bring a first-party claim against a commercial vendor." (Respondents' Brief pp. 11-12, n. 11). *Winters*, however, relied upon a number of cases from other jurisdictions that have been superseded, modified or overruled in the 36 years since the *Winters* opinion.

Even so, contrary to *Winters*, South Carolina permits first-party dram shop recovery for minors. *Whitlaw*; *Marcum*. *See also Busby v. Quail Creek Golf and Country Club*, 885 P.2d 1326, 1330-1331 (Okla. 2023) (Oklahoma Court noted the Hawaiian Court in *Winters* refused to find a commercial vendor liable for selling alcohol to a minor who is injured after drinking beer, but added "the majority of states allow a cause of action against a commercial vendor on behalf of a minor who voluntarily drinks to the point of intoxication and is thereby injured. Most of these jurisdictions do not distinguish between injured minor passengers and minors who purchase alcohol or who are served alcohol and later injure themselves"; Oklahoma's Supreme Court held "We agree with jurisdictions which allow a cause of action against a commercial vendor on behalf of a minor who voluntarily drinks to the point of intoxication and is thereby injured, regardless of whether the minor violated statutes in attempting to purchase or to consume beer."). *Winters* followed the minority rule and is contrary to settled South Carolina law. It does not advance Respondents' position.

Respondents cite Idaho Code Ann. § 23-808(4)(a) with the parenthetical "prohibiting first-party claims." (Respondents' Brief p. 12, n. 11). Idaho, unlike South Carolina, enacted a comprehensive Dram Shop Act which "provides the exclusive remedy for a plaintiff injured by an intoxicated person against the vendor of the alcoholic beverages." *Jones v. Lynn*, 498 P.3d

1174, 1186 (Idaho 2021). The statute's stated purpose was "to limit dram shop and social host liability." *Id.* The Idaho Dram Shop Act provides expressly "[n]o claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or representatives." Idaho Code Ann. § 23-808(4)(a).

South Carolina has no Dram Shop Act, much less a provision like the one found in Idaho's statute. Furthermore, South Carolina recognizes first-party claims may be brought by minors who are sold alcohol or underage persons who are provided alcohol. *Whitlaw*; *Marcum*. This statute, therefore, is distinct from South Carolina law in very meaningful ways.

Respondents give a "same" cite to 235 Ill. Comp. Stat. Ann. 5/6-21(a) as "prohibiting first-party claims." (Resp. Br. P. 12, n. 11). Like Idaho (but unlike South Carolina), Illinois has a comprehensive Dram Shop Act which provides in part, "[n]othing in this Act shall be construed to confer a cause of action for injuries to the person or property of the intoxicated person himself..." 235 ILCS 5/6-21(a) (West 2022). *See Mitchell v. Michael's Sports Lounge*, 240 N.E.3d 603 (Ill. App. (1st Dist.) 2023) (noting the Illinois legislature created a limited cause of action in enacting the Dramshop Act and that the Act "has no common law counterpart"). Again, South Carolina does not have a statute similar to this one, which would have prevented the claims in *Marcum* and *Whitlaw*. Like the statute in Idaho, this statute does not assist this Court in deciding this matter.

Respondents also give a "same" cite to Iowa Code Ann. § 123.92(1)(a), comparing it to the Idaho statute as "prohibiting first-party claims." (Resp. Br. p. 12, n. 11). Like Idaho and Illinois (and again, unlike South Carolina), Iowa has enacted a comprehensive Dram Shop Act. Iowa Code Ann. § 123.92(rev. 2023). The statute provides "any third party who is not the

intoxicated person who caused the injury at issue" may bring a claim against anyone who sold or served any alcoholic beverage directly to the intoxicated person who was visibly intoxicated at the time of the sale or service. § 123.90(1)(a). The Court has construed the phrases "sold" and "served" not to require direct sales or direct service. *Pangburn v. Rookies, Inc.*, 967 N.W.2d 570 (Iowa Ct. App. 2021). The exclusion of a first-party claim, however, is expressly by statute – no such provision exists in South Carolina. This statute is, therefore, of also no help.

Respondents cite *Mills v. City of Overland Park*, 837 P.2d 370 (Kan. 1992) for the parenthetical "[t]he repeal of the dram shop act coupled with the enactment of laws criminalizing the minor's purchase, possession, and consumption does 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." (Respondents' Brief p. 12, n. 11). *Mills* is meaningfully distinct from this case. In *Mills*, a 19-year old spent the day drinking with his friend at several establishments. At the final establishment a disturbance occurred and the police were summoned. Decedent identified himself and his age. After speaking with staff the police told him he was free to go. He was underdressed for the cold weather but walked off into a field towards an industrial development. He was found in a ditch the next morning and had frozen to death.

Mills' family sued the establishment for allowing him to leave in an incapacitated state. The district court dismissed the case and the family appealed. The Supreme Court of Kansas framed the narrow issue as follows: "The question of the liability of one furnishing intoxicating liquor to a minor for injuries caused by the minor's intoxication has been decided by the Kansas Supreme Court in *Ling v. Jan's Liquors*, 237 Kan. 629, 703 P.2d 731 (1985)." The *Mills* Court adhered to the common law rule expressed in *Ling* against redress for injuries resulting from the

sale of alcohol. The Court also observed that in *Ling*, the Court held that the alcohol statutes were intended to regulate the sale of liquor and were not intended to impose civil liability, and adhered to that determination. The Court discussed the English common law rule at length and concluded that in enacting the criminal provisions of the Kansas alcoholic beverages code, "the legislature did not intend to impose civil liability for violations thereof. If such liability is to be imposed, under some or all circumstances, then we conclude, as we did in *Ling*, that this is a decision to be made by the legislature." *Mills*, at 377.

This holding is at odds with South Carolina jurisprudence in this area, which grounds alcohol liability in the regulatory scheme, including the alcoholic beverage control statutes. *E.g. Hartfield v. Getaway Lounge & Grill*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010) ("Because South Carolina does not have a Dram Shop Act, our civil remedy arises out of criminal statutes"); *Marcum v. Bowden*, 372 S.C. at 459, 643 S.E.2d at 88 (describing *Whitlaw v. Kroger* as holding a vendor who violates the duties under the statute criminalizing the sale of beer or wine to a person under the age of 21 and providing regulatory penalties for the knowing sale to a person under 21 "places a duty on a commercial vendor" and "[a] vendor who violates this duty and sells to a person under 21 *may be liable to the unlawful purchaser*, and to third parties harmed by the purchaser's consumption of the alcohol") (emphasis added). In fact, our Court has described *Marcum v. Bowden* as "altering the common law of social host liability." *State v. Beaty*, 423 S.C. 26, 40, 813 S.E.2d 502, 509 (2018). *Mills*, therefore, provides no help to this Court in resolving this issue.

Respondents cite to Me. Rev. Stat. Ann. Title 28-A, § 2504 as "prohibiting a person who is eighteen or older from bringing a first-party claim against a seller of alcohol." (Resp. Br. P. 12,

n. 11). The Maine statute expressly provides "[e]xcept as provided in subsection 2, any person who suffers damage, as provided in section 2508, may bring an action under this Act, against a server for negligently or recklessly serving liquor to an individual." 28–A M.R.S.A. § 2504(1) (1988). Section 2 provides:

> **2. Persons who may not bring suit.** The following may not bring an action under this Act against a server for negligently serving liquor to an individual:
>
> A. The intoxicated individual if he is at least 18 years of age when served by the server;
>
> B. The estate of the intoxicated individual if the intoxicated individual was at least 18 years of age when served by the server; and
>
> C. Any person asserting claims arising out of the personal injury or death of the intoxicated individual if the intoxicated individual was at least 18 years of age when served by the server.

28-A M.R.S.A. § 2504(2) (1988). Thus, the statute expressly prohibits an underage person over 18 from bringing a first-party claim. South Carolina has no such statutory prohibition.

Even so, Maine also has a statute that places liability for all damages caused by "*reckless* service to a minor." 28-A M.R.S.A § 2507(1) (1988) (emphasis added). That section does not contain a provision similar to the provision found in Section 2504(2) for ordinary negligence. Arguably, then, a first-party claim exists for any underage person when the service to the minor was "reckless." At bottom, South Carolina's statutory scheme is nothing like the Maine Liquor Liability Act (MLLA) and, even so, the MLLA does not prohibit a first-party action for anyone considered a "minor" under the MLLA (*i.e.*, under 21 years of age) for reckless conduct. *Cf. Thibodeau v. Slaney*, 755 A.2d 1051 (Me. 2000) (describing the operation of the MLLA, including specific pleading requirements).

Respondents cite *State ex rel. Joyce v. Hatfield*, 78 A.2d 754 (Md. 1951) for the following: "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.'" (Resp. Br. p. 12, n. 11). *Hatfield*, however, was modified substantially 45 years later by the enactment of § 10-117(b) of the Criminal Law Article of the Maryland Code (2002, 2012 Repl. Vol.). The Maryland Court of Appeals described *Hatfield* and the development of the statutory scheme, and observed:

> * * * At the time of *Hatfield*, there was no law similar to CR § 10–117(b), which prohibits adults from allowing underage persons to drink alcohol on their property. The enactment of CR § 10–117(b) reflects a determination by the General Assembly that more protection of youths from alcohol was needed.

Kiriakos v. Phillips, 139 A.3d 1006, 1022 (Md. Ct. App. 2016). The Court, citing to cases from other states including *Marcum*, noted "[m]any jurisdiction ... agree that underage persons lack full adult capacity to handle alcohol." *Kiriakos*, at 1022. The Court concluded:

> We view CR § 10–117(b) as a substantial development in the law from the days of *Hatfield*. Guided by the statute, we conclude that [decedent minor's] decision to drink did not render the nexus between [the social host's] conduct and his death too remote to preclude [the social host's] conduct, as a matter of law, from being considered a proximate cause of his death. Accordingly, the common law rule in *Hatfield* poses no bar to a claim of social host liability predicated on CR § 10–117(b) for injuries to a minor intoxicated on the adult's property.

Kirakos, at 1024. *Hatfield*, then, is of questionable continued efficacy in light of Maryland's enactment of § 10-117(b) in 1996.

In fact, Maryland's statute specifically provides further:

> (d) A person may not violate subsection (a) or (b) of this section if the violation involves an individual under the age of 21 years who:
>
> (1) the person knew or reasonably should have known would operate a

> motor vehicle after consuming the alcoholic beverage; and
>
> (2) as a result of operating a motor vehicle while under the influence of alcohol or while impaired by alcohol, *causes serious physical injury or death to the individual or another*.

CR § 10-117(d) (emphasis added). Maryland's statute therefore likely provides a first-party claim for anyone under the age of 21 years although the Maryland appellate courts have not decided the issue under the statute. In any event, *Hatfield* does not aid Respondents' arguments.

Respondents cite Minn. Stat. Ann. § 340A.90 subdiv. 1(c) for the following: "An intoxicated person under the age of [twenty-one] years who caused the injury has no right of action under this section." (Resp. Br. p. 12, n. 11). The obvious meaningful distinction is that South Carolina has no statute similar to the Minnesota statute, which expressly prohibits a first-party claim for a person under 21 years of age against either a social host or a seller of alcohol. Neither *Whitlaw* nor *Marcum* would have been decided as they were under this statute. This statute does not advance Respondents' argument in this case.

Respondents cite *Snodgras v. Martin & Bayley, Inc.*, 204 S.W.2d 638 (Mo. 2006) as "concluding state law prohibits a cause of action by a minor against a commercial vendor that sells alcohol for off-premises consumption." (Resp. Br. p. 12, n. 11). The Court should not be persuaded by this cite.

Unlike South Carolina, Missouri has a Dram Shop Act found in § 537.053 of Missouri Code. The statute itself notes Missouri repealed an earlier Dram Shop Act in 1934 and since that time "it has been and continues to be the policy of this state to follow the common law of England ... to prohibit dram shop liability and to follow the common law rule that furnishing alcoholic beverages is not the proximate cause of injuries inflicted by intoxicated persons." Mo.

Ann. Stat. § 537.053.(1). Notwithstanding the adherence to the common law rule, the statute then creates a cause of action for on-premises sales to obviously intoxicated person, and expressly permits a first-party claim for anyone under the age of 21 years. Mo. Ann. Stat. § 537.053.(2) and (4) ("Nothing in this section shall be interpreted to provide a right of recovery to a person who suffers injury or death proximately caused by the person's voluntary intoxication *unless the person is under the age of twenty-one years*. No person over the age of twenty-one years or their dependents, personal representative, and heirs may assert a claim for damages for personal injury or death against a seller of intoxicating liquor by the drink for consumption on the premises arising out of the person's voluntary intoxication.")(emphasis added). *Snodgras*, therefore, is meaningfully distinct from this case.

Respondents cite Nev. Rev. Stat. Ann. § 41.1305(3) as "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." (Resp. Br. p. 12, n. 11). This is a very simplistic reading of Nevada's Dram Shop Act. Section 41.1305 provides:

> 1. A person who serves, sells or otherwise furnishes an alcoholic beverage to another person who is 21 years of age or older is not liable in a civil action for any damages caused by the person to whom the alcoholic beverage was served, sold or furnished as a result of the consumption of the alcoholic beverage.
>
> 2. Except as otherwise provided in this section, a person who:
>
> > (a) Knowingly serves, sells or otherwise furnishes an alcoholic beverage to an underage person; or
> >
> > (b) Knowingly allows an underage person to consume an alcoholic beverage on premises or in a conveyance belonging to the person or over which the person has control,
>
> is liable in a civil action for any damages caused by the underage person as a

> result of the consumption of the alcoholic beverage.
>
> 3. The liability created pursuant to subsection 2 does not apply to a person who is licensed to serve, sell or furnish alcoholic beverages or to a person who is an employee or agent of such a person for any act or failure to act that occurs during the course of business or employment and any such act or failure to act may not be used to establish proximate cause in a civil action and does not constitute negligence per se.
>
> 4. A person who prevails in an action brought pursuant to subsection 2 may recover the person's actual damages, attorney's fees and costs and any punitive damages that the facts may warrant.
>
> 5. As used in this section, "underage person" means a person who is less than 21 years of age.

NRS § 41.1305 (eff. 2007). The Supreme Court of Nevada has not construed the operation of these sections. It is difficult to square subparts 2, 3 and 4 unless the provisions are viewed as excepting from liability only the person who possesses the license or that person's employee for failing to enforce policies and procedures to prevent the sale. Otherwise, subpart 2 makes no sense. In any event, South Carolina has no such provision. This statute sheds no light on the inquiry before the Court.

Respondents cite to *Rudden v. Bernstein*, 61 A.D.3d 736 (N.Y. App. Div. 2009) as "explaining state law 'does not provide a right of recovery for injuries suffered by intoxicated minors as a result of their own intoxication.'" (Resp. Br. p. 12, n. 11). *Rudden* involved interpretation of New York's Dram Shop Act, which provides:

> Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, ... shall have a right of action against any person who shall, by unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication.

NY Gen. Obl. Law § 11-101(1). New York courts have held "[t]he Dram Shop Act does not

create a cause of action in favor of one injured as a result of his or her own intoxicated condition, and the mere youth of the injured person does not constitute an exception to the voluntary intoxication rule." *Drive New Jersey Ins. Co. v. RT Hospitality Group, LLC*, 240 A.D.3d 105 (N.Y. Sup. Ct. App. Div., 2nd Dep. 2025). South Carolina has no similar statute to the New York Act, which would have prevented liability in *Whitlaw* and *Marcum*. *Rudden*, therefore, is distinct from this case in very meaningful ways.

Respondents cite to three other statutes for limiting first-party claims. The North Carolina statute, N.C. Gen. Stat. § 18B-120(1) (2009), expressly exempts "the underage person" from the definition of "aggrieved party" who is injured by an underage person to whom alcohol is sold. The North Dakota statute expressly provides "[a] claim for relief under this section may not be had on behalf of the intoxicated individual nor on behalf of the intoxicated individual's estate...." N.D.C.C. § 5-01-06.1(3). The Utah statute expressly limits liability to "a third person" or the third person's heir. U.C.A. 1953 § 32B-15-201(1) (eff. 2024). Again, South Carolina has no Dram Shop Act nor any other statute similar to any of these provisions.

Respondents next cite to *Klever v. Canton Sachsenheim, Inc.*, 715 N.E.2d 536 (Ohio 1999) for the rule "in Ohio there is no cause of action against a liquor permit holder by a voluntarily intoxicated person (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." (Resp. Br. p. 12 n. 11). This is a quote from the case syllabus. The Supreme Court of Ohio examined the Ohio Dramshop Act, Ohio R.C. 4399.18, as a limited exception to the common law rule of nonliability and noted the Act codified "preexisting public policy," which declared "an innocent *third party* could recover from a commercial proprietor for injuries caused

by an intoxicated patron under certain circumstances." *Klever*, at 538 (emphasis in original). The Court noted the statutory exception must be narrowly construed because it created a cause of action not previously recognized at common law. The Court concluded the language of the Act prevents "any intoxicated adult patron," including an underage adult, from bringing a claim under the Act because the injured person and the intoxicated person must be two different persons. *Klever*, at 538-539. In dictum, the Court proceeded to rule that public policy of Ohio required the Court to treat a 19-year old the same as someone over the age of 21. However, the Court bottomed its decision on the express language of the Act. Of course, South Carolina has no such statutory language. This case is also of little help.

Respondents cite *Smith v. Harms*, 865 P.2d 486 (Or. Ct. App. 1993) as "declining to permit a first-party claim by an underage purchaser against a commercial vendor." (Resp. Br. p. 12, n. 11). *Harms* was decided under Oregon's alcohol statutes at the time, ORS 471.130 and 471.430, which criminalized a minor's purchase of alcohol. Since plaintiff violated the law by purchasing the beer, the Oregon Court of Appeals thought it inconsistent to permit him to sue.

However, seven years after *Harms* the Supreme Court of Oregon decided *Fulmer v. Timber Inn Restaurant and Lounge, Inc.*, 9 P.3d 710 (2000), in which the Court held that "a plaintiff may bring a common-law negligence action against a person or entity that negligently supplied alcohol to the plaintiff when he or she already was visibly intoxicated and the plaintiff suffered injuries caused by that negligent conduct." *See Bonner v. American Golf Corp. of Cal.*, 558 P.3d 812, 818 (Or. 2024) (describing *Fulmer*). Oregon's legislature reacted to *Fulmer*, enacting ORS 471.565(1), which attempted to preclude a first-party claim by a person who was served while visibly intoxicated and later was injured. On a certified question, the Oregon

Supreme Court held the provision did not violate Oregon's constitutional "right to a remedy" provision so long as the Court construed it not to prevent a first-party claim by a "visibly intoxicated" person who has "lost the sense of reason and volition" since that person would not be "voluntarily" consuming the alcohol. *Bonner*, at 829. Therefore, a limited first-party claim exists even under the modified Oregon Dram Shop Act. At bottom, *Harms* provides no assistance in deciding this case.

Respondents next cite *Mueller v. McMillan Warner Ins. Co.*, 704 N.W.2d 613 (Wis. Ct. App. 2005) as "explaining a principal, or first party, to a transaction who violates the state statute restricting sales to underage persons is exempt from civil liability." (Resp. Br. p. 12, n. 11). *Mueller* was decided under a version of Wisconsin's Dram Shop Act at the time that provided no liability for alcohol sales with exceptions for furnishing to underage persons who then harm third parties. The Supreme Court had interpreted this section to exclude "principals to the transaction" from the definition of "third parties." *Meier v. Champ's Sport Bar & Grill, Inc.*, 623 N.W.2d 94 (Wisc. 2001). The current version of the statute also provides that the immunity "does not apply if the provider knew or should have known that the underage person was under the legal drinking age and if the alcohol beverages provided to the underage person were a substantial factor in causing injury to a 3rd party." Wis. Stat. § 125.035. South Carolina has no such statutory provision. *Mueller* is meaningfully distinct from this case.

Lastly, Respondents cite *White v. HA, Inc.*, 782 P.2d 1125 (Wyo. 1989) as "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.'" (Resp. Br. p. 12, n. 11). The "third-party case" referenced in *White* was *McClellan v. Tottenhoff*, 666 P.2d 408 (Wyo. 1983),

which was superseded by statute by Wyoming's adoption of a Dram Shop Act in 1985. *Daniels v. Carpenter*, 62 P.3d 555, 560 (Wyo. 2003) ("The primary holding of *McClellan* was legislatively abrogated in 1985 with passage of a statute specifically limiting the liability of alcohol providers" who "legally provided alcoholic liquor or malt beverage to any other person"). *White* is therefore of questionable efficacy.

Further, in *White*, the Supreme Court of Wyoming held a tavern keeper had a duty to protect its patrons that arises when there is a disturbance in the bar sufficient to alert the tavern keeper that there is imminent danger of injury to a third party. In that case, one intoxicated patron shot another after they both left the tavern. The case had to do with foreseeability of a criminally violent act. The Court in *White* stated "[e]arlier cases have suggested liability ... when a tavern keeper serves intoxicating liquor to a minor or person obviously intoxicated who later injures a third party either on or off the tavern premises." *White*, at 1128, citing *McClellan*.

As noted above, Wyoming now has a Dram Shop Act which permits claims when the tavern owner violates the alcoholic beverage control title. *See* Wy. St. § 12-8-301 (c) (1986 as amended) ("This section does not affect the liability of the licensee or person if the alcoholic liquor or malt beverage was sold or provided in violation of title 12 of the Wyoming statutes."). The Wyoming Supreme Court later gave as examples "a non-licensee who furnishes alcohol to an underage person (§ 12-6-101(a)), a licensee who furnishes alcohol to a minor after having received notice that the person is a minor (§ 12–5–502), a licensee who furnishes alcohol to a "habitual drunkard" after having received notice that the person is a habitual drunkard (§ 12-5-502), and a licensee who furnishes alcohol to a minor or to an intoxicated person in the drive-in area (§ 12-5-301(a)(v))." *Baessler v. Frier*, 258 P.3d 720, 724 n. 3 (Wy. 2011).

In sum, none of the cases or statutes Respondents provide in Footnote 11 advance, or even inform, the issue before this Court.

B. Authorities in Footnote 12 on pp. 12-13

Respondents next contend "even in the 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." (Resp. Br. pp. 11-12). Once again, Respondents overstate or misstate the statutory provisions or the holdings of those cases. The Court should not be persuaded.

Respondents contend Alaska Stat. Ann. §§ 04.21.020(a)(1) indicates "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." (Resp. Br. p. 12, n. 12). This description appears to provide immunity just from the presentation of a laminated license. However, the statute actually provides for liability for sale to someone under 21 years of age "unless the licensee, agent, or employee *secures in good faith* from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates the person is 21 years of age or older...." AS 04.21.020 (a)(1)(emphasis added). Thus, the seller must procure the document "in good faith." Section 04-21-050(a) permits the licensee to obtain a signed form prepared by the "board," meaning the regulatory authority. Subpart (b) provides "Except as provided in AS 04.16.160 (which prohibits certain persons who are 21 or older from purchasing alcoholic beverages under a court order), a *valid* driver's license or a *valid* identification card is acceptable as proof of age or that the person is not restricted from purchasing alcoholic beverages when used

for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold if the license or identification card is made of or encased in plastic and contains a photograph of the licensee or card holder and a statement of age or date of birth." AS 04-21-050(b) (emphasis added). That is, the driver's license encased in plastic and containing the photo and birth date must be "valid" for section 04-21.020(a)(1) to operate – the statute does not protect a seller who honors a fake ID, especially one that is obviously fake like the ID in this case, or a seller who does not act in good faith.

Respondents cite to *Strang v. Cabrol*, 691 P.2d 1013 (Cal. 1984) as "indicating civil liability for personal injuries can only be predicated upon the sale of alcohol to a minor who is obviously intoxicated." (Resp. Br. p. 12, n. 12). The Court in *Strang* construed a prior version of California's Dram Shop Code found in both CA Civ. Code § 1714 and § 25602.1. Section 25602 governed "sales to drunkard or intoxicated person" and § 25602.1 governed sales to intoxicated minors. Effective January 1, 2012, Section 1714, the legislature restated the common law rule, then enacted the following exceptions:

> (1) Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.
>
> (2) A claim under this subdivision may be brought by, or on behalf of, the person under 21 years of age or by a person who was harmed by the person under 21 years of age.

CA Civ. Code § 1714(d) (2012). These provisions did not exist in 1984 when *Strang* was decided.

The Court in *Strang* proceeded to construe prior versions of these provisions together to hold the legislature intended to "supersede evolving common law negligence principles which would otherwise permit a finding of liability under the circumstances here pled." *Strang* at 1016. Importantly, South Carolina has no Dram Shop Act nor any statutory provision similar to the California scheme.

These are but a few examples of how the cases and statutes Respondents cite in Footnote 12 are meaningfully distinct. The remaining cites suffer from the same shortcoming - none are persuasive of Respondents' arguments nor do they advance this Court's review. *See* Fla. Stat. Ann. § 562.11(c) (Florida's Dram Shop Act which requires the licensee selling to a person who presents a fake ID to act in good faith and on appearances such that an ordinarily prudent person would believe the purchaser to be of legal age and the licensee "carefully checked" the form of identification presented; South Carolina has no such statute); *Pelzek v. American Legion*, 463 N.W.2d 321 (Neb. 1990) (noting Nebraska repealed and abolished Dram Shop liability laws in 1935 and therefore the common law immunity applies; Court declined to adopt a common law cause of action for violating the alcohol control statutes; Oklahoma declined to follow *Pelzek* in *Busby v. Quail Creek Golf and Country Club*, 885 P.2d 1326, 1330 and n. 14 (Ok. 1994), observing "the majority of states allow a cause of action against a commercial vendor on behalf of a minor who voluntarily drinks to the point of intoxication and is thereby injured."); *Robinson v. Matt Mary Moran, Inc.*, 525 S.E.2d 559 (Va. 2000) (Court adhered to the English common law rule of no liability for a vendor of alcohol do to a lack of proximate cause; South Carolina's rule is contra under *Whitlaw* and its progeny, including *Marcum*); Wisc. Stat. Ann. § 125.035 (noting immunity under Wisconsin's Dram Shop Act does not apply "if the provider knew or should

have known that the underage person was under the legal drinking age," and setting forth four (4) elements for obtaining immunity, including a requirement that the beverages are provided "in good faith reliance on the underage person's representation" and "the appearance of the underage person is such that an ordinary and prudent person would believe that he or she had attained the legal drinking age"; South Carolina has no such statutory provision); Ariz. Stat. § 4-241 (2023) (Arizona's Dram Shop Act lists four (4) things a licensee must do to obtain immunity, including "[e]xamine the identification to determine that the identification reasonably appears to be a valid, unaltered identification that has not been defaced" and maintain the records or use a biometric identity verification device; South Carolina has no such statutory provision); Conn. Gen. Stat. Ann. § 30-86 (b)(3)(2024) (the cited language applies only to the subsection resulting in penalties; the remainder of the statute requires use of scanning technology to verify the validity of the identification the purchaser presented at the time of the sale, see subsections (c) and (d)); *Millenium Club, Inc. v. Avila*, 809 N.E.2d 906, 913-914 (Ind. 2004) (the narrow issue was whether a small claims court erred in dismissing a nightclub's claims against minors for fraud where the minors gained entry using fake IDs causing the club to be fined; Court noted prior case holding "it to be the public policy of this state that an individual who has been convicted of a crime should be precluded from imposing liability upon others, through a civil action, for the results of his or her own criminal conduct" but adding "we also recognized an important limitation to the public policy bar 'when it is unclear whether the plaintiff is in fact legally responsible for the criminal act in question'"); Ky. Rev. Stat. Ann. § 244.080 (permitting the defense in a criminal prosecution that the minor used a fake ID and the minor's appearance "indicated strongly" that the minor was of legal age; Kentucky, however, permits a common law

dram shop action based upon violation of the statute without regard to the fake ID provision, *see Priest v. Black Cat, Inc.*, 74 S.W.3d 769 (Ky. Ct. App. 2001); Mich. Comp. L. Ann. § 436.1701(8) (2021) (providing a defense to criminal prosecution where the purchaser provided "bona fide documentary evidence of the age and identity of that person"; Michigan, however, has a Dram Shop Act which permits the defense only if the identification card appears to be genuine, Mich. Comp. L. Ann. § 436.1801 (6) (2019); South Carolina has no such statutory provisions); Miss. Code Ann. § 67-3-69 (Rev. 2004) (the fake ID defense is for criminal prosecution; Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73 (Rev. 2004) codifies the English common law immunity but then creates dram shop liability for sales where a person is visibly intoxicated or where the sale was not lawful to a person who may lawfully purchase intoxicating beverages; South Carolina has no similar statutes); Mont. Code Ann. § 16-3-301 (this statute provides a defense to criminal prosecution; the enactment and development of Montana's Dram Shop Act is set forth in *Babcock v. Casey's Mgmt., LLC*, 494 P.3d 322 (2021) with no mention of a fake ID defense to civil liability; even so, South Carolina no similar statutory provisions); N.J Stat. Ann § 33:1-77 (providing a defense to criminal prosecution for a fake ID; New Jersey has a Dram Shop Act, N.J.St. § 2A:22A-5 (b) (setting forth a negligence standard without reference to any fake ID defense)); S.D. Cod. Laws § 35-11-1 (codifying the English common law rule of absolute immunity for alcohol sales; South Dakota does not permit dram shop liability at all; South Carolina does not have a similar statute nor does South Carolina provide complete immunity from dram shop liability).

In sum, like Footnote 11, none of the cases or statutes Respondents provide in Footnote 12 advance, or even inform, the issue before this Court.

Conclusion

This Court should find the string-cited authorities with cryptic parenthetical explanations in footnotes 11 and 12 of Respondents' Brief are not relevant or persuasive to the issue before the Court. For the reasons stated in this Brief and Appellants' Opening Brief this Court should hold South Carolina recognizes a first-party cause of action for underage persons between the ages of 18 and 21 who are served or sold alcoholic beverages in violation of the beverage control statutes. The Court should reverse the circuit court's order and remand the matter for further proceedings.

Respectfully submitted,

/s/ John S. Nichols
John S. Nichols, (SC Bar No. 4210)
john@bluesteinattorneys.com
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599

Mark B. Tinsley (SC Bar No. 15597)
mark@goodingandgooding.com
H. Woodrow Gooding (S.C. Bar No. 2180)
woody@goodingandgooding.com
Gooding and Gooding, PA
P.O. Box 1000
Allendale, SC 29810
(803) 587-7676

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Attorneys for Appellants