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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Thomas J. Rode, Circuit Court Judge

Civil Action Case No.: 2020-CP-10-01553
Appellate Case No.: 2025-002179

CRISTA LINARES GRAINGER, as Personal Representative of the Estate of Sebastian Linares Grainger, Plaintiff/Appellant,

v.

UBER TECHNOLOGIES, INC., and RASIER, LLC, Defendants/Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUE ON APPEAL

In South Carolina, the touchstone of proximate causation is foreseeability. To prevail on a negligent retention or supervision claim, a plaintiff must show that the employer knew of employee conduct sufficiently connected to the plaintiff's injury to make that injury reasonably foreseeable. The circuit court granted summary judgment to the defendants in this case because no reasonable jury could find that mere rider feedback about the smell of smoke in a for-hire driver's vehicle made it foreseeable that the driver would—more than two years later and while off-duty—independently sell heroin, fentanyl, and painkillers to a former rider.

The question presented is whether the circuit court correctly granted summary judgment on the issue of proximate causation.

INTRODUCTION

Plaintiff in this appeal seeks to expand South Carolina negligence law in ways that no South Carolina court ever has and that would impose nearly boundless liability. Plaintiff asks this Court to hold that Uber should have reasonably foreseen that a driver whose car allegedly smelled like smoke in 2015 would, more than two years later, sell fatal narcotics to a former rider—at a private residence, while *not* on an Uber-facilitated trip, and without interacting through the Uber platform. That theory has no foothold in the record and no support in settled South Carolina tort law, as the circuit court correctly determined when it granted Uber summary judgment.

The undisputed facts leave no room for a jury question on foreseeability. Uber approved co-Defendant Jesse McNeal to use the driver version of the Uber App only after he cleared every screening that the South Carolina General Assembly has required of transportation network companies. That screening included national criminal background checks that disclosed no history whatsoever of drug use by McNeal. Plaintiff invokes a handful of years-old rider reviews that noted McNeal's car smelled like smoke but said nothing about drug use, impairment, or danger—let alone suggested that McNeal would sell heroin, fentanyl, and painkillers on his own time. And the unlawful drug transaction at issue here indisputably *did not* involve McNeal's use of the Uber platform: It occurred 12 days after a ride, was coordinated through purely private channels, and happened at a private residence while neither person was logged into the Uber App. Uber is not liable as a matter of law for a one-on-one drug sale that Uber had no ability to monitor, prevent, or even know about.

Plaintiff's true complaint is not that Uber should have foreseen the unforeseeable, but that Uber did not remove McNeal years earlier for reasons having nothing to do with the drug use that caused Mr. Grainger's tragic death. Plaintiff's argument confuses but-for causation with foreseeability. *Both* are required to support a claim for negligence—and the circuit court correctly recognized the difference. Because no reasonable jury could find that Uber should have foreseen an independent, illegal, off-platform drug sale based merely on years-old complaints about smoke odors, this Court should affirm the judgment below.

STATEMENT OF THE CASE

A. Statement of Facts

Uber facilitates connections between individuals in need of a ride and drivers who are willing to provide transportation services for a fee. (ROA 003.) In South Carolina, the Transportation Network Company Act (TNC Act), S.C. Code Ann. § 58-23-1610 *et seq.*, governs the operation of transportation-network companies (TNCs) like Uber. *Id.* § 58-23-1710(A). The Act requires a TNC "to obtain certain background and qualification information" from each prospective driver before approving that driver to provide TNC services. *Id.* § 58-23-1650(A). Those requirements include: (1) a valid driver's license; (2) verification the driver is at least twenty-one years old; (3) a certified copy of the driver's ten-year driving record; (4) proof of automobile liability insurance; and (5) a local and national criminal background check, including a multistate or multi-jurisdictional criminal record locator and a National Sex Offender Registry database search. *Id.* § 58-23-1650(B)(1)-(5). The Act further requires TNCs to verify that drivers continue to satisfy all requirements at least once annually. *Id.*

§ 58-23-1650(C). The Act provides, however, that "[n]othing in this section may be construed to require drug testing by a TNC of a TNC driver." *Id.* § 58-23-1650(F)(4).

In 2015, Uber permitted Jesse McNeal to access the driver version of the Uber App after he complied with all TNC Act requirements. (ROA 059, 172-179.) Uber obtained a copy of McNeal's valid South Carolina driver's license, verified his age, and secured proof of insurance. (ROA 172-173.) Uber also required McNeal to submit proof of an annual vehicle safety inspection and received the latest inspection report from McNeal just weeks before the events at issue in this case. (ROA 174.) Through Checkr, Inc.—a third-party vendor nationally accredited at conducting background checks—Uber obtained a background check on McNeal that included both a motor-vehicle record search and a criminal record search. (ROA 175-179.) Uber obtained additional background checks through Checkr during McNeal's use of the Uber App in 2015, 2016, and 2017. (ROA 180-189.) None of those checks revealed any drug-related charges, any history of dealing drugs, or any other disqualifying information about McNeal. (*Id.*) Uber's corporate representative testified below that McNeal met all the TNC Act's driver-qualification requirements, and nothing in his background check would have disqualified him from accessing the driver version of the Uber App. (ROA 332, line 20-ROA 333, line 5; ROA 338, line 22-ROA 340, line 22; ROA 343, lines 14-21.)

In 2015, more than two years before this case's underlying events, some riders in McNeal's vehicle complained about a smoky odor. (ROA 404-408.) Those reviews were submitted roughly between May and October 2015. (*Id.*) Most complaints referenced the smell of "smoke" generally. (*Id.*) Only one rider noted the car "smelled like weed" or marijuana. (ROA 404.) Based on Uber's experience, including in states where marijuana is legal, such odors commonly originate from prior passengers rather than the driver. (ROA 391, p. 103, line 21-p. 104, line 5.) None of McNeal's rider reviews reported that he ever smoked while driving, drove under the influence, or exhibited any behavior suggesting impairment. Numerous other riders during the same period rated McNeal highly, including five-star reviews with positive feedback like "clean and nice." (ROA 404.)

On March 21, 2017, McNeal was logged into the driver version of the Uber App when Sebastian Linares Grainger—whose estate is represented by Plaintiff in this case—requested a ride. (ROA 121.) McNeal picked him up at Mr. Grainger's home. (ROA 003.) During the trip, Mr. Grainger and McNeal exchanged personal cell phone numbers. (*Id.*) After the trip, the two had no further communications through the Uber App and no further trips together. (*Id.*)

Two days later, on March 23, Mr. Grainger sent a text message from his personal cell phone to McNeal's personal cell phone number. (ROA 077, lines 8-24, ROA 079, lines 4-15.) Mr. Grainger introduced himself and requested "brick," a term used for crack cocaine. (*Id.*) McNeal ultimately provided crack cocaine to Mr. Grainger. (ROA 079, lines 12-15.) On April 3—twelve days after the initial ride—Mr. Grainger again contacted McNeal through their personal cell phones and asked McNeal for painkillers and heroin. (ROA 078, lines 14-20, ROA 079, lines 16-20.) That evening, McNeal gave Mr. Grainger painkillers and what was believed to be heroin in exchange for payment. (ROA 080, lines 9-13, ROA 081, lines 8-12, ROA 082, lines 5-8.) They completed the exchange at Mr. Grainger's home. (ROA 081, lines 4-10, 19-25, ROA 082, lines 5-8.)

Mr. Grainger and McNeal coordinated both illegal drug transactions using their personal cell phones. (ROA 077-079.) There is no evidence that they used the Uber App in any way; McNeal did not log into or otherwise use the Uber App on either date on which he sold drugs to Mr. Grainger. (ROA 130-149.)

On April 5—fourteen days after the McNeal-Grainger trip—officers from the Charleston County Police Department performed a wellness check and discovered Mr. Grainger's body at his home. (ROA 153.) In Mr. Grainger's bedroom, the officers saw valium pills and a substance later determined to be heroin and fentanyl. (ROA 153; ROA 075, line 18-ROA 076, line 12.) According to the autopsy report, Mr. Grainger passed away on either April 3 or April 4, 2017. (ROA 168; *see* ROA 075, line 18-ROA 076, line 12.) The cause of death was "acute mixed drug toxicity with heroin, fentanyl, diazepam." (ROA 168; ROA 075, line 18-ROA 076, line 12.)

B. Procedural History

1. Plaintiff-appellant is Mr. Grainger's sister and the personal representative of his estate. On March 23, 2020, Plaintiff filed this wrongful death action under S.C. Code § 15-51-10, asserting several theories of recovery: (1) that Uber is vicariously liable for the alleged negligence of McNeal; (2) that Uber is directly liable for hiring or failing to properly screen McNeal; and (3) that Uber is directly liable for negligently retaining and supervising McNeal. (ROA 122-129.)

Uber moved for summary judgment. (ROA 051-052; ROA 053-070.) After full briefing and a hearing on August 26, 2025, the circuit court granted summary judgment in favor of Uber on September 22, 2025. (ROA 001-009.) The court determined that, on this undisputed record, no reasonable jury could find Uber liable on any of Plaintiff's claims. (ROA 007-008.)

First, the court held that Plaintiff's vicarious liability claim failed because, even assuming McNeal were an employee or agent of Uber (as opposed to an independent contractor), the illegal drug transactions "occurred twelve days after the completion of the Trip, during a time where Defendant McNeal's actions were not in furtherance of Uber's business and were for purposes wholly disconnected from his use of the Uber App." (ROA 005.)[1]

Second, the circuit court determined that Plaintiff's negligent hiring and screening claim failed because the undisputed record "reflects that Uber hired a nationally accredited third-party vendor to perform local and national background checks as required under the TNC Act, which revealed no prior drug-related charges or any history of dealing illegal drugs." (ROA 007.) The court further observed that "the evidence shows that Uber verifies drivers' compliance with its requirements annually." (*Id.*) Thus, "[b]ased on Uber's process of screening" and verifying McNeal's compliance, the court held that "the only reasonable inference that can be reached is

[1] Because it was unnecessary to reach the issue, the circuit court declined to resolve Uber's contention that Plaintiff's vicarious liability claims failed for the independent reason that McNeal was "an independent contractor" as to whom Uber cannot be held vicariously liable as a matter of law. (ROA 004 & n.1 (citing *Rock Hill Tel. Co.* v. *Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 237 (2005)).)

that Uber's screening and selection of [McNeal] was not the proximate cause of [Mr. Grainger]'s death and Plaintiff's damages." (*Id.*)

Third, the circuit court held that Plaintiff's negligent retention and supervision claim failed because "the causal chain is too attenuated and speculative to present a genuine issue of fact" on the element of proximate causation. (ROA 007.) The court observed that "there is no evidence in the record to support a reasonable inference that" rider feedback "reporting smoke (potentially marijuana smoke) in [McNeal]'s vehicle in 2015" would have "ma[de] it reasonably foreseeable to Uber that two years later, [McNeal] would have met a passenger, provided his personal phone number, and – undisputedly on his personal time – provided heroin, fentanyl, and painkillers to [Mr. Grainger]." (*Id.*) Rather, "[t]he only reasonable inference that can be reached is that Uber was not the proximate cause of Plaintiff's damages because any alleged negligence was too remote from [Mr. Grainger]'s death." (ROA 008.)

Plaintiff moved for reconsideration (ROA 415-419), which the circuit court denied (ROA 010-012).

2. On October 23, 2025, Plaintiff timely filed a Notice of Appeal. (ROA 426-427.) On appeal, Plaintiff challenges only the circuit court's third ruling—that Plaintiff failed to adduce evidence that could support a finding of proximate causation on her negligent retention or supervision claim. Plaintiff does not challenge the circuit court's conclusions rejecting her claims of vicarious liability, negligent hiring, or negligent screening. *See, e.g.*, Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *South*

Carolina Dep't of Transp. v. *M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008) ("[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court.").

STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Harris Teeter, Inc.* v. *Moore & Van Allen, PLLC*, 390 S.C. 275, 278, 701 S.E.2d 742, 743 (2010); *see* Rule 56(c), SCRCP.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Hoard ex rel. Hoard* v. *Roper Hosp., Inc.*, 387 S.C. 539, 545, 694 S.E.2d 1, 4 (2010) (citation omitted). To avoid summary judgment, a party "'must set forth specific facts'" that "affirmatively demonstrat[e] the presence of a genuine issue of material fact." *Id.* at 549, 694 S.E.2d at 6 (citation omitted). It "is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood* v. *Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Likewise, a "'party may not rest upon the mere allegations or denials of his pleadings,'" or simply "assert[] that a jury may disbelieve uncontradicted evidence." *Hoard*, 387 S.C. at 549, 694 S.E.2d at 6 (citation omitted). When, as here, a party asserts a claim of negligent retention or supervision, the trial court "should dispose of the matter on a dispositive motion when no reasonable fact-finder could find the risk" of the complained-of harm "foreseeable." *Doe* v. *ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005); *see Kase* v. *Ebert*, 392 S.C. 57, 63, 707 S.E.2d 456, 459 (Ct. App. 2011).

ARGUMENT

THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON PLAINTIFF'S NEGLIGENCE CLAIM

The circuit court properly granted summary judgment because Plaintiff cannot identify any evidence that McNeal's known conduct—a handful of rider reviews about the smell of smoke in his car—made it foreseeable that McNeal would independently sell fatal narcotics to a former rider more than two years later while disconnected from the Uber platform.

A. To establish proximate cause on negligent retention or supervision claims, a plaintiff must show that the employer knew of past employee misconduct making the ultimate complained-of injury "foreseeable." *Doe* v. *ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005); *see Kase* v. *Ebert*, 392 S.C. 57, 63-64, 707 S.E.2d 456, 459-460 (Ct. App. 2011). The plaintiff must "demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." *ATC*, 367 S.C. at 206, 624 S.E.2d at 451. But a plaintiff cannot rest on the possibility of *any* danger in the abstract. Rather, "the prior misconduct" must have "a sufficient nexus to the ultimate harm" allegedly suffered by the plaintiff. *Id.* at 207, 624 S.E.2d at 451. The analysis thus turns on "the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused." *Id.* at 206, 624 S.E.2d at 451.

Where a plaintiff fails to identify past misconduct with "a sufficient nexus to the ultimate harm" to him or her that gives rise to the negligence claim, the question of foreseeability is "properly resolved as a matter of law" in the defendant's favor.

ATC, 367 S.C. at 206-207, 624 S.E.2d at 450-451. "Although foreseeability is usually an issue of fact, the court should dispose of the matter on a dispositive motion when no reasonable factfinder could find the risk foreseeable." *Kase*, 392 S.C. at 63, 707 S.E.2d at 459 (citation omitted) (affirming summary judgment).

The record here contains no evidence from which a reasonable factfinder could infer that McNeal's past conduct known to Uber made Plaintiff's harm—Mr. Grainger's fatal overdose—foreseeable. Plaintiff's claim hinges on the assertion that Uber should have foreseen, based on a handful of rider reports about the smell of McNeal's car, that McNeal would cause Mr. Grainger's overdose more than two years later, while neither of them was even using the Uber App. As the decision below held, that "causal chain is too attenuated and speculative to present a genuine issue of material fact." (ROA 007.)

Plaintiff fails to show proximate cause for two independent reasons. First, the record is devoid of any evidence from which a factfinder could infer that "rider feedback makes it reasonably foreseeable to Uber that two years later, Defendant McNeal would have met a passenger, provided his personal phone number, and—undisputedly on his personal time—provided heroin, fentanyl, and painkillers to [Mr. Grainger]." (ROA 007.) Numerous riders rated McNeal highly, including five-star reviews with positive feedback like "clean and nice." (ROA 404.) While some riders referenced the smell of "smoke" generally in McNeal's car (ROA 404-408)—and a single rider noted that the car "smelled like weed" (ROA 404)—the undisputed record shows that such smells commonly derive from other riders, not the driver (ROA 391, p. 103, line

21-p. 104, line 5). Most important, *none* of McNeal's rider reviews reported that he was smoking while driving, driving under the influence, or exhibiting behavior suggesting impairment of any kind. (*See* ROA 402-410.) Without evidence of actual wrongdoing (as opposed to an odor), Plaintiff cannot show the "propensity, proclivity, or course of conduct" necessary to sustain a negligence claim. *ATC*, 367 S.C. at 206, 624 S.E.2d at 451; *see Kase*, 392 S.C. at 64, 707 S.E.2d at 459-460.

Second, the record does not establish the required "nexus" between "the prior acts and the ultimate harm caused." *ATC*, 367 S.C. at 206, 624 S.E.2d at 450; *see id.* at 207, 624 S.E.2d at 451. Plaintiff grounds her claim (Br. 4, 10-12) on the allegation that McNeal drove under the influence while using the Uber App in 2015. To be clear, there is no evidentiary basis for that contention. But even if there were, driving under the influence would still be "a far cry from" *completing a drug transaction* two years later, on McNeal's personal time, at Mr. Grainger's private residence, while they were using their personal phones. *ATC*, 367 S.C. at 207-208, 624 S.E.2d at 451. Plaintiff's claim falls far short even of the "factual similarities" that are insufficient to show foreseeability, *see Kase*, 392 S.C. at 62-63, 707 S.E.2d at 459, much less the nexus necessary for proximate causation, *see ATC*, 367 S.C. at 207-208, 624 S.E.2d at 451.

Courts consistently dispose of negligent retention and supervision claims as a matter of law where, as here, the employee's alleged prior conduct bears no meaningful resemblance to the injury complained of in the current lawsuit. In *Kase*, for example, the Court of Appeals affirmed summary judgment because an employee's prior assault conviction, serious traffic violations, disciplinary reprimands for hostility, and "erratic behavior" were insufficient to make it foreseeable to the defendant that the employee would perpetrate a roadside assault. 392 S.C. at 59-60, 63-64, 707 S.E.2d at 457, 459. Similarly in *ATC*, the Court of Appeals affirmed a directed verdict for the defendant because the employee's prior inappropriate sexual advance lacked "a sufficient nexus" to the sexual assault underlying the plaintiff's claim. 367 S.C. at 203, 207-208, 624 S.E.2d at 449, 451. And in *Hoskins* v. *King*, 676 F. Supp. 2d 441 (D.S.C. 2009), the court granted summary judgment because the employee's prior traffic infractions and car accident "d[id] not rise to a level" that could show "a sufficient nexus" with the traffic accident that injured the plaintiff. *Id.* at 447.[2]

Just as assault convictions and erratic behavior cannot bridge the gap to a roadside attack, and prior traffic infractions and accidents cannot bridge the gap to an accident involving plaintiff, so too reports of a car that smelled like smoke cannot bridge the gap to an illegal and off-app sale of heroin, fentanyl, and painkillers two years later. The circuit court correctly recognized that straightforward point. (ROA 007-008.)

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[2] *See also, e.g.*, *Lee* v. *Dorcey*, No. 21-cv-4137, 2023 WL 3020208, at *4 (D.S.C. Jan. 26, 2023), *report and recommendation adopted*, 2023 WL 4013498 (D.S.C. Jun. 15, 2023) (granting summary judgment because a "video of [employee] … engaging in consensual oral sex" and knowledge that the employee committed theft would not adequately suggest a "propensity to commit sexual assault"); *Interim Personnel of Cent. Va., Inc.* v. *Messer*, 263 Va. 435, 442, 559 S.E.2d 704, 708 (2002) ("that [employee] had been convicted twice of DUI, had failed to pay fines or attend counseling, and had been declared an habitual offender, would not place a reasonable employer on notice or make it foreseeable that [he] would steal a truck, operate the stolen vehicle during non-business hours for his own frolic, and cause an accident").

B. As noted above (at 8-9), Plaintiff has abandoned her claims of vicarious liability, negligent hiring, and negligent screening by failing to raise any substantive argument on those claims. Plaintiff presses (Br. 8-12) only her negligent retention and supervision claim—and only on the theory that Mr. Grainger's death was "fore-seeable" because of customer reviews mentioning smoke odor in McNeal's car years prior. Yet Plaintiff fails to identify any authorities or record evidence to disturb the circuit court's summary disposition of that (or any other) claim.

Plaintiff contends (Br. 10)—without citing any evidence—that Uber "admits … it had a duty to remove McNeal's access to the app once it received information of his drug use while using the app"; that Uber "cannot dispute … it received reports of conduct that would immediately disqualify its driver from using the app"; and that McNeal "provided drugs for [Mr. Grainger] during" the only ride he ever provided Mr. Grainger via the Uber App. Those assertions are false.

There is no evidence that Uber "received information" that McNeal used drugs "while using the [Uber] app." Pl.'s Opening Br. 10. The rider reviews that Plaintiff relies on reported that McNeal's car smelled like smoke—not that he used, possessed, or sold drugs. The testimony Plaintiff cites elsewhere in her brief (at 4-5) establishes only that, as a general matter, a driver would be disqualified upon proof of driving under the influence—proof that does not exist here. Plaintiff's argument equating years-old reports of smoky *odors* with information of drug *use* is a mischaracterization of the record, not a basis for reversal. And Plaintiff's claim that McNeal provided Mr. Grainger drugs "during" a ride arranged through the Uber app is equally baseless:

Plaintiff cites nothing in the record to support it and instead relies on "mere allegations," which are insufficient to overcome summary judgment. *Hoard*, 387 S.C. at 549, 694 S.E.2d at 6.

Plaintiff wrongly suggests (Br. 3) that Checkr found that McNeal was a "Habitual Offender" and that Uber ignored that finding. That assertion has nothing to do with McNeal's qualifications to drive, or with proximate cause on Plaintiff's negligence claims. McNeal's background check revealed a 2006 charge for unlawful possession of a pistol and a 2008 probation violation. Neither of those was disqualifying under the TNC Act, *see* S.C. Code Ann. § 58-23-1650(F), nor did they have any nexus to the off-platform sale of heroin, fentanyl, and painkillers that caused Mr. Grainger's death in 2017, *see* pp. 12-13, *supra*. The "number and nature" of those prior acts, *ATC*, 367 S.C. at 206, 624 S.E.2d at 451, would not put a reasonable person on notice that McNeal would sell fatal narcotics to a former rider while not connected to Uber years later.

Plaintiff focuses most of her argument (Br. 10-12) on a theory of *but for* causation: she contends that, "but for Uber's failure to investigate the reports of drug use by McNeal, [Mr. Grainger] would not have been in contact with McNeal." But that is beside the point. To establish proximate cause, a plaintiff must establish "*both*" "but for" causation *and* "foreseeability." *Bishop* v. *South Carolina Dep't of Mental Health*, 331 S.C. 79, 88-89, 502 S.E.2d 78, 83 (1998) (emphasis added). Even if Plaintiff could prove but-for causation, her claim would still fail because she cannot establish that Mr. Grainger's overdose was a "foreseeab[le]" consequence of Uber's alleged failure to remove McNeal from the Uber platform, *id.*, as the circuit court correctly held (ROA 007-008). Regardless, Plaintiff's but-for theory proves too much: under Plaintiff's logic, any TNC would be the proximate cause of any harm inflicted by any driver who ever received a negative rider review, no matter how attenuated the connection—factually or temporally—between the review and the harm. South Carolina does not recognize such limitless liability. *See Bishop*, 331 S.C. at 90-91, 502 S.E.2d at 84 (affirming summary judgment where an intervening cause rendered initial negligence too remote to constitute proximate cause).

For similar reasons, Plaintiff errs in repeating (Br. 6) her retained expert's opinion that McNeal "should have been off the road two years before he met [Mr.] Grainger." Once again, Plaintiff targets *but for* causation, not foreseeability. *See Bishop*, 331 S.C. at 88-89, 502 S.E.2d at 83. An expert's opinion that McNeal's Uber account should have been deactivated does nothing to close the gap between a smattering of smoke complaints and an off-platform drug transaction that occurred years later and resulted in Mr. Grainger's tragic death. *See Kase*, 392 S.C. at 63, 707 S.E.2d at 459; *ATC*, 367 S.C. at 207-208, 624 S.E.2d at 451. The absence of foreseeability defeats Plaintiff's claim regardless of any expert opinions on but for causation. (ROA 007-008.)

Plaintiff's reliance on *Parks* v. *Characters Night Club*, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001), is likewise misplaced. That case undermines Plaintiff's position because it held—just as the circuit court did here—that the claimant's injury was *not* "reasonably foreseeable" as a matter of law. *Id.* at 486, 548 S.E.2d at 606; *see id.* at

499-500, 548 S.E.2d at 613-614. And *Parks* did not even involve a negligent retention or supervision claim: the plaintiff instead alleged that a nightclub breached its duty to protect an invitee by failing to break up a fight. *Id.* at 487, 548 S.E.2d at 607. Plaintiff also invokes (Br. 11-12) *Parks*'s general rule statement—that proximate cause does not require foresight of a "particular event"—to argue that Uber "merely had to anticipate that allowing McNeal to continue to provide rides while using drugs would probably cause injury to someone." But that contention rests on the same fundamental misstatements of fact and law discussed above. *See* pp. 12-15, *supra*. Rider reviews about smoke odor in McNeal's car are not evidence of "provid[ing] rides while using drugs." Nothing in *Parks* relieves Plaintiff's burden to show a causal nexus between McNeal's known prior conduct and Plaintiff's harm. *See ATC*, 367 S.C. at 206, 624 S.E.2d at 450. Indeed, *Parks* militates in favor of affirming the decision below because here, as in *Parks*, there is "absolutely no evidence in the record indicating [Uber's] alleged negligence … proximately caused [Plaintiff]'s injury." 345 S.C. at 500, 548 S.E.2d at 614.

As Plaintiff's remaining citations make clear, foreseeability turns on the "natural and probable consequence" of the defendant's actions. Pl.'s Opening Br. 9-10 (citations omitted). The natural and probable consequence of a driver using marijuana would be that he causes an accident while driving impaired—not that he engages in independent, off-platform sales of heroin, fentanyl, and painkillers to former passengers years later. *See* pp. 10-13 & n.2, *supra*; *see also Crolley* v. *Hutchins*, 300 S.C. 355, 357, 387 S.E.2d 716, 718 (Ct. App. 1989) (holding that illegally serving alcohol to an intoxicated person did not proximately cause the customer's attempted suicide because "[o]ne does not expect a person to attempt suicide as a natural and probable result of being served a drink while intoxicated"). To establish negligence based on an employee's drug use, a plaintiff must "prove a nexus between [the employer's] alleged negligence … and [the plaintiff's] injuries" by demonstrating that the employee "acted while under the influence of drugs." *Jordan* v. *Western Distrib. Co.*, 135 F. App'x 582, 590 (4th Cir. 2005). Plaintiff has not even attempted that showing.

Finally, Plaintiff alludes in passing to the TNC Act but offers nothing to undermine the circuit court's ruling. In the background section of her brief, Plaintiff implies (at 4) that Uber failed to vet independent drivers in accordance with the TNC Act and Uber's internal policy. But Plaintiff forfeited any claims based on Uber's pre-hire screening by failing to develop any substantive arguments about them. *See* pp. 7-9, 14, *supra*. In any event, the undisputed record shows that Uber complied with the TNC Act's screening requirements and company procedures. (ROA 007; ROA 059, 172-179.) And even assuming Plaintiff could prove a statutory or policy violation, the same causal-nexus requirements would defeat her claim: Plaintiff must establish that any noncompliance proximately caused her injuries. *See, e.g.*, *Seals by Causey* v. *Winburn*, 314 S.C. 416, 418-419, 445 S.E.2d 94, 96 (Ct. App. 1994); *see id.* ("The injury must be the natural and probable consequence of the violation of the statute before the violation can be said to be the proximate cause of the injury."); *Peterson* v. *National R.R. Passenger Corp.*, 365 S.C. 391, 401, 618 S.E.2d 903, 908 (2005) (affirming grant of summary judgment because, "while evidence may exist that Respondents did not comply with their own internal safety policies, there is no evidence that this noncompliance caused" the claimant's harm). For the reasons discussed above, Plaintiff cannot carry that burden.

* * *

In short, Plaintiff asks this Court to hold that years-old reports of smoke odors in a driver's car made it reasonably foreseeable that the driver would independently sell lethal narcotics to a former rider—more than two years later, while off the Uber platform, using personal phones, and at a private residence. No authority supports that extraordinary leap. And no evidence in the record closes the gap either. Rather than dramatically expand settled tort law, the circuit court correctly entered summary judgment.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court should be affirmed.

Respectfully submitted,

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July 2, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Thomas J. Rode, Circuit Court Judge

Civil Action Case No.: 2020-CP-10-01553
Appellate Case No.: 2025-002179

CRISTA LINARES GRAINGER, as Personal Representative of the Estate of Sebastian Linares Grainger, Plaintiff/Appellant,

v.

UBER TECHNOLOGIES, INC., and RASIER, LLC, Defendants/Respondents.

RULE 211(B), *SCACR*, CERTIFICATION

I, Robert E. Sumner, IV, Esquire, hereby certifies and attests the ***FINAL BRIEF*** submitted by and on behalf of the Respondents, Uber Technologies, Inc. and Raiser, LLC, complies with the requirements of Rule 211(b), *SCACR*.

Signed: s/Robert E. Sumner, IV
Rober E. Sumner, IV, Esquire

Charleston, South Carolina

2 July 2026
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