THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Vernon F. Dunbar, Circuit Court Judge

Appellate Case No. 2026-001065

Roger Wayne Lynch, …….. Appellant,

v.

Angela West Einstein, …… Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether contrasting evidence on site conditions, Einstein's driving choices, and Mr. Lynch's conduct are material in determining the parties' relative levels of fault for a pedestrian-versus-motorist collision.

2. Whether the circuit court violated established summary judgment principles by concluding Mr. Lynch bore all fault for the collision and Einstein bore none despite evidence that Einstein violated South Carolina traffic laws and Mr. Lynch suffered a medical emergency.

3. Whether the circuit court erred by equating Mr. Lynch's claims with the "rare case" where comparative fault may be resolved on a summary judgment motion.

4. Whether a reasonable jury could conclude Einstein's statutory violations for speeding and illegal driving maneuvers showed the recklessness required to support a punitive damages award.

STATEMENT OF THE CASE

Appellant Roger Wayne Lynch commenced this action by filing a Summons and Complaint on July 5, 2022, seeking compensatory and punitive damages for injuries he suffered when struck by Respondent Angela West Einstein's vehicle on December 16, 2021. (Compl.). Einstein answered on August 5, 2022, denying Mr. Lynch's claims for relief and asserting affirmative defenses including comparative negligence. (Answer). Einstein first moved for summary judgment on January 29, 2024, arguing Mr. Lynch could not prove Einstein breached a legal duty. (Def.'s First Mot. for Summ. J.). Following a hearing, Judge G. D. Morgan, Jr. granted the motion. (Form 4 order, entered Mar. 18, 2024; Formal order, entered Apr. 3, 2024). Mr. Lynch filed a motion to alter or amend judgment on April 9, 2024, and the circuit court vacated its summary judgment order on April 29, 2024. (Pla. Mot. to Alter or Amend J.; Form 4 order, entered Apr. 29, 2024).

Einstein filed a second summary judgment motion on May 23, 2024, which Judge Perry H. Gravely denied on August 6, 2024. (Order, entered Aug. 6, 2024) ("the Court finds it appropriate to allow the Plaintiff further opportunity to pursue [] additional discovery before ruling on this Motion for Summary judgment"). Einstein's third summary judgment motion—the operative one

for this appeal—was filed on May 30, 2025, and heard by Judge Vernon F. Dunbar on January 12, 2026. Judge Dunbar granted the motion, first outlining his findings and conclusions in "Order Instructions" entered on March 6, 2026, with directions for Einstein's counsel to draft a formal order. (Order Instructions, entered Mar. 6, 2026). A twenty-five-page formal order was entered by Judge Dunbar on March 24, 2026, finding in part that no reasonable jury could find Einstein's alleged misconduct was equal to or greater than the wrongdoing Einstein attributed to Mr. Lynch. (Formal Order, entered Mar. 24, 2026).

Mr. Lynch moved to alter or amend that judgment on April 3, 2026, which the circuit court denied on April 6, 2026. (Form 4 order, entered Apr. 6, 2026). Mr. Lynch timely noticed his appeal on April 30, 2026. (Notice of Appeal).

STATEMENT OF THE FACTS

Einstein struck Mr. Lynch (a pedestrian) with her vehicle as she drove along Wade Hampton Blvd. in Greenville, South Carolina, shortly after 8 p.m. on December 16, 2021. (Compl. ¶¶ 8-9; Answer ¶¶ 8-9). Mr. Lynch's injuries from the collision were severe enough to require the amputation of his right leg. (Exh. 24—Injury Photos). Seven months passed between the collision and the filing of this lawsuit. Since then, Mr. Lynch and Einstein have presented competing testimony, conflicting witness statements, and contradictory evidence on nearly every fact material to the collision.

Those disputes concern the lighting conditions at the scene, Mr. Lynch's visibility in the roadway, Einstein's speed and lane movements immediately before impact, whether Einstein braked before the collision, and how Mr. Lynch came to be in the roadway. The evidence on these issues comes from multiple sources, including deposition testimony, eyewitness statements, police materials, body-camera footage, and a post-collision investigation conducted on Einstein's behalf.

The collision site was illuminated by interior and exterior lights from adjacent businesses (IHOP and Asada Restaurant), as well as the headlights of the vehicles driven by Einstein and Lemuel Gaines, an eyewitness traveling parallel to Einstein on her left. (Exh. 5—A. Einstein Dep. 63-64; Exh. 6—R. Hamilton Dep. 77-79; Exh. 7—Still Image from Body Cam Footage). However, the nearest street light (which was beyond the collision site) was inoperable, and Einstein offers the investigating police officer's body cam footage to suggest the scene and Mr. Lynch were in the dark. (Exh. 8—Hamilton Body Cam Video). Gaines reported that he observed Mr. Lynch before impact. In his written statement, Gaines stated that he "saw clearly" that Mr. Lynch was in the roadway. (Gaines Statement). Gaines told police he saw Mr. Lynch crossing the road as Mr. Lynch "fell" and was "lying in the road," and Einstein acknowledges running over his legs. (Gaines Statement; A. Einstein Dep.). The parties agree Mr. Lynch had not taken a dose of his medication in the 36 hours preceding the collision but disagree whether Mr. Lynch had eaten a meal on the collision date. (R. Lynch Dep. 32, 57).

The parties are just as divided on their view of each other's conduct before and during the collision. There is no dispute Mr. Lynch was struck in Einstein's lane of travel, i.e. the far right lane of Wade Hampton Blvd., while suffering from hypoglycemia (low blood sugar). Mr. Lynch is a long-term diabetic who uses medication to control his blood sugar. (R. Lynch Dep. 32). There is no evidence refuting Mr. Lynch's testimony that he was walking to his mother's home to retrieve his recently-arrived mail-order diabetes medication when Einstein struck him. (R. Lynch Dep. 30, 122).

Mr. Lynch's hospital blood tests drawn a short time later confirmed his blood sugar was low and that he had recently consumed alcohol. (Exh. 12—Prisma Labs). However, the only toxicology expert to testify in this litigation described Mr. Lynch's blood alcohol level as relatively

low for a pedestrian and concluded his alcohol consumption does not explain how he came to fall into the roadway. (Exh. 10—D. Eagerton Rpt. at 2).

On the other side of the collision, Einstein describes the incident as unavoidable and claims Gaines's statement to police supports her version of events. (Gaines Statement). Einstein testified she was driving below the speed limit and first saw Mr. Lynch when he was only a few feet in front of her vehicle. (A. Einstein Dep. 48, 49, 73). According to Einstein's deposition, she immediately braked, swerved, and managed to avoid an even greater tragedy by striking only Mr. Lynch's lower body. (A. Einstein Dep. 84). Yet, Einstein's descriptions of the collision have not been entirely consistent.

In the months following the collision, a private insurance-related investigation was conducted by "PURE Specialty Risk Management, LLC" ("PURE") after consultation with Einstein, who was a PURE insured/member. (Exh. 9—PURE File). Einstein told the PURE representative that, despite the 45 miles-per-hour posted speed limit, she "sped up to about 50 mph" shortly before the collision. (PURE File at 3). She intended to make a left turn farther ahead on Wade Hampton Blvd. and therefore needed to move from the far right lane to the far left lane. *Id*. Because Gaines's vehicle was traveling directly to her left, Einstein increased her speed to get ahead of Gaines before moving across the adjacent lanes. *Id*. At that moment, Einstein said she observed Mr. Lynch in the roadway ahead of her. *Id.* Einstein also told the PURE representative that "[s]he did not slam on brakes" before the collision. *Id.*

Throughout a complicated and contentious discovery period, Einstein filed a series of summary judgment motions asking the circuit court to find Mr. Lynch failed to offer evidence she was at fault or at least that her fault could reasonably be found to be as much as his. (Def.'s Mot. for Summ. J.). The circuit court granted Einstein's third motion, concluding as a matter of law

Einstein encountered an unavoidable collision on a dimly lit road for which Mr. Lynch was entirely or mostly responsible. (Order Instructions; Formal Order). Mr. Lynch moved for reconsideration, arguing the circuit court failed to view the contested evidence in his favor, drew factual and legal conclusions at odds with the record, and ignored key documents including Einstein's admissions to the PURE representative which were omitted entirely from the circuit court's analysis. (Pla. Mot. to Alter or Amend J.). The circuit court denied that motion. (Form 4 Order). This appeal followed.

STANDARD OF REVIEW

To grant a motion for summary judgment, the circuit court must find that there is no genuine issue as to any material fact. Rule 56(c), SCRCP. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). An appellate court "applies the same standard used by the [circuit] court" when reviewing a summary judgment order. *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011).

ARGUMENT

This case is about two very different stories of how Mr. Lynch lost his leg and the way in which South Carolina courts parse facts when addressing a summary judgment motion. A summary judgment ruling generally flows out of a three-step process. A trial court (1) reviews the record for

factual disputes; (2) assembles the version of those disputed facts most favoring the non-movant; and (3) consults governing substantive law to see if that version could prevail at trial. The circuit court's process here was flawed at every step. The circuit court first failed to identify key factual disputes, leading off its order by incorrectly asserting "[t]he basic facts . . . are not significantly in dispute." (Formal Order at 1). As a result, the story of the Lynch-Einstein collision of December 2021 the circuit court tells was assembled all wrong. Einstein's statutory obligations were barely referenced, crucial evidence in which Einstein made admissions in Mr. Lynch's favor were ignored entirely, and the circuit court even expressly delved into "credib[ility]" determinations. (Order Instructions at 3 ¶ 5). It was from this flawed factual foundation that the circuit court erroneously counted Mr. Lynch's claims among the rare cases where a vehicle collision comparative fault dispute may be taken away from a jury. (Formal Order at 16-17).

This Court has confronted this error before. In *Abdelgheny v. Moody*, it reversed summary judgment in a pedestrian-versus-motorist collision case because the circuit court resolved competing inferences Rule 56 reserves for the jury. 432 S.C. 346, 351, 852 S.E.2d 225 (Ct. App. 2020). *Abdelgheny* reminded circuit courts that, even if a trial judge believes a pedestrian bears greater fault, summary judgment is improper when entering it requires choosing one view of disputed evidence over another. *Id*. The time has come for the Court to reissue that reminder.

1. The parties offered directly contrasting evidence on the essential facts for assessing fault for the collision.

By the time the parties briefed and argued Einstein's third summary judgment motion, no definitive answer had emerged on any of the key facts determining how much legal responsibility each bore for the ultimate outcome. Physical conditions at the collision site, the quality of Einstein's driving, and the character of Mr. Lynch's conduct all remained disputed by various

combinations of the parties' testimony, witness statements, and post-collision investigation records. Accordingly, the circuit court erred in entering judgment for Einstein.

Einstein bore the initial burden associated with her motion for summary judgment. She had to "demonstrate[e] the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). A factual dispute is "material" when its resolution in the non-movant's favor would be sufficient to "constitute a legal defense" or to "affect the result of the action." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 388, 701 S.E.2d 776, 779 (quoting *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 179, 375 S.E.2d 331, 332 (Ct. App. 1988)). Meeting that burden required Einstein show "an absence of evidence to support" Mr. Lynch's position on each of these issues. *Id.*

This is far from the first case to address comparative fault for a pedestrian-versus-motorist collision and, as discussed in more detail below, precedent shows the outcome-determinative facts largely fall into three categories. Independent of the actors' behavior, a factfinder must consider the collision scene itself. Past cases assessed liability only after remarking on the roadway's rural/urban character, weather conditions, and lighting adequacy because all of these factor into what a motorist could reasonably be expected to see and whether a pedestrian could reasonably expect to be seen. *Abdelgheny*, 432 S.C. at 351, 852 S.E.2d at 228 (finding jury questions on motorist liability in collision on rainy state highway); *see also Price v. Lowman*, 373 F.2d 390 (4th Cir. 1967) (applying South Carolina law) (reversing directed verdict to motorist after finding genuine dispute on headlight usage). From there, a jury would have to evaluate the motorist's driving choices including her speed along with the existence and reasonableness of any efforts to avoid a collision. *Cooper by Cooper v. Cnty. of Florence*, 306 S.C. 408, 412 S.E.2d 417 (1991)

(reversing directed verdict to motorist and concluding jury must decide whether she violated motor vehicle statutes). Finally, turning to the other side of the collision, jurors must weigh evidence concerning the pedestrian's conduct including his location when he was struck and how he came to be there. *Abdelgheny*, 432 S.C. at 351, 852 S.E.2d at 228.

There is work for a jury to do on all three categories in this case. The record evidence varies substantially on how the scene appeared on the night of the collision. Einstein's circuit court briefing argued that, because one nearby streetlight was inoperable, this section of Wade Hampton Blvd. was "not well-lit." (Def. Mem. in Supp. of Mot. for Summ. J. at 1). However, that is not how she characterized the scene in her deposition. Einstein's sworn testimony admitted two adjacent businesses (IHOP and Asada Restaurant) had functioning interior and exterior lights at the time of the collision that were "extremely bright." (A. Einstein Dep. 61). Einstein's current argument is also contradicted by the results of a post-incident investigation. Following the collision, the Einsteins notified PURE which dispatched an investigator for a site visit. The PURE investigator concluded the relevant portion of Wade Hampton Blvd. was a "fairly well-lighted area." (Pure File at 1). Einstein goes on to argue the supposedly poor lighting meant Mr. Lynch could not be seen as she drove toward him. (Def. Mem. in Supp. of Mot. for Summ. J. at 3). Einstein draws this conclusion from what she describes as "an uncontradicted statement" of Mr. Gaines, the driver of the vehicle traveling parallel to her when the collision occurred. (Def. Mem. in Supp. of Mot. for Summ. J. at 14). Yet, that assertion does not accurately capture what Mr. Gaines actually reported. In fact, his official statement to police was that "I ***saw clearly*** as I approached it was a man" in the roadway. (Gaines Statement) (emphasis added).

Questions also abound on the reasonableness of Einstein's driving choices. Einstein attempts to take speed off the table entirely, arguing she was "traveling significantly less than the

posted speed limit" (45 miles-per-hour) when she hit Mr. Lynch. (Def. Mem. in Supp. of Mot. for Summ. J. at 2). Einstein cites only her deposition for this proposition. *Id.* Again, however, what she claimed to pursue summary judgment is not what she previously said when the matter was under investigation. When the PURE investigator interviewed her, Einstein admitted she "sped up to about 50 mph" shortly before the collision and, though she claims to have reduced speed before impact, even then she was still speeding. (PURE File at 3) (claiming she "dropped back down to 48 mph").

Einstein's circuit court briefing also offers no way to explain away the reason Einstein was speeding. She had been driving along Wade Hampton Blvd. for approximately one mile, flanked on her left the entire time by Mr. Gaines's vehicle. Recognizing she needed to make a left turn ahead, Einstein had a choice to make. She could slow down and fall in line behind Mr. Gaines's vehicle or speed up, outpace Mr. Gaines, and make her lane change in front of him. She admits choosing the second option and violated South Carolina traffic laws to do so.

> [Einstein] was in the far right lane of 3 on Wade Hamptom [sic] Blvd and she advised that there was another Range Rover in the middle lane and [Einstein] was going to want to move over to the far left eventually up ahead. She was travelling approx 45 mph in a 45 mph zone and sped up to about 50 mph to try to get ahead of the other veh[icle] to her left and then realized this other veh[icle] was going a bit too fast so she dropped back down to 48 mph.

(PURE File at 3). It is not even clear whether Einstein braked in an effort to avoid the collision. Again, she argued to the circuit court that she did but told the PURE investigator a different story. (Def. Mem. in Supp. of Mot. for Summ. J. at 2); (PURE File at 3) (Einstein "**did not slam on brakes** as she worried . . . she would skid and pin [Mr. Lynch] under the car) (emphasis added).

Finally, the record presents very different accounts of Mr. Lynch's conduct preceding the collision. The parties agree Mr. Lynch suffers from diabetes for which he takes prescription medication, but the record evidence disputes Einstein's claim that Mr. Lynch was "reckless" and

"neglecting his diabetes." (Def. Mem. in Supp. of Mot. for Summ. J. at 10, 12). Einstein claims Mr. Lynch's low blood sugar was the product of him not eating "at all" on the collision date and argues Mr. Lynch's toxicology expert (Dr. David Eagerton) supports that claim. (Def. Mem. in Supp. of Mot. for Summ. J. at 10) (citing D. Eagerton Dep. 53, 61). However, Mr. Lynch testified that he had eaten earlier on the incident date. (R. Lynch Dep. 57).

Einstein then asked the circuit court to find as a matter of law that Mr. Lynch knew his low blood sugar (hypoglycemia) was severe at the time of the collision, that it could cause him to fall, and that he ignored this risk. (Def. Mem. in Supp. of Mot. for Summ. J. at 12). The evidence contests these propositions. Mr. Lynch admits feeling his blood sugar was low (R. Lynch Dep. 53, 58) but lacked most of the symptoms associated with hypoglycemia. As Dr. Eagerton explained, hypoglycemia is characterized by nervousness, anxiousness, sweating, chills, nausea, confusion, light headedness, sleepiness, incoordination, and impaired vision. (D. Eagerton Rpt. at 1). Mr. Lynch only had *one* of these symptoms. (R. Lynch Dep. 53) (admitting to dry mouth and limitations on vision). There is also evidence contesting Einstein's assertion that Mr. Lynch ignored hypoglycemia symptoms as they emerged. The entire reason Mr. Lynch was at the collision site was because he had taken a city bus to the stop nearest his mother's house where he could retrieve his medication. (R. Lynch Dep. 30). As for Einstein's claim that Mr. Lynch was loitering on a roadside rather than pursuing his medication (Def. Mem. in Supp. of Mot. for Summ. J. at 5), Mr. Lynch testified that he was walking from a nearby bus stop to his mother's residence to retrieve his medication. (R. Lynch Dep. 30, 122).[1]

[1] The same is true for the notion that Mr. Lynch unreasonably failed to take his diabetes medication. Mr. Lynch testified that his last dose of the medication prior to the collision (i.e. the evening of December 16, 2021) was the previous day (i.e. morning of December 15th). (R. Lynch Dep. 32) (he "didn't get to take" medication on collision date). As Mr. Lynch explained, his prescription was refilled on a monthly basis with each new month's shipment being mailed out on the 15th of

Einstein also asked the circuit court to rule Mr. Lynch was 100% responsible for the collision based on "his problem with intoxication." (Def. Mem. in Supp. of Mot. for Summ. J. at 4). But, while the fact of Mr. Lynch's alcohol use on the collision date is not contested, its connection to the collision certainly is. In fact, the only expert to offer an opinion on the matter testified that Mr. Lynch's blood alcohol concentration was "relatively low" at the time of the collision and "would not have resulted in his behavior" at that time. (D. Eagerton Rpt. at 3). Lastly, there are instances in Einstein's argument where she implies Mr. Lynch may have purposefully placed himself in the path of her vehicle. (Def. Mem. in Supp. of Mot. for Summ. J. at 2, 9) (citing R. Cortez Statement). That notion is flatly rejected by a driver eyewitness to the collision. (Gaines Statement) ("I saw clearly as I approached that it was a man that ***fell on the road*** . . .") (emphasis added).

In sum, the record presents genuine disputes of fact in at least nine different areas: (1) lighting conditions; (2) Mr. Lynch's visibility in the roadway as Einstein approached; (3) Einstein's speed; (4) Einstein's braking; (5) Einstein's attentiveness; (6) Einstein's maneuvers; (7) Mr. Lynch's perception and response to low blood sugar; (8) the effect of Mr. Lynch's alcohol consumption on his conduct; and (9) the precise manner in which Mr. Lynch came to be in the roadway. All nine relate to essential issues for determining the parties' relative levels of fault for the collision which means the record before the circuit court was filled with "genuine issues" of "material fact" (Rule 56(c), SCRCP), and Einstein failed to meet her initial burden in pursuing summary judgment.

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the month to be received on a later date at his mother's residence. (R. Lynch Dep. 122). Mr. Lynch was walking to his mother's house to retrieve that medication when the collision occurred. (R. Lynch Dep. 31).

2. The circuit court stepped out of its prescribed role to make credibility determinations, weigh competing evidence, and to voice its conclusion on the parties' relative fault.

The circuit court was candid in describing how it chose to resolve Einstein's summary judgment motion. The circuit court developed and stated its "position" on the parties' evidentiary offerings, concluding Mr. Lynch "was overwhelmingly grossly negligent compared to any slight evidence of negligence by" Einstein. (Formal Order at 16 n. 4). The circuit court developed this merits "position" by highlighting evidence it believed supported its conclusion, ignoring evidence that did not, and interpreting other evidence in an Einstein-friendly manner. Since the circuit court's approach strays from the proper judicial role in addressing summary judgment, this Court must reverse.

Under Rule 56, SCRCP, a court considering summary judgment "neither makes factual determinations nor considers the merits of competing testimony." *John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 904 S.E.2d 889 (Ct. App. 2024) (quoting *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)). In practice, this means a court may not weigh conflicting evidence against each other or offer an assessment on any witness's credibility. *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 548 S.E.2d 880, 883 (Ct. App. 2001); *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 513, 450 S.E.2d 624, 628 (Ct. App. 1994) ("It is of course correct that questions of credibility can make summary judgment inappropriate"). Even if the operative facts are not disputed, there can be no summary judgment if the inferences arising from those facts are disputed. *Miller v. City of Camden*, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) ("Summary judgment should be denied if more than one inference can be drawn from the evidence"); *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009). Thus, the circuit court was required to offer Mr. Lynch the benefit of having all "ambiguities, conclusions, and inferences arising from the evidence" construed in his favor.

Chandelle Prop. Owners Ass'n v. Armstrong, 444 S.C. 292, 906 S.E.2d 599 (Ct. App. 2024) (quoting *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992)).

The misapplication of these rules began with the very first factual dispute identified above. The circuit court concluded there was no genuine dispute as to the lighting conditions on Wade Hampton Blvd. the night of the collision. (Order Instructions at 2 ¶ 4) (finding "no genuine issue of material fact" that "the precise location where the accident occurred was not well illuminated"); (Formal Order at 1). This ruling is concerning both in how it was formed and in the evidence cited in support. Despite the bar on weighing evidence, the circuit court reviewed Officer Hamilton's post-collision bodycam video footage, took a view on the relative lighting level it portrayed, and concluded its own review settled the matter. (Order Instructions at 2 ¶ 4).

In so doing, the circuit court stepped directly into a factfinder role. While it was not improper for the circuit court to review that footage, the court offered no explanation for why its interpretation of the contents should definitively decide the issue. Nor did the court explain why its view should prevail over the PURE investigator who actually visited the scene and found it to be a "fairly well-lighted area." (Pure File at 1). The circuit court made the same error later in its order, concluding IHOP and Asada Restaurant's lights "did not illuminate the road" (Order Instructions at 4 ¶ 14) even though Einstein herself agreed those lights were "extremely bright." (A. Einstein Dep. 61). This is precisely the type of unjustified factual determination that warrants the reversal of a summary judgment. *See e.g. Tolan v. Cotton*, 572 U.S. 650, 657-58 (2014) (granting certiorari and reversing summary judgment order where trial court overlooked contrary evidence to conclude shooting incident site was "dimly-lit").

The circuit court also misapplied the summary judgment rule when considering Einstein's driving. Perhaps the most notable part of the circuit court's ruling is how little consideration it gave

to whether Einstein complied with South Carolina's motor vehicle statutes. In a twenty-five-page order, just three sentences reference Einstein's speed. (Formal Order at 3, 11, 20). The court accepted Einstein's deposition testimony and concluded she was "traveling significantly less than the posted speed limit." (Formal Order at 3) (citing A. Einstein Dep. 73:8-16; 81:10-23). The circuit court did not even acknowledge Einstein herself admitted to speeding when speaking to the PURE investigator after the collision. (PURE File at 3). Much later in the order, the court added a sentence declaring it is "unrefuted" Einstein's speed did not exceed 48 miles-per-hour, which is still more than the speed limit. (Formal Order at 11). Yet, Einstein is on record admitting she "sped up to 50." (PURE File at 3). The same disparities pop up in the circuit court's discussion of Einstein's actions immediately before the collision. The circuit court's order expressly concluded Einstein "slammed on her brakes" right before she struck Mr. Lynch (Formal Order at 20), but Einstein is on the record stating the exact opposite. (PURE File at 3) (Einstein "***did not slam on brakes*** . . .") (emphasis added).

The circuit court developed this distorted view of Einstein's driving decisions because it ignored the PURE File entirely. Mr. Lynch opposed Einstein's summary judgment by citing the PURE File *nine* times, screenshotting multiple portions of it directly in his memorandum, and attaching the file in total as an exhibit. *See generally* Pla. Mem. in Opp. to Def.'s Mot. for Summ. J. Yet, the PURE File does not garner a single mention in the circuit court's order. There is no acknowledgment of it as offering a contrary view on these important factual matters and not even an explanation for the omission. Given the PURE File shows Einstein's evolving description of key events and that the circuit court's role was to identify but not decide material factual disputes, the court erred in failing to include the PURE File in its analysis.

The circuit court order's deviation from the summary judgment standards is just as pervasive when addressing Mr. Lynch's actions on the collision date. The first proposition offered to conclude Mr. Lynch bears all fault for the collision is his alcohol consumption. (Formal Order at 12-13). This section of the order violates the principle that a court may not pick-and-choose among the evidence when considering disputed factual matters. The circuit court found Mr. Lynch's drinking was enough to conclude, as a matter of law, that he is barred from recovering for his injuries even though the amount he consumed is unclear. This is so, the circuit court reasoned, because the toxicologist, Dr. Eagerton, concluded Mr. Lynch's blood alcohol concentration was consistent with some level of mental and physical impairment. (Formal Order at 13). But, if the circuit court was going to credit one portion of Dr. Eagerton's opinions, then fairness dictates that the court also acknowledge the rest of them. It was, therefore, inconsistent with the summary judgment standard for the circuit court to note Dr. Eagerton's testimony on the possibility of impairment without also citing Dr. Eagerton's assertions that Mr. Lynch's blood alcohol was at a "relatively low level" and "would not have resulted in his behavior as it was documented" on the collision date. (D. Eagerton Rpt.).

The circuit court's order also draws a series of conclusions on Mr. Lynch's conduct dependent on Einstein-friendly interpretations of ambiguous or disputed evidence. For example, the circuit court found Mr. Lynch "was acting in an erratic manner" prior to the collision—a conclusion supposedly drawn from the witness statement of Roberto Cortez (deceased). (Order Instructions at 2 ¶ 5). The circuit court used the Cortez statement to assert (1) Mr. Lynch was just "lying in the street" when Einstein struck him (Order Instructions at 2 ¶ 5); and (2) had been "jumping in and out of traffic." (Formal Order at 17). However, the Cortez statement totals just three sentences and never says or suggests Mr. Lynch was "lying in the street." (Cortez statement).

Nor does Cortez ever say Mr. Lynch was jumping into traffic. His uncorroborated statement merely places Mr. Lynch at one point in the Asada Restaurant "parking" lot and vaguely says Mr. Lynch was "trying to jump into the cars." *Id*. Whether these were cars in the Asada Restaurant parking lot or elsewhere and what exactly "jump into" meant in Cortez's mind is unclear. What is clear, though, is Cortez's statement cannot establish facts he did not claim, and Mr. Lynch was owed the benefit of all reasonable inferences in his favor when construing this sort of ambiguous evidence. *Byers*, 310 S.C. at 7, 425 S.E.2d at 24. The circuit court also overlooked the implications of the very statement on which it relied. Cortez's account purports to describe Mr. Lynch exiting a vehicle, moving through the Asada Restaurant parking lot, and attempting to interact with passing vehicles before the collision. If Cortez could observe those events, then his statement itself tends to undermine the notion that visibility conditions rendered Mr. Lynch effectively invisible.

Worse still, the circuit court's use of the Cortez statement is not just Einstein-friendly, it is directly contradicted by another eyewitness. The "jumping into" language is used by the circuit court to conclude this case is more like pro-motorist precedents than cases where comparative fault was left to a jury because the former group includes instances where a pedestrian or children on bicycles did in fact jump into the path of an oncoming motorist. (Formal Order at 17-18) (comparing *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000) and *Est. of Haley ex rel. Haley v. Brown*, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006) to *Abdelgheny*). The Cortez statement cannot be used to support the notion that Mr. Lynch jumped into the path of Einstein's vehicle. The Gaines statement simply does not permit it. (Gaines Statement) ("I saw clearly as I approached it was ***a man that fell on the road*** . . .") (emphasis added). In the end, the circuit court concluded there was no "credible" evidence to contest the notion that Mr. Lynch was jumping into traffic and lying in the street. (Order Instructions at 2-3 ¶ 5). Respectfully, Gaines's statement directly refutes

the second notion, and the circuit court had no business evaluating the relative levels of these witnesses' credibility.

The order's evaluation of Mr. Lynch's medical condition is similarly flawed. The circuit court concluded Mr. Lynch showed "willful neglect" of his diabetes. (Formal Order at 6, 13, 14). This too was the type of assessment a summary judgment analysis should not include especially with the competing evidence in this record. The circuit court seemed to base its "willful neglect" finding on two propositions: (1) Mr. Lynch "likely did not eat at all" on the collision date; and (2) he missed doses of his diabetes medication. (Formal Order at 13). Since Mr. Lynch testified he had eaten that day (R. Lynch Dep. 57), the first proposition is genuinely contested. Using the second proposition to find "willful neglect" as a matter of law was also improper. "Willfulness" is limited to an act undertaken "intentionally with the specific intent to do something the law forbids" and requires "bad purpose either to disobey or disregard the law." *Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 83, 370 S.E.2d 872, 874 (1988) (quoting *Black's Law Dictionary* 1434 (5th ed. 1979)). Mr. Lynch's testimony shows he did not have a specific intent or bad purpose to become hypoglycemic. As he explained in his deposition, Mr. Lynch "did not get to take" his dose of diabetes medicine on the collision date. (R. Lynch Dep. 32). His monthly dose had been mailed out to his mother's house the previous day. (R. Lynch Dep. 122) (explaining that monthly refill of prescription medications is mailed out on the 15th of each month). Mr. Lynch was actively pursuing his medication at the time of the collision. (R. Lynch Dep. 30) (describing how he was "going to my mother's house to get my medicine"). The circuit court casting this testimony aside to find "willful neglect" was an impermissible weighing of the evidence. A jury should rule on the reasonableness of Mr. Lynch's conduct.

The result of the circuit court's erroneous application of summary judgment principles was a dramatically skewed view of key events. By the time the circuit court began applying the governing substantive law to this case, the court had already decided Mr. Lynch was the "sole author of his own injuries" (Formal Order at 15) and there was "no evidence at all to support any claim of negligence by Ms. Einstein." (Formal Order at 12). However, neither conclusionwas properly drawn when considering the evidentiary record in full and construing the evidence in the light most favorable to Mr. Lynch. A reasonable jury need only credit Einstein's own words to find she was speeding and violated South Carolina statutory law by attempting to outpace Gaines's vehicle rather than slowing down and falling in line behind him. A jury could also reasonably conclude Mr. Lynch fell onto the well-illuminated stretch of Wade Hampton Blvd. due to a sudden medical emergency he was actively and reasonably attempting to avoid or mitigate by walking to his mother's house to retrieve his medication. This record warrants a jury weighing the parties' relative fault, and the circuit court erred in seizing that decision for itself.

3. The circuit court's distorted view of the evidence impaired its application of the governing law.

South Carolina appellate courts have consistently held that, in all but the "rare case," comparative fault is a jury question, especially for a pedestrian-versus-motorist collision because each participant has a legal duty to account for the other's presence on the roadway. The circuit court found this is that rare case because it misconstrued the evidence to find Einstein faultless and Mr. Lynch guilty of "willful" misconduct. The circuit court's misapplication of the summary judgment rules discussed above fatally undermined both the conclusion and the structure of its legal analysis. It is not just that the circuit court incorrectly concluded any reasonable jury must find Mr. Lynch primarily at fault, it is that the court did not properly consider Einstein's responsibilities or her actions.

South Carolina uses a comparative fault system in which "the plaintiff's negligence shall be compared to the combined negligence of all defendants" with the plaintiff's recovery "reduced in proportion to the amount of his or her negligence." *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991). Summary judgment on comparative negligence is uncommon as the quantification and comparison of a plaintiff and defendant's alleged negligence presents a question of fact for the jury to decide. *Creech v. S.C. Wildlife & Marine Resources Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997). In fact, the South Carolina Supreme Court has gone so far as to note its "reticen[ce] to endorse" judgment as a matter of law in comparative negligence cases. *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 588, 784 S.E.2d 670, 675 (2016) (quoting *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002)).

Abdelgheny, this court's most recent and most analogous pedestrian-versus-motorist case, echoed these sentiments while also exposing how the circuit court's analysis went astray here. 432 S.C. at 350, 852 S.E.2d at 227 (citing *Thomasko*). The analysis must fairly consider both the pedestrian and motorist's conduct because they "owe[] each other the duty to keep a proper lookout." *Abdelgheny*, 432 S.C. at 350, 852 S.E.2d at 228. A circuit court that merely considers or counts evidence of the pedestrian's alleged errors has completed only half the task. A pedestrian's negligent act (even if rising to the level of a statutory violation) does not necessarily mean he bears primary fault. *Id.* at 350, 852 S.E.2d at 227-28 (noting pedestrian's crosswalk violation but concluding court "cannot agree that the only inference a reasonable juror could make is [pedestrian's] own negligence accounted for more than fifty percent of the fault").

The circuit court failed to heed this principle. The order's three-page substantive law analysis does not meaningfully address Einstein's legal duties and whether she met them on the collision date. The comparison is striking. The order faults Mr. Lynch for violating a pedestrian's

statutory duty (Formal Order at 18) but does not discuss or even cite any of the statutory duties South Carolina law imposed on Einstein as a motorist. *See* Pla. Mem. in Opp. to Def.'s Mot. for Summ. J. at 32-33) (collecting statutes). Einstein was required to obey posted road signs, limit her speed to meet the road conditions (S.C. Code Ann. § 56-5-1520(A)), and attempt a right-sided pass only when it was safe to do so. S.C. Code Ann. § 56-5-1850; *see also Yaun v. Baldridge*, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964) ("One operating a motor vehicle on a public highway owes an urgent duty to keep a proper lookout and to keep the vehicle under proper control").

Einstein's duties to Mr. Lynch were not eliminated or reduced by the circuit court's belief that Mr. Lynch had performed some negligent act prior to the collision. *Abdelgheny*, 432 S.C. at 350, 852 S.E.2d at 228 (finding pedestrian's crosswalk violation "did not excuse [motorist] from his urgent duty to not only look, but to see"). Einstein's actions also cannot evade review simply because she claims the right-of-way. *Price*, 373 F.2d at 390 (quoting *Johnson v. Finney*, 246 S.C. 366, 143 S.E.2d 722 (1965) (motorist having right-of-way "does not relieve him of the duty to use reasonable care for the safety of such pedestrian, even though the statute requires a pedestrian on the highway to yield the right way to the motorist").[2] In fact, even accepting Einstein's position on Mr. Lynch's sobriety and medical condition (i.e. the opposite of a proper summary judgment approach), Einstein's duty of reasonable care to him as a pedestrian remained. S.C. Code Ann. § 56-5-3230 ("every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian . . . and shall give an audible signal when necessary and shall exercise proper precaution upon

[2] *See also Lester v. McFaddon*, 288 F. Supp. 735, 741 (D.S.C. 1968) ("Motorists using the highways have the duty of exercising ordinary and reasonable care to avoid injuring a pedestrian who is crossing or upon or along a highway, and the fact that a motorist may have the right-of-way over a pedestrian does not relieve him of the duty to use reasonable care for the safety of such pedestrian, even though a statute may require a pedestrian on the highway to yield the right-of-way to the motorist.").

observing any child or any obviously confused, incapacitated or intoxicated person").[3] So, as *Abdelgheny* demonstrates, once a court addresses the evidence on the pedestrian's statutory compliance, it then must do the same for the motorist. 432 S.C. at 350-51, 852 S.E.2d at 228 (surveying the evidence on motorist's possible section 56-5-3230 and 56-5-1520(A) violations even after noting pedestrian's crosswalk error); *King v. Mattox*, 246 S.C. 1, 142 S.E.2d 209 (1965) (even if pedestrian violated statutory duty in where he was walking, jury could still conclude defendant motorist was at fault for violating predecessor to section 56-5-3230). The circuit court did not do that here, and that was an error of law.

Summary judgment would have been denied had the circuit court properly applied *Abdelgheny*. This case shares a fact *Abdelgheny* deemed critical to analyzing whether a defendant motorist met her statutory obligations. Both there and here, a motorist claimed the pedestrian was a few feet away when first seen. (A. Einstein Dep. 49) (stating that Mr. Lynch was "no more than 5 feet" in front of her vehicle); *Abdelgheny*, 432 S.C. at 349, 852 S.E.2d at 227 (motorist claiming pedestrian "was only ten feet in front of his truck"). Viewing the matter in the light most favorable to the pedestrian, *Abdelgheny* found this evidence supported an inference that the motorist violated two duties. The motorist admitting he first saw the pedestrian at only a distance of 10 feet could be construed as "incompatible with a careful lookout." 432 S.C. at 351, 852 S.E.2d at 228. This admission could also make a reasonable juror believe the motorist was out pacing his headlights and, as a result, traveling too fast for conditions in violation of section 56-5-1520(A). *Id.* Because Einstein admits she first saw Mr. Lynch at a distance of "no more than 5 feet," the inferences of

[3] The statute's inclusion of children and "obviously confused, incapacitated or intoxicated" persons reflects a legislative judgment that motorists must account for the possibility that some pedestrians may act unpredictably. S.C. Code Ann. § 56-5-3230. Thus, evidence that Mr. Lynch was impaired does not eliminate Einstein's duties as a motorist.

negligence in *Abdelgheny* apply equally here, especially since Gaines reported observing Mr. Lynch before impact. (Gaines Statement).

Evidence of Einstein's negligence goes well beyond just an inference from when she first saw Mr. Lynch. The collision occurred while Einstein was maneuvering to get around Gaines's vehicle so she could move from the far-right lane of Wade Hampton Blvd. to the far-left lane in preparation for a future turn. (PURE File at 3). Although Gaines's vehicle already occupied the adjacent lane, Einstein chose to increase her speed rather than slow down and fall in behind him. *Id*. According to Einstein's own statement, she accelerated to approximately 50 miles-per-hour before attempting to move across the adjacent lanes. *Id*..

Einstein's speed violated section 56-5-1520(A) by exceeding the posted 45 miles-per-hour limit. A reasonable jury could also conclude Einstein's actions to get around Gaines reduced her ability to observe and react to hazards in the roadway. S.C. Code Ann. § 56-5-1850(b) (providing that no right-sided pass may be attempted absent "conditions permitting such movement in safety"); *Roumillat v. Keller*, 252 S.C. 512, 516, 167 S.E.2d 425, 428 (1969) ("Speed has a direct relation to the ability of a motorist to control his vehicle . . ."). Einstein's choice was more than dangerous—it was unnecessary. Rather than speeding and attempting an illegal pass, Einstein could have easily slowed down, fallen in line behind Gaines, and then safely accessed the far left lane from there. A jury should be the one to evaluate the reasonableness of Einstein's driving choices rather than the circuit court summarily concluding as a matter of law she did nothing wrong. *Cooper*, 306 S.C. at 412, 412 S.E.2d at 419 (reversing directed verdict and finding that whether motorist violated section 56-5-3230 should have been submitted to jury).

The circuit court further erred in finding any misconduct by Einstein was not a proximate cause of the collision. (Formal Order at 16, 18). The order concludes as a matter of law that nothing

Einstein could have done would have led to a different outcome. (Formal Order at 3, 11, 17, 20) (citing Gaines Statement). However, had Einstein chosen the safer option for her driving maneuver, she would have been traveling slower and behind Gaines in the middle lane rather than speeding down the far-right lane attempting an illegal pass.[4] Gaines's statement cannot carry the weight of disproving a link between Einstein's driving choices and the collision. For one thing, his statements are quite ambiguous. Just as much as he says the collision was "unavoidable," Gaines also says that he "saw clearly" as he approached Mr. Lynch. (Gaines Statement). Also, courts are generally disinclined to accept as established fact legal conclusions of witnesses to a disputed event. *See Littrell v. Landmark Builders of S.C., LLC*, No. 2:19-cv-0637-DCN, 2021 WL 795579, at * 5 n. 4 (D.S.C. Mar. 2, 2021) (noting investigating officer's assessment of accident in incident report but concluding "legal opinions of the Charleston Police Department are worth little evidentiary value on summary judgment").

Gaines was also not positioned to definitively determine what Einstein could have avoided. While Gaines could describe what he observed from his own vehicle, he did not know Einstein was attempting to get in front of him to move toward the far left lane. His "unavoidable" conclusion therefore does not account for all of the circumstances surrounding Einstein's conduct. Thus, even if Gaines's "unavoidable" line was admissible[5], it would not be probative on proximate cause.

The circuit court pushed *Abdelgheny* aside, concluding the evidence in this record more closely aligns with older pedestrian-versus-motorist precedents. (Formal Order at 16-17) (citing *Bloom* and *Haley*). But, the decisive facts in *Bloom* and *Haley* are absent here. Both of those cases

[4] Proximate cause, like comparative fault, is almost always a question of fact and rarely a proper basis for summary judgment. *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 222, 826 S.E.2d 285, 295-96 (2019).

[5] *See* Rule 701, SCRE (placing strict limits on lay witness opinion testimony); Rule 702, SCRE (limiting scientific and technical opinions to properly qualified expert witnesses).

involved motorists who were indisputably obeying the speed limit and other traffic safety laws. *Bloom*, 339 S.C. at 421, 529 S.E.2d at 712; *Haley*, 370 S.C. at 243, 634 S.E.2d at 64 (motorist was "in his proper lane and at the posted speed limit"). Einstein's admissions in the PURE File place her speed and driving maneuvers squarely at issue in this case. *See also Littrell*, 2021 WL 795579, at * 5-6 (denying motorist's summary judgment motion while distinguishing *Bloom* and *Haley* because they "contained no evidence of any fault on the part of the defendant").

Moreover, both of those cases involved pedestrians who suddenly jumped into the motorist's path. The plaintiff from *Bloom* "quickly entered" a congested block of Meeting Street in Charleston, appearing suddenly in a rainstorm from between two parked cars. 339 S.C. at 423, 529 S.E.2d at 713. The child decedent from *Haley* jumped his bicycle from a parking lot directly into a passing pickup truck such that, instead of the pickup hitting the child, the child hit the pickup. Einstein cannot point to anything similar here. 370 S.C. at 244, 634 S.E.2d at 64.

The circuit court's order attempts to use the Cortez statement to equate Mr. Lynch with the *Bloom* and *Haley* plaintiffs. (Formal Order at 17). However, as discussed above, Cortez's statement is ambiguous at best for what "jump into cars" means and where this supposed "jumping" took place. Plus, Einstein cannot plausibly argue Mr. Lynch jumped in front of her vehicle the way the plaintiffs jumped in front of the *Bloom* and *Haley* defendants. The driver traveling right next to her says Mr. Lynch "fell" into the road. (Gaines Statement).[6]

Finally, the circuit court erred in its approach to Mr. Lynch's supposed fault for the collision. As discussed above, the circuit court overlooked contrary evidence when it ruled as a

[6] Gaines's statement distinguishes *Bloom* in another way. *Bloom* assigned no fault to the motorist as a matter of law because a nearby driver stated the pedestrian was not visible "at all" prior to the collision. 339 S.C. at 421, 529 S.E.2d at 712. Gaines plainly says otherwise. (Gaines Statement) ("I saw clearly as I approached it was a man that fell on the road . . .").

matter of law that Mr. Lynch's diabetes management was "willful" misconduct. South Carolina law recognizes a medical emergency defense that can fully excuse a person whose sudden onset of illness leads him to commit what would otherwise be a traffic violation. *Collins v. Frasier*, 378 S.C. 249, 251, 662 S.E.2d 464, 465 (Ct. App. 2008). The circuit court acknowledges this defense but concludes there is no evidence available for Mr. Lynch to claim it. (Formal Order at 14-15) (quoting *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 344 S.E.2d 157 (Ct. App. 1986)). *Howle* does not support that conclusion. In fact, as this Court has since recognized, *Howle* does exactly what Mr. Lynch argues should be done here—call for the issue to be submitted to a jury. *Collins*, 378 S.C. at 252, 662 S.E.2d at 466 ("The point is that in *Howle*, as in the case before us, a jury question was presented").

Whether the medical emergency defense is available is a fact-intensive inquiry addressing what the individual knew about his condition, how he was feeling in the minutes and hours prior to the onset of his impairment, and what if anything he did to avoid or mitigate the risk of impairment. *See e.g. Memphis Transit Mgmt. Co. v. Bradshaw*, 403 S.W.2d 298, 299-300 (Tenn. 1966) (finding a jury should decide whether the bus driver who fainted and caused collision was reasonable in continuing to drive when, after suffering laceration to finger, alternated between feeling woozy and feeling normal); *Thornton v. Lees*, Civil Action No. 2007-145 (WOB), 2008 WL 4544408, at * 2 (E.D. Ky. Oct. 10, 2008) ("the totality of the facts indicates that there is a triable issue as to whether it was foreseeable to defendant that, having taken his midday insulin shot and but thereafter consuming only snacks, he would pass out while driving from his home . . . to a restaurant for lunch"). Ultimately, whether Mr. Lynch could be considered negligent for falling ill with hypoglycemia on the collision date depends on whether he acted as "a reasonable man under like disability." Restatement (Second) of Torts § 283C; *see also Ballou v. Sigma Nu*

General Fraternity, 291 S.C. 140, 352 S.E.2d 488, 495 (Ct. App. 1986) (citing Restatement (Second) of Torts § 283C).

That is an unresolved factual issue. The circuit court declared Mr. Lynch "willfully" neglectful of his diabetes based on his lack of food intake and his missed doses diabetes medication. Yet, the record also contains evidence suggesting Mr. Lynch had eaten on the collision date and that he was actively pursuing his diabetes medication at his mother's house at the time he fell ill. Whether Mr. Lynch's conduct was reasonable and, therefore, whether he is entitled to a partial or full defense to comparative fault on this issue, is another in a long line of genuine factual disputes a jury should resolve.

4. Einstein consciously disregarded the dangers her speed and illegal passing posed to others on and in the roadway.

The circuit court's ruling on Mr. Lynch's punitive damages claim was framed as an inevitable product of entering summary judgment on the negligence claim. Since the circuit court concluded Mr. Lynch was totally at fault (or that Einstein's fault was inconsequential), Mr. Lynch could not recover actual or punitive damages. (Formal Order at 18-19). For the reasons discussed above, the circuit court's ruling on negligence overlooked material factual disputes and incorrectly evaluated the evidence. The genuine material factual disputes presented by the evidence discussed above are sufficient to create jury questions on negligence and recklessness. As such, summary judgment on punitive damages should also have been denied.

Punitive damages are appropriate where the defendant's misconduct was willful, wanton, or performed with reckless disregard for the plaintiff's rights. *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). Recklessness is met by evidence tending to show "a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger." *Mishoe*, 366 S.C. at 201, 621 S.E.2d at 366 (citing *McGee v. Bruce Hosp. Sys.*,

321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)). Beyond echoing its negligence ruling, the circuit court's only additional basis for summary judgment on punitive damages was a footnote concluding Einstein's traffic offenses are not enough to support a claim requiring reckless misconduct. (Formal Order at 20 n. 6) (citing *Gurwood v. GCA Servs. Group, Inc.*, 445 S.C. 324, 914 S.E.2d 149 (2025)). But, *Gurwood* addressed a different issue. The Supreme Court was not ruling on the role of statutory violations in punitive damages claims but instead whether the elevated burden of proof for such claims (clear and convincing evidence) applies to motions for judgment as a matter of law. 445 S.C. at 335, 914 S.E.2d at 155 (trial court "must incorporate the clear and convincing evidence standard into its analysis of the defendant's directed verdict motion as to punitive damages").

The Supreme Court has long held traffic statute violations are evidence from which a jury may infer the recklessness or willfulness necessary to support a punitive damages award. *Cooper*, 306 S.C. at 412, 412 S.E.2d at 419 (holding that "[v]iolation of [motorist duty to pedestrian] statutes would constitute evidence of recklessness, willfulness and wantonness"); *Rhodes v. Lawrence*, 279 S.C. 96, 97, 302 S.E.2d 343, 344 (1983) ("a jury question as to punitive damages was clearly presented given the well settled rule that a showing of statutory violation can be evidence of recklessness and willfulness"). Mr. Lynch's punitive damages claim should be presented to a jury because he has presented evidence to show Einstein violated statutes governing speed and lane changes. As she admitted to the PURE investigator, Einstein increased her speed to approximately 50 miles-per-hour while attempting to maneuver around Gaines's vehicle and position herself for a left turn farther ahead on Wade Hampton Blvd. (PURE File at 3). What Einstein admitted could lead a reasonable juror to find recklessness not just because of the statutory violations but also because she consciously chose an aggressive maneuver over an equally

effective defensive option. There was no imperative to speed or to attempt an illegal pass. Einstein could have just as easily accomplished her goal of reaching the far-left lane of Wade Hampton Blvd. by slowing down and changing lanes behind Gaines's vehicle.

CONCLUSION

Based on the arguments stated above, Mr. Lynch respectfully requests this Court reverse the circuit court's summary judgment order. That order attributed the collision that took Mr. Lynch's leg to a reckless pedestrian invisible to a diligent driver on a dark street. Yet, the record more than supports a finding that Einstein's reckless speed and illegal driving maneuvers led her to run over the legs of a man who fell into a well-lit street as he walked home to retrieve his medication. The Rule 56 standard did not permit the circuit court to select the first version of events, and South Carolina substantive law would support judgment against Einstein based on the second. In sum, *Abdelgheny*'s parting reminder rings especially true in this case. Even if the circuit court believed for itself that Mr. Lynch bears the greater fault for the collision, "arriving at that conclusion required choosing between the multiple inferences emerging from the evidence." 432 S.C. at 351, 852 S.E.2d at 228. Since Rule 56 "reserves that choice to the jury," the circuit court's summary judgment order usurped the role of the jury and should be reversed. *Id.*

Respectfully submitted,

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June 1, 2026
Rock Hill, SC