

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.

RECORD ON APPEAL (VOLUME 1)

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2303510

Roger Wayne Lynch
PLAINTIFF(S)

Angela West Einstein
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

See page 2 below

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/15/2024 .

Adam Peoples for Angela West Einstein

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendant's Motion for Summary Judgment. Defendant moves on the grounds that she did not breach any duty of care which was owed to Plaintiff. Both counsel made compelling arguments. Based on a review of the file, submissions of the parties, and oral arguments, the Defendant's motion is hereby granted. The Court finds Plaintiff failed to show the existence of a genuine issue of material fact on the issue of Defendant's negligence. Kitchen Planner, LLC v. Friedman, 440 S.C. 456 (2023). The evidence shows Defendant did what a reasonable and prudent person would ordinarily have done under the circumstances. Counsel for the Defendant is to prepare a formal order.

It is So Ordered.



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein

Case Number: 2022CP2303510

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-03-15 17:13:53 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NO. 2022-CP-23-03510
	)	
ROGER WAYNE LYNCH,	)	
	)	
PLAINTIFF,	)	ORDER GRANTING SUMMARY
	)	JUDGMENT TO DEFENDANT
v.	)	
	)	
ANGELA WEST EINSTEIN,	)	
	)	
DEFENDANT.	)	
_____	)	

A hearing on Defendant Angela West Einstein's Motion for Summary Judgment was held on March 4, 2024, in the Greenville County Courthouse in the subject case. After due and careful consideration of the parties' arguments, memoranda and supporting materials, the Court finds that Plaintiff failed to show the existence of a genuine issue of material fact as to Defendant's negligence and, therefore, grants summary judgment in favor of Defendant Angela West Einstein.

Procedural History

This is an automobile-pedestrian personal injury case. Plaintiff was struck by Defendant's vehicle as he was lying down, drunk, in Defendant's lane of Wade Hampton Boulevard, at night, in the dark, wearing dark clothing. Plaintiff initiated this lawsuit against Angela West Einstein on July 5, 2022. The parties exchanged written discovery and completed the depositions of Plaintiff Roger Wayne Lynch; Defendant Angela West Einstein; and officer Rachel L. Hamilton. Defendant's motion for summary judgment was filed on January 29, 2024. Defendant submitted a Memorandum in Support of Defendant's Motion for Summary Judgment and Plaintiff submitted a Memorandum in Opposition to Defendant's Motion.

The court held a hearing on Defendant's Motion for Summary Judgment on March 4, 2024. Plaintiff was represented by Christopher Joseph McCool of the O'Shea Law Firm, LLC, and Defendant was represented by Adam Peoples and Samuel R. Velasquez of Hall Booth Smith, PC.

Standard of Review

S.C. R. Civ. P. 56(c) sets forth the standard for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The South Carolina Supreme Court has consistently held that a Motion for Summary Judgment must be granted where the undisputed evidence shows no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Laughridge v. Parkinson*, 403 S.E.2d 120, 122 (S.C. 1991) (quoting *S.C. Elec. & Gas Co. v. Combustion Engineering, Inc.*, 322 S.E.2d 453, 457 (S.C. Ct. App. 1984)). In applying Rule 56(c), South Carolina courts apply the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion to show a "reasonable inference" to be drawn from the evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023).

Factual Background

On the evening of December 16, 2021, at or around 10 p.m., Plaintiff stood at a bus stop just south of the intersection of US-29/Wade Hampton Boulevard and Batesview Drive in Greenville, Greenville County, South Carolina. Wade Hampton Boulevard is a six-lane highway that serves as one of the main corridors to and from Greenville.

A. Testimony of Plaintiff

According to Plaintiff's deposition taken June 6, 2023, sometime after 9 p.m., the Plaintiff took a city bus to Wade Hampton Boulevard, which is reportedly near Plaintiff's mother's

apartment. [Deposition of Plaintiff, p. 37]. The city bus dropped off Plaintiff on Wade Hampton Boulevard, the side opposite an IHOP. [Deposition of Plaintiff, p. 40-41]. The last thing Plaintiff recalls is going across the street. [Deposition of Plaintiff, p. 30]. Plaintiff does not recall the time of day the accident occurred, what he was wearing or whether he used a crosswalk. [Deposition of Plaintiff, p. 43-44]. Plaintiff does not have a reason to believe that the police report is inaccurate. [Deposition of Plaintiff, p. 45]. Plaintiff does not recall his statements to the police. [Deposition of Plaintiff, p. 70]. Plaintiff does not dispute the EMS report that he had the smell of alcohol on his breath. [Deposition of Plaintiff, p. 80]. Plaintiff argued that, even if a medical event resulted in him lying in the roadway, Einstein was still negligent “by hitting me.” [Deposition of Plaintiff, p. 87-90].

Plaintiff’s Medical Records

According to Plaintiff’s medical records, on the night of the subject accident, at Greenville Memorial Hospital, Plaintiff’s treating provider noted “alcohol intoxication on arrival, high risk for withdrawal.” [Exhibit F.]. A blood test reported an alcohol level of 99; the reference (or normal) range for this test is a level of 10 or less. [Exhibit G.]. According to Plaintiff’s prior medical records produced in discovery in this litigation, Plaintiff has a history of collapsing secondary to excessive alcohol consumption and failing to take insulin and/or oral diabetic agents. On January 24, 2021 (roughly 11 months before the subject accident), Greenville County EMS transported Plaintiff to Greenville Memorial Hospital after he was found intoxicated and unconscious lying on the side of the road. After Plaintiff was treated for hypoglycemia, he reported to his providers that he had been out for a night of drinking and smoking crack. [Exhibit H.]. Additionally, on Thursday, November 25, 2021 (roughly 3 weeks before the subject accident), Plaintiff was transported by Greenville County EMS to Greenville Memorial Hospital for altered mental status as a result of

hypoglycemia and alcohol intoxication. Again, Plaintiff admitted to medical providers that he had been drinking alcohol and smoking crack all day. Plaintiff further revealed that he had not taken any insulin or oral diabetic agents for three to four days. [Exhibit I].

These medical records show that Plaintiff knew or should have known that failing to take medication for his diabetes and/or consuming alcohol could lead to him losing consciousness and collapsing, including in locations where he may be susceptible to further injury.

B. Testimony of Rachel Hamilton

Officer Rachel Hamilton, a police officer with the Greenville City Police Department, responded to the scene of the accident and testified that she found Plaintiff in the roadway, where he was receiving medical aid. [Deposition of Rachel Hamilton, p. 14]. Thereafter, Officer Hamilton was the primary officer investigating the scene and spoke with multiple witnesses. [Deposition of Rachel Hamilton, p. 22]. Officer Hamilton testified there was no indication Einstein was speeding at the time of the accident. [Deposition of Rachel Hamilton, p. 32-33]. Officer Hamilton also said, after speaking with Einstein, there was no reason to believe Einstein was impaired. [Deposition of Rachel Hamilton, p. 33]. Officer Hamilton described this part of Wade Hampton Boulevard as being “very dark” with “not a lot of streetlights.” Deposition of Rachel Hamilton, p. 18].

Following the accident, Officer Hamilton spoke with Plaintiff, and during their conversation, Plaintiff admitted that he had wandered into the roadway. [Deposition of Rachel Hamilton, p. 37-38]. Plaintiff further admitted to “drinking a fifth of alcoholic beverage prior to the incident...” Deposition of Rachel Hamilton, p. 36-374].

Officer Hamilton testified that, upon an investigation, Plaintiff was determined to be at fault for the accident. Officer Hamilton did not determine the fault until after speaking with Plaintiff. Officer Hamilton described the reasoning behind her determination as follows:

[Mrs. Einstein] was driving straight in her roadway and she didn't have to stop or anything like that. There was no crosswalk [at the location of the collision]. There was no . . . reason for [Plaintiff] to be in the roadway at the area that he was in. So it would have been pedestrian [sic] in the roadway, and he would have been at fault.

Nothing discovered during Officer Hamilton's investigation led her to dispute that Plaintiff was lying in the street at the time of the accident. [Deposition of Rachel Hamilton, p. 26-27]. Officer Hamilton ultimately described the accident as "unavoidable," and that Einstein did nothing wrong. [Deposition of Rachel Hamilton, p. 43].

C. Statement of Lemuel Gaines

At the time of the events in question, Gaines was driving in the lane immediately to the left of Einstein. [Exhibit D]. After the accident, Gaines gave a sworn statement to investigating officers. According to Gaines, after passing the IHOP, he thought there was an animal in the road. He also asserted that as their vehicles approached Plaintiff's unconscious body, Mrs. Einstein "didn't have time to stop/slow and struck the man." Gaines stated that Plaintiff was wearing very dark apparel and therefore, he could not be seen. Finally, Gaines stated that hitting the Plaintiff was "unavoidable." [Exhibit D].

D. Testimony of Defendant Angela Einstein

On the evening of the events in question, Einstein was leaving a home in Paris Mountain, SC where she had dropped off her future son-in-law at her daughter's work party. [Deposition of Angela Einstein, p. 44]. Einstein was driving north on Wade Hampton Boulevard, a six-lane highway. Einstein was driving in the far right of three (3) lanes northbound, next to the curb. [Deposition of Angela Einstein, p. 56]. Another vehicle was in the lane immediately to the left

of Einstein, so they were driving side-by-side. [Deposition of Angela Einstein, p. 56]. Einstein was traveling at or just below the speed limit of 45 miles per hour on Wade Hampton. [Deposition of Angela Einstein, p. 83]. Einstein was driving with both hands on the wheel, looking straight forward. Einstein described the area in question as extremely dark. [Deposition of Angela Einstein, p. 61].

As soon as Einstein saw a person lying in the street, she applied her brakes as hard as she could. [Deposition of Angela Einstein, p. 72, 84]. Einstein also testified that she was boxed in but swerved upon seeing Plaintiff lying in the road. Einstein was faced with a split-second decision prior to rolling over Plaintiff. [Deposition of Angela Einstein, p. 93]. Einstein recalls expecting to sideswipe the car beside her as she swerved but did not. [Deposition of Angela Einstein, p. 90-91]. Even if the other vehicle were not in the lane immediately to the left of Einstein, Einstein testified that she still would not have been able to avoid Plaintiff. [Deposition of Angela Einstein, p. 85. Einstein described Plaintiff's clothing at the time of the incident as "dark." Deposition of Angela Einstein, p. 85]. Einstein testified to speaking to one witness at the scene who stated they saw Plaintiff walk out onto Wade Hampton Boulevard and lie down. [Deposition of Angela Einstein, p. 69].

Applicable Law

To establish negligence under South Carolina law, the plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty and that the breach was the proximate cause of the plaintiff's injuries. *Bloom v. Ravoir*, 529 S.E.2d 710, 712 (S.C. 2000). Stated differently, "negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation; or doing what such a person, under the existing circumstances, would not have done." *Jones v. Am. Fid. & Cas. Co.*, 43 S.E.2d

355, 359 (S.C. 1947) (quotation marks omitted). The burden in a negligence case is always on the party asserting the claim. Ralph King Anderson, Jr., Anderson's South Carolina Request to Charge – Civil, § 20-1 (2d ed.). A plaintiff may not rely on mere speculation or conjecture. *Legette v. Smith*, 220 S.E.2d 429, 430 (S.C. 1975). As the Supreme Court of South Carolina observed in *King v. J.C. Penney Co.*, 120 S.E.2d 229, 230 (S.C. 1961),

In this State it is well settled that the burden rests upon the party to prove negligence. This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence In order, therefore, for a plaintiff to recover damages, she must prove by the greater weight or preponderance of the evidence not only the injury but also that it was caused by the actionable negligence of the defendant.

In *Bloom*, on December 23, 1994, at or around 6:30 p.m., respondent pedestrian Bloom testified to looking both ways before crossing Meeting Street in Charleston, South Carolina. *Bloom*, 529 S.E.2d at 711. Bloom was wearing dark clothing, and “[t]here was a misty rain falling” *Id.* Bloom chose not to cross Meeting Street at the traffic lights, crosswalks and “walk/don’t walk signals” at either end of the relevant block of Meeting Street. *Id.* One witness saw Bloom drinking in the lobby of a hotel. *Id.*, at 712. Ravoira testified to stopping a traffic light, “pull[ing] forward, hear[ing] his [Ravoira’s] wife yell his name, and s[eeing] something out of his peripheral vision.” *Id.* Ravoira then heard a thump then “[a]fter a pause, the car’s windshield shattered.” *Id.* The witnesses to the collision corroborated Ravoira’s testimony, including the speed of Ravoira’s vehicle and the inability to see Bloom. *Id.*

At issue on appeal was whether the Court of Appeals erred in reversing the trial court’s grant of summary judgment.

To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *E.g., Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under South Carolina’s doctrine of comparative

negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant. *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991).

Bloom, 529 S.E.2d at 712–13. “In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” *Id.*, at 713 (citing *Creech v. S.C. Wildlife & Marine Res. Dep’t*, 491 S.E.2d 571, 575 (S.C. 1997)).

The South Carolina Supreme Court held that “a verdict for Bloom is not reasonably possible under the facts of this case.” *Bloom*, 529 S.E.2d at 713.

The only inference to be drawn from this evidence is that Bloom entered the street quickly and without any warning to drivers. Moreover, although there were crosswalks and traffic signals at both corners, Bloom chose to cross in the middle of the block. Thus, by Bloom’s own testimony, he breached his duties as a pedestrian. S.C. Code Ann. § 56–5–3150 (1991). This breach is compounded by the fact that it was dark and rainy out, and Bloom—who was dressed in dark clothing—quickly entered the street from between two parked vehicles.

Bloom, 529 S.E.2d at 713. The Court further found that “the issues of fact highlighted by the Court of Appeals do not rise to the level of ‘material’ issues of fact because, as a matter of law, the evidence shows that Bloom was more than fifty percent negligent.” *Id.*, at 713. “Where evidence of the plaintiff’s greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Id.*, at 714 (citing *Hopson v. Clary*, 465 S.E.2d 305, 307 (S.C. Ct. App. 1996)).

Legal Analysis

Based on the testimony of witnesses and information obtained during the course of discovery in this case, Einstein complied with the applicable rules of the road. Therefore, the undisputed facts in the case show that Einstein did use ordinary care at the time of the incident and, therefore, was not negligent.

The evidence presented shows that it was dark on the night in question;; Plaintiff entered Wade Hampton Boulevard at a place where there was not a crosswalk and where there was no lighting; and Plaintiff was lying in the roadway with his head facing the curb and his body jutting out into the lane. The evidence presented further shows that Einstein was not speeding at the time of the accident; Einstein was operating her vehicle appropriately in her lane of travel at the time of the accident; Einstein applied her brakes; Einstein attempted to avoid accident; and it was determined by law enforcement that Einstein could not have reasonably avoided striking Plaintiff. South Carolina law is clear: the fact that an accident occurred is not evidence of negligence. *King*, 120 S.E.2d at 230.

Plaintiff argues that because there was an impact between Einstein's vehicle and Plaintiff, negligence may be inferred. *Id.* Such an argument is speculation and, in contravention of South Carolina law, presumes negligence on the part of Einstein. *Legette v. Smith*, 220 S.E.2d at 430; Anderson's South Carolina Request to Charge – Civil, § 20-1.

Instead, Plaintiff entered Wade Hampton Boulevard in violation of South Carolina Code Section 56-5-3150 which provides:

- (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
- (c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Plaintiff 1) crossed Wade Hampton not by a traffic-control signal, 2) outside of a crosswalk and 3) failed to yield to the right-of-way to Einstein's vehicle. Thus, Plaintiff violated South Carolina law and was negligent.

Therefore, as in *Bloom*, the only inference a reasonable juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault.

Accordingly, this Court finds there is no genuine issue as to any material fact regarding whether Einstein failed to use ordinary care at the time of the incident. Plaintiff has not produced any evidence that Einstein breached a duty of care she owed to him. *Kitchen Planner, LLC v. Friedman*, 440 S.C. 456 (2023). The evidence shows Defendant did what a reasonable and prudent person would ordinarily have done under the circumstances. Plaintiff thereby cannot meet his burden on an essential element of his claim. Furthermore, the only inference a reasonable juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault. *Bloom*, 529 S.E.2d at 714; For all of these reasons, Defendant Einstein is entitled to judgment as a matter of law.

CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

_____, 2024.

The Honorable G.D. Morgan Jr.
Thirteenth Judicial Circuit
Greenville, South Carolina

ELECTRONICALLY FILED - 2024 Apr 03 8:34 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein

Case Number: 2022CP2303510

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-04-02 21:23:48 page 12 of 12

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2303510

Roger Wayne Lynch
PLAINTIFF(S)

Angela West Einstein
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

See page two below

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2024 .

Adam Peoples for Angela West Einstein

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on several motions, including 1) Plaintiff's Motion to Reconsider, Alter, or Amend, 2) Defendant's Motion to Alter/Amend Judgment Pursuant to SCRCP 59(e), and 3) Plaintiff's Motion to Strike/Exclude Defendant's Exhibits Filed and Served After Summary Judgment was Granted. Based on a thorough review of the file and the submissions of the parties, the Court acknowledges that the materials subsequently filed after the Order were not before the Court at the time of the hearing and issuance of the Order granting summary judgment. Therefore, in the interest of justice and in fairness to the parties, the Court hereby vacates the April 3, 2024 Order of Summary Judgment. The parties are entitled to refile any motions, including any motions for summary judgment. As a result of this order, the aforementioned motions are moot.

It Is So Ordered.



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein

Case Number: 2022CP2303510

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-04-26 16:47:18 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Roger Wayne Lynch

Plaintiff,

v.

Angela West Einstein,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT

C.A. No.: 2022CP2303510

ORDER

This matter came before the Court upon various Motions filed by both sides and was heard via WebEx on July 17, 2024.

First, the Court will address Plaintiff's counsel's objection to Attorney Adam Peoples participation in the hearing for failing to adhere to Rule 404, SCACR. Adam Peoples, a North Carolina attorney, was admitted *pro hac vice* by order of the Court filed November 13, 2023 upon application of Christian E.W. Fober, a South Carolina attorney who apparently is no longer involved in the case nor a member of Peoples' law firm. Under Rule 404, the South Carolina attorney of record shall "attend all subsequent proceedings". At the hearing on July 17, 2024, Samuel Velasquez was in attendance and Mr. Velasquez, who is in the same firm as Mr. Peoples, is a member of the South Carolina Bar, practicing out of the firm's Mt. Pleasant office and has been listed as attorney of record in pleadings and other filings with the Court at least since January 29, 2024 (per the Motion of Summary Judgment filed at that time). Further, in her various Motions, Plaintiff's counsel has noticed Mr. Velasquez, along with Mr. Peoples, as attorney of record. Even though no formal Order of substitution or notice has been filed, the

Court finds that Samuel Velasquez qualifies as the South Carolina attorney of record for this case and as required by Rule 404; thus Adam People's participation in the hearing was proper.

Next, the Court will address Defendant's Motion for Summary Judgment. This Motion has its own tortured history. Judge Morgan previously granted Defendant's Motion, but because of an issue with filed exhibits, vacated his Order and allowed the Defendant to refile her Motion. On May 23, 2024, the Defendant refiled her Motion for Summary Judgment and was heard on July 17, 2024. In considering a Motion for Summary Judgment, the Court must only grant summary judgment if it determines there is no genuine issue of material fact. Further, the Court must construe all "ambiguities, conclusions, and inferences arising from the evidence against the moving party." *City of Columbia v. Town of Irmo*, 316 S.C. 193 (1994). Although the evidence presented by Plaintiff may not support liability even in light of the standard for Summary Judgment, this is complicated with discovery issues which have been raised by Plaintiff's counsel since the previous hearing. In addition to a Motion to Compel discovery and records from subpoena, some of which shall be addressed in this Order, Plaintiff's counsel points to several discovery items and depositions which have not been concluded and which may have a bearing on the issue of liability and comparative negligence. In light of these issues, the Court finds it appropriate to allow the Plaintiff further opportunity to pursue the additional discovery before ruling on this Motion for Summary Judgment. Our appellate courts have generally held firm on the premise that summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101 (1991). Therefore, the Court respectfully denies Defendant's Motion for Summary Judgment at this time, but these Defendant may renew her Motion at such time that Plaintiff has had a "full and fair opportunity to complete discovery."

Next, the Court will address the various discovery issues raised by the parties' respective Motions.

As to subpoena of Dr. Ron Phillips. Defendant has filed a Motion to Quash and Plaintiff has filed a Motion to Compel. The Plaintiff's subpoena to Dr. Phillips involves a very broad request, but at the hearing, Plaintiff's counsel asserts that her primary focus of this discovery relates to the medication which Defendant was taking at the time of the accident. The Court finds that medical records relating to the medication prescribed to the Defendant at the time of the accident is relevant and discoverable and it is ordered that records relating to medication as of the date of the accident shall be provided. The Court finds that no other medical records are not relevant or could lead to admissible evidence and thus the Court rules that the additional records are not discoverable and grants the Defendant's Motion to Quash as it relates to additional medical records.

As to Subpoena of Allied Universal. The parties advised that this subpoena was issued through Richland County and there is a pending Motion in Richland County on this issue. So it will not be addressed by this Court at this time.

As to Defendant's Financial Records. Finally, the Plaintiff has filed a Motion to Compel responses to discovery served on Defendant, primarily relating to Defendant's wealth and assets. In response, Defendant filed a Motion to Strike, Quash and/or for a Protective Order. Defendant has objected to all discovery relating to her personal wealth and assets because the discovery is not relevant to any claims or defenses. The only purpose for which this information is relevant is in the assessment of punitive damages, but this is limited to "net worth and extrapolations from net worth." See **Sulton v. HealthSouth Corp.**, 400 S.C. 412 (2012). This Court routinely restricts any discovery of this nature until such time that the issue of punitive damages has

survived Summary Judgment and at that time, the Court will allow the discovery on a very limited scope and under specific guidelines set out by the Court, usually through the use of a Certified Public Accountant to review the party's financial information and provide information as to net worth. But that will only be implemented if required for the consideration of punitive damages at the appropriate time.

The other Motion on the roster, the Plaintiff's Motion to Strike Exhibits, related to the previous hearing and was rendered moot by Judge Morgan's Order vacating Summary Judgment in favor of Defendant.

It is so Ordered.

E-Signature of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein

Case Number: 2022CP2303510

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Roger Wayne Lynch,

Plaintiffs,

v.

Angela West Einstein

Defendant.

IN THE COURT OF COMMON
PLEAS
THIRTEENTH JUDICIAL CIRCUIT

ORDER INSTRUCTIONS

Defendant filed a Motion for Summary Judgment. The Motion was heard on January 12, 2026.

Pursuant to rule 56(c) Defendant as the party seeking summary judgment must show that there is no genuine issue of material fact, and that the Defendant, as the moving party, is entitled to a judgment as a matter of law.

In assessing the term “genuine” Merriam – Webster Dictionary defined genuine as “actual, true, or actually having the reputed or apparent qualities of character.

In the case of Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 461, 892 S.E. 2d 297, 300, quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S. Ct. 134’8, 1356 (1986) the Court States “a party opposing summary judgment must... ‘do more than simply show that there is some

metaphysical doubt as to the material facts’, but must ‘come forward with specific facts showing that there is a genuine issue for trial.’”

Plaintiff contends, Defendant acted in a negligent, willful, wanton and reckless manner, and Defendant’s conduct caused Plaintiff’s injuries.

In order to properly assess Defendant’s SJM, the Court first examined the issues where there is no genuine issue of material fact.

1. Plaintiff was legally intoxicated at time of the accident. Plaintiff’s toxicologist measured Plaintiffs BAC at .09.
2. Plaintiff admitted to drinking alcohol (beer/liquor) on the day of the accident.
3. Plaintiff’s toxicologist testified that Plaintiff had not eaten for most of or the entire day. This fact is coupled with undisputed evidence that Plaintiff had not taken his diabetic medication. Plaintiff’s blood glucose was at an unhealthy and dangerous level, resulting in hypoglycemia. (blood glucose level was 29–30). Thus, there is no genuine issue of material fact regarding Plaintiff’s willful neglect of his health.
4. The accident occurred on December 16, 2021 at 8:22 PM or at nighttime. Bodycam video footage reflects the precise location where the accident occurred was not well illuminated.
5. Roberto Cortez, witness, provided a statement to police, that Plaintiff was acting in an erratic manner trying to jump into cars; and was lying in the street.

This statement has not been refuted or contested by objective and credible evidence.

6. Lemuel Gaines apprised the police he initially thought Plaintiff was an animal in the road and could not be seen. Mr. Gaines stated the accident “was unavoidable”.
7. There is no evidence or factual assertion disputing the accounts of witnesses Cortez and Gaines.
8. Plaintiff is a diabetic. Plaintiff admits he is unable to recall events. Plaintiff further admitted he loses awareness as to his actions when his blood sugar is low.
9. No genuine issue of fact that Plaintiff was indeed negligent; and that Plaintiffs ability to think and reason was impaired. (Dr. Everston depo. p.15 ll. 8-15.). Moreover, Plaintiff’s expert further testified, Plaintiffs motor condition became impaired depo. p.15ll. 14–15.
10. Accident did not occur in pedestrian crosswalk and Plaintiff was dressed in dark clothing.

Plaintiffs’ Argument of Genuine Issues of Material Fact

11. Defendant was impaired by prescription drugs and/or a combination of drugs and alcohol. Defendant’s admission of drinking wine with dinner and her contribution to a blog is not evidence of intoxication absent, engaging in pure

speculation, surprise and conjecture. Plaintiff failed to present specific facts showing Defendant was impaired either by drugs or alcohol. (See Egerton depot. pp. 42–44).

12.No evidence of distracted driving. i.e., cell phone records showing use of phone at time of accident. No evidence of eating while driving.

13.Defendant’s statement that prior to accident she was traveling 46–48 MPH, but reduced speed because vehicle in left lane was going too fast, is not refuted. (Einstein Depo. P. 73ll. 8-16). Moreover, fact that Defendant further reduced speed by applying brakes before impact is evidence that there was no violation at the Motor Vehicle Statutes or a breach of duty to keep a proper lookout. No evidence of recklessness because under the attendant circumstances, such behavior would be a minor traffic violation (48 MPH or less in a 45 MPH zone) prior to striking Plaintiff.

14.Plaintiff asserts the road was well-lit in that lights from the adjacent restaurants were illuminating the roadway. First, the accident occurred in front of Asada. Lights from that establishment did not illuminate the road from a review of the body cam video. The same conclusion is true for IHOP. The lights from the restaurants were primarily interior rather than exterior lighting. To suggest that interior lighting illuminated a major state highway would be tantamount to speculation and conjecture.

Mr. Rheney, please prepare an Order consistent with these instructions granting SJM.



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein
Case Number: 2022CP2303510
Type: Order/Summary Judgment

So Ordered

Vernon F. Dunbar

Electronically signed on 2026-03-06 11:06:03 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL DISTRICT
COUNTY OF GREENVILLE	)	
Roger Wayne Lynch,	)	C.A. No. 2022-CP-23-03510
	)	
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
vs.	)	MOTION FOR SUMMARY JUDGMENT
	)	AND DENYING PLAINTIFF'S MOTION TO
Angela West Einstein,	)	DISMISS DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
Defendant.	)	

These matters are before the Court on Defendant's motion for summary judgment and Plaintiff's motion to dismiss Defendant's motion for summary judgment. During the hearing Plaintiff voluntarily withdrew his motion to dismiss. For the reasons set forth below, the Court grants Defendants motion for summary judgment, and hereby dismisses this matter with prejudice.

FACTUAL BACKGROUND

The basic facts of this automobile-pedestrian accident are not significantly in dispute. The accident occurred on Wade Hampton Boulevard in Greenville, S.C. on December 16, 2021, at 8:22 p.m., directly in front of Asada Restaurant, which is located next to the IHOP Restaurant. It was dark at the time of the accident and although there were streetlights in the area, the streetlight closest to the scene of the accident was out, leaving the area of the road not well-lit. (Defendant Dep., pp. 61, 62, 88). The bodycam video of an investigating officer viewed by the court confirms this. Defendant, Angela Einstein, was driving in the right/outside lane of Wade Hampton toward Greenville. There was curb to her right and a vehicle driven by Pastor Lemuel Gaines directly to her left. (Defendant Dep., pp. 59, 60). As Ms. Einstein passed the IHOP, she came upon Plaintiff, Roger Wayne Lynch, a Black man dressed in dark clothing, lying across her lane of traffic. Despite swerving, Ms. Einstein could not avoid hitting the plaintiff. (Defendant Dep., pp. 56, 58, 92). Mr.

Lynch suffered injuries as a result of the accident.

It is unknown exactly when Mr. Lynch arrived in the area. He claims that he took a bus from downtown to a nearby bus stop, but he does not remember much of anything after getting off the bus. (Lynch Dep., pp. 30, 40, 43, 44, 56, 57). He does not believe that he was in the area for more than an hour prior to the accident. (Plaintiff Dep., pp. 60, 84). He spent some time talking to a person whose name he does not recall. (Plaintiff Dep., pp. 61, 62). While he was in the area before the accident he was observed by the owner of Asada Restaurant, Roberto Cortez. Mr. Cortez provided a statement to police investigators that he witnessed the plaintiff arriving in the area in a black car, remaining in the area, and “trying to jump into the cars.” (Cortez Statement). Mr. Lynch admits riding in a black car earlier in the day with a driver named “Frank”, whose last name he claims he cannot recall. (Lynch Dep., p. 72).

Ms. Einstein arrived in the area of the accident after taking separate trips to drop her daughter, Meg, and Meg’s fiancé (now husband), Daniel, off at a holiday party hosted at the home of Meg’s employer near Paris Mountain. Meg’s employer had recommended attendees be dropped off at the party due to scarce parking. Ms. Einstein first dropped Meg off at the party and headed back to Greenville. Because Daniel had planned to arrive later, Ms. Einstein texted Daniel to ask if he wanted her to pick him up and drop him off as she had done for Meg. He accepted, so Ms. Einstein returned downtown, picked him up, took him to the party and then headed back toward Greenville to go home. (Defendant Dep., pp. 43, 44, 66).

After dropping Daniel at the party, Ms. Einstein drove down North Pleasantburg, turned right onto Wade Hampton, and proceeded toward the scene of the accident. The undisputed evidence is that she was listening to Christmas music, not using her phone, not doing anything that

may have distracted her attention, and was looking straight ahead with both hands on the steering wheel. (Einstein Dep., pp. 64, 65, 83). As Ms. Einstein drove toward Asada and IHOP, she suddenly saw Mr. Lynch lying in her lane of travel. He was not in or near a crosswalk. As soon as Ms. Einstein realized there was a person lying in the road, she applied her brakes, so at the time of the accident she was traveling significantly less than the posted speed limit of 45 MPH. (Einstein depo. pp. 73:8–16; 81:10–23). Specifically, she “tapped [the brakes] as hard as [she] could to stop, swerved all at the same time.” (Einstein depo. p. 84:20–23). While Ms. Einstein was able to swerve, she was unable to avoid hitting the plaintiff's legs. Ms. Einstein rolled forward to safely do a U-turn, parked, and used her vehicle's Bluetooth to call 911 and waited for emergency personnel to arrive. (Einstein depo. pp. 84, 98).

Just before the accident Ms. Einstein was traveling beside an SUV driven by Pastor Lemuel Gaines. In a handwritten statement to the police, as well as in his affidavit submitted with Defendant's Memorandum, Pastor Gaines reported that he was driving beside the defendant and as they were passing IHOP he first saw what he thought was an animal in the road. He then realized it was a man in very dark clothes who “fell on the road.” According to Pastor Gaines, the man could not be seen, Ms. Einstein had no time to slow or stop, and the accident was “unavoidable.” (Gaines Affidavit and Statement).

It is undisputed that at the time of the accident Mr. Lynch was lying in the road, intoxicated, and in a hypoglycemic state. At or about 9:05 p.m. his blood alcohol level (“BAC”) measured .083,¹ which is legally intoxicated to drive a vehicle, and which would have caused impairment of

¹ It is unclear exactly when Mr. Lynch's blood was drawn, but the plaintiff's retained toxicologist, Dr. Eagertson, has testified it likely was 9:05 p.m. on the evening of the accident, about five minutes after EMS released the plaintiff to hospital staff, when draws were made to run other lab tests. This is likely the very earliest blood for a BAC test could have been drawn.

his ability to think and reason and of his motor coordination. (Eagerton Dep., pp. 14, 15). Dr. Eagerton testified that based upon retrograde extrapolation the plaintiff's BAC was at least .090 at the time of the accident. If the plaintiff's blood was drawn later than 9:05 p.m., which is possible, retrograde extrapolation would conclude the plaintiff's BAC was even higher at the time of the accident (Eagerton Dep., p.18).

During his deposition, Mr. Lynch admitted drinking alcohol on the day of the accident, but claimed he only drank one or two Budweiser beers the morning of the accident and none after 8:00 a.m. When asked what size of Budweiser beer(s) he drank, he testified it was "A fifth. Fifth can. A fifth, like can," and that it was only 12 ounces (Lynch Dep., pp. 58 - 60). According to the primary investigating officer, Rachel Hamilton of the Greenville Police Department, during an interview of Mr. Lynch four days after the accident while he was still in the hospital, he admitted to her that he drank "a fifth of alcoholic beverage prior to the accident," but he did not mention a specific alcoholic beverage (Hamilton Dep., pp. 36-37). Further, while Mr. Lynch claimed he stopped drinking the morning of the accident, Dr. Eagerton testified that it was likely the plaintiff drank alcohol after the time he claimed to have stopped and that he likely drank at least three standard drinks within an hour of the accident. (Eagerton Dep., pp. 19, 20). However, even if he stopped drinking at 8:00 a.m., based on retrograde extrapolation the plaintiff's BAC would have been .26 or .27 at 8:00 a.m. the day of the accident. After the accident, Mr. Lynch received medication for alcohol withdrawal at the hospital, and he later admitted that the process of withdrawal was "horrible." (Lynch Depo, p. 122).

To compound his problem with intoxication at the time of the accident, Mr. Lynch is

diabetic. He requires insulin every day and also takes Metformin². Yet, he admitted that he had not taken any diabetes medication on the day of the accident; his last dose of diabetes medication prior to the accident was the morning of December 15, some 36 hours prior. (Lynch Depo, p. 32). He claimed that he had taken the bus to this particular area because his mother lived nearby and his medication was at her house, though he did not live there. He acknowledged that his blood sugar level was going up and down the day of the accident and admitted that when he skips his medication and his blood sugar drops, he “can’t remember nothing”, “can’t function,” is “just out...really out,” and “don’t know what [he is] doing.” (Lynch Dep., pp. 41, 52 –53). He also admitted that before the accident he knew his blood sugar level was low because his mouth was dry and his eyes were affected. (Lynch Dep., p. 53). But, instead of going straight to his mother’s house after getting off the bus so he could take his medicine, he hung out with a guy whose name he doesn’t know. (Lynch Dep. pp. 60, 61).

According to Dr. Eagerton, when the plaintiff's blood was drawn after being admitted to the hospital post-accident, his blood glucose level was 29, far below the normal range of 65 or 70 to 100. After admission, his blood glucose level increased to 45 and normalized at about 1:00 a.m. on December 17. Dr. Eagerton testified that in his June 28, 2024, report, he had opined that based upon the plaintiff's blood glucose level of 29 around the time of the accident, any statements made by him at that time would be unreliable since he was hypoglycemic and therefore would not have been of sound mind. (Eagerton Dep., pp. 13, 14).

² According to Medline, “Metformin helps to control the amount of glucose (sugar) in your blood. It decreases the amount of glucose you absorb from your food and the amount of glucose made by your liver. Metformin also increases your body's response to insulin, a natural substance that controls the amount of glucose in the blood.” <https://medlineplus.gov/druginfo/meds/a696005.html>

However, Dr. Eagerton conceded that hypoglycemia would not have affected the plaintiff's ability to understand what he was telling Officer Hamilton four days later when he informed her that he had consumed a fifth of alcohol on the day of the accident. Further, Dr. Eagerton testified that the plaintiff not eating on the day of the accident (rather than the plaintiff simply not taking his diabetes medicines), likely caused or contributed to the plaintiff's hypoglycemic episode and also contributed to the plaintiff's behavior and collapse at the scene, as an alcohol level of .09 alone likely would not have caused the plaintiff to behave in the manner described by witnesses and then fall down in the roadway. (Eagerton Dep., pp. 13, 15). Regardless of the exact reason for Mr. Lynch's hypoglycemic episode, it is clear it was caused by his willful neglect of his own health. And, as noted below and admitted by Mr. Lynch, this was not a new problem for him as he admits it had happened many times before.

The evidence is uncontradicted that Ms. Einstein was neither distracted nor impaired on the night of the accident. In their memorandum and during argument of this motion Plaintiff's counsel argued that Ms. Einstein may have been under the influence of alcohol or prescription medication at the time of the accident. But, and as noted in Defendant's memorandum in support of her motion, Plaintiff's counsel has obtained her texts, a download of her cell phone data, her credit card charges, her prescription history, a list of all conditions for which she took any prescription medication in 2021, her country club billing statement, contact information for family and friends, photographs from her daughter's employer's Christmas party, magazine article pictures, taken her deposition, questioned her about empty bottles of wine in her garage months later that was to go to recycling, inspected her car, culled through police bodycam video footage and questioned Officer Hamilton about her observations of Ms. Einstein at the time of the accident. Despite all of that, the evidence establishes that Ms. Einstein had only one glass of wine no later

than 9:30 p.m. at a Christmas dinner the night of December 15, twenty-four hours before the accident, and 30 mg of Cymbalta the morning of December 16, approximately 12 hours before the accident. When asked about that, Dr. Eagerton testified that the wine would have been eliminated from Ms. Einstein's system within two hours of drinking it, or approximately 21 hours before the accident, and would not have impaired her in any way at the time of the accident. Likewise, a Cymbalta taken 12 hours before the accident would not have impaired her in any way at the time of the accident. (Eagerton Dep., pp. 42-44). After years of discovery, there was no evidence presented to the Court that Ms. Einstein was impaired in the slightest, negligent in any way, or that there was anything at all that she could have done to avoid the accident. In fact, the evidence is directly to the contrary.

STANDARD OF REVIEW

Summary judgment is proper where the evidence shows “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP; *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 646, 819 S.E.2d 166, 170 (Ct. App. 2018). The movant must first demonstrate that there is no genuine dispute of material fact. *See Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005) (citing *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004)). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *See Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). Rather, to defeat the motion, the party opposing summary judgment must present evidence of specific facts from which the

finder of fact could reasonably find for him, thereby showing there is a genuine issue for trial. *See Miller*, 365 S.C. at 220, 225, 616 S.E.2d at 730, 732.

In considering a motion for summary judgment, a court must view the facts in the light most favorable to the non-moving party. However, “[o]nce a party carries its initial burden, the ‘opposing party must, under Rule 56(e) do more than simply show that there is some metaphysical doubt as to the material facts’, but ‘must come forward with specific facts showing that there is a **genuine issue for trial**’”. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587, 106 S.Ct. 1348, 1356 (1986)) (emphasis in original). “[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Id.* *See also, Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) (rejecting use of the “scintilla rule.”). Moreover, “a court ‘cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.’” *Bloom v. Ravoir*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citing *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996)) (emphasis added). “When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Pye v. Aycock*, 325 S.C. 426, 480, S.E.2d 455 (Ct. App. 1997).

Both South Carolina and federal law indicate that granting summary judgment prior to the close of discovery is permissible. *See, Dawkins v. Fields*, 354 S.C. 58,, 69, 580 S.E.2d 433, 439 (2003)(affirming grant of summary judgment prior to the close of discovery and stating “the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a fishing expedition’” (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991)); *Sheet Metal*

Workers Int'l Ass'n, Loc Union No. 33 of N. Ohio No. 70 v. *Power City Plumbing and Heating, Inc.* 934 F.2d 557, 560-61 (4th Cir. 1991) (affirming grant of summary judgment against appellant's argument that it did not have the chance to complete adequate discovery and noting that appellant was not precluded from conducting discovery during the motion's pendency so any failure to complete discovery was not attributable to the district court). Based on these considerations, summary judgment must be granted in this case.

APPLICATION OF LAW TO FACTS

While Mr. Lynch alleges that Ms. Einstein's negligence, willfulness, wantonness, and/or recklessness proximately caused his injuries arising from the accident, the record is completely devoid of any evidence to reasonably support his allegations, and no reasonable jury could find in his favor. To establish negligence, a plaintiff must prove (1) the defendant owed a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused the plaintiff's injuries. *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). Even if a plaintiff establishes the three elements, under the doctrine of comparative negligence, "a plaintiff may only recover damages if his own negligence is not greater than that of the defendant." *Id.* at 422, 529 S.E.2d at 713 (citing *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991)). Therefore, while summary judgment on a negligence claim is rare, "where a verdict is not reasonably possible under the facts presented, summary judgment is proper." *Bloom v. Ravoir*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000). Further, where, as here, a reasonable jury cannot find there is clear and convincing evidence of willful, wanton, or reckless conduct, the issue of punitive damages is not a question for the jury. *Gurwood v. GCA Servs. Grp., Inc.*, 445 S.C. 324, 335, 914 S.E.2d 149, 155 and n.3 (2025).

Here, a jury could not reasonably return a verdict for the plaintiff for either actual or punitive damages based upon the evidence in the case. The plaintiff has failed to establish that any negligent act or omission by Ms. Einstein proximately caused his injuries. Indeed, the evidence shows Mr. Lynch was responsible for the accident and his resulting injuries. Further, even if the plaintiff were able to establish some negligence by Ms. Einstein, given the circumstances leading to him lying in the road at the time of the incident, no reasonable juror could find the plaintiff to be less than 51% at fault. As such, Ms. Einstein is entitled to summary judgment. Finally, because there is no evidence whatsoever that would allow for a reasonable jury to conclude that Ms. Einstein was reckless, willful, wanton or grossly negligent, or that she acted in conscious disregard for the plaintiff's rights, Ms. Einstein is entitled to summary judgment on the issue of punitive damages.

A. Ms. Einstein Was Not Negligent In Any Way That Served As A Proximate Cause Of The Accident.

There is no evidence that Ms. Einstein was negligent in a way that proximately caused the accident. At the time of the accident, she was looking straight ahead with both hands on the wheel, not distracted, and not using or looking at her phone. She was neither eating nor drinking. She had completed one round-trip between downtown Greenville and the Paris Mountain area to take her daughter to a holiday party and was returning from a second trip after having dropped off her son-in-law at the same party. Those two trips alone would have taken her through at least two dozen lights and intersections, all of which she had navigated without incident. She had consumed no alcohol on the day of the accident. The plaintiff's own toxicologist concedes that nothing Ms. Einstein had consumed in the 24 hours prior to the incident would have impaired her ability to drive at the time of this accident in the slightest. (Eagerton Dep., pp. 42, 43). Officer Hamilton observed Ms. Einstein shortly after the accident and testified there was nothing that indicated she

was impaired in any way at the time of the accident. (Hamilton Dep., p. 33). It is unrefuted that while she had earlier been traveling between 46 – 48 MPH, she had already slowed prior to reaching the area where the accident occurred, braked when she first saw Mr. Lynch and was traveling significantly less than 45 MPH at impact. It is undisputed that when she saw Mr. Lynch lying in the roadway, she was able to swerve to try to avoid him but was unable to avoid the accident.

As noted above, there were two other witnesses to the accident, Mr. Cortez and Pastor Gaines. According to Mr. Cortez, he observed Mr. Lynch “trying to jump into cars” just before the accident. (Cortez Statement). According to Pastor Gaines, he did not see Mr. Lynch in the roadway until he had passed by the IHOP, which is immediately before where the plaintiff was lying in the roadway, and even then he thought the plaintiff was an animal in the road. Most importantly, Pastor Gaines noted in his statement to the police and in his affidavit the plaintiff could not be seen, Ms. Einstein did not have time to stop or slow, and the accident was “unavoidable” for her. (Gaines Statement and Affidavit). No evidence or factual assertions have been presented to the Court by Mr. Lynch disputing the accounts of these witnesses.

Counsel for Mr. Lynch has attempted to argue during this case that Mr. Einstein was somehow impaired by alcohol or prescription medication at the time of the accident. This case has been pending since July 2022, and as noted above Mr. Lynch has thoroughly investigated this issue in an effort to locate evidence to support that claim. However, no such evidence was presented. The record establishes only that Ms. Einstein had a single glass of wine at a dinner party on the evening of December 15, 2021, approximately 24 hours before this accident, and Dr. Eagerton testified that would have been completely eliminated from her system within two hours and would have had no impact on her at all at the time of the accident. Ms. Einstein took a

Cymbalta the morning of March 16, 2021, but again Dr. Eagerton testified that would have had no effect on her that contributed to this accident in any way. Mr. Lynch failed to present any other evidence from other discovery done that Ms. Einstein was under the influence of anything at the time of the accident.

Likewise, Plaintiff's attorney's argument that Ms. Einstein's co-authorship of a magazine column, "Drinkin' on the Job", and that she may have a glass of wine several nights in a week with dinner is evidence that she may have consumed alcohol prior to this accident is without merit. This is, at best, rank speculation if it even rises to that level. Plaintiff has failed to present specific facts showing Ms. Einstein was impaired by prescription drugs, alcohol or anything else on the evening of the accident. Despite nearly four years of litigation, there is simply no evidence at all to support any claim of negligence by Ms. Einstein, or any actions by her that caused or contributed to the accident, and she is entitled to summary judgment on all claims as a matter of law.

B. The Plaintiff Is Barred From Recovery Because He Was Responsible For The Accident And His Own Injuries

Based upon the undisputed facts presented in this matter and the law, the only reasonable conclusion that can be reached is that Mr. Lynch was responsible for the accident and his own injuries, and he is therefore barred from any recovery in this case. As established by Dr. Eagerton, it is undisputed that at the time of the accident Mr. Lynch was legally intoxicated. His BAC was .09 at a minimum, assuming his blood was drawn upon arrival at the hospital, which the evidence establishes was the earliest that could have been done. If it was drawn later, his BAC would have been higher than that at the time of the accident. Although the precise amount of what he drank is unknown and what type(s) of alcohol he drank is unclear, as is much of the day of the accident for Mr. Lynch, he admitted to drinking "a fifth" —a term he concedes is a common reference to liquor, not beer, even by him. (Lynch Dep., p. 69). While he claims he stopped consuming alcohol

at 8:00 a.m. the morning of the accident, Dr. Eagerton doubts that timeline. It is his opinion Mr. Lynch more than likely consumed at least three standard drinks in the hour before the accident. In the final analysis the exact amount and timing of Mr. Lynch's alcohol consumption does not need to be precisely resolved since it is undisputed that when he was lying in the roadway at night in dark clothes, he was legally intoxicated, and according to Dr. Eagerton mentally and physically impaired as a result.

To compound matters, by his own testimony Mr. Lynch spent the 36 hours prior to the accident neglecting his diabetes. He had not taken either his daily insulin or Metformin since the morning of December 15. Additionally, he does not remember what or when he ate the day of the accident, (Lynch Dep., pp. 57). According to his toxicologist Mr. Lynch likely had not eaten anytime near the time of the accident and likely did not eat at all that day. (Eagerton Dep., pp. 53, 61). As a consequence of Mr. Lynch's own willful neglect of his chronic medical condition, his blood glucose plunged to a dangerously low level and he lost awareness of his situation. (Eagerton Dep., pp. 47) This is consistent with Mr. Lynch's own testimony that he doesn't really remember what he did the day of the accident and that he can remember almost nothing after allegedly getting off the bus near where the accident occurred: not the time of day, weather, clothing, surroundings, or the collision at all, nor the details of the collision like where he was when he was hit, who hit him, what kind of car hit him, the speed of the car or whether there were other cars around. (Plaintiff Dep., pp. 57).

In addition, a review of Mr. Lynch's prior hypoglycemic incidents that resulted in hospital admissions reflect that he was well-aware of the potential consequences of his behavior. It is undisputed that in January 2021, less than a year before the accident, he was found by EMS unconscious, on the side of the street suffering from hypoglycemia in 42-degree weather. He was

treated for hypoglycemia and possible hypothermia, told the EMS attendants that he had been out for a night of drinking and smoking crack.³, and was taken to the hospital by ambulance. (January 2021 EMS Report). Similarly, on November 25, 2021, just three weeks before the accident, he was again found by EMS in his bedroom in a confused and hypoglycemic state, surrounded by “multiple alcoholic beverage bottles” that were empty. He admitted to drinking “copious amounts of alcohol.” His blood glucose level was reported to be 30. He was again taken to the hospital by ambulance. (November 2021 EMS Report).

In addition to these documented ambulance runs for medical issues similar to what occurred on the evening of this accident, Mr. Lynch admitted in his deposition that he has been to the hospital more than 12 times per year on average when his blood glucose levels got too high or too low. As he stated, “[w]hen your sugar level get so high or so low you got to go. You don’t know if you go or not because they pick you up in an ambulance. You don’t know nothing. I didn’t know nothing” (Lynch Dep., pp. 22-23). As such, it cannot be disputed that prior to this accident and on the day of the accident Mr. Lynch was well-aware what could be the effects of his willful and reckless failure to take the most basic care of his diabetes.

That Mr. Lynch was negligent cannot be disputed. First, the very fact that as a diabetic, he failed to take his insulin and eat properly, is recognized in South Carolina as negligence. *See, Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 344 S.E.2d 157 (Ct. App. 1986):

A jury could reasonably find from the facts, as recited above, that PYA [as employer] and Gregory [the diabetic driver/defendant] were negligent because Gregory had sufficient warning on the morning of the accident that a hypoglycemic episode was approaching and, though he had “gotten woozy” and knew he had not

³ Mr. Lynch testified in his deposition he has not used illegal drugs since 2006 and that he was an insulin dependent diabetic (Lynch Dep., pp. 20). He later testified that he had used no drugs since 2008, and still later testified he had used no drugs for ten years. (Lynch Dep., pp. 114, 124). The medical records directly contradict his testimony denying drug use.

eaten lunch, he neither ate the candy he had available to abate the episode nor stopped driving.

Id at 590–91, 344 S.E.2d at 159. As such, Gregory’s claim that he suffered a sudden medical emergency as the result of hypoglycemia which led to the accident was rejected. That Mr. Lynch was not driving a vehicle, as argued by his attorneys, is irrelevant. Mr. Lynch knew and had known what the effects of his failure to take proper care of his diabetes could and likely would be, and there was nothing sudden about this event to him.

South Carolina cases have also held the fact of voluntary intoxication alone may be sufficient to hold as a matter of law that plaintiff’s negligence exceeded that of a defendant. In *Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003), the Supreme Court stated: “We agree with the trial judge that Lydia's admission that he was ‘appreciably impaired’ and that he lost control of the vehicle supports only one conclusion, that Lydia's negligence exceeded Horton's. *See Creech v. South Carolina Wildlife & Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997) (if the evidence supports only one conclusion, then the comparative fault of the plaintiff and defendant becomes a question of law for the trial judge). *Lydia*, 355 S.C. at 40, 583 S.E.2d at 752-53.

The evidence here is overwhelming and can lead to only one reasonable conclusion: the plaintiff’s self-inflicted conduct—intoxication, failure to take medication, failure to eat—caused him to fall into the middle of a busy Greenville highway at night, wearing dark clothing in a not well-lit area. The plaintiff knew the dangers of not controlling his blood glucose level. While his injuries are unfortunate, he alone created the circumstances of lying across a roadway. Ms. Einstein had no knowledge of his condition, and no opportunity to recognize his condition and avoid him. The plaintiff was the sole author of his own injuries. The evidence supports only one conclusion: that the plaintiff’s negligence was the cause of the accident and his injuries. Accordingly, Ms. Einstein is entitled to summary judgment as a matter of law.

C. **Any Negligence of Ms. Einstein Was Not a Proximate Cause Of the Accident and She is Is Entitled to Summary Judgment.**

Ms. Einstein was not negligent at all, but even if she were any such negligence was not a proximate cause of the accident. To the extent it might be argued she was negligent and proximate cause exists, because of the plaintiff's overwhelming grossly negligent behavior, no reasonable jury could find that he was less than 51% at-fault and, as such, he is legally barred from any recovery in this case.⁴

The plaintiff remembers nothing about the accident and can offer no testimony about anything Ms. Einstein did to cause the accident. Nevertheless, and despite testifying that he does not know if Ms. Einstein was unable to stop without hitting him, it is his belief he is entitled to recover in this case simply because she had a car and hit him. That cannot serve as a basis for the imposition of liability on Ms. Einstein, particularly in light of the plaintiff's overwhelming gross negligence, and comparing two decisions of the South Carolina Supreme Court in auto-pedestrian cases supports the conclusion that a verdict in favor of Mr. Lynch is not reasonably possible under the facts.

In *Bloom v. Ravoir*, *supra*, the Supreme Court affirmed that a pedestrian's negligence exceeded 50% as a matter of law where he violated crossing statutes by jaywalking mid-block in dark, rainy conditions while wearing dark clothing and entering traffic suddenly from between parked cars; the Court concluded the pedestrian's fault was overwhelming and precluded any reasonable inference of driver negligence. 339 S.C. 417, 420–25, 529 S.E.2d 710, 711–14.

⁴ It is not Ms. Einstein's or the Court's position that the plaintiff was only 51% at-fault, but instead that he could not be less at fault than 51%. It is Ms. Einstein's position, and the Court's, that the plaintiff was overwhelmingly grossly negligent compared to any slight evidence of negligence by her.

Likewise, in *Est. of Haley ex rel. Haley v. Brown*, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006), three boys around eight years old were riding bicycles and darted out into the street from a parking lot. Defendant motorist swerved to avoid the first two boys but the third struck the defendant's truck. At trial, the plaintiff presented an expert who opined that the defendant had two seconds to avoid the accident, inferring that the defendant was negligent. The court of appeals affirmed the trial court's directed verdict for the defendant.

At the time of this accident, Brown was driving in his proper lane and at the posted speed limit. Moreover, there is no evidence of any impairment or recklessness on his part. Brown was confronted with an emergency situation caused solely by the first two boys wrongfully darting out of the bank parking lot into the path of his truck. He quickly made a decision to swerve to the left to avoid hitting the two boys. By choosing to swerve, Brown made a choice a person of ordinary prudence placed in the same emergency situation might also make at that moment. In fact, Brown did not hit *any* of the three children that day; unfortunately, one of them, Joshua, struck him.

Id. at 243–44, 634 S.E.2d at 64.

By contrast, in *Abdelgheny v. Moody*, 432 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020), the court reversed summary judgment because material disputes existed where the pedestrian wore bright clothing, had safely crossed two lanes, paused in the median, and there was evidence the driver may have failed to maintain a proper lookout—facts permitting a jury to weigh comparative fault.

In the accident at issue, the features giving rise to issues of material fact in *Abdelgheny* are absent: the plaintiff was not wearing bright clothes, the plaintiff was not actively attempting to avoid traffic—he had at one point been jumping in out of traffic according to Mr. Cortez—he was lying in the road at the time he became visible to Ms. Einstein, and there exists an uncontradicted statement by Pastor Gaines that the incident was unavoidable by Ms. Einstein. Moreover, evidence supporting the conclusion that a verdict in favor of the plaintiff is not reasonably possible is even

more stark than in *Bloom*: the plaintiff was lying in a live travel lane on a highway at night, intoxicated, in an avoidable hypoglycemic state, and wearing dark clothing—directly contravening clear statutory duties to exercise due care for personal safety and to avoid creating roadway hazards. *See* S.C. Code Ann. §56-5-3150(a) and (c). On these objective facts, no competent evidence suggests Ms. Einstein, or any reasonable motorist could have perceived and avoided a supine, dark-clad, impaired pedestrian under low-visibility nighttime conditions; any contrary supposition is speculative and cannot forestall summary judgment. Thus, as in *Bloom*, the evidentiary record admits to only one reasonable conclusion—that plaintiff’s negligence exceeds 50% and is the sole or superseding cause—rendering the claim ripe for summary judgment.⁵ As such, even if Ms. Einstein was somehow slightly negligent, she is still entitled to summary judgment since no reasonable jury could find the plaintiff to be less than 51% at-fault for the accident. *See Bloom* at 422, 529 S.E.2d at 713.

D. Ms. Einstein Is Entitled To Summary Judgment On The Issue Of Punitive Damages

⁵ *See* 339 S.C. at 420–25, 529 S.E.2d at 711–14; *Pottinger v. Price*, 2019-0183 (La. App. 1 Cir. 10/23/19), 289 So. 3d 1047, 1057–58 (upholding a trial court’s granting of summary judgment for a motorist and finding a motorist that attempted to slow down and swerve but still struck a pedestrian acted reasonably where there was no crosswalk, it was night, there were no streetlights illuminating roadway in area of accident, the pedestrian was wearing dark upper body clothing and no reflective materials, and the pedestrian had parked his vehicle on shoulder, which could have distracted approaching drivers and provided physical barrier limiting potential escape path for any swerving vehicle.); *see Gaffron v. Metropolitan Atlanta Rapid Transit Authority*, 229 Ga. App. 426, 494 S.E.2d 54 (1997) (finding a pedestrian may not ignore traffic conditions and enter roadway relieved of her duty to exercise ordinary care for her own safety); *Schupp v. Grill*, 27 Conn. App. 513, 607 A.2d 1155 (1992) (finding plaintiff was the proximate cause of his own injuries where he was hit while running in the middle of an unlighted road toward the defendant’s westbound automobile at 6:42 p.m. in the dark). *Jones v. Gleim*, 468 N.E.2d 205, 208 (Ind. 1984) (finding a pedestrian’s “conduct in crossing the street in the middle of the block on a rainy, foggy night when her vision was impaired and she did not continue to look for oncoming traffic was not that of a reasonable person and was in disregard of the obviously known and appreciated dangers.”).

The plaintiff has prayed for recovery of punitive damages. Having already determined that Ms. Einstein was not negligent and that Mr. Lynch was solely or primarily at-fault for the accident and his injuries, it is axiomatic that Mr. Lynch is not entitled to recovery of punitive damages. Nevertheless, the Court addresses this issue as well.

“Punitive damages may be awarded only if the plaintiff proves by *clear and convincing evidence* that his harm was the result of the defendant's wilful, wanton, or reckless conduct.” S.C. Code Ann. §15-32-520 (emphasis added). The clear and convincing standard represents “the highest burden of proof known to the civil law....” *Mellen v. Lane*, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008). While determining whether a party is entitled to punitive damages is a jury question, a trial court must determine whether a jury can reasonably find there is clear and convincing evidence of wilful, wanton, or reckless conduct. *Gurwood v. GCA Servs. Grp., Inc.*, 445 S.C. 324, 335, 914 S.E.2d 149, 155 and n.3 (2025). Mere negligence, even gross negligence, is insufficient to support punitive damages. *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 237, 763 S.E.2d 615, 619 (Ct. App. 2014) (citing *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943)). The Court of Appeals clarified that “while punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence.” *Solanki*, 410 S.C. at 237, 763 S.E.2d at 619.

As noted above, the only reasonable conclusion that can be drawn in this case is that Ms. Einstein was not negligent and no acts or omissions on her part caused the plaintiff’s injuries. At the time of the accident, she was driving down a not well-lit road at night, with both hands on the wheel and looking straight ahead without any distractions, when she came upon the plaintiff dressed in dark clothing lying in the road from a combination of alcohol and a diabetic episode.

When Ms. Einstein saw the plaintiff in the roadway, likely at about the same time Pastor Gaines did, she was proceeding at the speed limit and slammed on her brakes, but it was too late to avoid the accident.⁶ As Pastor Gaines stated, the accident was simply unavoidable for Ms. Einstein. By contrast, the plaintiff's own conduct, his drinking combined with his mismanagement of his blood glucose levels despite knowing the consequences of both, created the danger; he was the author of his own injuries. Consequently, the record contains no evidence whatsoever that would allow for a reasonable jury to conclude that Ms. Einstein was reckless, willful or wanton, or that she acted in conscious disregard for the plaintiff's rights. As such, Ms. Einstein is entitled to summary judgment on the issue of punitive damages.

E. Plaintiff Is Not Entitled To Additional Time For Discovery

During the hearing of this motion Plaintiff's counsel argued that additional time was needed to complete discovery. Initially, it should be noted that Plaintiff's counsel did not submit an affidavit pursuant to Rule 56(f) prior to the hearing claiming that additional time was needed to complete discovery. Even if such an affidavit had been submitted, this argument must fail.

During the hearing Defense counsel provided the Court with a summary of the history of discovery in this case. The Court allowed Plaintiff's counsel ten days to respond to that information. Plaintiff's counsel submitted a response and disputed little if any of the information provided by Defense counsel during the hearing, some of which is noted below. Based upon

⁶ Even if the plaintiff attempts to establish Ms. Einstein was somehow violating a traffic law at the time of the incident, which Ms. Einstein denies, in *Gurwood*, the Supreme Court signaled that a minor traffic violation, standing alone, does not elevate conduct to the level of recklessness necessary for punitive damages. 445 S.C. at 332, 914 S.E.2d at 154 (“[c]lear and convincing evidence is an elevated standard of proof . . . the mere violation of the statute, without more, is insufficient to prove punitive damages by clear and convincing evidence.”) (quoting *Wise v. Broadway*, 315 S.C. 273, 282, 433 S.E.2d 857, 862 (1993) (Toal, J. dissenting)).

arguments during the hearing and the submissions on this issue, the Court finds Plaintiff's counsel's argument is without merit.

This accident occurred in December 2021. The summons and complaint were filed in July 2022. The depositions of Mr. Lynch, Ms. Einstein and Officer Hamilton were taken in 2023 and the deposition of Ms. Einstein's husband, Howard, was taken in November 2024.

In 2024, Ms. Einstein's medical records were requested and objected to, and in August 2024, Judge Gravely ordered limited discovery of the same. Later, during a hearing on other matters in October 2025, Judge Rivers *sua sponte* permitted some additional limited discovery of Ms. Einstein's medical records. With one exception Plaintiff and Dr. Eagerton had all additional records ordered to be produced by the Court in November 2025. The exception, a letter from Dr. Johnstone, was provided in early December, which concluded that production. No objections were made to that production, and no additional information was requested. This information has provided no support for Plaintiff's counsel's arguments of impairment by Ms. Einstein.

In 2025, Plaintiff's counsel also moved for production of Ms. Einstein's cell phone so that all data could be downloaded for production. Defendant opposed that request, and on motion to compel Judge McMaster ordered production of the phone for a limited production of data/information around the time of the accident. All information ordered to be produced by Judge McMaster has been produced. None of this information has provided support for Plaintiff's counsel's arguments of negligence by Ms. Einstein.

Defendant initially moved for summary judgment in late January 2024. That motion was granted by Judge Morgan in March 2024, but the order was rescinded for reasons not relevant to this issue at this time, except for the arguments made by Plaintiff's counsel. Specifically, on April 9, 2024, Plaintiff's counsel filed a motion to alter or amend Judge Morgan's Order along with an

affidavit signed by counsel stating additional discovery was needed, including the depositions of Pastor Gaines, Mr. Cortez, Daniel Fedorski and certain 1st responders to the scene, and to obtain the medical and cell phone records of Ms. Einstein. None of those depositions were ever taken by Plaintiff's counsel.

In May 2024, Defendant again moved for summary judgment. On July 1, 2024, Plaintiff's counsel filed a memorandum in opposition to that motion, arguing that additional time was needed to complete discovery, including obtaining Ms. Einstein's cell phone and medical information.

On November 18, 2024, Defendant supplemented her discovery responses to add her children Meg and Davis as potential witnesses, as well as Mr. Cortez, Mr. Gaines and Mr. Fedorski. The addresses of each of those witnesses were also provided.

On December 11, 2024, Defendant supplemented her discovery responses to provide the names and addresses of Cynthia Waterman, Kathryn Norwood, Marion Crawford, Ann Taylor and Alex Burgamy. This information was requested by Plaintiff's counsel.

In an email to defense counsel dated May 2, 2025, Plaintiff's counsel noted her intention to take the depositions of Defendant's two children, Meg and Davis, as well as Ms. Burgamy, Ms. Norwood, Ms. Crawford, Ms. Taylor, Ms. Waterman, Mr. Cortez and Mr. Gaines, and representatives of Mr. Fedorski's employer Allied, Pure Insurance and Chubb Insurance. She also stated her intention to request an unredacted copy of the attendance list of the Greenville Country Club Board of Directors, which was meeting on the evening of the accident and which Mr. Einstein attended, as well as the cell phone data from Ms. Einstein's cell phone. She expressed an interest in a scheduling order because there was "a lot to do in a short period of time" since the case was then scheduled for trial on June 23, 2025.

In all of 2025, a total of four (4) depositions were taken, all by counsel for Defendant.

Plaintiff did not schedule or take any of the twelve (12) depositions it was indicated were planned to be taken during the previous eighteen (18) months since advising the Court in an affidavit and written memoranda that the motion for summary judgment should not be granted because additional discovery was needed. Plaintiff took only the deposition of Mr. Einstein in November 2024, who was not a witness to the accident, which deposition led to the issuance of an Order of Civility by Judge Gravely after reading a copy of the transcript. Plaintiff did not schedule or take the depositions of any of the eleven (11) members of Defendant's prayer group whose names and addresses were requested in discovery.

In Plaintiff's counsel's response to this information it was argued, among other things, that Judge Gravely's Order and Notes of Civility limited Plaintiff's ability to "fully and fairly conduct depositions". Initially, it should be noted that Judge Gravely's Order was issued in February 2025, nine months after Plaintiff's counsel's affidavit claiming additional time was needed to take depositions, so that does not explain why only one deposition was taken during that time, which was not even a deposition ever claimed to be needed. Further, it is entirely unclear how an order directing counsel to behave professionally in depositions and to ask relevant questions somehow inhibited Plaintiff's counsel from taking any depositions at all, and Plaintiff's counsel provided no further insight into that claim. One need not speculate about that though, as Judge Gravely's Order speaks for itself. In no way did he restrict Plaintiff's counsel from taking depositions in the slightest, and more importantly there is no evidence Plaintiff's counsel scheduled any of them to be taken thereafter.

The case was scheduled long ago for a day-certain trial during the March 16, 2026, term of court. That was the second time the case had been set for trial. The hearing of this motion was three years and six months after the lawsuit was filed, nearly two years after the first motion for

summary judgment was filed and two months before the scheduled trial. Trials and motions cannot be delayed indefinitely based on some mere hope that a party will find evidence to support its position at some point. Here, there was more than ample time for Plaintiff's counsel to complete any discovery needed in this matter and Plaintiff's counsel has failed to demonstrate that additional time for discovery would yield any relevant evidence to rebut the motion for summary judgment.

CONCLUSION

Ms. Einstein is entitled to summary judgment because there is no evidence that any of her conduct proximately caused the plaintiff's injuries; instead the evidence is clear that Mr. Lynch was at-fault in causing the accident and his own injuries. Even if there was evidence of negligence by Ms. Einstein, Mr. Lynch's gross negligence so far outweighs any slight negligence of Ms. Einstein that no reasonable jury could find him less than 51% at-fault, thereby barring him from any recovery. Lastly, there is no evidence of any acts or omissions by Ms. Einstein that could possibly serve as a basis for an award of punitive damages, particularly in light of the overwhelming gross negligence of the plaintiff. Therefore, Ms. Einstein is entitled to summary judgment on all issues and this matter is hereby dismissed with prejudice.

AND IT IS SO ORDERED!

[ELECTRONIC SIGNATURE OF COURT TO FOLLOW]



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein

Case Number: 2022CP2303510

Type: Order/Summary Judgment

So Ordered

Vernon F. Dunbar

Electronically signed on 2026-03-24 15:11:24 page 25 of 25

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2303510

Roger Wayne Lynch
PLAINTIFF(S)

Angela West Einstein
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is before this Court upon Plaintiff's Motions for Reconsideration of the Order Instructions and Final Order filed respectively on March 6, 2026 and April 3, 2026, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRPC), which were timely filed with this Court by Counsel.

After careful consideration of the arguments, filings of Counsel and a review of the evidence and record in this matter, this Court respectfully denies the Motion for Reconsideration, Alter and to Amend Order.

IT IS SO ORDERED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/06/2026 .

Adam Peoples for Angela West Einstein

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Roger Wayne Lynch vs. Angela West Einstein
Case Number: 2022CP2303510
Type: Order/Electronic Form 4

So Ordered

Vernon F. Dunbar

Electronically signed on 2026-04-06 10:44:34 page 3 of 3

ELECTRONICALLY FILED - 2026 Apr 06 4:00 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A NO. 2022-CP-23 _____
	)	
Roger Wayne Lynch,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
v.	)	
	)	
Angela West Einstein,	)	
	)	
Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and are required to appear and defend this action set forth in the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer or Motion to said Complaint on O'Shea Law Firm, LLC at 1120 Folly Road, Charleston, SC 29412 within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to appear and defend within the time aforesaid, judgment by default will be entered against you for the relief demanded in the Complaint.

O'Shea Law Firm, LLC

s/ Christopher J. McCool

Christopher J. McCool (SC Bar No.: 64003)

Brooklyn A. O'Shea (SC Bar No.: 102505)

1120 Folly Road

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[Signatures continue on following page]

Tara A. Leaphart Attorney At Law, LLC

s/ Tara A. Leaphart

Tara A. Leaphart (SC Bar No.: 73660)

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taraleaphartlaw@outlook.com

Attorneys for Plaintiff

July 5, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 th JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A NO. 2022-CP-23-_____
	)	
Roger Wayne Lynch,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	
v.	)	
	)	
Angela West Einstein,	)	
	)	
Defendant.	)	

Plaintiff hereby alleges and pleads as follows:

1. Plaintiff is a resident and citizen of Greenville County, State of South Carolina.
2. Defendant is a resident and citizen of Greenville County, State of South Carolina.
3. At all relevant times, the most substantial part of the acts and omissions committed by Defendant giving rise to this action occurred in Greenville County, South Carolina.
4. At all relevant times, Plaintiff was a pedestrian.
5. At all relevant times, Defendant was operating a 2021 Land Rover Range Rover vehicle.
6. This Court has jurisdiction pursuant to S.C. Code Ann. § 36-2-803.
7. The venue is proper pursuant to S.C. Code Ann. § 15-7-30.
8. The subject incident occurred on December 16, 2021 on Wade Hampton Boulevard in Greenville, South Carolina.

9. As Plaintiff was in the right-hand lane of Wade Hampton Boulevard, he was violently struck by the vehicle Defendant was operating.

10. Defendant owed a duty to Plaintiff to operate her vehicle safely, with reasonable care, and in accordance with all laws concerning the operation of a motor vehicle.

11. Defendant was negligent, negligent per se, willful, wanton, and/or reckless and breached the duties Defendant owed to Plaintiff in one or more of the following ways:

- (a) In operating her vehicle in a negligent, negligent per se, careless, and/or reckless manner;
- (b) Failing to use due care;
- (c) Traveling at an excessive rate of speed;
- (d) Failing to keep her vehicle under proper control;
- (e) Failing to keep a proper lookout;
- (f) Failing to have her vehicle equipped with proper brakes and, if so equipped, in failing to timely apply the brakes;
- (g) Failing to operate her vehicle safely and properly under the prevailing traffic conditions;
- (h) Failing to use the degree of care and caution that a reasonably prudent driver would have used under the circumstances then and there prevailing;
- (i) Failing to take evasive action;
- (j) Otherwise operating her vehicle without exercising reasonable care and in a negligent, negligent per se, willful, wanton, and/or reckless manner;
- (k) Failing to comply with all applicable statutes and ordinances; and
- (l) In such other particulars that may be established during the course of discovery and/or at the trial of this action.

12. Plaintiff is in the protected class of persons in which the statute(s) and/or ordinance(s) Defendant violated intend to protect.

13. Defendant's negligent, negligent per se, willful, wanton, and/or reckless conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the incident described herein.

14. As a direct and proximate cause of Defendant's negligent, negligent per se, willful, wanton, and/or reckless conduct and breach of the duties owed to Plaintiff, Plaintiff sustained injuries to his body.

15. As a direct and proximate cause of Defendant's negligent, negligent per se, willful, wanton, and/or reckless conduct and breach of the duties owed to Plaintiff, Plaintiff has suffered damages including, but not limited to, physical injury and harm, mental and emotional anguish, past and future medical expenses, lost income and wages, loss of enjoyment of life, permanent injuries, and any other damages, both economic and non-economic, which may be learned through discovery of this case and as the trier of fact may determine and award.

WHEREFORE, Plaintiff demands judgment against Defendant for actual and punitive damages, including damages for physical injury and harm, mental and emotional anguish, past and future medical expenses, lost income and wages, loss of enjoyment of life, permanent injuries, for the costs of this action, attorney fees, pre and post judgment interest, and for any additional relief this Court deems just and proper.

[Signatures on following page]

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s/ Christopher J. McCool

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Attorneys for Plaintiff

July 5, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

GREENVILLE COUNTY

CASE NO.: 2022-CP-23-03510

Roger Wayne Lynch,

Plaintiff,

vs.

Angela West Einstein,

Defendants.

ANSWER OF DEFENDANT

Defendant Angela West Einstein ("Einstein"), by and through the undersigned counsel, submits this Answer to Plaintiff's Complaint, stating as follows:

FIRST DEFENSE

Einstein responds to the allegations in Plaintiff's Complaint, paragraph by paragraph, as follows:

1. The allegations of Paragraph 1 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

2. Admitted.

3. With respect to the allegations in Paragraph 3 of the Complaint, it is specifically denied that Defendant was negligent in any manner with respect to the incident. It is admitted that the incident that is the subject of this litigation occurred in Greenville County, South Carolina. Except as stated, denied.

4. Denied.

5. With respect to the allegations in Paragraph 5, it is admitted that Defendant was operating a 2021 Land Rover Range Rover vehicle at the time of the incident that is the subject of this litigation. Except as stated, denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

6. The allegations of Paragraph 6 contain legal conclusions to which no response is required. To the extent a response is required, the allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

7. The allegations of Paragraph 7 contain legal conclusions to which no response is required. To the extent a response is required, the allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

8. Admitted.

9. With respect to the allegations in Paragraph 9 of the Complaint, it is admitted that, upon information and belief, Plaintiff was laying in the roadway on Wade Hampton Boulevard in Greenville, South Carolina at the time of the incident that is the subject of this litigation. It is specifically denied that Defendant was negligent in any manner with respect to the incident. Except as stated, denied.

10. The allegations of Paragraph 10 contain legal conclusions to which no response is required. To the extent a response is required, the allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

11. The allegations of Paragraph 11, and each of its subparts, is denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

SECOND DEFENSE
Failure to State a Claim

Plaintiff fails to state a cause of action upon which relief can be granted and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

THIRD DEFENSE
Absence of Proximate Cause

No act or omission on the part of Einstein caused or contributed to the incident and alleged damages set forth in the Complaint. The lack of proximate causation is pled in bar of Plaintiff's claims against Einstein.

FOURTH DEFENSE
Comparative Negligence

Einstein pleads Plaintiff's own negligence in failing to exercise reasonable care for his own safety by engaging in conduct and/or activities that placed him at risk of injury and/or death such as failing to act as a reasonably prudent person would under the circumstances. Such conduct by Plaintiff constitutes negligence and was the proximate cause of any alleged injuries or damage sustained by Plaintiff. Einstein pleads the Plaintiff's own negligence as a bar to Plaintiff's claims.

Plaintiff's recovery of any amount from Einstein is barred and/or reduced to the extent of Plaintiff's own negligence, which is an amount sufficient that, under South Carolina law, acts as a total bar to the Plaintiff's action and/or recovery in this matter.

FIFTH DEFENSE

Failure to Mitigate

Plaintiff's claims are barred—in whole or in part—for failure to mitigate his alleged damages and losses.

SIXTH DEFENSE

Intervening / Superseding Causes

If Einstein was negligent, which is expressly denied, the superseding and/or intervening acts of third parties broke the chain of causation and were the proximate cause of any injuries alleged by the Plaintiff and Einstein pleads such superseding and intervening negligence of third parties as a bar to this action. To the extent the negligence of Einstein is apportioned under the laws of the State of South Carolina, any and all apportionment to Einstein should be 0% of the liability based upon the acts and omissions of others, including the Plaintiff.

SEVENTH DEFENSE

Einstein Met Standard of Care

Einstein exercised all possible care under the circumstances and complied with all duties—if any—owed to Plaintiff at the time of the incident.

EIGHTH DEFENSE

Assumption of the Risk

Plaintiff's claim is barred by the doctrine of assumption of the risk in that Plaintiff knew, or should have known, that becoming intoxicated and then laying in the open roadway at night posed a significant risk of harm to himself and caused a dangerous condition. Plaintiff appreciated the danger and voluntarily exposed himself to the danger that resulted in his alleged injuries and/or damages.

NINTH DEFENSE

No Entitlement to Punitive Damages

Plaintiff's claim for punitive damages violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and comparable and other provisions of the South Carolina Constitution and laws. Plaintiff's Complaint fails to state a claim for punitive damages against Einstein because Plaintiff does not allege and/or is unable to show that Einstein acted with malice or undertook willful or wanton conduct regarding the incident at issue. Further, Plaintiff is statutorily barred from any award of punitive damages in excess of the limitation set forth in S.C. Code § 15-32-530.

TENTH DEFENSE
Unavoidable Accident

The incident that is the subject of this litigation was unavoidable such that Defendant should not be liable in negligence. Einstein did not act negligently or willfully to cause anything that could have led to this incident.

ELEVENTH DEFENSE
Negligence Per Se Not Applicable

Defendant did not violate any law, statute, or ordinance at the time of the incident that is the subject of this litigation. Further, Plaintiff was not in the class of people that the laws allegedly violated by Einstein, which is expressly denied, were designed to protect. Einstein's alleged violation of any laws, which is again expressly denied, was not the proximate cause of Plaintiff's alleged damages.

TWELFTH DEFENSE
Sudden Emergency

Plaintiff's own conduct created emergency circumstances such that Defendant should not be held to the same level of care as individuals who are not responding to an emergency situation. Einstein acted as a reasonably prudent driver would do under the circumstances.

THIRTEENTH DEFENSE
Reservation

Einstein has not yet had an adequate opportunity to conduct its investigation into this matter and expressly reserves the right to assert any additional defenses, affirmative or otherwise, which may become apparent through discovery and/or trial.

DEMAND FOR RELIEF

WHEREFORE, Defendant Angela West Einstein respectfully requests that:

- (a) The Complaint be dismissed, with prejudice;
- (b) Plaintiff have and recover nothing from the Defendant;
- (c) That all costs of this action, including attorneys' fees and costs, be taxed against the Plaintiff;
- (d) That there be a trial by jury on all issues so triable; and
- (e) For such other relief as the Court may deem just and proper.

Respectfully submitted this 5th day of August, 2022

HALL BOOTH SMITH, P.C.

/s/ Megan M. Stacy
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Attorneys for Defendant Einstein

ELECTRONICALLY FILED - 2022 Aug 05 11:15 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER OF DEFENDANT** has been filed with the South Carolina electronic filing system and served upon the other parties hereto by electronic mail and by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

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This 5th day of August, 2022.

HALL BOOTH SMITH, P.C.

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Attorneys for Defendant Einstein

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 *
 COUNTY OF GREENVILLE * TRANSCRIPT OF RECORD

-----X
 ROGER WAYNE LYNCH, *
 *
 Plaintiff, *
 *
 vs. * Case No. 2022-CP-23-03510
 *
 ANGELA WEST EINSTEIN, *
 *
 Defendant. *
 -----X

January 12, 2026

B E F O R E:

The Honorable Vernon F. Dunbar, Presiding Judge

A P P E A R A N C E S:

Brooklyn O'Shea, Esq.
 Ian O'Shea, Esq.
 Whitney Harrison, Esq.
 Attorneys for the Plaintiff

David Rainey, Esq.
 Ronald G. Tate, Jr., Esq.
 Attorneys for the Defendant

Recorded by: TEC Courtroom

Court Reporter: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
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E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

THE CLERK: Judge, this is Case No. 2022-CP-23-03510, Roger Wayne Lynch versus Angela West Einstein, Defendant's Motion for Summary Judgment, Plaintiff's Motion to Dismiss Defendant's Motion (indiscernible).

THE COURT: All right. I'll hear from the parties. You may approach.

Parties ready to proceed?

MR. RAINEY: Yes, Your Honor.

THE COURT: Good afternoon, Mr. Rainey. I hear from you, sir.

MR. RAINEY: How are you? I think, Your Honor, as a preliminary matter, there was a motion filed last week to move to dismiss the Defendant's Motion for Summary Judgment, and I suppose that should probably come first. But I'll do whatever Your Honor wishes.

THE COURT: Whichever the parties feel comfortable arguing first. I usually go by who filed first, but if you wish to proceed, that's fine with me.

MS. O'SHEA: Okay, Your Honor. I think, procedurally, the Motion to Dismiss the Summary Judgment motion makes sense, but that was mostly an effort to get a brief filed or understand the grounds for the Motion for Summary Judgment. To the extent they've briefed it and were here, we'll just consider that moot, if that's okay with Your Honor.

1 THE COURT: All right. That's perfectly acceptable with
2 the Court.

3 How about with you, sir?

4 MR. RAINEY: Yes, sir, that's fine.

5 THE COURT: I didn't think you would disagree with that.
6 All right, sir.

7 MR. RAINEY: Yes, sir.

8 Your Honor, I am David Rainey. I am an attorney for
9 Defendant Angela West Einstein in a lawsuit filed against her
10 by Roger Wayne Lynch as a result of an accident on Wade
11 Hampton Boulevard on the evening of December 16th of 2021.

12 We have moved for summary judgment in this matter. The
13 plaintiff has pointed out this has come up several times, and
14 it has. It was granted once back in March/April time period
15 of '24. Then that Order was withdrawn with the right to renew
16 the motion. It was renewed and argued again on July the 1st,
17 I think, or July the 17th of that year. It was -- Judge
18 Gravely heard that one -- Gravely heard that one. Again,
19 denied it but with the right of the parties to renew based on
20 the plaintiff's argument that they needed additional time for
21 discovery.

22 We are now two months out from trial. We re-filed or
23 renewed the motion last May -- the end of May of '24, and
24 that's what we're here about today.

25 As a way of background, Your Honor, I mentioned this

1 arises from an accident in December of 2022 on Wade Hampton
2 Boulevard. The accident happened at about 8:22 at night.
3 Given that it was mid-December, just before the shortest day
4 of the year, it was, of course, nighttime.

5 The accident happened very near a couple of restaurants
6 that are side by side. There's an IHOP restaurant, and beside
7 it is or was a restaurant by the name of Asada. The accident
8 occurred in front of the Asada restaurant.

9 At the time of the accident, Ms. Einstein was driving in
10 the right or outside lane of Wade Hampton, which at that area
11 is either four or six lanes wide; I'm not sure which. She was
12 in the right or outside lane. A gentleman by the name of
13 Pastor Lemuel Gaines was in a vehicle to her left. When they
14 both came upon the plaintiff, who is a 60-plus-year-old
15 African American male dressed in dark clothing in the area of
16 a street light that was out, the light being in the Asada
17 parking lot, more to the left side as you're looking at the
18 restaurant.

19 Mr. Lynch was drunk. Mr. Lynch was suffering from a
20 hypoglycemic episode of his own making. I'm not stating those
21 in any fashion other than to tell you the plaintiff's own
22 expert -- toxicologist expert, Dr. Eagerton, well-known in the
23 state of South Carolina, has made -- drawn both of those
24 conclusions, based on his deposition testimony of several
25 weeks ago.

1 The plaintiff was suffering his episode due to his own
2 making. As I mentioned, this was the evening of December the
3 16th. He admitted in his deposition that he is an
4 insulin-dependent and metformin-dependent diabetic. He had
5 not had any of his medication for the past 36 hours or the
6 morning of the 15th, by his own admission. He had not had any
7 food or any that he could recall that day.

8 Dr. Eagerton is of the opinion that he probably did not
9 have any food on the day of the accident, which exacerbated
10 the situation. And as I mentioned, he had -- he was drunk at
11 the time.

12 Dr. Eagerton has testified that his blood alcohol, we
13 believe to be correct, was .09 or beyond legally intoxicated
14 to drive a vehicle in South Carolina. It really sort of
15 depends, though, on when his blood was drawn. That is not
16 exactly known. But the earliest it could have been drawn was
17 at 9:05, about five minutes after the EMTs turned him over to
18 the hospital; some other draws were made at that time for
19 other tests. So that's the very earliest. Based upon that
20 being the earliest possibility of draw withdrawal, he had to
21 be 0.09 or more at the time of the accident.

22 Ms. Einstein and Pastor Gaines came upon the plaintiff
23 lying in the roadway at, basically, the exact same time.
24 We've got some exhibits that we have submitted to the Court,
25 but Ms. Einstein -- when Ms. Einstein saw the plaintiff, he

1 was lying in the roadway with his head toward the curb.
2 Pastor Gaines has -- we've submitted his affidavit related to
3 -- verifying the handwritten statement that he gave the police
4 on the evening of the accident. He said when he first saw
5 him, as he was passing the IHOP, he fell. So he may have seen
6 him falling. And Ms. Einstein saw him as he -- at the time he
7 fell while he was laying on the ground.

8 She attempted to swerve to the left. Pastor Gaines was
9 to her left. She attempted to swerve to the left. Her
10 testimony is, invaded his lane somewhat but was unable,
11 although she was unable to avoid hitting the plaintiff, she at
12 least didn't roll over his torso and his head, and she rolled
13 over his legs, causing injury to his legs. He was taken to
14 the hospital, treated, and eventually his leg -- one of his
15 legs was amputated at or above the knee.

16 Our motion, Your Honor, is the same as it has been for
17 the past couple of years. There's no evidence in this case,
18 Your Honor, that Ms. Einstein was negligent. She was going
19 significantly less than the speed limit at the time that she
20 hit the plaintiff; speed limit being 45 miles per hour.

21 She had her hands on the steering wheel. She was looking
22 straight ahead. There were no distractions in her car. No
23 people, no pets, no use of her phone, no food, no drink, no
24 nothing. She had her radio on Christmas music, and that was
25 it. There's no evidence of impairment in her case; that may

1 or may not come up in today's hearing. There's simply no
2 evidence of that, even by the testimony of the plaintiff's
3 toxicology expert.

4 She did see the plaintiff; she did attempt to swerve to
5 the right. Swerving to the left would have put her up on the
6 curb and into the parking lot of the restaurant. So there was
7 really nothing that she could do.

8 We have submitted to the Court the statement of Pastor
9 Gaines, and his statement, for the record, that he had
10 provided an affidavit verifying says, "Driving towards
11 downtown, I was riding beside in (left) of a white Range
12 Rover. Suddenly, after passing IHOP on right, I thought an
13 animal was in the road. I saw clearly as I approached it was
14 a man that fell on the road, and the white Range Rover didn't
15 have time to stop/slow and struck the man. He was in very
16 dark clothes so he could not be seen and was unavoidable."

17 The second basis, Your Honor, for this is the accident is
18 100% the fault of the plaintiff. As I mentioned before, the
19 plaintiff's expert, Dr. Eagerton, has testified that he was at
20 least a .09 at the time of the accident. The plaintiff's
21 testimony is at odds with that of Dr. Eagerton. It doesn't
22 matter to us either way. The plaintiff testified that he had
23 not had any alcohol since 8 a.m. that morning, 12 hours before
24 this accident. And he testified that, at that time, all he
25 had was one or two Budweiser beers.

1 Now, if that -- that's simply, quite frankly, impossible.
2 By Dr. Eagerton's testimony, any such two beers would have
3 long since been dissipated from the plaintiff's system.

4 He did tell the investigating officer, Hamilton, whose
5 deposition is part of the record here, several days after the
6 accident -- three or four, as I recall -- that he had had a
7 fifth of alcohol. He did not specifically say what kind of
8 alcohol, but when he was asked about that in his deposition,
9 that's when he said he had a fifth of Budweiser.

10 He was then asked, "Well, what do you use the phrase 'a
11 fifth' for?" And he admitted that he used that phrase when
12 talking about liquor, not beer.

13 Either way, Dr. Eagerton has testified it is unlikely --
14 he does not believe it to be true -- that the plaintiff
15 stopped drinking at 8:00 in the morning. He assumes -- his
16 opinion is that the plaintiff had three standard drinks in the
17 hour before this accident. Regardless, if he had stopped
18 drinking the morning of the accident when he says he did, he
19 would have been a .26 or .27, according to Dr. Eagerton at
20 that time, which is highly, highly intoxicated.

21 That matters because Dr. Eagerton also testified that
22 consumption of alcohol, particularly for a diabetic, can
23 exacerbate the blood sugars in the system.

24 Dr. Eagerton also says he doesn't believe the plaintiff
25 ate at all on the day of the accident, because if he had, his

1 blood sugars wouldn't be as far out of whack as they were.
2 The body needs food to regulate blood sugars. His blood
3 sugars were so low at the time of the accident that he was,
4 according to Dr. Eagerton -- well, these are my words --
5 basically out of his mind at the time of the accident.

6 Dr. Eagerton has testified -- or the plaintiff has
7 testified, rather, that he knew this was coming. He testified
8 that his blood sugars had been going up and down all day. He
9 knows what that feels like. His mouth was dry, his eyes were
10 affected, and he was trying to get home to his mother's, who
11 lived somewhere in the vicinity of the Asada restaurant; I
12 think, behind Asada. He was trying to get to his mother's
13 apartment so that he could take his medication.

14 This is not new to the plaintiff. We have provided to
15 the Court two ambulance run reports: one from January of '21,
16 the year of the accident, and one from November of '21, three
17 weeks before the accident, where the plaintiff was taken by
18 ambulance to the hospital for hypoglycemic episodes, for
19 consumption of drugs and not eating, and potentially alcohol,
20 too. I can't remember specifically, but it's in the documents
21 that you have.

22 The plaintiff also testified in his deposition that he
23 goes to the hospital back at that time -- I'm not sure about
24 now -- but at the time of the accident, he would go to the
25 hospital by ambulance approximately once per month for

1 hypoglycemic episodes. So I anticipate the plaintiffs may
2 argue that the plaintiff was having a sudden medical emergency
3 and is, therefore, excused from his own negligence in this
4 case. If that argument is made, that argument doesn't apply
5 here.

6 There's a case from 1985 identical to this, Howell vs.
7 PYA Monarch, which we've cited in our brief, where a defendant
8 and his employer raised the same defense that the defendant
9 had a sudden hypoglycemic episode, but the evidence
10 established that he was feeling it that morning when he was at
11 a customer's, he had candy that he kept in his car to deal
12 with these type things, and he didn't do anything. He didn't
13 eat. He didn't eat his candy. He didn't do anything, even
14 though he knew he was suffering this episode. He then passed
15 out and had a crash.

16 In that case, the Court determined the jury was correct
17 in deciding that he did not have a sudden medical emergency,
18 as Mr. Lynch did not have one either.

19 That combination of events -- the alcohol, the lack of
20 eating, the hypoglycemic episode -- caused the plaintiff to
21 fall into the roadway. It's not entirely clear where he fell
22 from, but Pastor Gaines has said he saw him falling, and he
23 was driving almost parallel to Ms. Lynch. He saw him falling.

24 There's another witness, Mr. Cortes, who was the owner of
25 Asada restaurant. He testified or his statement to the police

1 that night said he saw the plaintiff arrive in his parking lot
2 in a black car. That's contrary to what the plaintiff said in
3 his deposition, that he took a bus out and was on the other
4 side of the road, dropped off by the bus.

5 Mr. Cortes said he saw him dropped off in his parking lot
6 by someone driving a black car and that he remained in the
7 area, and he watched him jumping in and out of cars before he
8 finally fell and was hit by Ms. Lynch.

9 So, regardless, here, the plaintiff is in complete
10 violation of two statutes at least -- 56-5-3130 and 56-5-3150,
11 which I can hand up to the Court, although I expect the Court
12 is aware of them, that a passenger is not to enter an active
13 traffic -- lane of traffic when you're not in a crosswalk,
14 which he was not; he was nowhere near a crosswalk.

15 The last argument, at least as far as this portion of the
16 motion, Your Honor, is that, even if -- and we don't agree
17 that Ms. Einstein was negligent even in the slightest. But
18 even if she was slightly negligent, the plaintiff's negligence
19 here is so gross, so willful, so wanton that it -- so -- that
20 he could not possibly be found by a jury to be less than 51%
21 at fault.

22 Now, we're not asking the Court to pick -- to assign
23 percentages of negligence here. We're not saying this is a
24 51 to 49% case or 55 to 45. What we're arguing here -- and we
25 believe to be correct -- is that the plaintiff was so grossly

1 negligent that no reasonable jury could possibly return a
2 verdict in his favor. And in that case, although summary
3 judgment in comparative negligence cases are uncommon, courts
4 have held, in Bloom vs. Rav- -- I can't say the word,
5 R-a-v-o-i-r-a -- which is a nearly factually identical case,
6 where a plaintiff entered a lane of traffic from between two
7 cars, wearing dark clothing at night, on a rainy night, and
8 stepped in front of a truck and got hit.

9 The Court in that case determined that the plaintiff's
10 negligence was so high, so gross that the Court was proper in
11 granting summary judgment.

12 It certainly is uncommon, but in a case like this where
13 the plaintiff's negligence and gross negligence so
14 horrifically outweighs any potential possible negligence of
15 the defendant, it would be proper for the Court to grant
16 summary judgment.

17 The last thing, Your Honor, is we've also moved for
18 summary judgment on the issue of punitive damages, which the
19 plaintiffs have prayed for here. As the Court is aware, a
20 plaintiff would have to establish to recover punitive damages
21 that the defendant was willful, wanton, and reckless by clear
22 and convincing evidence.

23 But the Court must first determine whether the jury could
24 reasonably find, by clear and convincing evidence, that the
25 defendant was reckless, willful, and wanton.

1 In this case, there's no possibility of that, that
2 there's no negligence on behalf of Ms. Einstein at all. Even
3 if she was slightly negligent, there's no way a jury could
4 reasonably determine that she was willful or wanton and
5 reckless -- or reckless in any manner at all.

6 So, separately, we would ask for the Court to grant
7 summary judgment on the issue of punitive damages.

8 THE COURT: All right, sir. Thank you very much.

9 Good afternoon, ma'am. I'll hear from you.

10 MS. O'SHEA: Good afternoon, Your Honor. I'm Brooklyn
11 O'Shea. I'm here with Ian O'Shea and Whitney Harrison.
12 Mr. McCool might be on WebEx; I'm not sure. But we represent
13 the plaintiff, Mr. Lynch.

14 THE COURT: As I look now, he's not attending by WebEx,
15 but -- just to apprise you. But if he--

16 MS. O'SHEA: That's okay.

17 THE COURT: --attempts to get in, we'll let him in.

18 MS. O'SHEA: Okay. So I'm sure you are well aware of the
19 standard for summary judgment. I just want to distinguish the
20 standard that we're going to be using in the comparative
21 negligence defense.

22 The case, Bloom, that Mr. Rainey cited, there have been
23 opinions that have come out since Bloom distinguishing that
24 case that are much more similar as set forth in our brief.
25 Abdelgheny -- I also can't say my case right. I think I'm

1 saying it right. Abdelgheny v. Moody, that case distinguishes
2 Bloom in that the only way the Court can grant summary
3 judgment in this case is by finding that there's only one
4 reasonable inference that a jury could make, a sole inference
5 that they could make from all the evidence that's being
6 provided to you from both parties.

7 And the evidence demonstrates that there are a number of
8 inferences that the jury could make. And like Mr. Rainey
9 said, it's not the Court's job to determine the actual
10 percentages today, just to analyze whether or not a reasonable
11 jury, given all the evidence, could arrive at the conclusion
12 that the defendant is at fault in this case.

13 And so I don't think that there is a sole inference that
14 can be determined if all the evidence is presented and viewed
15 in the light most favorable to Mr. Lynch.

16 So there are a number of genuine issues of material fact,
17 and I know that we just gave you guys a memo electronically.
18 I have a hard copy as well, if I can approach with that, Your
19 Honor.

20 THE COURT: Yes, please.

21 MS. O'SHEA: I should have led with that. I'm sorry.

22 THE COURT: That's quite all right. That's not a
23 problem.

24 Thank you very much.

25 MS. O'SHEA: We had some printer issues, so I'm sorry

1 that those are in black and white, but --

2 THE COURT: Oh, that's fine.

3 MS. O'SHEA: Electronically, you can see, you know, the
4 color photos for purposes of visibility, lighting, and that
5 sort of thing.

6 THE COURT: Certainly. And I think my law clerk showed
7 me a few of those photographs earlier because she indicated to
8 me that she had just received it when I got back from lunch.
9 So that's fine.

10 MS. O'SHEA: And then we have -- we can't really e-File,
11 I guess, the video and 911 call, so we did a placeholder for
12 that and sent it to you by email. But if there's another way
13 that we need to make that part of a record, just let us know.

14 THE COURT: I think that's probably the only way, unless
15 I give it to the clerk, the thumb drive or something of that
16 nature. But I will take a look at it.

17 MS. O'SHEA: Okay. We'll be happy to do anything else
18 that we need to do for that. And if y'all have any trouble
19 opening the video or audio, just let us know.

20 THE COURT: All right. Thank you.

21 MS. O'SHEA: So there are genuine issues of material fact
22 as to a number of different topics, and this is set forth in
23 more detail in our brief, but one of those issues is
24 visibility.

25 The defendant is -- has the -- is taking the position

1 that it was not well-lit, that she could not see Mr. Lynch
2 because he is a Black man and was wearing dark clothing.

3 There is a lot of evidence that the road was indeed
4 well-lit. Like Mr. Rainey said it -- where the incident
5 occurred is situated next to two restaurants, an IHOP and an
6 Asada. Both of those had lighting. So that's what those --
7 some of those photos are, from the body cam from that night.

8 Also, it was a dry road, a straight line of sight,
9 straight roadway, and that's why we provided the daytime
10 photos just to show you kind of the layout of the road.

11 So Defendant was also driving a nice Range Rover with
12 state-of-the-art headlights that were on.

13 Mr. or Pastor Lemuel Gaines was driving near her, also
14 with his headlights on, also driving a Range Rover.

15 Those lights were illuminating the road along with the
16 IHOP and Asada. The claim file materials that we received in
17 response to a subpoena say that the headlights were on, this
18 is a commercial area, fairly well-lighted, diner nearby.

19 And, importantly, Pastor Gaines was able to not only see
20 Mr. Lynch in the roadway, but saw him walking and fall. And
21 that's important because Ms. Einstein is saying she did not
22 see him. He was able to see that while driving the same
23 direction as her. Ms. Lyn- -- I'm sorry, Ms. Einstein was
24 attempting to pass Pastor Gaines on the right. And there's
25 also evidence that she was speeding.

1 So she is accelerating to drive around Mr. Gaines's
2 vehicle, passing in the right lane, and does not see Mr. Lynch
3 in the roadway. But Mr. Lemuel Gaines was able to see him
4 walking across the road and collapse.

5 Plaintiff -- you know, it's undisputed that he was
6 suffering from hypoglycemia. He was not driving. So also to
7 distinguish some of the cases that have been cited, you know,
8 with respect to somebody that has diabetic episodes, driving a
9 vehicle is very different from being at a bus stop and trying
10 to walk to your mother's house to get your medication. So
11 Mr. Lynch was not operating a vehicle.

12 The level of alcohol in his system is pretty minimal.
13 Dr. Eagerton has said that's not enough to cause this
14 condition; that the reason that he collapsed, his behavior can
15 all be attributed to the hypoglycemia. And, also, that his
16 statements to police are likely unreliable because of his
17 condition. So hypoglycemia is going to present in a way
18 that's quite similar to alcohol in the forms of confusion and,
19 you know, his state of falling down, that sort of thing, but
20 alcohol is not what led to that, and he was simply trying to
21 get his medication.

22 But a driver has a duty to look out for all pedestrians
23 on the roadway. So regardless of their skin color or their
24 level of intoxication, what they're wearing, you have a duty
25 to keep a proper lookout, maintain a safe distance with the

1 vehicles around you. You shouldn't pass in the right lane if
2 you can't do that safely. You have a duty to drive the speed
3 limit.

4 There's also evidence that Ms. Einstein had consumed
5 alcohol at least within 48 hours of the incident, and that's
6 important because she's also prescribed drugs that can cause
7 impairment by themselves or in the combination of alcohol. So
8 Ativan, Cymbalta, Restoril.

9 And she -- there's also evidence that she suffers from
10 vertigo intermittently and takes medication for that. That
11 can also cause impaired driving.

12 And she testified that she was listening to the radio at
13 the time that she ran over Mr. Lynch.

14 There are some inconsistent statements from Ms. Einstein
15 about when she saw Mr. Lynch, whether that's at the time he
16 fell or already laying in the roadway.

17 And, basically, to summarize the topics of various
18 genuine issues of material fact we have, they're in this
19 chart, along with the corresponding evidence, just to kind of
20 lay that out for you, along with the far right side gives
21 examples of inferences that a reasonable juror could easily
22 draw in favor of the plaintiff in this case.

23 So we're looking at those genuine issues of material fact
24 being visibility, the plaintiff's impairment, the defendant's
25 impairment, the defendant's distracted driving, and the

1 defendant's breaches of those duties of care that I've laid
2 out for you just a second ago, and as far as the plaintiff's
3 ability to avoid the incident with respect to his diabetes
4 medication or his medical emergency that he was suffering
5 from.

6 And then with respect to credibility of both of the
7 parties and the witnesses, that's really for the jury to
8 analyze, as well as proximate cause. But there are genuine
9 issues of material fact as well that speak to those issues.

10 But, again, we're not asking you today to determine, you
11 know, what you think, who is more at fault. The sole issue
12 is, could a reasonable juror, hearing all of these facts that
13 somebody is speeding, passing in the right lane, distracted,
14 potentially impaired, not maintaining a proper lookout -- you
15 know, if she wasn't speeding and passing in the right, would
16 she have seen him sooner? Would she have been able to avoid
17 him? All of these things. Can a reasonable juror conclude
18 that she's liable?

19 And there are a number of inferences that can be made.
20 We just want to have our day in court, and they can set forth
21 all of those, you know, comparative negligence defenses. But
22 this should get to a jury if we apply that standard for
23 summary judgment.

24 We've got a date certain coming up in March, and we have
25 had extensive discovery in this case. It is still ongoing,

1 but I think that you have ample evidence in the record of what
2 both parties have submitted. I'll defer to our brief and
3 exhibits for anything that I may be leaving out. There's a
4 lot of deposition testimony, statements within the claim file.

5 For example, from Ms. Einstein, it says they spoke to
6 Mrs. Insured (ph) -- that would be defendant -- that there was
7 another Range Rover and was going to want to move over
8 eventually. So she's driving, sped up to about 50 miles an
9 hour, which is in excess of the speed limit, to try to get
10 ahead of the vehicle to her left, then realized this other
11 vehicle was going a bit too fast, so she drops back down to
12 48, which is still above the 45-mile-per-hour speed limit, and
13 all of a sudden, saw a man lying down in the roadway, not sure
14 if he was just getting into that position or not.

15 But, again, another driver who is right there is able to
16 watch him walking and collapse because he was keeping a proper
17 lookout and it was well-lit enough for Mr. Gaines to see that.

18 So, again, I think you have ample evidence. We're not
19 talking about a scintilla. There are plenty of issues of
20 material fact. Admittedly, there are -- you know, there's
21 definitely a liability dispute here, and a jury should get to
22 analyze all of that. So that's really all that we're asking.

23 But to the extent you don't think we've presented enough
24 evidence, once you have an opportunity to review the record
25 and all of these exhibits -- discovery is ongoing. We do have

1 a number of issues that are outstanding.

2 So to the extent you don't think we've presented enough,
3 in the alternative, we would like the opportunity to complete
4 discovery.

5 And I will admit, we have had a lot of time in this case,
6 but I wouldn't call it a full and fair opportunity to conduct
7 discovery, and we've had a number of things that are still
8 needed, importantly, like her GPS data on her cell phone and
9 cell phone data from a download that a third-party neutral is
10 currently reviewing that could easily have additional evidence
11 weighing in favor of Mr. Lynch.

12 And let me look through my notes here.

13 Just one more thing. Dr. Eagerton did not call Mr. Lynch
14 drunk. His blood alcohol content is really -- it's not clear,
15 even according to what Mr. Rainey just said. And none of that
16 led to his condition, which is hypoglycemia. It may have some
17 overlap there, but that's why he was laying in the roadway.

18 Again, he's not driving, so those cases are not on point.
19 He's trying to get his medicine. He was doing exactly what he
20 needed to do and had a medical emergency. He could not avoid
21 it.

22 And then with respect to punitive damages, some of these
23 same facts, we've set forth evidence demonstrating violation
24 of motorist statutes, and that is enough for the jury to
25 consider.

1 So we don't have to meet that clear and convincing
2 standard, necessarily. Again, it's just could a jury
3 reasonably conclude that that standard could be met from the
4 evidence that we've shown.

5 So, yeah, again, we just would like our chance to present
6 this case in front of a jury. And, you know, thank you for
7 your time, and I know it's a lot of materials, so...

8 THE COURT: No, you're quite welcome. Thank you.

9 I do have one follow-up question. You indicated that the
10 defendant may have been intoxicated. I guess the inference
11 can be drawn from having consumed an alcoholic beverage, I
12 believe, 21 hours prior to the accident. Any scientific or
13 expert evidence on intoxication? Because I know Dr. Eagerton
14 talked about your client's intoxication. Anything in regard
15 to expert testimony with regard to the defendant's
16 intoxication?

17 MS. O'SHEA: Yes, Your Honor. The defendant regularly
18 consumes alcohol. She's admitting she consumed it within 48
19 hours of the incident.

20 Dr. Eagerton's -- I don't recall if it was his report or
21 his affidavit, but both of them have been provided to you --
22 explained that there can be an interaction with the
23 prescription drugs that she's also prescribed and taking, and
24 that she can have some level of impairment from that.

25 So what exactly it was, she doesn't have -- we don't have

1 a BAC from her. So there's a little bit of an unknown factor
2 there, but a jury could infer that she was drinking.

3 She was leaving a Christmas party. She works for a
4 newspaper doing a blog called, "Drinking on the Job." She was
5 texting her friends after just, "What if I had been drinking?
6 Imagine if I had been drinking." And that text is a little
7 suspicious. But the jury might think the same.

8 And also, she suffers from vertigo and has medication for
9 that. That can also potentially impair a driver.

10 And so what exact cocktail of things was she on at the
11 time or how much alcohol, if any, or how those were
12 interacting, we don't have a precise number from, like, a
13 blood alcohol level. But the jury should get to evaluate her
14 credibility and any other evidence that we get, for example,
15 off of the cell phone and for many of her other witnesses, you
16 know, that sort of thing.

17 So there is evidence that the prescription drugs that
18 she's on can impair her, and then also that she is using the
19 radio and driving and distracted, so it can be -- I'm thinking
20 of it more of a totality of the circumstances type thing,
21 where the jury should get to analyze all of that.

22 THE COURT: Okay. Thank you very much.

23 MS. O'SHEA: Thank you.

24 THE COURT: Mr. Rainey?

25 MR. RAINEY: Your Honor, it is genuinely hard to address

1 everything that you just heard that is absolutely incorrect.

2 Let me start with this specious claim that Ms. Einstein
3 was somehow impaired on the evening of this accident. The
4 plaintiff's own expert, in sworn testimony, said he has no
5 evidence to support that claim.

6 You asked for scientific evidence. His testimony had
7 been provided to you in the brief, and he said he has zero,
8 not one shred of evidence that she was impaired on the evening
9 of this accident.

10 Ms. O'Shea just said she had alcohol within 48 hours.
11 What Ms. Einstein had was a single glass of wine 24 hours
12 before this accident. Dr. Eagerton testified that is
13 completely eliminated from her system within two hours. 21 to
14 22 hours before this accident. It played zero part in this
15 accident. There is zero evidence that she had alcohol on the
16 day of this accident.

17 Ms. O'Shea just told you she was coming from a Christmas
18 party. That is false. She dropped off her daughter at her
19 daughter's company's Christmas party. She dropped her off at
20 the base of Paris Mountain because there was no parking at the
21 party. She then picked up her soon-to-be son-in-law, took him
22 and dropped him off.

23 Ms. O'Shea subpoenaed from this employer every photograph
24 from that party. There are over a hundred photographs that
25 have been provided by this employer. Not one of them has

1 Ms. Einstein in it because she wasn't at the party.

2 She dropped her daughter and son-in-law off at the base
3 of the mountain and was coming back from there at the time of
4 this accident.

5 There is zero evidence prescription drugs played a part
6 in this. This is completely speculative that she was having
7 vertigo at the time of this accident.

8 Three months before this accident, while on vacation, she
9 called Dr. Tripp Johnstone, said she was dizzy. He prescribed
10 a medicine and said, "If you have any problems, come in and
11 see me." She never went to see him. Three months before this
12 accident.

13 There is zero evidence that she was taking medication for
14 vertigo, or much less suffering from vertigo. No evidence at
15 all. It's not something a jury could reasonably conclude
16 because it doesn't exist.

17 Ms. Einstein testified she had taken a single Cymbalta
18 pill on the morning of this accident. She did not take
19 Restoril. She did not take Ativan.

20 Her prescription history that the plaintiff has obtained
21 has no Ativan in it for an entire year. Her testimony in her
22 deposition was that she had not taken Ativan in years since
23 she lost her nephew. No Ativan. No Restoril. One Cymbalta.

24 Dr. Eagerton testified that Cymbalta played zero part in
25 this accident. Could not have impaired her 12 hours later.

1 There's no drugs. There's no alcohol. There is zero
2 evidence. And the fact that we're sitting here even talking
3 about impairment by Ms. Einstein is, quite frankly, offensive
4 because there's no evidence of it. The plaintiff continues to
5 pursue this path. They've subpoenaed her medical records or
6 her billing records from a club -- from a country club.
7 They've gone through all these pictures with this innuendo of
8 because she and a friend write an article about new
9 restaurants that have bars once a month, that somehow she's a
10 blooming alcoholic. It's crazy. It is ridiculous. There is
11 no evidence at all of impairment by her.

12 Some other things that need to be addressed. And I'll
13 let Mr. Tate deal with the cell phone issue.

14 If I could approach, if you don't mind, Your Honor.

15 THE COURT: I do not.

16 MR. RAINEY: In anticipation that the plaintiffs would
17 say they need more time for discovery, now, we've been through
18 this three times. Three times the plaintiffs have told the
19 Court, "We need more time for discovery."

20 So I prepared a chronology in anticipation this argument
21 would be made again. I want to go through it.

22 This lawsuit was filed 3-1/2 years ago, in July of '22.

23 Angie Einstein's deposition was taken in December of '22.

24 Mr. Lynch's deposition was taken in April of '23.

25 The deposition of Officer Hamilton was taken June the 6th

1 of '23, and then the defendant filed a Motion for Summary
2 Judgment in January of '24.

3 The plaintiff filed a response; the motion was granted.

4 Judge Morgan ended up rescinding that Order.

5 There was an affidavit by Mr. McCool dated March 25th.
6 In his affidavit, he said, we got all this discovery we want
7 to do. We want to depose Gaines. We want to depose Cortes.
8 We want to depose Dan Fedorski. We want to depose the first
9 responders, who I've now deposed. And we want all the medical
10 and cell phone records.

11 In April of '24, Ms. O'Shea submitted a motion to have
12 the -- have the Order withdrawn and attach Mr. McCool's
13 affidavit adopting -- we've got all this discovery we want to
14 do.

15 In May of '24, the motion was renewed.

16 In July of '24, the plaintiffs again argued to Judge
17 Gravely, "We've got all this discovery we want to do."

18 In October of '24, the plaintiff asked for and was given
19 the names of everybody in Angie Einstein's prayer group --
20 names and telephone numbers and addresses -- because they
21 wanted to depose them.

22 In November -- that was supplemented to name the daughter
23 and son and give their addresses, as well as Mr. Cortes,
24 Mr. Gaines, Mr. Fedorski.

25 In December -- November of '24, the plaintiff took the

1 deposition of Danny Einstein -- I'm sorry, of Howard Einstein,
2 Ms. Einstein's husband, a non-witness to this accident. He
3 doesn't know anything about it.

4 In December, the defendant supplemented it again to give
5 the names and addresses of five more people: Cynthia
6 Waterman, Catherine Norwood, Marion Crawford, Ann Taylor, Alex
7 Burgamy.

8 In May of '22, Ms. O'Shea wrote me and said, "We want to
9 depose all these people. We want Meg, we want Davis, we want
10 Burgamy, we want Norwood, we want Crawford, we want Taylor, we
11 want Waterman, Cortes, Gaines, Fedoroski" -- well, he was
12 deceased by then. His employer, Allied, PURE Insurance, Chubb
13 Insurance. We want the list of everybody that was at the
14 Greenville Country Club board meeting the night of this
15 accident because Howie Einstein happened to be at that
16 meeting. We want the cell phone records.

17 In all of 2025 -- I got involved in this case in February
18 or March. I'm the only one that did a deposition. I did four
19 of them. I did emergency responders, and I took the
20 deposition of the plaintiff's expert.

21 There has been 18 months that have passed since the
22 plaintiff said "we got all this discovery we want to do."
23 They have not taken a deposition except for a non-witness to
24 this accident. They've had all this time, and yet they're
25 coming back for the fourth time to tell this Court, "We need

1 more time for discovery." This is absurd. This case has gone
2 on for 3-1/2 years. There is no evidence of negligence by
3 Angie Einstein.

4 Ms. O'Shea said, "Well, maybe she shouldn't be passing in
5 the right lane; that was an improper thing to do."

6 Fortunately, the statute 56-5-1850 (ph) says passing on
7 the right is permitted when there's a roadway with
8 unobstructed pavement of sufficient width for two or more
9 lines of vehicles moving lawfully in the same direction.
10 Perfectly permissible for Ms. Einstein to be passing
11 Mr. Gaines if she was passing him. But she wasn't.

12 Her testimony is she had backed off, and he was actually
13 passing her. There's no evidence in this case that she was
14 passing him. Even if she was, it would be perfectly
15 appropriate for her to do so by statute.

16 Ms. Einstein doesn't claim that she did not see
17 Mr. Lynch. Her testimony is she did see him. She saw him
18 lying in the roadway. There's no argument in this case that
19 she never saw him. The argument is she saw him at a point
20 where there was absolutely nothing she could do about it. He
21 had fallen into the roadway.

22 Mr. Gaines or Pastor Gaines -- I want to read this to the
23 Court again. "Driving towards downtown, I was riding beside
24 (left) of white Range Rover. Suddenly, after passing IHOP on
25 the right, I thought an animal was in the road. I saw clearly

1 as I approached it was a man that fell on the road, and the
2 white Range Rover did not have time to stop or slow and struck
3 the man. He was in very dark clothes so he could not be seen
4 and was unavoidable."

5 Ms. O'Shea just told you that Pastor Gaines saw this
6 gentleman walking across the road and he fell. That is false.
7 He doesn't say a word about seeing him walking. He saw him
8 falling, just as Ms. Einstein did. When she laid eyes on him,
9 he is laying in her lane in dark clothes at night, drunk, and
10 in a diabetic episode, none of which can be blamed on her.

11 All of it, every single shred of that can be blamed on
12 him. He never said that he saw him walking across the road.

13 Ms. O'Shea said that alcohol was pretty minimal. That's
14 -- again, Dr. Eagerton didn't say that. He said alcohol alone
15 would not explain his behavior that night but alcohol played a
16 part in it because alcohol, when you have a diabetic
17 condition, particularly one that has gone haywire like it has
18 with this gentleman by his own making, alcohol will play a
19 part. So it does play a part.

20 We're not talking about driving. Driving has nothing to
21 do with this. That doesn't have anything to do with a
22 hypoglycemic episode. The episode is the same whether you're
23 driving or walking.

24 So the cases that we're talking about are perfectly
25 applicable. They stand for the proposition of you can't

1 create your own medical emergency and then use it as a shield
2 to blame somebody else for what you did to yourself. That's
3 what that case stands for, and that's exactly what happened
4 here.

5 Mr. Lynch did it to himself. I'm sorry that sounds
6 unkind, but he did it. I'm sorry it happened to him. But
7 nobody is to blame here for that hypoglycemic episode, for an
8 alcohol bender, for not eating but Mr. Lynch. There's no way
9 you can know the first thing about this guy till she sees him
10 laying on the road right in front of her car.

11 I think I've dealt with the rest. There has been some
12 discussion about inconsistent statements of Ms. Einstein about
13 when she saw Mr. Lynch. There's nothing inconsistent at all.
14 She has maintained from the start -- she never said, "I saw
15 this guy walking across the road." When she saw him, he was
16 laying in the road, which was right after Pastor Gaines saw
17 him falling and laying in the road. So there's no
18 inconsistent statements.

19 This is all made up because there's simply no evidence of
20 negligence by Ms. Einstein in this case. Even if there was,
21 which there wasn't, it is so slight as to be infinitesimal
22 compared to the gross negligence and willful and wanton
23 behavior of the plaintiff and what he did to himself that day,
24 and he has no basis whatsoever to blame Ms. Einstein for this.

25 I mentioned that I've not dealt with the cell phone issue

1 very much except at the very beginning. I'm going to let
2 Mr. Tate speak to that, because there's an update on that of
3 which Ms. O'Shea is aware.

4 THE COURT: All right.

5 MR. TATE: Thank you, Your Honor.

6 THE COURT: Before you begin, Mr. Tate, if you'll put the
7 microphone closer to you because we're using WebEx.

8 MR. TATE: Thank you.

9 THE COURT: If you'll speak directly into it. And I'll
10 be happy hear from you.

11 MR. TATE: Very brief. Thank you, Your Honor. I
12 appreciate it. It's Ron Tate again for the defendant.

13 Your Honor, I -- a little background on this cell phone
14 issue. The mediator in this case is Kip Darwin from
15 Spartanburg. And we had a -- I wouldn't say it was a dispute
16 over the production of cell phone records, but we did.

17 There was a Request for Production of various
18 communications that took place over time, over some numbers of
19 -- some number of hours before and after this accident
20 occurred. And defense counsel responded to those requests by
21 producing a number of text messages that Ms. Einstein had sent
22 to various people, which discussed how the accident occurred.
23 And I believe that some of those text messages are in the
24 record as part of Ms. O'Shea's filing today.

25 It's like, "Well, hey, you guys need to know what

1 happened," that kind of thing. And she explains what
2 happened.

3 So there was a subsequent request that Ms. Einstein
4 produce her entire cell phone, and of course, we objected
5 because that's overly broad, and for other reasons. And that
6 motion was heard by Judge McMaster some time ago, I think in
7 the summer this year.

8 Judge McMaster issued a very detailed ruling and advised
9 the parties this is -- these are the parameters that I expect
10 the cell phone records will be produced. And, in fact, we did
11 produce a Cellebrite report from the cell phone for those
12 parameters.

13 And then there was a subsequent discussion whereby the
14 plaintiff wanted production, again, of the entire phone. And
15 again, Judge McMaster determined what would be produced.

16 And ultimately, Judge, it was agreed about a month or six
17 weeks ago between the parties that, hey -- and it was
18 suggested by Ms. O'Shea -- can't we just give this material to
19 Mr. Darwin as the mediator who can review it as sort of a -- I
20 wouldn't say referee, but to confirm that there were no
21 additional documents, no additional communications that were
22 responsive -- that would be responsive to the request for
23 production or responsive to what Judge McMaster said should be
24 produced.

25 So Mr. Darwin did review the contents of the entire phone

1 download. And I had a conversation today with him, and he
2 confirmed he didn't find anything else, and he had
3 communicated that with Ms. O'Shea.

4 So it's a little surprising to me that she says they need
5 more discovery directed to this cell phone, because everything
6 has been provided and produced, and that was confirmed by the
7 mediator, as he stated today and as he told me he told
8 Ms. O'Shea. So we don't know what else there is to do on that
9 front, and it is certainly not a reason why summary judgment
10 shouldn't be decided today, Your Honor.

11 THE COURT: All right. Thank you very much.

12 Ms. O'Shea, I'll hear from you.

13 MS. O'SHEA: Thank you. With respect to the discovery
14 and the depositions, one issue that we've had is that it took
15 us years to get a witness list and then, in the process of
16 this case, we've had two witnesses die. So that's one reason
17 for those depositions. And one of those people would be
18 Mr. Cortes, who Mr. Rainey was just speaking about. And we
19 won't be able to ask him why he said that Mr. Lynch got out of
20 a black car instead of the bus or the stuff about him being
21 suicidal. I don't know, some of that just doesn't make sense.
22 But, again, would speak to a genuine issue of material fact.

23 The medical records, the cell phone, I agree with
24 Mr. Rainey; we've been trying to get this stuff for a long
25 time. We didn't get most of her medical information and

1 prescriptions until after her deposition. So there's a lot of
2 things that came about in the discovery process after
3 Ms. Einstein's deposition that we would like to ask her at
4 trial and were unable to ask about in her deposition. We've
5 been pretty limited in what we can do with our depositions as
6 well.

7 The cell phone is important. The mediator told me he
8 wanted to try to meet with both of us, and my -- I was under
9 the impression he's still looking through the phone, had
10 applied some parameters, and I am not aware that he's done
11 with that. I'm not sure what that will reveal, but...

12 And if only text messages were looked at, I think it's
13 important -- I learned a lot from, you know, like the Murdaugh
14 case of how much data phones have, but what we don't have and
15 have never had access to in this case is GPS data, mobile
16 application usage that can show somebody's speed, their
17 whereabouts that night, you know, how long somebody's at a
18 Christmas party, photos. There's just a lot that can be
19 gleaned from that.

20 And we have been coming to court and filing motions and
21 have been trying to get that from -- since the summer, like
22 Mr. Rainey said.

23 So we've been making these efforts. I do think that
24 there's a lot to still potentially discover. We don't have to
25 take Ms. Einstein's word for it. You know, when there's no

1 evidence about XYZ because we didn't know about it and didn't
2 ask about it in a deposition because we didn't have it -- she
3 didn't disclose all of her prescription drugs until we started
4 sending the subpoenas and going to court for the medical
5 records.

6 And then, even then, most of them are redacted. You
7 know, we don't have medical records associated with the
8 vertigo because they won't give them to us. We have only a
9 prescription list.

10 We're trying to get the medical information, you know,
11 corresponding with that. And then I think it was Judge Rivers
12 allowed us to have the diagnosis, if I'm remembering
13 correctly, but trying to get more information with the
14 underlying condition for what the drugs are for.

15 Mr. Rainey said that Pastor Gaines never said he saw
16 Mr. Lynch walking. That is false, and it's on video. So if
17 you'll look at the body-worn camera video at the scene, he
18 does say that. And that's important, seeing somebody walking
19 before they fall down. How much time would Ms. Einstein have
20 to avoid it or see him? And what was the visibility like? It
21 speaks to all of those things. And, you know, there's some
22 conflicting testimony there that needs to be weighed.

23 Something important that was not mentioned with regard to
24 the passing-on-the-right statute and you shouldn't do that
25 unless it can be done safely, obviously, it was not done

1 safely here; somebody got run over.

2 And something that was not mentioned and that has not
3 been addressed by them at all is the admission that she's
4 speeding, and you can't safely be passing when you're
5 speeding. And driving in excess of the speed limit when it's
6 dark, you have to, you know, use due care for the conditions
7 prevailing at that time. And there's evidence that she wasn't
8 doing that.

9 And so I think, again, you have plenty for us to survive
10 summary judgment, and I don't think the sole inference is that
11 Mr. Lynch is the only one that could be at fault in this case.
12 A jury could absolutely draw an inference that Ms. Einstein
13 was negligent and breached her duties.

14 And so, again, if you think that there's enough evidence
15 to make that determination, I think so, too. But to the
16 extent you don't think that there is enough, we do want to
17 complete discovery. Some of these motions -- we have the cell
18 phone one that's under advisement, and at the same time, we're
19 trying to still get that data.

20 I don't -- if they have it -- the whole phone was
21 downloaded, given to the defendant and the third-party
22 neutral, but not us. And so...

23 Oh, and just the passing on the right, the subsection
24 regarding doing that movement safely is Subsection B.

25 So, yeah. Thank you. I think you've been very patient

1 with us. If there's anything else, you --

2 THE COURT: I just do have one question.

3 MS. O'SHEA: Sure.

4 THE COURT: I'm not certain whether the mediator,
5 Mr. Dawson, was going to reconvene by listening to your
6 arguments or he was just going to review the evidence and
7 disclose to the parties what he found. I just need to know,
8 was there any intention on reconvening the mediation or is
9 that concluded?

10 MS. O'SHEA: We're certainly always open to --

11 THE COURT: I just don't want my ruling to interfere if
12 y'all had mediation on your calendar within the next three
13 weeks.

14 MR. RAINEY: So what happened was, we agreed with
15 Ms. O'Shea to jointly retain an expert in Charlotte to do the
16 data download.

17 THE COURT: Okay.

18 MR. RAINEY: He provided some information that we
19 reviewed, and as instructed by Judge McMaster and provided it
20 to Ms. O'Shea.

21 She was not satisfied with that. We had another hearing
22 with Judge McMaster, and it was decided at that time -- by
23 then, the plaintiff had her own expert -- his own expert. So
24 it was decided between the parties to have a neutral third
25 then review the data download. That's how Kip came back into

1 play in this.

2 THE COURT: Okay. So that's the extent of his
3 involvement at this time. That's all I need to make certain.
4 I just didn't want to interfere if the parties were still
5 negotiating. That's why I wanted to make certain I
6 understood.

7 MS. O'SHEA: And then he asked -- Mr. Darwin asked if we
8 could meet regarding the cell phone data.

9 MR. TATE: Mr. Darwin -- again, Ron Tate.

10 Mr. Darwin told me that he would be happy to meet with us
11 if we felt it would be useful. He indicated to me also, he
12 was done with the review, and that that meeting would just be
13 basically to reassure, I believe, Plaintiff's counsel that
14 everything had been produced and there was nothing new. That
15 was what he told me.

16 So -- and, incidentally, I was just reading from someone
17 else's cell phone. Judge, interestingly Judge McMaster has
18 just issued a ruling essentially closing out the cell phone
19 motion issue.

20 THE COURT: Okay.

21 MR. TATE: So that's -- now, that issue seems to be moot.

22 THE COURT: All right. Thank y'all very much.

23 MS. O'SHEA: Thank you, Your Honor.

24 THE COURT: All right. You-all have a great day.

25 I will take this matter under advisement. I have a lot

1 of documents to read. I've already read a bunch, but thank
2 you for bringing that to my attention.

3 Yes, sir?

4 MR. RAINEY: I do -- I don't want to annoy the Court, but
5 Ms. O'Shea raised an issue that I feel like I need to address
6 and that's the medical record issue. All the medical -- I
7 want to assure the Court -- and I'm going to hand this up as
8 well. We certainly oppose the medical records from
9 Ms. Einstein because she's not claiming to be injured here.

10 So in anticipation, again, that that would come up, I
11 provided a chronology of the medical record history. The
12 summary of all this, in a nutshell, is every single medical
13 record we have been ordered to produce has been produced.

14 Adam Peoples, who's behind me and who has remained on
15 this case and principally handled it up until last March,
16 produced a discovery response in late 2024, I think November
17 or December, listing all the conditions, all the medicines
18 that were taken.

19 We redid that last year. The plaintiff is well aware of
20 every condition she suffered from and the medications that she
21 took for it.

22 So to the extent they're claiming they're entitled to
23 more, that would be incorrect because we have complied 100%
24 with what the Court told us to produce, Judge Rivers, and
25 previous to that, Judge Gravely.

1 So there is nothing left to produce. The plaintiff and
2 her -- his expert have it, and his expert says, based on the
3 information he has, that no drugs, no alcohol played any part
4 in this case. For Ms. Einstein, that is.

5 THE COURT: All right. I understand. All right.

6 MS. O'SHEA: (Indiscernible) seeing these memos that they
7 keep handing --

8 THE COURT: Yeah, I suspect -- and I hadn't either until
9 today. So if you wish to respond, certainly I'll leave the
10 record open. Just let me know how much time. I'll say ten
11 days, because I think two memos were given, one with
12 medications and another one with the discovery.

13 MS. O'SHEA: Thank you, Your Honor.

14 THE COURT: All right. And if you wish, after reading
15 it, and you wish to respond by ten days -- if you don't, just
16 let me know, and I'll go ahead and make a ruling.

17 MS. O'SHEA: Thank you, Your Honor.

18 THE COURT: All right. Thank y'all very much. Y'all
19 have a great day.

20 MR. RAINEY: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (The above hearing concluded.)
23
24
25

Certificate of Transcriber

CASE NAME: Lynch v. Einstein

DATE OF HEARING: 1/16/26

RECORDING METHOD: TEC Courtroom Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.



/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 1/17/26

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NO. 2022-CP-23-03510
	)	
ROGER WAYNE LYNCH,	)	
	)	
PLAINTIFF,	)	DEFENDANT'S NOTICE OF
	)	MOTION AND MOTION FOR
v.	)	SUMMARY JUDGMENT
	)	
ANGELA WEST EINSTEIN,	)	
	)	
DEFENDANT.	)	
_____	)	

TO: PLAINTIFF AND HIS ATTORNEYS:

PLEASE TAKE NOTICE THAT Defendant Angela West Einstein ("Defendant"), by and through her undersigned counsel, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, shall move before the presiding judge of the Greenville County Court of Common Pleas, within ten (10) days after service hereof, or as soon thereafter as the Court will allow for an Order granting Defendant summary judgment as to all causes of action.

The basis for this Motion is that there is no genuine issue of material fact, and Defendant is entitled to summary judgment as a matter of law. Specifically, there is no evidence that Defendant's actions breached any duty of care owed to Plaintiff at the time of the incident.

This motion is supported by the pleadings, written discovery exchanged by the parties, deposition transcripts, all applicable statutory and common law, and any supplemental affidavits or memorandum the court may receive at or prior to the time of a hearing on this motion.

[Signature Page to Follow]

HALL BOOTH SMITH, P.C.

/s/ Samuel Velasquez

Samuel Velasquez, SC Bar No. 105920

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Attorney for Defendant Angela Einstein

January 29, 2024

Mount Pleasant, South Carolina

Exhibit B
(Testimony of Plaintiff)

Q So you took the bus to Wade Hampton Boulevard and it dropped you off right near your mother's apartment?

A Yes.

Deposition of Lynch

Q So you were going to your mother's house to get your medicine.

A Right.

Q What kind of medicine was there that you needed to retrieve?

A I needed to get my blood sugar medicine.

Q The blood sugar medicine?

A Yes.

Q Would that be the Insulin and the Metformin?

A Insulin and the Metformin, yes, ma'am.

Deposition of Lynch

Exhibit B (cont'd)
(Testimony of Plaintiff)

Q At the time of the incident, had you made it to your mother's apartment yet?

A No.

Q The bus drop you off, tell me what happened next that you remember.

A The bus dropped me off and I was going across the street. I don't remember nothing else.

Q All right. So --

A I don't remember nothing else.

Deposition of Lynch

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A NO. 2022-CP-23-03510
	)	
Roger Wayne Lynch	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S MOTION TO
v.	)	RECONSIDER, ALTER, OR AMEND
	)	
Angela West Einstein	)	
	)	
Defendant.	)	
_____	)	

Please take notice that Plaintiff Roger Wayne Lynch ("Plaintiff"), moves before The Honorable G.D. Morgan, Jr., pursuant to Rules 56 and 59, SCRCP, for an order altering or amending the Court's Order filed on April 3, 2024 granting Defendant's Motion for Summary Judgment and ending the case. Plaintiff received electronic notice of the Order on April 3, 2024.

LEGAL STANDARD

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990); Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023); Rule 56(c), SCRCP.

Under South Carolina law, “a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant.” Nelson v. Concrete Supply Co., 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991). As part of this comparative negligence system, a plaintiff’s recovery “shall be reduced in proportion to the amount of his or her negligence.” Id. 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). Comparative fault may be decided as a matter of law only where “the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” Bloom v. Raviora, 339 S.C. 417, 529 S.E.2d 710 (2000) (citing Creech, 328 S.C. at 33, 491 S.E.2d at 575). Whether motorist statutes have been violated and the degree of fault attributable to a motorist for violating these statutes is also a jury question. Cooper v. County of Florence, 306 S.C. 408, 412 S.E.2d 417 (1991) (citing Jarvis v. Green, 257 S.C. 558, 186 S.E.2d 765 (1972) (“The determination of whether a motorist statute has been violated is ordinarily a question of fact for the jury”)). Accordingly, in a case involving a collision between a motor vehicle and pedestrian, it is the jury as trier of fact who weighs evidence presented by both sides and determines the existence and quantity of fault attributable to a plaintiff pedestrian and defendant motorist. See Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910 (Ct. App. 2001) (affirming jury’s allocation of fault among driver and pedestrian in pedestrian’s negligence claim).

On a motion for summary judgment, “the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). “Because reasonableness depends upon the evidence and the rational inferences that may be drawn from it in its context,

granting summary judgment in a negligence case is infrequent, for the court's duty at this stage is to presume the credibility of the evidence.” Abdelgheny v. Moody, 432 S.C. 346, 349–50, 852 S.E.2d 225, 227 (Ct. App. 2020). “When inferences conflict as to a material fact in a comparative negligence case, choosing between them—that is, choosing the facts that bear upon the percent of negligence attributable to the plaintiff and to the defendant—is up to the jury, whose duty is to decide what the facts are, not what they are presumed to be.” Id., at 50 (quoting Berberich v. Jack, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011)). “If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. Id. (quoting Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002)).

ARGUMENT

Plaintiff respectfully asserts the Court’s order should be amended for the following reasons:

- 1. The Court erred by granting summary judgment because Plaintiff has submitted substantial evidence demonstrating a genuine issue of material fact exists and that Defendant was 50% or more responsible for running over Mr. Lynch.**

The Court’s order relied heavily on Bloom v. Ravoir, 339 S.C. 417, 529 S.E.2d 710, 712 (2000). Importantly, courts have since addressed similar comparative negligence actions distinguishing Bloom. In Abdelgheny v. Moody, now-Justice Gary Hill distinguished Bloom and held

We understand how the trial court could have concluded Chelsea's negligence exceeded Moody's and amounted to more than fifty percent of the comparative fault. But arriving at that conclusion required choosing between the multiple inferences emerging from the evidence. Rule 56, SCRCP, reserves that choice to the jury. The order of summary judgment is REVERSED.

432 S.C. 346, 351, 852 S.E.2d 225, 228 (Ct. App. 2020). In light of the Court of Appeals’ holding in Abdelgheny, summary judgment should have been denied in this case, much like the Court did in Littrell guardian of Littrell v. Landmark Builders of S.C., LLC. In Littrell, The Honorable David C. Norton issued an order distinguishing Bloom and citing Abdelgheny. The Court’s ruling in Littrell addressed a similar comparative negligence fact pattern as the one alleged in this case (pedestrian struck while allegedly impaired, late at night, without the benefit of a crosswalk, supported by a police report as evidence) and Judge Norton’s analysis is spot on:

[T]he evidence precludes the court from reaching a factual finding as a matter of law... Landmark has presented evidence from which a jury could infer that Littrell is at least partly at fault for the injuries he sustained.... For example, Landmark has offered evidence showing that Littrell was impaired by alcohol and drugs at the time of the accident.⁴ ...

[Footnote 4:] Landmark contends that a report from the Charleston Police Department... constitutes “uncontroverted, objective evidence that [Littrell]’s intoxication/impairment was a direct cause of the accident and his ensuing injuries” because the report concluded that Littrell, not the driver of the vehicle, “was the sole contributing party responsible for the collision.” [citations omitted] **Of course, legal conclusions are within the sole preview of the court, and the legal opinions of the Charleston Police Department are worth little evidentiary value on summary judgment...**

[A] jury could very well conclude that Littrell's conduct—crossing King Street late at night without the benefit of a traffic light or crosswalk—was unreasonable. But some evidence of a plaintiff's negligent conduct does not warrant summary judgment in favor of the defendant. Indeed, the law permits summary judgment only where “the evidence admits only one reasonable inference”—that the plaintiff's negligence exceeds the defendant's. **That is not the case here. The record contains evidence of negligence attributable to both Littrell and Landmark, and the court cannot conclude as a matter of law that the former outweighs the latter. Like the duty to determine proximate cause, the duty to apportion fault falls to the jury. Because the evidence permits more than one reasonable inference, South Carolina law prohibits the court from usurping that role.**

Littrell guardian of Littrell v. Landmark Builders of S.C., LLC, No. 2:19-CV-0637-DCN, 2021 WL 795579, at *5 (D.S.C. Mar. 2, 2021) quoting Abdelgheny, 852 S.E.2d at 228 (emphasis added).

The Court's order also relies heavily on Kitchen Planners, LLC v. Friedman, a case which addressed facts unlike the ones in this case. The decision in Kitchen Planners was not intended to give the trial court power to make factual decisions that are for a jury to determine. Rather, Kitchen Planners removed the "mere scintilla" standard. In keeping with the spirit of the Kitchen Planners decision, the Court's intention was not to flip the standard the opposite way so that a mere scintilla of evidence showing comparative fault would then lead to summary judgments being granted, depriving parties of access to juries. Here, Plaintiff did not rely on a mere scintilla of evidence. Plaintiff submitted substantial evidence showing a genuine issue of material fact exists, evidence which should be viewed in the light most favorable to the Plaintiff in this action.

Like in Bloom, Abdelgheny, and Littrell, Defendant asserted comparative negligence as an affirmative defense in this case. See Answer of Defendant – Fourth Defense. At the summary judgment hearing, defense counsel argued "the plaintiff in this case alleges that Ms. Einstein was negligent... But ... even if she was, this Court should find as a matter of law that the plaintiff's own comparative negligence is so great that he can't recover anything anyway." Ex. 3 – Transcript at 5. It is clear the evidence shown, even without a full and fair opportunity to conduct discovery, leads to more than one reasonable inference. Therefore, the Court must leave weighing the evidence to a jury.

The most noteworthy aspect of Bloom is how different its facts are from the current case. The Bloom plaintiff darted out on the road's rainy surface from between two parked cars while Mr. Wilson was standing in the open as Mr. Johnson's tractor-trailer was barreling toward him. Bloom at 423, 529 S.E.2d at 713. Assuming for the sake of argument that Mr. Lynch's conduct was negligent, his conduct was far less culpable than the Bloom plaintiff. Mr. Lynch did not choose to dart out into a heavily traveled urban road from between two parked cars in the rain. He had a

medical emergency near a bus stop and collapsed while trying to get to his medicine. See Plaintiff's Memorandum in Opposition – Ex. A. (Plaintiff's bloodwork), Ex. B. (Plaintiff's deposition testimony). Additionally, Mrs. Einstein's conduct is much more culpable than the Bloom defendant. Ms. Einstein struck a pedestrian visible to the driver of the vehicle next to her, Mr. Lemuel Gaines, who was able to observe Mr. Lynch fall before Einstein struck him. Ms. Einstein's luxury vehicle, equipped with state-of-the-art headlights, was traveling in a well-lit area with no rain and a dry road. See Plaintiff's Memorandum in Opposition & Exhibits. Ms. Einstein described the road and conditions as "dry" and a "straight shot." Plaintiff's Memorandum in Opposition – Ex. D (Defendant's deposition testimony). The factual distinctions between Bloom and this case render the reliance on Bloom a poor analogy and certainly do not support Defendant's efforts to remove this factual question from a jury's hands by asserting Mr. Lynch was 50% or more at fault as a matter of law. Also of significance, is that nothing in Bloom suggests discovery was ongoing at the time summary judgment was granted.

2. The Court erred by granting summary judgment before the parties had a full and fair opportunity to complete discovery.

Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Evening Post Pub. Co. v. Berkeley County School Dist., 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011). Rule 7, SCRPC, establishes the form required of motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, "shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Rule 7(b)(1), SCRPC. When a motion is challenged for a lack of particularity, the

court should ask “whether any party is prejudiced by a lack of particularity or ‘whether the court can comprehend the basis for the motion and deal with it fairly.’” Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010).

As set forth in the Affidavit of Christopher McCool, Esq., Defendant filed a bare bones motion for summary judgment with no memorandum or supporting affidavits or evidence. Defendant’s arguments were not raised until the hearing. See Ex. 2 – Affidavit of Christopher McCool at 1. “At this stage of the litigation, discovery in the action is ongoing and further discovery is needed in this case.” Ex. 2 at 1. Courts disfavor “trial from becoming guessing game or one of ambush for either party.” Scott v. Greenville Hous. Auth., 353 S.C. 639, 579 S.E.2d 151 (Ct. App. 2003). With Plaintiff unaware of Defendant’s position with no supporting evidence on file, preparing for the motion hearing on summary judgment was a guessing game and the dispositive hearing was one of ambush. When the proposed order granting summary judgment was sent to the Court without sending it to Plaintiff’s counsel first, Plaintiff’s counsel then asked defense counsel for a copy of the Exhibits referenced in the proposed order and got no reply. See Ex. 1 – Emails, Ex. 7 – Defendant’s Proposed Order. Before Plaintiff’s counsel could review and respond to the proposed order, the Court signed and filed it, and Plaintiff remains in the dark as to what evidence the exhibits are citing to throughout the order.

3. The Court erred by finding facts that have no evidentiary basis and by giving weight to inadmissible materials and information.

Materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence.¹ Authentication is a condition precedent to admissibility and is

¹ See Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991); Moon v. Jordan, 301 S.C. 161, 390 S.E.2d 488 (Ct.App.1990); Moss v. Porter Bros., Inc., 292 S.C. 444, 357 S.E.2d 25 (Ct.App.1987); Hansen v. DHL Labs., Inc., 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct.App.1994), *aff’d*, 319 S.C. 79, 459 S.E.2d 850 (1995) (“A genuine issue of fact ... can be created only by evidence which would be admissible at trial.”) (citing, *inter alia*, Rule 56(e), SCRCP). Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

satisfied by evidence sufficient to support a finding it is what its proponent claims. SCRE 901(a); State v. Rich, 293 S.C. 172, 359 S.E.2d 281 (1987). The Court’s order references exhibits that are not on file, not authenticated, and not attached to the order. (“Exhibit F” . . . “Exhibit G” . . . “Exhibit H” . . . “Exhibit I” . . . “Exhibit D”). See Order filed April 3, 2024. The Court’s order makes numerous findings of fact, but leaves crucial evidentiary gaps throughout its text. See Order filed April 3, 2024.

It is undisputed that the subject auto-pedestrian incident occurred on Wade Hampton Boulevard in Greenville, South Carolina on December 16, 2021 at approximately 8:21 p.m. As Plaintiff, a diabetic, was walking across the street after being dropped off by a city bus, he fell to the asphalt because his glucose levels were dangerously low (29 LL and 45 LL per hospital lab studies taken soon after the incident). See Plaintiff’s Memorandum in Opposition – Ex. A (Plaintiff’s bloodwork). Plaintiff was walking to his mother’s house after getting off the bus to retrieve his “blood sugar medicine” which he left at the house. See Plaintiff’s Memorandum in Opposition – Ex. B (Plaintiff’s deposition testimony). While on the dry asphalt, Defendant struck Plaintiff with her SUV, causing Plaintiff to sustain numerous fractures and injuries, including an above the knee amputation of his right leg. See Plaintiff’s Memorandum in Opposition – Ex. C (injury photographs).

Mr. Lynch was not “on crack” and there is *zero* evidence Mr. Lynch was on crack or any other similar drug when the Defendant ran him over with her Range Rover. See Plaintiff’s Memorandum in Opposition – Ex. A (Plaintiff’s bloodwork). Any insinuation that Mr. Lynch had a history or drug use is inadmissible as evidence. “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.”

Rule 404(b), SCRE. Defendant improperly raised inadmissible, prejudicial allegations regarding drug use, which was presented to the Court through hearsay within past medical records which have no relevance to the subject incident. Ex. 3 – Transcript.

Likewise, Defendant presented zero admissible evidence to support the Court’s finding that Plaintiff was “drunk.” Ex. 3 – Transcript, Order filed April 3, 2024. There was no evidence presented by a forensic toxicologist interpreting the medical records and no opportunity to take any expert depositions prior to the Court’s ruling. Ex. 3 – Transcript. Pursuant to Rule 702, SCRE, “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” If Defendant wants to contend presence of alcohol in one’s system or past drug use equates to impairment or causation at the time, testimony from a forensic toxicologist is necessary. Defendant relied upon “an excerpt of the plaintiff’s medical record” and read aloud ‘Ethel alcohol, medical only’ from the unauthenticated excerpt and then argued to the Court this means “[Mr. Lynch’s] alcohol level was 99. The reference range is less than 10. That means that a normal person’s blood test would come back at something under 10. Mr. Lynch’s blood alcohol came back at 99 or greater.” Ex. 3 – Transcript at 7. Defense counsel is not a forensic toxicologist or a witness to refute medical evidence of a diabetic episode and his arguments and recitation of hearsay are not admissible. Plaintiff was in the process of retaining an expert forensic toxicologist, Dr. David Eagerton, when summary judgment was granted, and Dr. Eagerton interprets the bloodwork very differently from Defense counsel. The need for expert testimony in this case further illustrates why Rule 56 states summary judgment is not to be granted until the opposing party has had a full and fair opportunity to complete discovery.

Moreover, the first two paragraphs of the Court's "Legal Analysis" section have no evidentiary basis. The Court's order finds "[t]he evidence presented shows that it was dark on the night in question" and concludes there "was no lighting." See April 3, 2024 Order at 9. "Of course, legal conclusions are within the sole preview of the court, and the legal opinions of [law enforcement officers] are worth little evidentiary value on summary judgment." Littrell, No. 2:19-CV-0637-DCN, 2021 WL 795579, at *5. However, if the Court is going to credit Officer Hamilton's testimony that the area was "very dark," then the Court also must acknowledge the Defendant's testimony where she confirmed her Range Rover headlights were on and the area around the IHOP was "extremely bright." See Plaintiff's Memorandum in Opposition – Ex. D (Defendant's deposition testimony). See also See Plaintiff's Memorandum in Opposition – Ex. E (photos). In light of this evidence, a reasonable jury could conclude there was ample lighting at the scene (from vehicle headlights, streetlights, and adjacent restaurants) for Defendant and other drivers to see Plaintiff and avoid hitting him.

Defendant also admits that based on the manner in which she was operating her vehicle, she was a mere five feet from Plaintiff the first time she saw him. A driver adjacent to Defendant stated the conditions were such that he saw Plaintiff walking across the street and fall. As Defendant proceeded down Wade Hampton Boulevard, a vehicle (also a 2021 Land Rover Range Rover Sport) driven by Lemuel Gaines was to the left of Defendant. See Plaintiff's Memorandum in Opposition – Ex. D (Defendant's deposition testimony). Although Mr. Gaines was able to see Plaintiff walking and fall, Defendant admits and concedes that she did not see Plaintiff until she was a mere five feet away from him. See Plaintiff's Memorandum in Opposition – Ex. D (Defendant's deposition testimony).

Following the incident, the body worn camera of an on-scene police officer recorded Mr. Gaines explaining, “I was driving but [Plaintiff], he was walking but he fell. I saw as soon as she hit him. I started screaming because she got over in his lane and she saw him fall and she tried to get back over but it was too late.” This body-worn camera video was submitted by still image exhibit to the Court in Plaintiff’s Memorandum in Opposition – Ex. F because Plaintiff was unable to e-file the body worn camera video. The video was also submitted at the Court’s request by email, “I do allow a submission of something like that... I’m going to request that you do send it to me. Send it to my law clerk. The email is gmorganlc@sccourts.org.” See Ex. 3 – Transcript at 29. See also Ex. 4 – Email to the Court from Plaintiff’s Counsel providing the investigating officer’s body worn camera video. Beyond the body worn camera video, Plaintiff also presented substantial evidence that:

1. Wade Hampton Boulevard is a straight flat, road with excellent sight lines for operators of vehicles. See Plaintiff’s Memorandum in Opposition – Ex. E (daytime photographs of Wade Hampton Blvd);
2. Defendant was driving a 2021 Land Rover Range Rover Sport (a high dollar luxury SUV) with functioning and in-use state of the art headlights that illuminated the roadway. See Plaintiff’s Memorandum in Opposition – Ex. D (Defendant’s deposition testimony);
3. The headlights from a vehicle in the direct vicinity of Defendant’s vehicle were also illuminating the roadway and Plaintiff. See Plaintiff’s Memorandum in Opposition – Ex. D (Defendant’s deposition testimony) and Ex. F (the Investigating Officer’s deposition testimony).
4. The lights from adjacent restaurants were illuminating the roadway. See Plaintiff’s Memorandum in Opposition – Ex. D (Defendant’s deposition testimony) and Ex. F (the Investigating Officer’s deposition testimony).

The evidence the Court relies on must be admissible. “None of the reports required by Sections 56-5-1260 to 56-5-1280 may be evidence of the negligence or due care of either party at the trial of any action at law to recover damages.” S.C. Code Ann. § 56-5-1290; See also Rule 803(6), SCRE (providing business records are admissible but stating “that subjective opinions and

judgments found in business records are not admissible.” S.C. Dep't of Revenue v. Meenaxi, Inc., 417 S.C. 639, 655, 790 S.E.2d 792, 800 (Ct. App. 2016); SCRE 803. Hearsay and legal conclusions within a police report must not be given weight in deciding upon summary judgment. Defendant relies heavily on an inadmissible police report. Ex. 3 – Transcript, April 3, 2024 Order. The Court adopted Defendant’s blatant mischaracterization of Plaintiff’s testimony within the order regarding the inadmissible police report, which states, “Plaintiff does not have a reason to believe that the police report is inaccurate.” See April 3, 2024 Order at 3 citing Deposition of Plaintiff at 45. Ex. 7 – Defendant’s Proposed Order. In contrast, below is what Plaintiff’s deposition testimony actually says at the page cited in the Court’s order:

ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023 Page 45

1	Okay?
2	A Uh-huh.
3	Q Was anyone else with you at the time of the
4	accident?
5	A No.
6	Q Mr. Lynch, if you'll turn to Exhibit 29, it looks
7	like it's right on top. It's a copy of that police
8	report.
9	A Uh-huh.
10	Q Do you recall speaking with an officer after the
11	incident?
12	A Not -- not really.
13	Q Okay. Do you recall an officer visiting you in the
14	hospital or speaking with you on the telephone
15	after the incident?
16	A Yeah, she called, but I didn't talk to her because
17	I didn't know who it was.
18	Q So you have not spoken with an officer about the
19	incident, to your recollection?
20	A Not to my recollection, no.
21	Q Do you have any memory issues as a result of the
22	incident?
23	A Yeah.
24	Q And we'll talk about that later, I want to make a
25	note of that.

Mr. Lynch's "uh" sound does not identify or authenticate the police report and he goes on to say he does not remember interacting with the investigating officer and has memory issues as a result of the incident. Ex. 6 – Plaintiff's Deposition at 45. South Carolina law – not a police report or the Plaintiff's lack of memory of a police report – governs what a driver's duties are. South Carolina law requires that every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person. S.C. Code Ann. § 56-5-3230. The statute includes language indicating that § 56-5-3230's duties on motorists are overarching duties in place notwithstanding the conduct of a pedestrian. This statutory provision begins with, "Notwithstanding other provisions of any local ordinance..." Additionally, cases interpreting this statute and its identical predecessor from an earlier version of the Code have deemed the statute's duties as overarching responsibilities notwithstanding the conduct of a pedestrian. In Lester v. McFaddon, 288 F. Supp. 735, 741 (D.S.C. 1968), the Court held:

Motorists using the highways have the duty of exercising ordinary or 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.

(citing Johnson v. Finney, 246 S.C. 366, 143 S.E.2d 722 (1965)(emphasis added).

While not all statutory violations may form the basis for a negligence cause of action, a motorist's careless driving in the presence of a pedestrian is the type of harm Section 56-5-3230 is designed to prevent and needlessly injured victims like Mr. Lynch are the class of individuals this statute is designed to protect. See Rayfield v. S.C. Dep't of Corr., 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988)(outlining requirements for statutory violation to support negligence claim). As a

result, “violation of these sections of the Code constitutes negligence per se and is evidence of recklessness, willfulness and wantonness.” Rowe v. Frick, 250 S.C. 499, 159 S.E.2d 47 (1968)(citing Field v. Gregory, 230 S.C. 39, 94 S.E.2d 15 (1956)).² As the Court noted in Cooper, violation of Section 56-5-3230 “would constitute evidence of recklessness, willfulness and wantonness on [driver’s] part.” 306 S.C. at 411, 412 S.E.2d at 418.

CONCLUSION

Weighing the evidence is for the jury and it is clear more than one reasonable inference can be drawn from the evidence if all of it is considered, especially in the light most favorable to the non-moving party. Based on the arguments above, Plaintiff respectfully requests an order granting Plaintiff’s Motion to Reconsider and denying Defendant’s Motion for Summary Judgment. Defendant’s claim that Mr. Lynch’s alleged negligence was the predominant factor in his injuries is not supported by South Carolina law or the evidence collected in this case. The evidence shows Defendant deviated from the applicable standard of care and proximately caused Mr. Lynch’s injuries.

Respectfully submitted,

O’Shea Law Firm, LLC

s/Brooklyn A. O’Shea
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² The Rowe court considered South Carolina law under a previous version of the South Carolina Code. Rowe specifically held that Section 46-442 and other motorist statutes from the 1962 Code of Laws of South Carolina could form the basis for a negligence cause of action. 250 S.C. at 504-05, 159 S.E.2d at 50. Rowe’s holding applies here because Section 46-442 uses the exact same language as § 56-5-3230. See Carma v. Swindler, 228 S.C. 550, 91 S.E.2d 254 (1956) (quoting Section 46-442).

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and

Tara A. Leaphart Attorney At Law, LLC

s/Tara A. Leaphart

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taraleaphartlaw@outlook.com

Attorneys for Plaintiff

April 9, 2024
Charleston, South Carolina

Re: Lynch v. Einstein / Civil Action No. 2022-CP-23-03510 / Proposed Order Granting Defendant's Motion for Summary Judgment [IMAN-DMS.FID290911]

1 message

Brooklyn O'Shea <brooklyn@oshealaw.com>

Tue, Apr 2, 2024 at 12:13 PM

Cc: Veronica Benson <VBenson@hallboothsmith.com>, Samuel Velasquez <svelasquez@hallboothsmith.com>, Denise Koza <dkoza@hallboothsmith.com>, "chris@oshealaw.com" <chris@oshealaw.com>, Adam Peoples <APeoples@hallboothsmith.com>, Debbie Robbins <DRobbins@hallboothsmith.com>, Melissa Morris <melissa@oshealaw.com>, Maureen Quinn <MQuinn@hallboothsmith.com>, Michael Litrenta <MLitrenta@hallboothsmith.com>, Tara Austin Leaphart <Taraleaphartlaw@outlook.com>
Bcc: Jordan Calloway <jordan@mcgowanhood.com>

Adam,

I have removed the Court from this email. May we please have a copy of the exhibits referenced in your proposed order? They don't seem to correspond with anything we have seen.

Thanks,
Brooklyn

Brooklyn A. O'Shea
Attorney at Law | O'Shea Law Firm, LLC
Phone: (843) 805-4943 Direct: (854) 800-4202
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On Mon, Apr 1, 2024 at 9:38 AM Morgan, Grenville D. Law Clerk (Jonathan Umbriano) <[gmorganlc@sccourts.org](mailto:gmorganlc@sccourts.org)> wrote:

Good Morning,

Judge Morgan will allow for the opposing counsel to review the proposed order.

Thank you,

**Jonathan R. Umbriano**

Law Clerk to The Honorable G.D. Morgan, Jr.

Resident Circuit Judge, 13<sup>th</sup> Circuit

305 E. North Street  
Greenville, SC 29601  
Office: (864) 467-8407  
Cell: (401) 626-0713

---

**From:** Brooklyn O'Shea <[brooklyn@oshealaw.com](mailto:brooklyn@oshealaw.com)>  
**Sent:** Monday, April 1, 2024 8:21 AM  
**To:** Veronica Benson <[VBenson@hallboothsmith.com](mailto:VBenson@hallboothsmith.com)>  
**Cc:** Morgan, Grenville D. Secretary (Brittany Long) <[gmorgansc@sccourts.org](mailto:gmorgansc@sccourts.org)>; Morgan, Grenville D. Law Clerk (Jonathan Umbriano) <[gmorganlc@sccourts.org](mailto:gmorganlc@sccourts.org)>; Samuel Velasquez <[svelasquez@hallboothsmith.com](mailto:svelasquez@hallboothsmith.com)>; Denise Koza <[dkoza@hallboothsmith.com](mailto:dkoza@hallboothsmith.com)>; [chris@oshealaw.com](mailto:chris@oshealaw.com); [taraleaphart@outlook.com](mailto:taraleaphart@outlook.com); Adam Peoples <[APeoples@hallboothsmith.com](mailto:APeoples@hallboothsmith.com)>; Debbie Robbins <[DRobbins@hallboothsmith.com](mailto:DRobbins@hallboothsmith.com)>; Melissa Morris <[melissa@oshealaw.com](mailto:melissa@oshealaw.com)>; Maureen Quinn <[MQuinn@hallboothsmith.com](mailto:MQuinn@hallboothsmith.com)>; Michael Litrenta <[MLitrenta@hallboothsmith.com](mailto:MLitrenta@hallboothsmith.com)>  
**Subject:** Re: Lynch v. Einstein / Civil Action No. 2022-CP-23-03510 / Proposed Order Granting Defendant's Motion for Summary Judgment [IMAN-DMS.FID290911]

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Judge Morgan,

We are just receiving the proposed order. May we please have an opportunity to review it and respond if needed before an order is signed?

Respectfully,

Brooklyn

**Brooklyn A. O'Shea**

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whether it is privileged, please immediately notify us by return email and destroy any copies—electronic, paper, or otherwise—which you may have of this communication. Please note that nothing in this email should be construed as giving tax advice. Should you need tax advice, please contact a tax attorney.

On Mon, Apr 1, 2024 at 8:06 AM Veronica Benson <VBenson@hallboothsmith.com> wrote:

Good morning, Judge Morgan,

I hope you had a nice weekend. Attached please find a proposed Order Granting Defendant's Motion for Summary Judgment e-filed to your queue this morning. If the proposed Order meets with your approval, we would appreciate it if you would sign it and have it filed. All counsel is copied on this email. If you need anything further, please let me know. Thank you and have a great day!

Veronica Benson

Legal Assistant | Hall Booth Smith, P.C.

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D: 854.444.5792

Mount Pleasant, SC 29464

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Roger Wayne Lynch,

Plaintiff,

V.

Angela West Einstein,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
C/A NO. 2022-CP-23-03510

Affidavit of Christopher J. McCool, Esq.

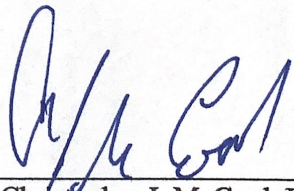
Personally appeared before me, Christopher J. McCool, Esq., who deposes and freely makes the following statement:

1. I am over the age of eighteen (18) years old and I am a resident of Charleston County, State of South Carolina.
2. I am an attorney with the O'Shea Law Firm, LLC in Charleston, South Carolina. O'Shea Law Firm, LLC represents the Plaintiff in the above-captioned action. The action involves a vehicle-pedestrian incident in which the Defendant operated the vehicle, and the Plaintiff was the pedestrian.
3. Beyond the very brief Motion for Summary Judgment filed by the Defendant, no supporting arguments or materials were provided to Plaintiff until the hearing on Defendant's Motion for Summary Judgment and no affidavits have been submitted by the Defendant as the moving party. Therefore, Defendant's arguments were unclear and/or unknown to Plaintiff's counsel until the hearing began on Defendant's Motion for Summary Judgment.
4. At this stage of litigation, discovery in the action is ongoing and further discovery is needed in this case.
5. Lemuel Gaines is an eyewitness identified by parties in the action. Mr. Gaines has yet to be deposed and Plaintiff intends to depose Mr. Gaines.
6. Roberto Cortez is an eyewitness identified by the parties in the action. Mr. Cortez has yet to be deposed and Plaintiff intends to depose Mr. Cortez.

7. Daniel Fedorski with Allied Universal Compliance and Investigations was identified by Defendant as having knowledge of the subject vehicle-pedestrian incident. Plaintiff intends to subpoena Allied Universal Compliance and Investigations. Mr. Fedorski has yet to be deposed and Plaintiff intends to depose Mr. Fedorski.
8. Defendant identified "First Responders" as having knowledge concerning the subject vehicle-pedestrian incident. The First Responders have yet to be deposed and Plaintiff intends to depose the First Responders.
9. Plaintiff has sought to subpoena the medical records of Defendant based on her use of medications at the time of the subject vehicle-pedestrian incident and Defendant objected to the issuing of the subpoena. Plaintiff intends to seek enforcement by the Court of the subpoena requesting Defendant's medical records.
10. Plaintiff intends to domesticate a subpoena to Defendant's cell phone provider to determine Defendant's cell phone activity at the time of the subject vehicle-pedestrian incident.
11. Plaintiff intends to engage in other discovery as more testimony and evidence is obtained.

FURTHER AFFIANT SAYETH NOT

BY:


Christopher J. McCool, Esq.

SWORN TO BEFORE ME THIS

25 day of March, 2024



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: October 9, 2033



1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE * TRANSCRIPT OF RECORD
3 -----X
4 ROGER WAYNE LYNCH, *
5 Plaintiff, *
6 vs. * Case No. 2022-CP-23-03510
7 ANGELA WEST EINSTEIN, *
8 Defendant. *
9 -----X

March 4, 2024

B E F O R E:

The Honorable G.D. Morgan, Jr., Presiding Judge

A P P E A R A N C E S:

Chris McCool, Esq.

Attorney for the Plaintiff

Adam Peoples, Esq.

Sam Velasquez, Esq.

Attorneys for the Defendant

Recorded by: Webex In-Court Recording

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

| DESCRIPTION | PAGE |
|-------------------------|------|
| Proceedings | 3 |
| Certificate of Reporter | 31 |

E X H I B I T S

(None.)

COURT REPORTER LEGEND

| | |
|-----------------|---|
| Dash (--) | Indicates an interruption in speech |
| Ellipses (...) | Indicates trailing off in speech |
| (ph) | Indicates phonetic word |
| [Verbatim] | Indicates the word is said as written |
| (Indiscernible) | [Transcription] Indicates word(s) is not known due to audio recording quality |

P R O C E E D I N G S

THE COURT: The next matter, Lynch versus Einstein, 2022-CP-23-3510, Defendant's motion for summary judgment.

All right. Starting with the plaintiff, please identify yourself for the record and who you represent.

MR. McCOOL: Yeah, absolutely. Absolutely. Sorry, Your Honor. This is -- I'm Chris McCool, and I represent the plaintiff in the action, Roger Wayne Lynch.

MR. PEOPLES: Good morning, Your Honor. My name is Adam Peoples. And together with Sam Velasquez, we represent the defendant, Angela Einstein.

THE COURT: All right.

MR. McCOOL: And, Your Honor, we filed a memo opposing the motion for summary judgment. I believe it was entered this morning and possibly circulated this morning, but I do have hard copies for the Court if you would like a copy.

THE COURT: I have got it, so yeah. But if you have got an extra copy, I'll look at it.

MR. McCOOL: It's black and white, but for the -- there's some photos in exhibits.

THE COURT: Okay.

MR. McCOOL: I think it will still be beneficial to the Court.

THE COURT: All right. Defense motion, so I'll hear

1 from you.

2 MR. PEOPLES: Thank you, Your Honor. We also
3 brought some materials for the Court, if I may approach.

4 THE COURT: All right.

5 MR. PEOPLES: Thank you. So just to orient Your
6 Honor, there's a number of tabs in the notebook in front
7 of you, but Tab 4 is the defendant's brief in support.

8 And I'll start, Your Honor, with kind of a general
9 overview of what this case is about, and then we'll back
10 into the specifics of the case.

11 In this case, the undisputed evidence shows that the
12 plaintiff, Mr. Lynch, was found lying in the road on Wade
13 Hampton Boulevard at night, wearing dark clothing, while
14 intoxicated. As he remained in that position, the
15 defendant ran over him. The undisputed evidence is that
16 she was in the right-most lane and there was another
17 person traveling to the lane to her immediate left, and so
18 there was nowhere for her to go, left or right. She
19 slammed on her brakes as soon as she had an opportunity
20 and realized what was ahead of her, but she was unable to
21 completely stop. Her tires were aimed for his head, and
22 she managed to avoid his head and run over his legs.

23 But the plaintiff in this case alleges that
24 Ms. Einstein was negligent. Our presentation to the Court
25 right now is that, number one, Ms. Einstein wasn't

negligent; there's no evidence of that. But, number two, even if she was, this Court should find as a matter of law that the plaintiff's own comparative negligence is so great that he can't recover anything anyway.

So to get into some of the detail, Your Honor, the incident at issue occurred on December 16th, 2021, around 10 p.m. If Your Honor will turn to page 3 of tab 4, which is the brief in support, the Court will find sort of a bird's-eye view of the area where the incident took place. To orient Your Honor, the defendant was traveling from right to left in the lane nearest to the IHOP. And so she was running against the curb. There was another person traveling beside her, a Mr. Lemuel Gaines, and he was riding in the middle lane.

And somewhere approximately where the little red Google marker is, where it says Wade Hampton and Brookshire Circle, somewhere in that vicinity the plaintiff was on the curb and then he wasn't, and he was lying in the road. He was completely in the road.

There was an eyewitness, the owner of the Asada restaurant who gave a witness statement to the law enforcement officer who investigated, and he testified that he saw the plaintiff trying to get in and out of cars. There was also some testimony by another eyewitness person that the plaintiff was in the road and then he was

1 out of the road. So nobody really knows -- the plaintiff
2 himself testified that he can't recall. Nobody really
3 knows why he was in the road, but it's undisputed that he
4 was not only in the road but he was lying down flat. We
5 know that because the defendant's car traveled over him,
6 and his body didn't even impact her bumper. She passed
7 over him, not through him.

8 So the evidence was, from the plaintiff, he was
9 dropped off -- if Your Honor looks directly south of the
10 red marker, there's a blue marker indicating a bus stop.
11 The plaintiff testified in his deposition that he was
12 dropped off by a bus at approximately that location and
13 that, at some point in time, he traveled across the street
14 to where he was ultimately hit. We don't know if the --
15 you know, him being hit was during the course of moving
16 from Point A to Point B, but the testimony of the store
17 owner seems to suggest that he had made it over to the
18 side nearest the IHOP with at least enough time to stumble
19 in and out of the road prior to being hit.

20 If Your Honor would turn the page -- I'm sorry, two
21 pages, Your Honor will see a photograph. And this is a
22 photograph of that area at night. And if Your Honor would
23 notice, IHOP a very well illuminated. The area in front
24 of the Asada restaurant is not. There's actually a street
25 light that's over that area that has been burned out,

1 still burned out, was burned out at the time.

2 And so the evidence was that neither Mrs. Einstein
3 nor Mr. Gaines, the person traveling to her immediate
4 left, saw the plaintiff until it was too late to do
5 anything about it.

6 And what we have in the rest of this brief, Your
7 Honor, are excerpts of the testimony of the people who
8 have been deposed or otherwise gave statements. There is
9 the statement of the plaintiff himself, the statement of
10 the defendant, and the statement of the officer who
11 investigated these incidents. And then, lastly, there is
12 the statement of Mr. Gaines. He has not been deposed, but
13 he gave a witness statement which Your Honor will find in
14 the tabs behind -- Tab 5 is Ms. Einstein's deposition,
15 Tab 6 is the officer's deposition, Tab 7 is the
16 plaintiff's deposition.

17 But if Your Honor would turn to Tab 8, this is an
18 excerpt of the plaintiff's medical record upon presenting
19 to the hospital immediately following the accident. And
20 if Your Honor would see there under the heading, "Ethel
21 alcohol, medical only," his alcohol level was 99. The
22 reference range is less than 10. That means that a normal
23 person's blood test would come back at something under 10.
24 Mr. Lynch's blood alcohol came back at 99 or greater.
25 That is part of our evidence that Mr. Lynch was

undisputed -- I mean, I'm sorry, was intoxicated.

And one of the things that the officer who investigated put in her report is that the plaintiff admitted to her that, shortly before the accident, he had consumed a fifth of liquor.

So we have the plaintiff's own statement that he consumed a fifth of liquor, his blood test, and then, on Tab 9, I have highlighted a little section here where the provider who was taking him in noted "alcohol intoxication on arrival, high risk for withdrawal."

Backing up a little bit, the investigating officer in her deposition and consistent with her report noted that she found no evidence that Mrs. Einstein was speeding or that she was impaired. The officer also acknowledged that this area of Wade Hampton is, quote, "very dark," closed quote.

Mr. Gaines's statement, which is on Tab 10 -- the very last sentence is the one that I'd like to draw the Court's attention to -- he says, "He," meaning the plaintiff, "was in very dark clothes so he could not be seen and was unavoidable."

So Mr. Gaines separately says that he initially thought it was an animal that was in the road. Actually, that's in that statement there. "Suddenly after passing IHOP on the right, I thought an animal was in the road."

Now, this is important, Your Honor. If you were to flip back to the photograph showing the bird's-eye view of the scene on page 3 of Tab 4, the IHOP is immediately adjacent to the Asada restaurant. And so an uninterested party, Mr. Gaines says that he didn't see this person until after he passed the IHOP. I don't have the actual footage here, but we're talking feet, not yards. It's a short distance between passing the IHOP and seeing Mr. Lynch, who was lying in the road. And this disinterested observer said that, after passing IHOP, he thought it was an animal, so he didn't even initially recognize that it was a person. There was some time of after that when the person that was lying in the road was actually identified.

THE COURT: All right. Mr. Gaines has not been deposed yet?

MR. PEOPLES: That's correct.

THE COURT: All right.

MR. PEOPLES: And turning to Ms. Einstein, who has been deposed, her testimony was that she was traveling in the right-most lane; that Mr. Gaines was in the lane immediately to her left so that, when she saw this person lying in her lane, she was unable to move to the left because there was a car immediately beside her. She was going the speed limit. She was looking ahead. As soon as

1 she realized that it was a person lying in the lane ahead
2 of her, she applied the brakes and that she was not
3 impaired, not speeding, not distracted.

4 In Tab 12, there's three pieces of authority. The
5 first is South Carolina Statute 56-5-3150, which the Court
6 probably knows, provides that a pedestrian shall yield the
7 right-of-way to all vehicles on the right-of-way.

8 But the next two cases are more sort of significant
9 to the Court's analysis. These two cases provide
10 something of a framework of two gutters (ph) about how a
11 motion for summary judgment can be granted in a case like
12 this where there, you know, potentially could be questions
13 of fact.

14 As the Court in Abdelgheny v. Moody, which is a
15 Court of Appeals case from 2020, and included in Your
16 Honor's notebook -- that's 432 S.C. 346 -- it is a rare
17 case when the evidence generates a single inference that
18 motion for summary judgment is proper in the course of a
19 negligence action.

20 This is that rare case, Your Honor. Starting with
21 Bloom v. Revoira, which is a 2000 case, and comparing that
22 to Abdelgheny v. Moody, which is a 2020 case, first
23 talking about Bloom, which is included in the materials we
24 have handed up, in Bloom, the plaintiff who was hit with a
25 vehicle was wearing dark clothing, he was not moving

1 across the roadway in a crosswalk. The plaintiff had
2 admitted to have been drinking. And the defendant in that
3 case testified that his wife was sitting in the passenger
4 seat next to him, and she saw something out of the
5 peripheral of her vision. She called at his name, he
6 looked to her, and by the time he had returned his vision
7 ahead of him, he couldn't have -- he didn't have an
8 opportunity to stop. In other words, the undisputed
9 evidence from the defendant was, was that he looked away
10 from the road ahead of him.

11 In that case, the trial court granted a motion for
12 summary judgment. The Court of Appeals reversed the grant
13 of summary judgment, and the Supreme Court affirmed the
14 trial court, undoing what the Court of Appeals had done.

15 In that case, the Supreme Court said that the only
16 inference is that the plaintiff, Bloom, entered the street
17 quickly and without warning; that he failed to use the
18 crosswalk, which is a breach by his own admission; that
19 his breach was compounded by the fact that it was dark and
20 rainy on that occasion; and that he was wearing dark
21 clothes. Under those facts, the Court said, as a matter
22 of law, that the plaintiff's negligence exceeded
23 50 percent.

24 Comparing that to Abdelgheny vs. Moody, in this
25 case, unlike Bloom, this plaintiff was wearing bright

1 clothes. The testimony was she was in some sort of gym
2 and she came over in, like, neon clothes. In this case,
3 she had the opportunity to use a crosswalk, but it was
4 really, really far away. So it's not like she could have
5 used the crosswalk but chose not to; it's that the
6 crosswalk would have required her to go really far way out
7 of the way.

8 Like Bloom, it was raining on this occasion, but
9 unlike Bloom, in this case, the plaintiff had managed to
10 cross over two lanes and make it into the median without
11 any issues. And so she wasn't hit until she began to
12 cross even further through traffic.

13 In that case, again, like Bloom, the defendant
14 testified that, when he, quote, "looked up," closed quote,
15 the plaintiff was 10 feet away. Using the statement by
16 the defendant, the Court said that a reasonable juror
17 could find that the plaintiff -- I'm sorry; the defendant
18 in that case failed to exercise his duty; that if he
19 didn't see the person until he, quote, "looked up," then
20 potentially a jury could find that he wasn't looking up
21 and keeping his eye on the road as he has to. And that's
22 the case with the Abdelgheny Court said it's rare when
23 evidence generates a single inference.

24 Your Honor, we would suggest to this Court that this
25 case is even more egregious circumstances than Bloom,

1 because in both Bloom and Abdelgheny, the plaintiff was
2 standing up and crossing the road actively. In one, the
3 plaintiff was wearing bright clothing; in one, the
4 plaintiff was wearing dark clothing. But it's undisputed
5 in this case that our plaintiff was lying flat on the
6 ground.

7 The second thing is, is that it was dark. In
8 Abdelgheny, it was -- I can't recall -- I know it was
9 rainy in both of those cases. I don't know if it was
10 dark. But the incident at issue in this case happened at
11 10 p.m., so it's pitch black --

12 THE COURT: Doesn't the plaintiff argue, though,
13 there's some light there from IHOP that shines over there
14 where the gentleman was?

15 MR. PEOPLES: He does, and we'll have -- I have two
16 answers to that, Your Honor. The first is, is that, from
17 the photograph that's in the notebook, you can see that,
18 while the IHOP is brightly illuminated, the area where the
19 plaintiff was, in front of the Asada restaurant, is not.

20 And, second, by habit, if one has ever been driving
21 in traffic and immediately passed something very, very
22 bright into an area that's very, very dark, it takes a
23 minute for one's eyes to adjust.

24 If the suggestion is, is that the IHOP so adequately
25 illuminated the plaintiff lying on the road, then there's

1 no evidence of that. That, in fact, seems implausible,
2 especially looking at the photograph itself.

3 But even if this Court were to find that there's --
4 by some miracle, Mrs. Einstein's state-of-the-art
5 headlights could have potentially illuminated Mr. Lynch,
6 it's undisputed that another person -- an uninterested,
7 disinterested advisor, Mr. Gaines, was traveling at the
8 same pace in the lane immediately left to her, and he said
9 he didn't see the plaintiff until after they had passed
10 IHOP.

11 If it was necessary, we could call in an expert to
12 say that a person's ability to perceive a threat,
13 acknowledge the threat, and react to the threat is greater
14 than two seconds, and I don't think there would be any
15 dispute that it takes more than two seconds to go from
16 where they were beyond IHOP to the point of impact.

17 That's not the point. The point is that the
18 plaintiff himself, his own comparative negligence, is so
19 great that he can't possibly recover as a matter of law.

20 The other argument that's been advanced by the
21 plaintiff in this case is that it wasn't his alcohol, his
22 fifth of liquor that gave him a level of 99 when it should
23 have been under 10; it wasn't his alcohol that did this to
24 him; it was the sudden and unexpected emergency, this
25 diabetic episode.

1 And on that, Your Honor, if you would turn with me
2 to Tab 11, there are many, many, many instances in this
3 plaintiff's medical record where his own failure to take
4 his insulin, his diabetes medication, has caused him to
5 have episodes exactly like the one in this case. But I
6 picked out only two because these two, I think, are most
7 relevant.

8 And I apologize, Your Honor, for the quality of
9 these; we're trying to get better quality, but this is
10 what we have so far. The first record comes to us January
11 the 24th of 2021. Now, this is the January proceeding.
12 This incident happened in December of '21. This is
13 January of 2021. And in that record, turning to the third
14 page of it -- I'll read it -- "Medic 28 arrives on-scene
15 to find what appears to be a 60-year-old intoxicated male
16 unconscious beside of the street. Police report that the
17 patient has been down for about 30 minutes, and neighbors
18 threw ice water on him to try to wake him up. The current
19 temperature outside at the time of call is 42 degrees
20 Fahrenheit. The patient has no obvious injuries and is
21 expeditiously moved to the ambulance for passive rewarming
22 and treatment. After treatment for hypoglycemia and
23 possible hypothermia, the patient becomes conscious and
24 reports that he had been out for a night of drinking and
25 smoking crack. Patient reports that he is an

1 insulin-dependent diabetic and that he did eat at some
2 point today. Patient has no complaints," and it goes on.

3 So in January of the same year where this happened,
4 the plaintiff fails to take his insulin and passes out in
5 the road, just like in this case. The only difference is
6 that, in January, the plaintiff also admitted to having
7 smoked crack on top of the alcohol and the failure to take
8 his diabetes medication.

9 If we turn the page to the next most recent
10 hospitalization before the one at issue in this case, this
11 record is from November 27th, 2021. And in that record --
12 so this is less than a month before the incident in this
13 case, it says, "Patient was brought in by EMS for
14 hypoglycemia. The patient is unable to tell me who called
15 EMS or where he came from specifically, only that he was
16 at 'Pam's house.' He does not know Pam's last name and
17 does not know who called EMS. Per EMS, patient with a BGL
18 of 30 and altered mental status on arrival. He was
19 immediately given 15g oral glucose times three with
20 improvement of his BGL to 108. Following glucose
21 administration, the patient was alert and oriented times
22 three."

23 And then the next paragraph is back to the issue of
24 notice. Here, "The patient tells me that he was drinking
25 alcohol and smoking crack all day and did not eat

1 yesterday. He's a type 2 diabetic on insulin. He
2 currently feels weak but denies nausea or vomiting,
3 endorses mild left lower quadrant abdominal pain," and so
4 forth.

5 Your Honor, these two records tend to show that,
6 even if the plaintiff were to attempt to show that he
7 suffered some unexpected medical emergency, that these two
8 records by themselves and the many more that exist in his
9 own record, at the very least, put the plaintiff on notice
10 that, if he fails to take his medications, he will have
11 hypoglycemic episodes like the one he had in January, the
12 one he had in November, and the one that he had in
13 December.

14 If the argument is "I suffered an unexpected medical
15 episode," the plaintiff has to prove that the medical
16 episode was, in fact, unexpected. These instances in the
17 plaintiff's record not only show that he should -- he knew
18 or should have known that he could have these episodes,
19 but they also tend to show that the plaintiff's
20 explanation for his condition in this case, trying to
21 blame it on his hypoglycemic episode is less than
22 credible.

23 For all these reasons, Your Honor, Mrs. Einstein did
24 not owe a duty to a man lying in dark clothing, dark at
25 night, intoxicated, on the road, completely flat. He had

1 a duty to yield to her. But even if this Court were to
2 find that Ms. Einstein owed a duty and that there is some
3 possible world where she breached that duty by failing to
4 avoid him, this Court should nevertheless find that, as a
5 matter of law, the plaintiff's own negligence exceeds
6 50 percent and bars him from recovery because he -- even
7 if he allegedly had this diabetic episode, he knew or
8 should have known the effect that it would have on him.
9 His testimony was that he was headed back home to get his
10 meds, so he knew or should have known the effect that it
11 could have on him, and he knew or should have known that
12 taking -- drinking a fifth of liquor on top of that
13 episode would certainly only exacerbate his symptoms. His
14 injuries are only his own fault, and for that reason, we
15 would move for summary judgment.

16 THE COURT: All right. Let me hear from the
17 plaintiff.

18 MR. McCOOL: Yes, Your Honor. Thank you.

19 Regarding the reference to Mr. Gaines, the gentleman
20 who was in the car, driving the other car next to
21 Ms. Einstein, Mr. Gaines, at the scene, told the police
22 officers -- and this is captured on the body-worn
23 cameras -- he says, "I was driving but" -- and he didn't
24 know the name of the person who fell, but he -- so I'll
25 just reference -- I'll put in "plaintiff" or "Mr. Lynch."

1 "I was driving but Lynch, he was walking, but he fell."

2 This is the driver next to Ms. Einstein telling that
3 to the police, captured on the body-worn camera.

4 THE COURT: Doesn't that same driver, though, also
5 say that it was unavoidable and that the lady -- the
6 person in the Range Rover couldn't avoid it?

7 MR. McCOOL: Well, that is a statement that he
8 prepared afterwards. This is right then and there,
9 talking to the police officers. The police officer is
10 garnering witnesses and those sorts of things. But it
11 doesn't do away with the fact that he says -- because when
12 we take a look at what the defendants is saying, one of
13 the items was this gentleman was flat on the ground.
14 Well, eventually, he was, but we have the driver next to
15 Ms. Einstein saying, "I saw him walking and I saw him
16 fall." And that driver saw Mr. Lynch because of
17 headlights, because of lighting --

18 THE COURT: Well, let me ask you this: On Wade
19 Hampton Boulevard, if you're familiar with Wade Hampton
20 Boulevard, it's very busy, and it's not a small little
21 area. As a driver, are you under a duty to anybody
22 walking along the sidewalks on Wade Hampton Boulevard?
23 Are you under a duty to slow down and stop every time you
24 see somebody walking or standing up on Wade Hampton
25 Boulevard?

1 MR. McCOOL: Well, the law, Your Honor, says -- and
2 it's in our brief -- that the operator of a motor vehicle
3 owes an urgent duty to keep a proper lookout for
4 pedestrians and others on the roadway. This happened at
5 night, and the testimony in the case is little to no
6 traffic at that time of night when this happened.

7 And what Mr. Lynch did is he took the bus, and the
8 bus dropped him off, and he started walking across Wade
9 Hampton Boulevard. He felt the episode coming on, and his
10 medicine was at his mother's house. His mother lives
11 right by the IHOP. So he was walking to go get his
12 medicine at his mother's house.

13 And so with respect to that duty owed, it is. The
14 law is clear. It says an urgent duty owed by an operator
15 of a motor vehicle to keep a proper lookout for
16 pedestrians and other persons on the roadway.

17 And when we look at South Carolina Code Section
18 56-5-3230, drivers are specifically charged with the duty
19 to exercise due care with any pedestrians as well.

20 So Mr. Lynch is a pedestrian. He's walking --

21 THE COURT: Let's assume, for purposes of your
22 argument, that, okay, that he -- that Mr. Gaines says --
23 although in his statement, Mr. Gaines said that he
24 doesn't -- he doesn't word it like that; you just sort of
25 imply about walking. But he says that it was unavoidable,

1 and he says that the lady or the person in the Range Rover
2 could not have avoided it, which is a little bit different
3 of what you're saying he said on the body cam.

4 But let's just assume for purposes of my question
5 that you have a duty -- I agree -- we all agree that you
6 have a duty to look out -- be on the lookout. But even --
7 even if you take the position that he wasn't laying out
8 there, which he was eventually because he got run over,
9 but he's in black, he's very intoxicated --

10 MR. McCOOL: And I'll address that as well.

11 THE COURT: -- and the prior, of course, where he's
12 intoxicated, smoking crack and all that when he's a
13 diabetic, but let's assume for purposes of this night,
14 even if he's standing there on the sidewalk and then just
15 flops or drops out in the road and you're just coming up
16 on the scene, you have a duty at that point? I mean,
17 granted, you got a duty to be on the lookout, but don't
18 you comply with your duty with somebody that's in black,
19 intoxicated or not, and just comes right out in the road,
20 in the middle of Wade Hampton Boulevard and hit him?

21 MR. McCOOL: That's not what happened here. But if
22 you're saying somebody hiding and jumping out in front of
23 a car --

24 THE COURT: I'm saying this guy, he's intoxicated,
25 looking at the records --

1 MR. McCOOL: That intoxication level was .08, so
2 he's below --

3 THE COURT: Legally. .08? He was .08?

4 MR. McCOOL: Yeah, he's below the legal limit to
5 drive a vehicle.

6 THE COURT: At .08?

7 MR. McCOOL: Well, what --

8 THE COURT: No, he's not.

9 MR. McCOOL: I'm sorry. Well, I think that -- I
10 think the -- the level of alcohol in there that is noted,
11 the records note positive for ETOH. They don't say he's
12 intoxicated. They said positive for ETOH. And when you
13 take that number -- the reason they're saying that is
14 because the number is low enough or below the legal limit
15 to operate a vehicle. It's below that level. They're
16 just saying he's positive for ETOH.

17 THE COURT: You're saying that he's at .08, he is
18 legally intoxicated?

19 MR. McCOOL: I don't -- when you extrapolate -- when
20 you extrapolate that number, what they're saying is he's
21 not intoxicated. What I'm saying is he's not -- they're
22 saying he's positive for alcohol. They're not saying he's
23 intoxicated. That's what those records reflect. And
24 that's clear throughout them where they just say positive
25 for ETOH. They're not saying intoxicated.

1 So I misspoke. What I was saying was he is not
2 intoxicated. There's just a reference to him being
3 positive for ETOH. But there is clearly a reference to
4 his absolute low levels of glucose, and we noted those in
5 our brief as well. He knew he was -- he felt this coming
6 on, and he was like, "My medicine is at my mom's house.
7 I'm going to go get it." And he gets on the bus.

8 And we have a gentleman who says, "I saw him fall."
9 And that gentleman is right next to Ms. Einstein.
10 Ms. Einstein says in her deposition, "I was five feet away
11 from him the first time I saw him." But we have a driver
12 who admits on a police body-worn camera that he saw
13 Mr. Lynch walking and he saw Mr. Lynch fall.

14 THE COURT: And that same guy says it was
15 unavoidable.

16 MR. McCOOL: And, again, he has not been deposed,
17 and I think that's one of the items in terms of summary
18 judgment is discovery is not completed here. We can take
19 Mr. Gaines's statement. We have him saying on video --
20 and we can ask him further questions -- "What do you mean
21 by this? Who was asking you to prepare the statement?
22 Under what circumstances was this prepared? Mr. Gaines,
23 you're saying you saw him walking. You're saying you saw
24 him fall. Let's get into more questions about that in
25 that deposition."

1 But, again, it doesn't take away the fact -- and
2 we're dealing with the standard of a genuine issue of
3 material fact. If we present this to a jury, they're
4 going to see the body-worn camera with this gentleman,
5 Mr. Gaines, saying those things. And certainly that alone
6 creates a genuine issue of material fact.

7 We have the officer confirming the area is well lit
8 from the IHOP, from ambient lighting, from the headlights
9 from the vehicle. And simply because the restaurant next
10 to the IHOP might not be as well lit as IHOP doesn't mean
11 the IHOP light stops at the area where this event
12 happened. That IHOP lighting continues on into Wade
13 Hampton where the incident occurred.

14 Now, there's a statement made that Mr. Gaines --
15 that Ms. Einstein -- excuse me -- Ms. Einstein was going
16 to hit his head. There's no evidence of that whatsoever.
17 There's -- she said in her testimony she saw him five
18 feet. She was five feet away from him the first time she
19 saw him. She said nothing about, "I was going to hit his
20 head." She says, "I couldn't swerve or I didn't swerve;
21 there was no time. I ran over him. By that time, I tried
22 to swerve."

23 So this testimony about him hitting his head, that's
24 not accurate at all. But the fact remains is what is
25 the -- what is the standard in this case in terms of

1 summary judgment? And we do have genuine issues of
2 material fact simply based on the body-worn camera
3 statements made by Mr. Gaines, the lighting conditions at
4 the time were sufficient for Mr. Gaines to see Mr. Lynch,
5 and Ms. Einstein's admission that, "I was five feet away
6 from him the first time I saw him."

7 And what we have also done is we have an outstanding
8 subpoena for Ms. Einstein's telephone records to see what
9 she might have been doing on her phone and that sort of
10 thing at the time of these events that December day.

11 And with respect to Mr. Lynch previously testing
12 positive for cocaine or crack cocaine before that, that's
13 immaterial to the nights in question because there's no
14 evidence whatsoever that he was under the influence of
15 crack or any other type of drug like that.

16 But the facts do remain that he did have a medical
17 episode, a medical emergency, and another driver saw him
18 walking, another driver saw him fall, and Ms. Lynch
19 [verbatim], for whatever reason -- and the inference and
20 taking the evidence in the light most favorable to the
21 plaintiff is, because she was five feet away him the first
22 time she saw him, she's not paying attention, and that
23 should be for a jury to decide.

24 THE COURT: But you do agree he's in dark clothing?

25 MR. MCCOOL: He testified he's in dark clothing,

1 yes.

2 THE COURT: You agree that it's at nighttime?

3 MR. McCOOL: It's at night.

4 THE COURT: You do agree there's no evidence she was
5 speeding; correct?

6 MR. McCOOL: She said she was not speeding.

7 THE COURT: Is there any evidence that she was?

8 MR. McCOOL: That, I -- I do not know what the
9 download from the vehicle states, but I don't.
10 Mr. Gaines, he didn't respond specifically to speeds and
11 those sorts of things, but Ms. Einstein, in her
12 deposition, said she was going the speed limit. Also,
13 what the officer did say in her deposition when we deposed
14 the officer -- because Ms. Einstein said, for several
15 minutes, when there's no traffic on the road, that she was
16 staying to the right of Mr. Gaines. And this is for
17 several minutes, several miles.

18 And what the officer said in her deposition was
19 that's an improper way to drive because you should leave
20 yourself an out. You shouldn't -- when there's little to
21 no traffic, you, as a driver, need to make it so you're
22 not next to somebody for that extended period of time.

23 But, yes, there is dark clothing, it happened at
24 night, and at this juncture, there is no evidence of
25 Ms. Einstein traveling at a highly excessive rate of

1 speed. I believe she testified she was a few miles per
2 hour over the speed limit at the time. But as far as her
3 going 80 or 90, we don't have evidence of that, but there
4 is evidence of going a few miles an hour over the speed
5 limit.

6 THE COURT: All right. Anything in response?

7 MR. PEOPLES: Yes, Your Honor. If there is a
8 statement by Ms. Einstein that she was doing anything
9 other than at or below the speed limit, I'd like to see
10 it. I don't believe that exists.

11 Second, even if the Court accepts everything that
12 Mr. McCool said as true, hypothetically, that all --
13 Mr. Gaines truly did see this person fall into the street
14 as soon as he passed the IHOP. That is consistent with
15 Ms. Einstein's testimony that he was approximately five
16 feet ahead of her when she saw him. Because, as Your
17 Honor can see from the brief back in Tab 4, these two
18 structures are very close together.

19 So comparing Mr. Gaines's testimony, which says, "As
20 soon as I passed the IHOP, I saw him," with
21 Mrs. Einstein's testimony that, "When I saw him, he was
22 five feet away," there is no -- there is no disputed fact
23 here. They both saw him suddenly.

24 But more to the point, perhaps the most important
25 point is, is that Mr. McCool has said nothing at all about

1 his client's own negligence. So even accepting all of
2 Mr. McCool's arguments as true, that Mrs. Einstein
3 arguably could be found negligent based upon her failure
4 to recognize this man lying in the road before she
5 actually did, none of that excuses the fact that Mr. Lynch
6 knew or should have known that, if he doesn't take his
7 meds and he drinks alcohol, he loses consciousness, and at
8 least on one prior occasion, finds himself lying in the
9 road. This is the very thing he knew or should have known
10 would happen, and his own negligence exceeds that of
11 Ms. Einstein's.

12 THE COURT: All right. Very briefly in response.

13 MR. MCCOOL: Yes, Your Honor. With respect to the
14 comparative negligence argument, as cited in our brief,
15 the comparison of a plaintiff's negligence with that of
16 the defendant a question of fact for the jury to decide.
17 And that's the Creech --

18 THE COURT: Well, actually, it's -- I had a few of
19 those in my years. It's actually normally a question for
20 the jury. It doesn't always say it's a question for the
21 jury.

22 MR. MCCOOL: And then with respect to Mr. Gaines's
23 statement -- and if you can direct me to the tab that
24 you're referencing. Is that Tab 12? Excuse me. Tab 11?

25 THE COURT: Tab 11? It's Tab 10.

1 MR. McCOOL: 10. Okay. But, again, when you look
2 at that statement, he hasn't been deposed, but it does
3 nothing to negate -- it does nothing to retract from what
4 he told the officer captured on the body-worn camera that
5 he saw him --

6 THE COURT: Is the body-worn camera part of the
7 evidence?

8 MR. McCOOL: Your Honor, it's -- I can make it part
9 of the evidence and we can send it to you. I can send it
10 as an email -- have my office send it to you as an email
11 very quickly, and then we can take that portion and then
12 also submit it to the Court as a supplement to our memo
13 opposing the motion for summary judgment.

14 THE COURT: Yeah, just keep in mind, remember, when
15 you move for summary judgment or oppose summary judgment
16 that you have to submit your evidence. But I understand
17 the nature and practice of law. I did it for a long time,
18 and things can be --

19 MR. McCOOL: I think --

20 THE COURT: -- time constraints, but I will allow
21 sometimes -- I do allow a submission of something like
22 that. So I am going to request -- and I'm not saying I'm
23 going to consider it, but I'm going to request that you do
24 send it to me. Send it to my law clerk. The email is
25 gmorganlc@sccourts.org.

1 All right. Thank you both. I'll take it under
2 advisement. I'll let you know my decision.

3 MR. PEOPLES: All right. Thank you.

4 MR. McCOOL: Thank you.

5 (The above matter concluded.)
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2 CASE NAME/NUMBER: Lynch v. Einstein

3 202-CP-23-03510

4 DATE OF HEARING: 3/4/24

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3 of 4

Lynch v. Einstein (2022-CP-23-03510)

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C

Christopher McCool

to gmorganlc, me, Tara, Adam, Michael ▾

Download Attachment

Available until Apr 3, 2024

Judge Morgan, as requested at the hearing this morning, attached is the body worn camera video of Lemuel Gaines. If any additional information is needed, the same will be promptly provided.

Chris

Christopher J. McCool, Esq.
O'Shea Law Firm, LLC

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2021 WL 795579

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United States District Court, D. South Carolina, Charleston Division.

Paul LITTRELL, as the GUARDIAN OF Benjamin LITTRELL, Plaintiff,

v.

LANDMARK BUILDERS OF SOUTH CAROLINA, LLC, Defendant.

No. 2:19-cv-0637-DCN

|

Signed 03/02/2021

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ORDER

DAVID C. NORTON, UNITED STATES DISTRICT JUDGE

*1 The following matter is before the court on defendant Landmark Builders of South Carolina, LLC's ("Landmark") motion for summary judgment, ECF No. 33. For the reasons set forth below, the court denies the motion.

I. BACKGROUND

On the night of February 12, 2017, Benjamin Littrell ("Littrell") and Alex Lausten ("Lausten") traveled on foot from Lausten's apartment to various establishments in downtown Charleston, South Carolina. At some point that night, Littrell and Lausten were walking south along King Street on the sidewalk when they encountered a construction site between Spring Street and Cannon Street, where Landmark was constructing a boutique hotel. Landmark's construction site and equipment blocked a large portion of the sidewalk on which Littrell and Lausten were traveling. Local law required Landmark to place a sign alerting pedestrians to the obstructed sidewalk at each corner of the block, so that pedestrians knew to cross the street at a corresponding crosswalk before encountering the blocked-off portion of the sidewalk. According to the complaint, Landmark failed to place signs at the corners of the corresponding intersections and instead placed a sign reading "Sidewalk Closed – Cross Here" in the middle of the block, directly in front of the construction site and the blocked-off portion of the sidewalk. Littrell also alleges that Landmark unlawfully parked construction equipment on the curb, obstructing pedestrians' view of the roadway. When Littrell and Lausten arrived at the construction site and encountered the blocked-off portion of the sidewalk, they crossed King Street there, mid-block, and Littrell was struck by a northbound vehicle, sustaining serious injuries.

On March 5, 2019, Littrell's father, plaintiff Paul Littrell, filed this negligence action against Landmark on his son's behalf. ECF No. 1, Compl. On December 21, 2020, Landmark filed a motion for summary judgment. ECF No. 33. On January 19, 2021, Littrell responded. ECF No. 46. Landmark did not file a reply, and the time to do so has now expired. The court held a hearing on the matter on February 24, 2021. The motion is now ripe for resolution.

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II. STANDARD

Summary judgment shall be granted if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). “By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.”  Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”  Id. at 248. “[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. “[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”  Id. at 249. In so doing, the court must view the evidence in the light most favorable to the non-moving party and draw all inferences in its favor.  Id. at 255.

*2 “The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact.” Major v. Greenville Hous. Auth., 2012 WL 3000680, at *1 (D.S.C. Apr. 11, 2012). Nevertheless, “when a properly supported motion for summary judgment is made, the adverse party ‘must set forth specific facts showing that there is a genuine issue for trial.’ ” Id. (quoting Fed. R. Civ. P. 56(e)). The plain language of Federal Rule of Civil Procedure 56(c) “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.”  Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). “[C]onclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion.” Major, 2012 WL 2000680, at *1.

III. DISCUSSION

As an initial matter, there exists a clear dispute as to the location of the “Sidewalk Closed – Cross Here” sign at the time of the accident. As the court outlined above, Littrell alleges that the “Cross Here” sign was located in the middle of the block, directly abutting the construction site and the blocked-off portion of the sidewalk. Landmark seems to indicate the sign was properly located at the corner of King and Spring streets, directing pedestrians to cross at the corresponding crosswalk.¹ Recognizing the clear factual dispute, Landmark assumes for the purpose of its summary judgment motion that the “Cross Here” sign was located mid-block at the time of the accident, as Littrell contends, and not at the adjacent intersection. ECF No. 33-1 at 25. Even so assuming, Landmark argues that it is entitled to summary judgment on three separate grounds. First, Littrell “cannot prove that his injuries were proximately caused by any action or inaction on the part of Landmark.” Id. Second, Littrell’s “own negligence exceeds fifty percent.” Id. And finally, Littrell’s “injuries were caused in part by the actions of other third parties[.]” Id. Because each theory depends on disputed issues of material fact, summary judgment is inappropriate.

A. Proximate Causation

At the outset, the court finds necessary a brief discussion on a preliminary issue of evidence. Fed. R. Evid. 702 requires that an admissible expert opinion be based upon “scientific, technical, or other specialized knowledge.” By negative implication, “Rule 702 makes inadmissible expert testimony as to a matter which obviously is within the common knowledge of jurors because such testimony, almost by definition, can be of no assistance.”  Scott v. Sears, Roebuck, & Co., 789 F.2d 1052, 1055 (4th Cir. 1986). The Fourth Circuit applies the “common knowledge” rule, which finds expert testimony to be unnecessary when reaching the expert’s opinion “is something that can sufficiently be done by the jury without help from an expert.”  United

States v. Dorsey, 45 F.3d 809, 815 (4th Cir. 1995); see also *Minnesota Lawyers Mut. Ins. Co. v. Batzli*, 2010 WL 670109, at *2 (E.D. Va. Feb. 19, 2010) (“Where lay jurors are fully able to understand and appreciate the implications of the evidence admitted, proffered expert testimony will not assist the jury in determining a factual issue ... and is therefore inappropriate.”).²

*3 Landmark supports the first ground of its motion, in part, with the testimony of Littrell's experts, Douglas M. Smits, Stephanie Borzendowski (“Borzendowski”) and Ruston Hunt, and through the findings and testimony of its own expert, Brian Boggess. Although the court does not take up admissibility issues at the summary judgment stage absent an objection from the nonmoving party, see Fed. R. Civ. P. 56(c)(2), it has no problem concluding that much of the expert testimony on which Landmark relies would be unhelpful to a trier of fact and thus does not warrant the court's consideration on summary judgment. For example, Borzendowski's opinion that “an inanimate object such as a sign does not force people to cross the road mid-block” because “[i]t is not a physical barrier that would force a path of travel,” does not reflect any specialized knowledge and therefore constitutes a common-sense observation that does not warrant the court's attention. ECF No. 33-1 at 27 (quoting ECF No. 33-12, Borzendowski Depo. 64:22–65:3). As such, in determining whether Landmark's acts can be said to be a proximate cause of Littrell's injuries, the court considers only that evidence which might help a finder of fact and pays no mind to obvious statements of ordinary inference. With that evidentiary clarification in mind, the court turns to the issues at hand.

Landmark argues that Littrell cannot demonstrate that his injuries are a proximate cause of Landmark's acts because “even assuming” that the “Cross Here” sign was located mid-block, “all of the testimony demonstrates that [Littrell] ... could have chosen to return to the crosswalk at the corner of King and Spring [s]treets to cross.” *Id.* at 26–27. In other words, Landmark contends that because the “Cross Here” sign did not force Littrell to cross the street in the middle of the block, it cannot be a proximate cause of his injuries as a matter of law. The law instructs otherwise.

In South Carolina, a plaintiff asserting negligence must demonstrate that (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages.”  *Doe v. Marion*, 645 S.E.2d 245, 250 (S.C. 2007). “Negligence is not actionable unless it is a proximate cause of the injury.”  *Bishop v. S.C. Dep't of Mental Health*, 502 S.E.2d 78, 83 (S.C. 1998). “Proximate cause requires proof of both causation in fact and legal cause.” *Id.* (citing  *Oliver v. S.C. Dep't of Highways and Public Transportation*, 422 S.E.2d 128 (S.C. 1992)). “Causation in fact is prove[n] by establishing [that] the injury would not have occurred ‘but for’ the defendant's negligence,” while “[l]egal cause is prove[n] by establishing foreseeability.” *Id.* “Foreseeability is determined by looking to the natural and probable consequences of the complained of act.” *Id.* (citing  *Koester v. Carolina Rental Ctr., Inc.*, 443 S.E.2d 392 (S.C. 1994)). The defendant's negligence need not “be the sole proximate cause of the plaintiff's injury;” instead, the plaintiff must only demonstrate that the defendant's negligence “was at least one of the proximate causes of the injury.” *Id.* (citing *Hughes v. Children's Clinic, P.A.*, 237 S.E.2d 753 (S.C. 1977)).

Littrell contends that Landmark's placement of the “Cross Here” was a proximate cause of his injuries.³ As an initial matter, the court points out that Littrell has presented sufficient evidence to create a genuine issue of material fact with respect to the location of the sign. Lausten has testified that the “Cross Here” sign was located in the middle of the block on the night of the accident, prompting he and Littrell to cross King Street mid-block, without the benefit of a crosswalk. ECF No. 46-2 at 2; ECF No. 46-3, Lausten Depo. 65:4-9. One week after the accident, Littrell's father, Paul Littrell, took photographs of the same construction site depicting the “Cross Here” sign in the middle of the block, directly abutting the blocked-off portion of the sidewalk. ECF No. 46-4. Littrell has further presented a “screenshot” picture of a video from the night of the accident, which depicts the corner of Spring and King streets. ECF No. 46-1. Although the video quality is far from high definition, no sign at the intersection of Spring and King is evident, providing some additional evidence that the “Cross Here” sign was located mid-block and not in its proper place at the intersection. Littrell has also indicated that an investigator named Bobby Minter and a police officer named Wojslawowicz also saw Landmark's sign located mid-block on more than one occasion and will testify to the same at trial. Finally, Littrell has presented evidence that Landmark, weeks after the accident, placed a similar “Cross Here” sign at a different construction project in Charleston and again placed the sign mid-block, instead of at an intersection.

ECF No. 46-8. Moreover, as this court has indicated, Landmark assumes, for the purposes of its motion, that the “Cross Here” sign was indeed positioned in the middle of the block where Littrell and Lausten crossed King Street. Viewing the evidence in the light most favorable to Littrell, the court must make the same assumption.

*4 Landmark's argument fails because its alleged act of placing a sign that instructed pedestrians to “Cross Here”—in the middle of the King Street—is itself evidence of proximate causation. As outlined above, the touchstone of proximate cause is foreseeability. With that guidepost in mind, the court cannot conclude as a matter of law that a pedestrian being struck by a vehicle is an unforeseen consequence of placing a sign that reads “Cross Here” in the middle of a notoriously busy street. Intuitively, a sign that instructs a person to cross a street at a certain location creates a risk that the person may be prompted to actually cross the street there. And it is not unforeseeable that a pedestrian who complies with such an instruction might be struck by an oncoming vehicle and sustain injuries.

Unsurprisingly, local traffic-safety law contemplates as much. South Carolina has adopted the Federal Manual on Uniform Traffic Control Devices, S.C. Code Ann. § 56-5-920, which provides:

A wide range of pedestrians might be affected by [construction] zones, including the young, elderly and, people with disabilities such as hearing, visual, or mobility. These pedestrians need a clearly delineated and usable travel path.

[...]

If the [construction] zone affects the movement of pedestrians, adequate pedestrian access and walkways shall be provided. If the [construction] zone affects accessibility and detectable pedestrian facility, the accessibility and detectability shall be maintained along the alternate pedestrian route

[...]

It must be recognized that pedestrians are reluctant to retrace their steps to a prior intersection for a crossing or to add distance or out of the way travel to a destination.

ECF No. 46-11 at 3. South Carolina law also commands pedestrians to “obey the instructions of any official traffic-control device specifically applicable to him unless otherwise directed by a police officer.” S.C. Code Ann. § 56-5-3110(a). As such, the court cannot definitively say that Littrell's injury was not a probable or natural consequence of Landmark's placement of the “Cross Here” sign. Because the issue of foreseeability is inherently fact-intensive, the law commits it to the jury. See  Jeffords v. Lesesne, 541 S.E.2d 847, 851 (S.C. Ct. App. 2000) (“Ordinarily, the question of proximate cause is a jury issue.”).

Nevertheless, Landmark contends that its placement of the “Cross Here” sign, even if established, did not proximately cause Littrell's injuries because Littrell could have ignored the sign's instruction, turned around, and walked back to the intersection to cross the street at a crosswalk. In other words, Landmark states that its act cannot be a proximate cause of Littrell's injuries because its sign was instructive, not coercive. This argument misses the point because it focuses on what could have taken place, not what actually occurred. When assessing causation, the court does not deal in hypotheticals. Instead, it must take the facts as it finds them to determine whether the plaintiff's injury can be said to be a foreseeable consequence of the defendant's acts. Here, Littrell, regardless of the options available to him, resolved to cross King Street in the middle of the block. Although Littrell's decision was not a necessary consequence of Landmark's placement of the “Cross Here” sign, the court cannot conclude that it was an unforeseeable one. Again, the law makes clear that Landmark's actions must be a proximate cause of Littrell's injury, not the proximate cause, meaning that Landmark's negligence may still be actionable even if other proximate causes exist.

 Bishop, 502 S.E.2d at 83 (emphasis added). As such, the court's finding that a reasonable jury could find Littrell's injury to be a foreseeable consequence of Landmark's act ends the inquiry. Thus, whether Landmark's act proximately caused Littrell's injury is a question reserved for the jury. See Hurd v. Williamsburg Cty., 579 S.E.2d 136, 145 (S.C. Ct. App. 2003), *aff'd*, 611 S.E.2d 488 (S.C. 2005) (“Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law.”).

B. Contributory Negligence

*5 Next, Landmark contends that Littrell “cannot recover from Landmark because his own negligence exceeds fifty percent.” ECF No. 33-1 at 28. Because this argument also implicates material factual disputes, it too is an improper ground for summary judgment.

“[U]nder South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant.”  Bloom v. Ravoira, 529 S.E.2d 710, 713 (S.C. 2000). “Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide.” *Id.* (quoting  Creech v. S.C. Wildlife & Marine Res. Dep't, 491 S.E.2d 571, 575 (S.C. 1997)). Where, however, “the evidence admits only one reasonable inference, it becomes a matter of law for the determination of the court.”  Creech, 491 S.E.2d at 575. Because the determination of fault is an issue uniquely suitable and explicitly reserved for resolution by a jury, “summary judgment is generally not appropriate in a comparative negligence case.”  Bloom, 529 S.E.2d at 713.

Again, the evidence precludes the court from reaching a factual finding as a matter of law. To be sure, Landmark has presented evidence from which a jury could infer that Littrell is at least partly at fault for the injuries he sustained on February 12, 2017. For example, Landmark has offered evidence showing that Littrell was impaired by alcohol and drugs at the time of the accident.⁴ See ECF Nos. 33-6, 33-7, 33-8. And Landmark points out that a jury could very well conclude that Littrell's conduct—crossing King Street late at night without the benefit of a traffic light or crosswalk—was unreasonable. But some evidence of a plaintiff's negligent conduct does not warrant summary judgment in favor of the defendant. Indeed, the law permits summary judgment only where “the evidence admits only one reasonable inference”—that the plaintiff's negligence exceeds the defendant's. That is not the case here. The record contains evidence of negligence attributable to both Littrell and Landmark, and the court cannot conclude as a matter of law that the former outweighs the latter. Like the duty to determine proximate cause, the duty to apportion fault falls to the jury. Because the evidence permits more than one reasonable inference, South Carolina law prohibits the court from usurping that role.

Accordingly, the cases on which Landmark relies provide its argument no support:  Bloom, 529 S.E.2d at 714;  Hopson v. Clary, 468 S.E.2d 305, 307 (S.C. Ct. App. 1996); and  Estate of Haley ex rel. Haley v. Brown, 634 S.E.2d 62, 63 (S.C. Ct. App. 2006). In Bloom, the plaintiff, like Littrell, crossed a busy street in the middle of the block and was struck by a vehicle.  529 S.E.2d at 714. But, unlike here, the record in Bloom contained no evidence of any fault on the part of the defendant—the driver of the vehicle. Because the record only contained evidence of the plaintiff's negligence, the court found that his fault exceeded the defendant's as a matter of law. *Id.* In Hopson, the plaintiff attempted a U-turn, and her vehicle was struck by the defendant's vehicle. Similar to the court in Bloom, the court in Hopson found that the plaintiff “simply failed to present any evidence establishing negligence on the part of” the defendant, despite her contentions that he had been speeding and crossed a yellow line.  468 S.E.2d at 308.⁵ The only evidence on the record in Hopson tended to show that the plaintiff “attempted an inherently precarious maneuver without ascertaining whether she could do so safely.” *Id.* As such, the court found that the plaintiff's own negligence exceeded any negligence attributable to the defendant as a matter of law.

*6 The same goes for Haley, where the court found that the plaintiff's negligence exceeded the defendant's as a matter of law where the evidence belied any indication that the defendant was negligent.  634 S.E.2d at 65 (“[T]he only allegation of negligence is that [the defendant] should have swerved and braked; but the evidence shows [the defendant] did swerve and applied his brakes.”). In short, these cases are characterized by a total lack of competent evidence that the defendant acted negligently. Conversely, here, as the court has detailed, Littrell has presented competent evidence tending to show that Landmark acted negligently. The South Carolina Court of Appeals recently reversed a trial court's grant of summary judgment where the court relied on Bloom under facts similar to the ones here. Abdelgheny v. Moody, 852 S.E.2d 225, 228 (S.C. Ct. App.

2020) (“We understand how the trial court could have concluded [the plaintiff’s] negligence exceeded [the defendant’s][,] [b]ut arriving at that conclusion required choosing between the multiple inferences emerging from the evidence. [The law] reserves that choice to the jury.”). As such, the court cannot conclude that Littrell’s fault exceeds Landmark’s fault as a matter of law, meaning that summary judgment is improper.⁶

C. Intervening Acts

Finally, Landmark argues that Littrell’s injuries “were proximately caused by the intervening negligence of third parties,” meaning that the injuries cannot be attributed to Landmark as a matter of law. ECF No. 35 at 39. Once again, the court disagrees.

In South Carolina, “negligence, to render a person liable, need not be the sole cause of an injury; it is sufficient to show that it is a proximate concurring cause.”  Matthews v. Porter, 124 S.E.2d 321, 325 (1962). Where an intervening cause is “itself sufficient to stand as the cause of the injury,” it is deemed to “break[] the sequence or causal connection between the defendant’s negligence and the injury alleged” and thus exculpate the original negligent actor. Id. (quoting  Tobias v. Carolina Power & Light Co., 2 S.E.2d 686, 688 (S.C. 1939)). Where, however, the intervening act “was such that its probable or natural consequences could reasonably have been [] foreseen by the original wrongdoer, the causal connection is not broken and the original wrongdoer is responsible for all the consequences resulting from the intervening act.” Id. This inquiry turns on a familiar cornerstone of tort law—foreseeability. Put as simply as the court can manage, where an intervening act renders the injury an unforeseeable consequence of the original act, the intervening act breaks the causal chain. But where the consequences of the original act are foreseeable, even in light of intervening negligence, the original tortfeasor remains liable for his or her negligence.

Landmark posits that three actors committed intervening negligent acts: Lausten, Ariana Bolchoz (“Bolchoz”)—the driver of the vehicle—and the City of Charleston (the “City”). Landmark explains that Lausten acted negligently in providing Littrell alcoholic beverages and leading him across King Street; that Bolchoz drove negligently because she consumed one alcoholic beverage prior to driving; and that the City negligently failed to ensure Landmark’s compliance with local traffic-safety law. But, as the court has explained, evidence of other parties’ negligence is of little value to the court on summary judgment. Not one of the negligent acts to which Landmark points, even if proven, breaks the casual chain between Landmark’s actions and Littrell’s injuries because whether the latter is a foreseeable consequence of the former is an issue for the jury. The court cannot conclude that the intervening acts of alleged negligence rendered the accident unforeseeable. In other words, even in light of the acts of Lausten, Bolchoz, and the City, a reasonable jury could still conclude that the accident was a foreseeable consequence of Landmark’s acts. At bottom, the inquiry is the same as the one the court declined to answer above. Therefore, the court denies Landmark’s motion for summary judgment in full.

IV. CONCLUSION

*7 For the foregoing reasons the court **DENIES** the motion for summary judgment.

AND IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2021 WL 795579

Footnotes

- 1 Despite its recognition that a legitimate factual dispute exists, Landmark states that “there is no reliable evidence that the sign was not in the correct position on the corner of King and Spring.” ECF No. 33-1 at 25 n.7. As the court discusses below, this assertion is at odds with the record. Additionally, the issue of the “reliability” of the evidence belongs to the jury.
- 2 The “common knowledge” rule makes good sense. The admission of “common sense” expert testimony is dangerous because “the evaluation of the commonplace by an expert witness might supplant a jury’s independent exercise of common sense.”  Scott, 789 F.2d at 1055. This is especially true with issues that are traditionally resolved by the jury, like foreseeability. Minnesota Lawyers, 2010 WL 670109, at *2 (“Foreseeability and reasonableness ... are factual issues that lay jurors can independently understand and assess.”).
- 3 Littrell also contends that Landmark’s placement of its construction equipment obstructed Littrell’s view and thus also proximately caused his injuries. Because a reasonable jury could find that Landmark’s alleged placement of the “Cross Here” sign is a proximate cause of Littrell’s injuries, the court need not address Landmark’s alternative theory at this stage.
- 4 Landmark contends that a report from the Charleston Police Department’s Major Accident Investigation Team constitutes “uncontroverted, objective evidence that [Littrell]’s intoxication/impairment was a direct cause of the accident and his ensuing injuries” because the report concluded that Littrell, not the driver of the vehicle, “was the sole contributing party responsible for the collision.” ECF No. 33-1 at 30 (citing ECF No. 33-8 at 10). Of course, legal conclusions are within the sole preview of the court, and the legal opinions of the Charleston Police Department are worth little evidentiary value on summary judgment.
- 5 And moreover, Hopson and Haley were before the Court of Appeals on an appeal from a directed verdict, not a motion for summary judgment, meaning that there, unlike here, the court granted judgment after receiving all the relevant evidence at trial.  Hopson, 468 S.E.2d at 307;  Haley, 634 S.E.2d at 63.
- 6 In its motion, Landmark also mentions that Littrell’s negligence exceeds fifty percent because “there is no evidence, even assuming the ‘[Cross Here]’ sign was mid-block, that Plaintiff ever saw the sign.” ECF No. 33-1 at 31. Of course, as the court has detailed, there is evidence in the record that the “Cross Here” sign was located on King Street mid-block, where Littrell crossed over King Street. Intuitively, evidence that the sign and Littrell were in the same place at the same time permits an inference Littrell observed the sign, meaning that the court must assume as much for the purposes of this motion.  Liberty Lobby, 477 U.S. 242 at 255 (“The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.”).

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1 **Okay?**

2 A Uh-huh.

3 Q **Was anyone else with you at the time of the**
4 **accident?**

5 A No.

6 Q **Mr. Lynch, if you'll turn to Exhibit 29, it looks**
7 **like it's right on top. It's a copy of that police**
8 **report.**

9 A Uh-huh.

10 Q **Do you recall speaking with an officer after the**
11 **incident?**

12 A Not -- not really.

13 Q **Okay. Do you recall an officer visiting you in the**
14 **hospital or speaking with you on the telephone**
15 **after the incident?**

16 A Yeah, she called, but I didn't talk to her because
17 I didn't know who it was.

18 Q **So you have not spoken with an officer about the**
19 **incident, to your recollection?**

20 A Not to my recollection, no.

21 Q **Do you have any memory issues as a result of the**
22 **incident?**

23 A Yeah.

24 Q **And we'll talk about that later, I want to make a**
25 **note of that.**

| | | |
|-------------------------|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE 13 TH JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE |) | CASE NO. 2022-CP-23-03510 |
| |) | |
| ROGER WAYNE LYNCH, |) | |
| |) | |
| PLAINTIFF, |) | ORDER GRANTING SUMMARY |
| |) | JUDGMENT TO DEFENDANT |
| v. |) | ANGELA WEST EINSTEIN AND |
| |) | ENDING THE CASE |
| ANGELA WEST EINSTEIN, |) | |
| |) | |
| DEFENDANT. |) | |
| _____ |) | |

A hearing on Defendant Angela West Einstein's Motion for Summary Judgment was held on March 4, 2024, in the Greenville County Courthouse in the subject case. After due and careful consideration of the parties' arguments, memoranda and supporting materials, the Court finds that Plaintiff failed to show the existence of a genuine issue of material fact as to Defendant's negligence and, therefore, grants summary judgment in favor of Defendant Angela West Einstein, thereby ending this case in full.

Procedural History

This is an automobile-pedestrian personal injury case. Plaintiff was struck by Defendant's vehicle as he was lying down, drunk, in Defendant's lane of Wade Hampton Boulevard, at night, in the dark, wearing dark clothing. Plaintiff initiated this lawsuit against Angela West Einstein on July 5, 2022. The parties exchanged written discovery and completed the depositions of Plaintiff Roger Wayne Lynch; Defendant Angela West Einstein; and officer Rachel L. Hamilton. Defendant's motion for summary judgment was filed on January 29, 2024. Defendant submitted a Memorandum in Support of Defendant's Motion for Summary Judgment and Plaintiff submitted a Memorandum in Opposition to Defendant's Motion.

The court held a hearing on Defendant's Motion for Summary Judgment on March 4, 2024. Plaintiff was represented by Christopher Joseph McCool of the O'Shea Law Firm, LLC, and Defendant was represented by Adam Peoples and Samuel R. Velasquez of Hall Booth Smith, PC.

Standard of Review

S.C. R. Civ. P. 56(c) sets forth the standard for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The South Carolina Supreme Court has consistently held that a Motion for Summary Judgment must be granted where the undisputed evidence shows no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Laughridge v. Parkinson*, 403 S.E.2d 120, 122 (S.C. 1991) (quoting *S.C. Elec. & Gas Co. v. Combustion Engineering, Inc.*, 322 S.E.2d 453, 457 (S.C. Ct. App. 1984)). In applying Rule 56(c), South Carolina courts apply the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion to show a "reasonable inference" to be drawn from the evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023).

Factual Background

On the evening of December 16, 2021, at or around 10 p.m., Plaintiff stood at a bus stop just south of the intersection of US-29/Wade Hampton Boulevard and Batesview Drive in Greenville, Greenville County, South Carolina. Wade Hampton Boulevard is a six-lane highway that serves as one of the main corridors to and from Greenville.

A. Testimony of Plaintiff

According to Plaintiff's deposition taken June 6, 2023, sometime after 9 p.m., the Plaintiff took a city bus to Wade Hampton Boulevard, which is reportedly near Plaintiff's mother's

apartment. [Deposition of Plaintiff, p. 37]. The city bus dropped off Plaintiff on Wade Hampton Boulevard, the side opposite an IHOP. [Deposition of Plaintiff, p. 40-41]. The last thing Plaintiff recalls is going across the street. [Deposition of Plaintiff, p. 30]. Plaintiff does not recall the time of day the accident occurred, what he was wearing or whether he used a crosswalk. [Deposition of Plaintiff, p. 43-44]. Plaintiff does not have a reason to believe that the police report is inaccurate. [Deposition of Plaintiff, p. 45]. Plaintiff does not recall his statements to the police. [Deposition of Plaintiff, p. 70]. Plaintiff does not dispute the EMS report that he had the smell of alcohol on his breath. [Deposition of Plaintiff, p. 80]. Plaintiff argued that, even if a medical event resulted in him lying in the roadway, Einstein was still negligent “by hitting me.” [Deposition of Plaintiff, p. 87-90].

Plaintiff's Medical Records

According to Plaintiff's medical records, on the night of the subject accident, at Greenville Memorial Hospital, Plaintiff's treating provider noted “alcohol intoxication on arrival, high risk for withdrawal.” [Exhibit F.]. A blood test reported an alcohol level of 99; the reference (or normal) range for this test is a level of 10 or less. [Exhibit G]. According to Plaintiff's prior medical records produced in discovery in this litigation, Plaintiff has a history of collapsing secondary to excessive alcohol consumption and failing to take insulin and/or oral diabetic agents. On January 24, 2021 (roughly 11 months before the subject accident), Greenville County EMS transported Plaintiff to Greenville Memorial Hospital after he was found intoxicated and unconscious lying on the side of the road. After Plaintiff was treated for hypoglycemia, he reported to his providers that he had been out for a night of drinking and smoking crack. [Exhibit H]. Additionally, on Thursday, November 25, 2021 (roughly 3 weeks before the subject accident), Plaintiff was transported by Greenville County EMS to Greenville Memorial Hospital for altered mental status as a result of

hypoglycemia and alcohol intoxication. Again, Plaintiff admitted to medical providers that he had been drinking alcohol and smoking crack all day. Plaintiff further revealed that he had not taken any insulin or oral diabetic agents for three to four days. [Exhibit I].

These medical records show that Plaintiff knew or should have known that failing to take medication for his diabetes and/or consuming alcohol could lead to him losing consciousness and collapsing, including in locations where he may be susceptible to further injury.

B. Testimony of Rachel Hamilton

Officer Rachel Hamilton, a police officer with the Greenville City Police Department, responded to the scene of the accident and testified that she found Plaintiff in the roadway, where he was receiving medical aid. [Deposition of Rachel Hamilton, p. 14]. Thereafter, Officer Hamilton was the primary officer investigating the scene and spoke with multiple witnesses. [Deposition of Rachel Hamilton, p. 22]. Officer Hamilton testified there was no indication Einstein was speeding at the time of the accident. [Deposition of Rachel Hamilton, p. 32-33]. Officer Hamilton also said, after speaking with Einstein, there was no reason to believe Einstein was impaired. [Deposition of Rachel Hamilton, p. 33]. Officer Hamilton described this part of Wade Hampton Boulevard as being “very dark” with “not a lot of streetlights.” Deposition of Rachel Hamilton, p. 18].

Following the accident, Officer Hamilton spoke with Plaintiff, and during their conversation, Plaintiff admitted that he had wandered into the roadway. [Deposition of Rachel Hamilton, p. 37-38]. Plaintiff further admitted to “drinking a fifth of alcoholic beverage prior to the incident....” Deposition of Rachel Hamilton, p. 36-374].

Officer Hamilton testified that, upon an investigation, Plaintiff was determined to be at fault for the accident. Officer Hamilton did not determine the fault until after speaking with Plaintiff. Officer Hamilton described the reasoning behind her determination as follows:

[Mrs. Einstein] was driving straight in her roadway and she didn't have to stop or anything like that. There was no crosswalk [at the location of the collision]. There was no . . . reason for [Plaintiff] to be in the roadway at the area that he was in. So it would have been pedestrian [sic] in the roadway, and he would have been at fault.

Nothing discovered during Officer Hamilton's investigation led her to dispute that Plaintiff was lying in the street at the time of the accident. [Deposition of Rachel Hamilton, p. 26-27]. Officer Hamilton ultimately described the accident as "unavoidable," and that Einstein did nothing wrong. [Deposition of Rachel Hamilton, p. 43].

C. Statement of Lemuel Gaines

At the time of the events in question, Gaines was driving in the lane immediately to the left of Einstein. [Exhibit D]. After the accident, Gaines gave a sworn statement to investigating officers. According to Gaines, after passing the IHOP, he thought there was an animal in the road. He also asserted that as their vehicles approached Plaintiff's unconscious body, Mrs. Einstein "didn't have time to stop/slow and struck the man." Gaines stated that Plaintiff was wearing very dark apparel and therefore, he could not be seen. Finally, Gaines stated that hitting the Plaintiff was "unavoidable." [Exhibit D].

D. Testimony of Defendant Angela Einstein

On the evening of the events in question, Einstein was leaving a home in Paris Mountain, SC where she had dropped off her future son-in-law at her daughter's work party. [Deposition of Angela Einstein, p. 44]. Einstein was driving north on Wade Hampton Boulevard, a six-lane highway. Einstein was driving in the far right of three (3) lanes northbound, next to the curb. [Deposition of Angela Einstein, p. 56]. Another vehicle was in the lane immediately to the left

of Einstein, so they were driving side-by-side. [Deposition of Angela Einstein, p. 56]. Einstein was traveling at or just below the speed limit of 45 miles per hour on Wade Hampton. [Deposition of Angela Einstein, p. 83]. Einstein was driving with both hands on the wheel, looking straight forward. Einstein described the area in question as extremely dark. [Deposition of Angela Einstein, p. 61].

As soon as Einstein saw a person lying in the street, she applied her brakes as hard as she could. [Deposition of Angela Einstein, p. 72, 84]. Einstein also testified that she was boxed in but swerved upon seeing Plaintiff lying in the road. Einstein was faced with a split-second decision prior to rolling over Plaintiff. [Deposition of Angela Einstein, p. 93]. Einstein recalls expecting to sideswipe the car beside her as she swerved but did not. [Deposition of Angela Einstein, p. 90-91]. Even if the other vehicle were not in the lane immediately to the left of Einstein, Einstein testified that she still would not have been able to avoid Plaintiff. [Deposition of Angela Einstein, p. 85. Einstein described Plaintiff's clothing at the time of the incident as "dark." Deposition of Angela Einstein, p. 85]. Einstein testified to speaking to one witness at the scene who stated they saw Plaintiff walk out onto Wade Hampton Boulevard and lie down. [Deposition of Angela Einstein, p. 69].

Applicable Law

To establish negligence under South Carolina law, the plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty and that the breach was the proximate cause of the plaintiff's injuries. *Bloom v. Ravoir*, 529 S.E.2d 710, 712 (S.C. 2000). Stated differently, "negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation; or doing what such a person, under the existing circumstances, would not have done." *Jones v. Am. Fid. & Cas. Co.*, 43 S.E.2d

355, 359 (S.C. 1947) (quotation marks omitted). The burden in a negligence case is always on the party asserting the claim. *Ralph King Anderson, Jr., Anderson's South Carolina Request to Charge – Civil*, § 20-1 (2d ed.). A plaintiff may not rely on mere speculation or conjecture. *Legette v. Smith*, 220 S.E.2d 429, 430 (S.C. 1975). As the Supreme Court of South Carolina observed in *King v. J.C. Penney Co.*, 120 S.E.2d 229, 230 (S.C. 1961),

In this State it is well settled that the burden rests upon the party to prove negligence. This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence In order, therefore, for a plaintiff to recover damages, she must prove by the greater weight or preponderance of the evidence not only the injury but also that it was caused by the actionable negligence of the defendant.

In *Bloom*, on December 23, 1994, at or around 6:30 p.m., respondent pedestrian Bloom testified to looking both ways before crossing Meeting Street in Charleston, South Carolina. *Bloom*, 529 S.E.2d at 711. Bloom was wearing dark clothing, and “[t]here was a misty rain falling” *Id.* Bloom chose not to cross Meeting Street at the traffic lights, crosswalks and “walk/don’t walk signals” at either end of the relevant block of Meeting Street. *Id.* One witness saw Bloom drinking in the lobby of a hotel. *Id.*, at 712. Ravoira testified to stopping a traffic light, “pull[ing] forward, hear[ing] his [Ravoira’s] wife yell his name, and s[eeing] something out of his peripheral vision.” *Id.* Ravoira then heard a thump then “[a]fter a pause, the car’s windshield shattered.” *Id.* The witnesses to the collision corroborated Ravoira’s testimony, including the speed of Ravoira’s vehicle and the inability to see Bloom. *Id.*

At issue on appeal was whether the Court of Appeals erred in reversing the trial court’s grant of summary judgment.

To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *E.g., Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under South Carolina’s doctrine of comparative

negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant. *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991).

Bloom, 529 S.E.2d at 712–13. “In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” *Id.*, at 713 (citing *Creech v. S.C. Wildlife & Marine Res. Dep’t*, 491 S.E.2d 571, 575 (S.C. 1997)).

The South Carolina Supreme Court held that “a verdict for Bloom is not reasonably possible under the facts of this case.” *Bloom*, 529 S.E.2d at 713.

The only inference to be drawn from this evidence is that Bloom entered the street quickly and without any warning to drivers. Moreover, although there were crosswalks and traffic signals at both corners, Bloom chose to cross in the middle of the block. Thus, by Bloom’s own testimony, he breached his duties as a pedestrian. S.C. Code Ann. § 56–5–3150 (1991). This breach is compounded by the fact that it was dark and rainy out, and Bloom—who was dressed in dark clothing—quickly entered the street from between two parked vehicles.

Bloom, 529 S.E.2d at 713. The Court further found that “the issues of fact highlighted by the Court of Appeals do not rise to the level of ‘material’ issues of fact because, as a matter of law, the evidence shows that Bloom was more than fifty percent negligent.” *Id.*, at 713. “Where evidence of the plaintiff’s greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Id.*, at 714 (citing *Hopson v. Clary*, 465 S.E.2d 305, 307 (S.C. Ct. App. 1996)).

Legal Analysis

Based on the testimony of witnesses and information obtained during the course of discovery in this case, Einstein complied with the applicable rules of the road. Therefore, the undisputed facts in the case show that Einstein did use ordinary care at the time of the incident and, therefore, was not negligent.

The evidence presented shows that it was dark on the night in question;; Plaintiff entered Wade Hampton Boulevard at a place where there was not a crosswalk and where there was no lighting; and Plaintiff was lying in the roadway with his head facing the curb and his body jutting out into the lane. The evidence presented further shows that Einstein was not speeding at the time of the accident; Einstein was operating her vehicle appropriately in her lane of travel at the time of the accident; Einstein applied her brakes; Einstein attempted to avoid accident; and it was determined by law enforcement that Einstein could not have reasonably avoided striking Plaintiff. South Carolina law is clear: the fact that an accident occurred is not evidence of negligence. *King*, 120 S.E.2d at 230.

Plaintiff argues that because there was an impact between Einstein's vehicle and Plaintiff, negligence may be inferred. *Id.* Such an argument is speculation and, in contravention of South Carolina law, presumes negligence on the part of Einstein. *Legette v. Smith*, 220 S.E.2d at 430; Anderson's South Carolina Request to Charge – Civil, § 20-1.

Instead, Plaintiff entered Wade Hampton Boulevard in violation of South Carolina Code Section 56-5-3150 which provides:

- (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
- (c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Plaintiff 1) crossed Wade Hampton not by a traffic-control signal, 2) outside of a crosswalk and 3) failed to yield to the right-of-way to Einstein's vehicle. Thus, Plaintiff violated South Carolina law and was negligent.

Therefore, as in *Bloom*, the only inference a reasonable juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault.

Accordingly, this Court finds there is no genuine issue as to any material fact regarding whether Einstein failed to use ordinary care at the time of the incident. Plaintiff has not produced any evidence that Einstein breached a duty of care she owed to him. *Kitchen Planner, LLC v. Friedman*, 440 S.C. 456 (2023). The evidence shows Defendant did what a reasonable and prudent person would ordinarily have done under the circumstances. Plaintiff thereby cannot meet his burden on an essential element of his claim. Furthermore, the only inference a reasonable juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault. *Bloom*, 529 S.E.2d at 714; For all of these reasons, Defendant Einstein is entitled to judgment as a matter of law and dismissal of Plaintiff's lawsuit with prejudice.

CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Summary Judgment is **GRANTED**; and it is further **ORDERED, ADJUDGED, AND DECREED** that this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

_____, 2024.

The Honorable G.D. Morgan Jr.
Thirteenth Judicial Circuit
Greenville, South Carolina

| | | |
|-------------------------|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE 13 TH JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE |) | CASE NO. 2022-CP-23-03510 |
| |) | |
| ROGER WAYNE LYNCH, |) | |
| |) | |
| PLAINTIFF, |) | DEFENDANT ANGELA WEST |
| |) | EINSTEIN'S EXHIBITS IN SUPPORT |
| v. |) | OF MOTION TO ALTER/AMEND |
| |) | JUDGMENT PURSUANT TO SCRCP |
| ANGELA WEST EINSTEIN, |) | 59(e) |
| |) | |
| DEFENDANT. |) | |
| _____ |) | |

PLEASE TAKE NOTICE that Defendant Angela West Einstein, by and through her undersigned attorneys, hereby submits the following materials, attached as Exhibits A through H in support of her Motion to Alter/Amend Judgment Pursuant to SCRCP 59(e). Exhibits A through H were previously provided to Judge G. D. Morgan, Jr. and Plaintiff's counsel within tabbed binders at Defendant's Motion for Summary Judgement hearing on March 4, 2024. Judge Morgan received, reviewed, and relied upon the materials to grant Defendant's Motion for Summary Judgment. A Second Amended Order Granting Summary Judgment to Defendant is attached as Exhibit I, in order to coincide with the labeling of Exhibits A though H.

[Signature to Follow]

Respectfully submitted,

HALL BOOTH SMITH, P.C.

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Attorneys for Defendant Angela Einstein

April 12, 2024

Mount Pleasant, South Carolina

ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

| | | |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| |) | |
| |) | |
| COUNTY OF CHARLESTON |) | C/A NO.: 22-CP-22-03510 |

| | | |
|-----------------------|---|-------------------|
| Roger Wayne Lynch, |) | VIDEO |
| |) | DEPOSITION OF |
| Plaintiff, |) | |
| |) | ROGER WAYNE LYNCH |
| |) | |
| vs. |) | April 26, 2023 |
| |) | |
| |) | |
| Angela West Einstein, |) | |
| |) | |
| |) | |
| Defendant. |) | |

Deposition on oral examination of ROGER W. LYNCH, reported by Diane Grubowski, Court Reporter and Notary Public; Said deposition taken pursuant to Notice and in accordance with the South Carolina Rules of Civil Procedure, via Zoom, on Wednesday, the 26th day of April 2023, scheduled for 10:00 a.m. and commencing at the hour of 10:08 a.m.

1 a copy of the police report and the EMS report for
2 the incident. I expect you've never seen these
3 documents before?

4 A No, ma'am.

5 Q Okay. I want to start from the top. If you could,
6 describe for me in your own words what happened on
7 the night of the incident?

8 A Only thing I can say, I got off the city bus going
9 across the street. And after that, I don't know
10 nothing else. I don't.

11 Q You saw a bus across the street?

12 A No. I had got off the bus going to my mother's
13 house to get my medicine. And after that, I don't
14 know what happened. I don't know. All I know is
15 they cut me up in the hospital with two broke legs.

16 Q Let's break that down. You were going to whose
17 house?

18 A My mother's.

19 Q So you were going to your mother's house to get
20 your medicine.

21 A Right.

22 Q What kind of medicine was there that you needed to
23 retrieve?

24 A I needed to get my blood sugar medicine.

25 Q The blood sugar medicine?

1 Q What is your mother's address?

2 A Her address is [REDACTED]
3 [REDACTED]. It should be in the
4 record.

5 Q I am checking now to make sure we have that
6 address. I don't recall seeing that.

7 MR. MCCOOL: I think it's the apartments
8 right by the IHOP.

9 A Right behind IHOP.

10 Q So you took the bus to Wade Hampton Boulevard and
11 it dropped you off right near your mother's
12 apartment?

13 A Yes.

14 Q Do you know the name of that apartment complex?

15 A Huh-uh. [REDACTED]. That will be on the ...
16 inaudible ..., too, I think. I ain't for sure. I
17 didn't know how to get there.

18 MR. MCCOOL: [REDACTED]?

19 A Yes, I think it's [REDACTED]. Right behind IHOP.

20 Q Behind IHOP.

21 A Yeah.

22 Q The apartment number is?

23 MR. MCCOOL: [REDACTED].

24 A [REDACTED].

25 Q Okay. [REDACTED] Greenville,

1 ~~ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN~~
MS. LEAPHART: I can go ask.
2 MS. STACY: Thank you, I don't want to
3 forget to come back to that.
4 (MOMENTARILY OFF THE RECORD)
5 MS. LEAPHART: Clara Mae.
6 MS. STACY: That is a pretty name. Thank
7 you, Mr. Lynch, I'm sorry about that.
8 Q You said a bus dropped you off in front of the IHOP
9 at the bus stop, correct?
10 A Yes.
11 Q Do you typically take the bus to get around town?
12 A Yeah.
13 Q You don't own a car, correct?
14 A No.
15 Q At the time of the incident, had you made it to
16 your mother's apartment yet?
17 A No.
18 Q The bus drop you off, tell me what happened next
19 that you remember.
20 A The bus dropped me off and I was going across the
21 street. I don't remember nothing else.
22 Q All right. So --
23 A I don't remember nothing else.
24 Q The bus dropped you off on which side of the
25 street? On the side of the street with the IHOP or

1 the other side?
2 A Other side.
3 Q Other side. So when the bus drops you off, you
4 have to then cross the street, is that correct?
5 A Yeah.
6 Q Do you remember crossing the street at night?
7 A No. I remember getting out of the bus getting
8 ready to go across the street. My blood sugar
9 level going up and down. I don't have no car.
10 Q And you're sure the bus dropped you off across the
11 street from the IHOP, not on the same side?
12 A Yeah, I'm sure.
13 Q The impact, the reason we're here today. Which
14 side of the street did that occur on?
15 A I don't know.
16 Q You don't know to this day?
17 A No.
18 Q Have you ever been back to the scene of where this
19 happened?
20 A I ain't go back there -- yeah, two or three times,
21 but I can't remember where it happened.
22 Q So no one has told you -- you don't have any
23 understanding of which side of the street this
24 happened on?
25 A Huh-uh.

1 A Uh-huh.

2 ~~ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN~~
~~IS THAT A "yes?"~~
~~Roger Wayne Lynch on 04/26/2023~~

3 A Yeah.

4 Q I know it sounds silly because it's not

5 conversational, it makes it a lot easier for us

6 looking at it later.

7 A Yeah.

8 Q So you step off the bus. You believe you're about

9 to cross the street to go to your mother's

10 apartment, but you don't remember what happens

11 next?

12 A No.

13 Q You understand that you were struck by a vehicle as

14 you sit here today, correct?

15 A Yeah, I understand. Yeah.

16 Q Okay. Do you know who was driving that car?

17 A Nope.

18 Q Do you know what kind of car struck you?

19 A No.

20 Q Do you know which lane that car was in?

21 A Nope.

22 Q Do you know what speed that car was going?

23 A Nope.

24 Q Do you know what other cars were present on the
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25 road at the time?

1 A Nope.

2 Q Do you know what time of day this happened?

3 A Nope.

4 Q Do you know whether it was still daylight or
 5 whether it was already dark outside?

6 A No.

7 Q Do you recall what you were wearing?

8 A No.

9 Q These sound obvious, but we have to walk through
 10 all of this. Do you recall whether there were
 11 people in the surrounding area at the time?

12 A No.

13 Q We're going to go through these accident reports,
 14 I'm going to ask you about some information in
 15 those.

16 A Uh-huh.

17 Q I assume you don't recall, based on what we just
 18 talked about, but we're still going to walk through
 19 it. What I want to know is if you have any
 20 information to contradict these reports. Since you
 21 don't recall, is there anything that would lead you
 22 to believe these reports are not accurate? Is that
 23 fair?

24 A Yes, that's fair.

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25 Q You let me know if you disagree with anything.

1 Okay?

2 A Uh-huh. ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023

3 Q Was anyone else with you at the time of the
4 accident?

5 A No.

6 Q Mr. Lynch, if you'll turn to Exhibit 29, it looks
7 like it's right on top. It's a copy of that police
8 report.

9 A Uh-huh.

10 Q Do you recall speaking with an officer after the
11 incident?

12 A Not -- not really.

13 Q Okay. Do you recall an officer visiting you in the
14 hospital or speaking with you on the telephone
15 after the incident?

16 A Yeah, she called, but I didn't talk to her because
17 I didn't know who it was.

18 Q So you have not spoken with an officer about the
19 incident, to your recollection?

20 A Not to my recollection, no.

21 Q Do you have any memory issues as a result of the
22 incident?

23 A Yeah.

24 Q And we'll talk about that later, I want to make a
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25 note of that.

1 Q Okay. So you have not drank any liquor since you
2 were --
3 A No.
4 Q -- 16 or 17?
5 A No, I don't do that.
6 Q Do you have any understanding of why the officer
7 would have this in her report that you admitted to
8 drinking a fifth?
9 A I don't know.
10 Q Okay.
11 A I don't know what I said. I can't remember what I
12 said.
13 Q Her statement indicates that you also told her that
14 the combination of your drinking and your diabetes
15 had caused you to wander into the roadway.
16 You don't remember saying that, do you?
17 A No.
18 Q And you mentioned having some memory issues since
19 the incident, correct?
20 A A lot of them.
21 Q Do you know whether you were experiencing any
22 memory issues at the time of making this statement?
23 A Yeah.
24 Q You do recall or you don't recall?
25 A I don't recall.

1 Q I'm going to ask you a couple questions about some
2 notes that are in this report. I understand you
3 may not remember, but I'm going to ask anyway just
4 to make sure.

5 On page 1 the EMTs note the smell of alcohol on
6 your breath. Any reason to dispute that?

7 A No.

8 Q Would you be surprised that there was still alcohol
9 on your breath if you had not drank anything since
10 8 a.m. that morning?

11 A It could be.

12 Q There still could be alcohol on your breathe?

13 A Yeah, there could be a smell.

14 Q That's actually all I have for that one.

15 MR. LYNCH: Can we take another break, I
16 have to go to the bathroom.

17 MS. STACY: Absolutely, let's take another
18 break. However long you need, maybe back at
19 11:45. If you need more, take it.

20 (OFF THE RECORD 11:34 - 11:45)

21 MS. STACY: Mr. Lynch, we are back on
22 after another break.

23 Q We were just talking about the incident. I'm going
24 to show you some photographs now. These were
25 actually marked in my client's deposition, so I'm

1 Q Mr. Lynch, who do you think is at fault for the
2 incident?

3 A She is. ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023

4 Q "She is", are you referring to my client?

5 A Yes, your client.

6 Q Could my client have avoided this accident?

7 A I don't know.

8 Q Okay.

9 A Could she?

10 Q Why do you think my client is at fault?

11 A Because she had a car. I didn't have no car. She
12 hit me, I didn't hit her. She hit me.

13 Q You filed a Complaint against my client asserting
14 some negligence claims, and in fact, a gross
15 negligence claim. I don't expect you to know what
16 that means. What did my client do that was
17 negligent?

18 A For hitting me.

19 Q She hit you?

20 A Yes.

21 Q Anything else?

22 A For not paying attention. What else? She might
23 have been on the phone, we don't know.

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24 Q So on her phone or not paying attention?

25 A Yes. Really she's at fault. She's got a car. I

1 ain't got no car.

2 **Q So her owning a car is why she's at fault?**

3 **A Do you see how many people get hit by a car in your**
 4 life?

5 **Q If a person gets hit by a car, is it always the**
 6 driver's fault of the car and not the person?

7 **A I'm not going to say that. I'm not going to speak**
 8 on that.

9 **Q Okay.**

10 **A I speak on what I know, what happened to me.**

11 **Q And you don't know a lot about what happened to you**
 12 --

13 **A No, I don't really know. I don't know what went**
 14 on. I can't tell you something I don't know.

15 **Q Let's talk in hypothetical real quick. If you had**
 16 a medical event that resulted in you lying in the
 17 roadway, would it be my client's fault for hitting
 18 you?

19 **A Yes.**

20 **Q What if she had no time to stop?**

21 **A I ain't going to speak on that. I will not speak**
 22 on that.

23 **Q What if you were wearing dark clothing?**
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24 **A I will not speak on that.**

25 **Q Why are you not speaking on that?**

1 A Because I don't know.

2 Q You don't know.

3 A I ain't going to say something I don't know.
ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
 Roger Wayne Lynch on 04/26/2023

4 Q Okay. I'll represent to you then that my client
 5 testified that she was not on her phone and her
 6 eyes were on the road at the time of the incident.

7 Since you did not see the car or see my client
 8 driving the car, do you have any basis to dispute
 9 that?

10 MR. MCCOOL: Objection.

11 A No. I ain't got nothing to say on that.

12 Q Nothing to say. You are here for your deposition
 13 today. You filed a lawsuit against my client. We
 14 are defending this. We have the right to depose
 15 you and to ask you these questions.

16 A Yeah, I know that.

17 Q You are under oath, so unfortunately you can't --
 18 unless your attorney instructs you not to answer,
 19 you do have to answer the questions.

20 A Okay.

21 Q I understand that these are difficult questions and
 22 you may not want to speak on it. But you filed the
 23 lawsuit, you dragged us into this, so I'm going to
 24 ask you some questions --
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25 MR. MCCOOL: Objection.

1 Q -- Mr. Lynch.

2 MR. MCCOOL: Objection. Being combative.

3 Q You don't want to speak on this. My client
 4 testified she was not on her phone.

5 Any reason to dispute that?

6 MR. MCCOOL: Objection.

7 A (Non-verbal response)

8 Q Do you have any reason -- I'm sorry. Will you
 9 answer that verbally.

10 A No.

11 Q My client stated that she was paying attention to
 12 the road, her eyes were on the road. Are you aware
 13 of anything that would make that testimony
 14 untruthful?

15 MR. MCCOOL: Objection.

16 A No.

17 Q To ask this again, because I believe you did not
 18 want to answer earlier. What specifically did my
 19 client do wrong?

20 A By hitting me.

21 Q Do you know whether my client had time to avoid
 22 hitting you?

23 A I don't know.

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24 Q Do you know whether there were any other cars
 25 around my client?



GMH ORTHOPEDIC
SURGERY
701 Grove Road
Greenville SC 29605

Lynch, Roger Wayne
[REDACTED], Sex: M
Adm: 12/16/2021, D/C: 12/30/2021

EXHIBIT B

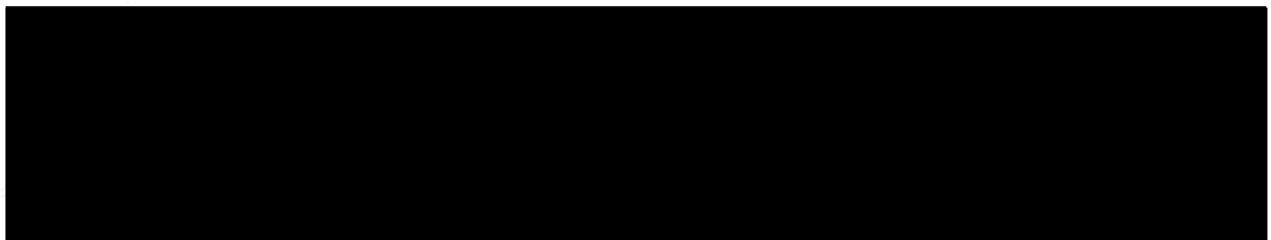
12/16/2021 - ED to Hosp-Admission (Discharged) in Greenville Memorial Orthopedic Surgery (continued)

H&P Notes (continued)

Attestation signed by Pellizzeri, Katherine Ferstadt, MD at 12/27/2021 6:08 PM (Updated)



Trauma & General / Acute Care / Surgical Critical Care Surgery Service

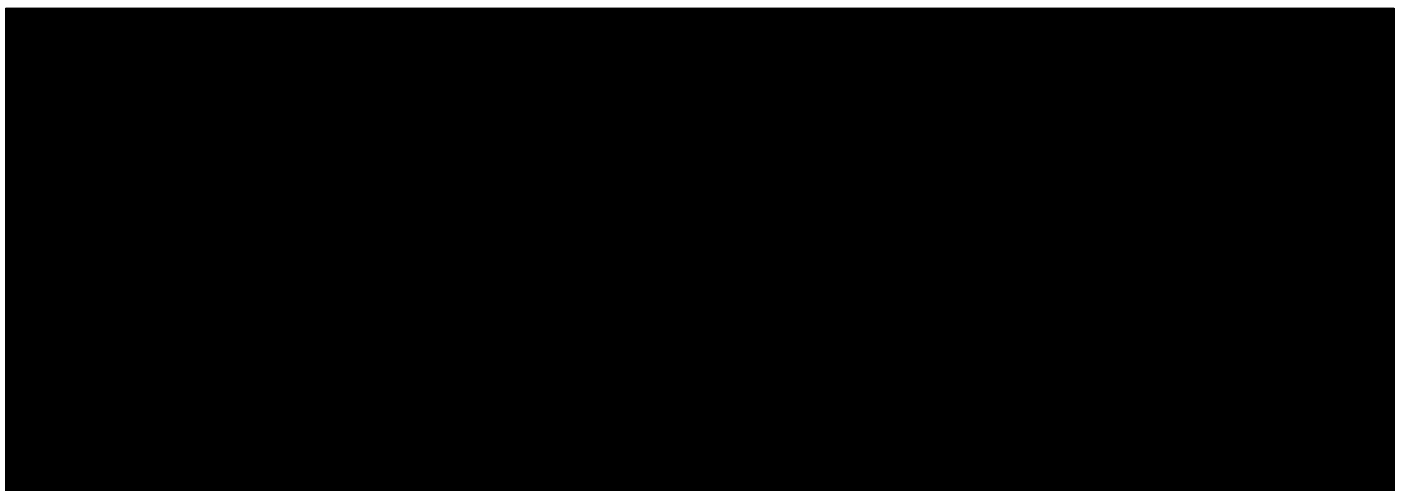


Intubated on arrival due to inability to protect his airway. Patient was hypotensive on arrival as well, however not tachycardic initially. Received 2 units of blood and had bilateral chest tubes placed with a rush of air on the left chest and improvement of patient's hemostatics. Patient was also hypoglycemic, acidotic and hypocalcemic. Patient received D50, calcium, and bicarb. Patient was then taken to the scanner and found to have no acute bony injuries. Chest tubes were already in place at that and very minimal residual pneumothoraces were seen. Right side did not have a rush of air upon placement. **alcohol intoxication on arrival, high risk for withdrawal**, will monitor. Correct hypokalemia. Will need fixation of open right tibial fracture includes right distal femur fracture. Antibiotics given in the trauma bay, will continue per open fracture protocol. Plan to start DVT prophylaxis if no evidence of further bleeding.



HISTORY and PHYSICAL
Trauma Surgery
Surgical Critical Care

12/16/2021



12/16/2021 - ED to Hosp-Admission (Discharged) in Greenville Memorial Orthopedic Surgery (continued)

ED Provider Note (continued)

| | | |
|-------------------------------------|--------------|----------------|
| Anion Gap | | mg/dL |
| | | 6 - 16 |
| | | mmol/L |
| Ethyl Alcohol (Medical Only) | | |
| Result | Value | Ref Range |
| Alcohol, Medical | 99 (H) | <10 mg/dL |
| Blood Gas | | |
| Result | Value | Ref Range |
| Draw Site | Radial, left | |
| Specimen Type, Blood Gas | Arterial | |
| FIO2 / O2 Mode | | % |
| Oxygen Device | | |
| pH | | 7.35 - 7.45 |
| pH, Corrected | | 7.35 - 7.45 |
| pCO2 | | 35 - 45 mm |
| | | Hg |
| pCO2, Corrected | | 35 - 45 |
| | | mmHg |
| pO2 | | 80 - 100 mm |
| | | Hg |
| pO2, Corrected | | 80 - 100 |
| | | mmHg |
| HCO3 | | 22.0 - 26.0 |
| | | mmol/L |
| Oxyhemoglobin | | 95.0 - 98.0 |
| | | % |
| Methemoglobin | | 0.00 - 3.00 |
| | | % |
| Carboxyhemoglobin | | 0.0 - 4.9 % |
| Total Hemoglobin | | 12.7 - 17.2 |
| | | g/dL |
| Sodium, POC | | 136 - 145 |
| | | mmol/L |
| Potassium, POC | | 3.5 - 5.1 |
| | | mmol/L |
| Glucose, POC | | 70 - 99 |
| | | mg/dL |
| Chloride, POC | | 98 - 107 |
| | | mmol/L |
| Lactate | | 0.5 - 2.2 |
| | | mmol/L |
| PF Ratio | | >=380 |
| Base Deficit/Excess | | >=0.0 |
| | | mmol/L |
| Patient Temperature | | 37.0 - 37.1 C |
| Calcium, Ionized | | 1.13 - 1.33 |
| | | mmol/L |
| er Panel (Hepatic Profile) | | |
| Result | Value | Ref Range |
| Albumin | | 3.4 - 4.8 g/dL |

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

EXHIBIT D

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 21-087347DATE 12/16/2021

I, Lemuel Gaines do hereby give freely and voluntarily this statement to
M. Halpay #857 and _____ who have identified themselves as officers of
the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and
that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice,
that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised
any reward to make this statement and do so voluntarily. I understand that I have the right to stop at any time. I hereby waive these rights.

I am _____ years old and reside at _____ Greenville SC _____

Driving towards downtown, I was riding beside (left) of white
range rover. Suddenly after passing IHOP on right I thought an animal
was in the road. I saw clearly as I approached it was a man
that fell on the road and the white Range Rover didn't have
time to stop/slow and struck the man. He was in very
dark clothes, so he could not be seen and was unavoidable.

2021 DEC 17 A 6:03

I have read or had read to me, the above statement of 1/1 pages and it is true and correct as best I recall, and I have received a copy
of this statement.

WITNESSES:

Sworn before me this 16 day of Dec 20 21.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

eJY/01/23/202209 09:05

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

01/24/2021 - ED in Prisma Health Greenville Memorial Hospital Emergency Department (continued)

Documents (continued)

Greenville County EMS
Patient Care Record
Name: LYNCH, ROGER

Incident #: 21012400561

01/24/2021

Patient 1 of 1

| Patient Information | | | | Clinical Impression | |
|---------------------|---------------------------|-----------|------------------------|-----------------------------|---|
| Last | LYNCH | Address | | Primary Impression | Unconscious |
| First | ROGER | Address 2 | | Secondary Impression | Diabetic Hypoglycemia |
| Middle | WAYNE | City | Greenville | Protocol Used | Hypoglycemia |
| Gender | Male | State | SC | Anatomic Position | General/Globol |
| DOB | | Zip | | Onset Time | |
| Age | | Country | US | Chief Complaint | UNCONSCIOUS |
| Weight | 172.00 lb - 78.00 kg | Tel | | Duration | 45 Units Minutes |
| Pedi Color | | Physician | | Secondary Complaint | |
| SSN | | Ethnicity | Not Hispanic or Latino | Duration | Units |
| Race | Black or African American | | | Patient's Level of Distress | Severe |
| Advance Directives | None | | | | Cognitive Functions and Awareness - Altered mental status
Metabolic - Hypoglycemia
Generalized Symptoms - Hypothermia |
| Resident Status | In-County Resident | | | Signs & Symptoms | |
| | | | | Injury | |
| | | | | Mechanism of Injury | |
| | | | | Medical/Trauma | Medical |
| | | | | Barriers of Care | None Noted |
| | | | | Alcohol/Drugs | Smell of Alcohol on Breath. Patient Admits to Alcohol Use. Patient Admits to Drug Use. |
| | | | | Pregnancy | |
| | | | | Initial Patient Acuity | Emergent (Yellow) |
| | | | | Final Patient Acuity | Emergent (Yellow) |
| | | | | Patient Activity | Active, Unspecified |

| Medication/Allergies/History | |
|------------------------------|---|
| Medications | Insulin |
| Allergies | No known allergies |
| History | Alcohol Abuse, IV Drug Use/Abuse, Type 1 Diabetes |
| Last Oral Intake | |

| Time | AVPU | Side | POS | BP | Pulse | RR | SP02 | ETCD2 | CO | SG | Temp | Pain | GCSE (E-V-U-M) | Qualifier | RTS | PTS |
|-------|----------------|------|-----|-----------|-------|------|--------|-------|-----|-----|------|------|----------------|-----------|-----|-----|
| 01:25 | Unres
ponse | L | Lay | 150/100 M | 90 R | 12 R | 100 Rm | UTO | UTO | 30 | UTO | 0 | 3+1+1+1/HQ | | A | |
| 01:30 | Unres
ponse | L | Lay | 150/104 A | 82 R | 12 R | 100 Om | UTO | UTO | UTO | UTO | 0 | 3+1+1+1/HQ | | B | |
| 01:31 | Unres
ponse | L | Lay | UTO | UTO | UTO | UTO | UTO | UTO | UTO | UTO | UTO | 3+1+1+1/HQ | | | |
| 01:42 | Unres
ponse | L | Lay | UTO | UTO | UTO | UTO | UTO | UTO | UTO | UTO | UTO | 3+1+1+1/HQ | | | |
| 01:49 | Alert | L | Sit | 155/78 A | 94 R | 20 R | 100 Ox | UTO | UTO | 167 | UTO | 0 | A=4+4+6/HQ | | 12 | |

| Time | Type | Rhythm | Notes |
|-------|---------|--------------|-------|
| 01:25 | UTO | UTO | UTO |
| 01:30 | UTO | UTO | UTO |
| 01:31 | 4-Lead | Sinus Rhythm | |
| 01:42 | 12-Lead | Sinus Rhythm | |
| 01:49 | 4-Lead | Sinus Rhythm | |

| Time | Treatment | Description | Flow Chart | Provider |
|-------|------------------|---|------------|-----------------|
| 01:26 | General Comments | Comments: WET CLOTHES REMOVED, Patient Response: Unchanged; Complication: None; | | FISHER, ANTONIO |
| 01:26 | Warming | Patient Response: Improved; Successful; Complication: None; | | TUCKER, ANTONIO |
| 01:26 | Warming | Comments: WARM ENVIRONMENT, Patient Response: Improved; Complication: None; | | TUCKER, ANTONIO |
| 01:27 | NPA | Patient Response: Unchanged; Successful; Complication: None; | | ALLEN, MICHAEL |

Hospital Chart Number: 100016346-017

Page 1 of 2

01/26/2021 17:02:03
PCRP: JKS3561-3000 4130 0000 acb3001b1f0
Electronically Signed by: TUCKER, ANTONIO
Template Version: PCRP-EXTBSCF 1.3.1
Data Version: KANA1103-M

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

01/24/2021 - ED in Prisma Health Greenville Memorial Hospital Emergency Department (continued)

Documents (continued)

| Greenville County EMS | | Patient Care Record | |
|-----------------------|-----------------|--|----------------------------------|
| Name: LYNCH, ROGER | | Incident #: 210124 Q0567 | Date: 01/24/2021 Patient: 1 of 1 |
| Flow Chart | | | |
| Time | Treatment | Description | Provider |
| 01:28 | Oxygen | Non Re-breather Mask (NRB); Flow Rate: 15 lpm; Patient Response: Unchanged; Successful; Complication: None; | ALIEN, MICHAEL |
| 01:35 | Warming | Comments: HEAT PACKS IN GROIN, AND ARMPITS WRAPPED WITH TOWELS; Patient Response: Improved; Successful; Complication: None; | TUCKER, ANTONIO |
| 01:36 | IV Therapy | 18 g; Hand-Left; Saline Lock; Total Fluid: 0; Patient Response: Unchanged; Unsuccessful; Complication: Exhavasation; | TUCKER, ANTONIO |
| 01:38 | IV Therapy | 18 g; Hand-Right; Saline Lock; Total Fluid: 10; Patient Response: Unchanged; Successful; Complication: None; | TUCKER, ANTONIO |
| 01:39 | IV Bolus | Hand-Right; Normal Saline (0.9% NaCl) - Warm; Total Fluid: 250; Patient Response: Unchanged; Successful; Complication: None; | TUCKER, ANTONIO |
| 01:41 | Dextrose 10% | 250 Milliliters (ml); Intravenous (IV); Patient Response: Improved; Complication: None; | TUCKER, ANTONIO |
| 01:42 | 12-Lead ECG | Patient Response: Unchanged; Successful; Complication: None; | TUCKER, ANTONIO |
| 01:45 | Transport Alert | Comments: HOSPITAL IS NOTIFIED OF THE PATIENT'S CONDITION, VITALS, AND ETA; Patient Response: Unchanged; Complication: None; | TUCKER, ANTONIO |

| | | Initial Assessment | |
|---------------|----------|--------------------|---|
| Category | Comments | Abnormalities | |
| Mental Status | | Mental Status | + Unresponsive |
| Skin | | Skin | + Cold |
| HEENT | | Head/Face | No Abnormalities |
| | | Eyes | - Left: Blind, Left: Constricted, Left: Dilated, Left: Non-Responsive, Right: Blind, Right: Constricted, Right: Dilated, Right: Non-Responsive |
| | | Neck/Airway | No Abnormalities |
| Chest | | Chest | No Abnormalities |
| | | Heart Sounds | Not Assessed |
| | | Lung Sounds | + LL: Clear, UL: Clear, RL: Clear, RU: Clear |
| | | | - LL: Absent, UL: Decreased, LL: Rales, UL: Rhonchi, LL: Wheezing, UL: Absent, LL: Decreased, RL: Rales, RL: Rhonchi, RL: Wheezing, RL: Absent, RU: Decreased, RU: Rales, RU: Wheezing, RU: Rhonchi |
| Abdomen | | General | No Abnormalities |
| | | Left Upper | Not Assessed |
| | | Right Upper | Not Assessed |
| | | Left Lower | Not Assessed |
| | | Right Lower | Not Assessed |
| Back | | Cervical | No Abnormalities |
| | | Thoracic | No Abnormalities |
| | | Lumbar/Sacral | No Abnormalities |
| Perine/GU/GI | | Perine/GU/GI | No Abnormalities |
| Extremities | | Left Arm | No Abnormalities |
| | | Right Arm | No Abnormalities |
| | | Left Leg | No Abnormalities |
| | | Right Leg | No Abnormalities |
| | | Pulse | Not Assessed |
| | | Capillary Refill | Not Assessed |
| Neurological | | Neurological | No Abnormalities |

Assessment Time: 01/24/2021 01:22:00

| | | Ongoing Assessment | |
|---------------|----------|--------------------|--|
| Category | Comments | Abnormalities | |
| Mental Status | | Mental Status | + Person Oriented, Place Oriented
- Event Oriented, Time Oriented |
| Skin | | Skin | Not Assessed |
| HEENT | | Head/Face | Not Assessed |
| | | Eyes | Not Assessed |
| | | Neck/Airway | Not Assessed |
| Chest | | Chest | Not Assessed |
| | | Heart Sounds | Not Assessed |
| | | Lung Sounds | Not Assessed |

Stampsheet Chart Number: JXN16341647

Page 2 of 8

01/25/2021 17:07:00
PC#02, J10633561, 3060 4132 8000-acba001b0m1
Electronically Signed by: TUCKER, ANTHONIO
Template Version: PER EXTRACT 1.3.3
Data Version: AAA344Kv3-460

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

01/24/2021 - ED in Prisma Health Greenville Memorial Hospital Emergency Department (continued)

Documents (continued)

Greenville County EMS
Patient Care Record
Name: LYNCH, ROGER

Incident #: Z10124 005781

Date: 01/24/2021

Page 1 of 8

| Ongoing Assessment | |
|--------------------|------------------|
| Category | Comments |
| Abdomen | General |
| | Left Upper |
| | Right Upper |
| Back | Left Lower |
| | Right Lower |
| | Cervical |
| Pelvis/GU/GI | Thoracic |
| | Lumbar/Sacral |
| | Pelvis/GU/GI |
| Extremities | Left Arm |
| | Right Arm |
| | Left Leg |
| Neurological | Right Leg |
| | Pulse |
| | Capillary Refill |
| | Neurological |

Assessment Time: 01/24/2021 01:48:00

Narrative

EMTIC 2P ARRIVES ON SCENE TO FIND WHAT APPEARS TO BE A 60-YEAR-OLD UNCONSCIOUS MALE LOCATED IN THE SIDE OF THE STREET. POLICE REPORT THAT THE PATIENT HAS BEEN DOWN FOR ABOUT 10 HOURS. NEIGHBORS THREW WATER ON HIM TO TRY TO WAKE HIM UP. THE CURRENT TEMPERATURE OUTSIDE AT TIME OF CALL IS 42 DEGREES FAHRENHEIT. THE PATIENT HAS NO OBVIOUS INJURIES AND IS EXPEDITIOUSLY MOVED TO THE AMBULANCE FOR PASSIVE REWARMING AND TREATMENT.

AFTER TREATMENT FOR HYPOGLYCEMIA AND POSSIBLE HYPOTHERMIA THE PATIENT BECOMES CONSCIOUS AND REPORTS THAT HE HAD BEEN OUT FOR A NIGHT OF DRINKING AND SMOKING CRACK. PATIENT REPORTS THAT HE IS AN INSULIN-DEPENDENT DIABETIC AND THAT HE DID EAT AT SOME POINT TODAY.

PATIENT HAS NO COMPLAINTS OF CHEST PAIN, SHORTNESS OF BREATH, OR OTHER PAIN RIGHT NOW.

Specialty Patient - Outbreak Screening

| | |
|---|-----------------|
| Outbreak Screened | COVID-19 |
| Onset of Signs/Symptoms | |
| Symptoms Reported | None |
| Has the patient traveled outside the community in the past 30 days? | No |
| Travel Start Date | Travel End Date |
| Travel Locations | |
| Has the patient traveled outside the United States in the past 30 days? | No |
| Travel Start Date | Travel End Date |
| Travel Locations | |
| Has the patient had household or close contact w/ someone with above symptoms and travel history? | No |
| Has the patient had household or close contact w/ someone with confirmed diagnosis of illness being screened? | No |
| Comments | |

Patient Travel

| | |
|---|-----------------|
| Has the patient traveled outside the community in the past 30 days? | No |
| Travel Start Date | Travel End Date |
| Travel Locations | |
| Has the patient traveled outside the United States in the past 30 days? | No |
| Travel Start Date | Travel End Date |
| Travel Locations | |

| Incident Details | | Destination Details | | Incident Times | |
|------------------|-------------------|---------------------|--------------------------|-------------------|----------|
| Location Type | Street or Highway | Disposition | Transported Lights/Siren | PSAP Call | 01:52:40 |
| Location | | Transport Due To | Other | Dispatch Notified | |

Hospital Chart Number: 1000163436407

Page 2 of 8

01/28/2021 15:07:53
Per: JLC13581 3000 4156 6160 acb06010080
Electronically Signed by: TUCKER, ANTHONY
Template Version: PER EXTRACT 1.3.1
Data Version: AAAAAA Y03136

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

PRISMA
HEALTH.

GMH EMERGENCY DEPT
701 Grove Road
Greenville SC 29605

Lynch, Roger Wayne

Sex: M

Adm: 11/25/2021, D/C: 11/25/2021

11/25/2021 - ED in Prisma Health Greenville Memorial Hospital Emergency Department (continued)

Medication List (continued)

None

ED Provider Note

ED Provider Notes by Marx, Shelby, MD at 11/25/2021 0942

Author: Marx, Shelby, MD
Filed: 11/25/2021 3:13 PM
Editor: Marx, Shelby, MD (Resident Physician)

Service: Emergency Medicine
Date of Service: 11/25/2021 9:42 AM

Author Type: Resident Physician
Status: Attested
Cosigner: Hirsh, Emily Lynn, MD at
11/27/2021 9:15 AM

Attestation signed by Hirsh, Emily Lynn, MD at 11/27/2021 9:15 AM

Please refer to my separately documented emergency department attending physician attestation note.

PRISMA
HEALTH.

Department of Emergency Medicine

Emergency Department Physician Provider Note^[SM.1T]

11/25/2021^[SM.2T]

Chief Complaint:^[SM.1T] Hypoglycemia and Alcohol Intoxication^[SM.2T]

Historian: History obtained from^[SM.1T] the patient^[SM.1M].

HPI: This is a^[SM.1T] 61 y.o. male^[SM.2T] with past medical history significant for hypertension, DM 2 gastric cancer status post gastrectomy and substance abuse who presents to the emergency department for altered mental status in the setting of hypoglycemia and alcohol intoxication.

Patient was brought in by EMS for hypoglycemia. The patient is unable to tell me who called EMS or where he came from specifically, only that he was at "Pam's house". He does not know Pam's last name and does not know who called EMS. Per EMS, patient with BGL of 30 and altered mental status on their arrival. He was immediately given 15 g oral glucose x3 with improvement of his BGL to 108. Following glucose administration patient was A/O x3.

Here, the patient tells me that he was drinking alcohol and smoking crack all day and did not eat yesterday. He is a type II diabetic on insulin. He currently feels weak but denies nausea or vomiting. He endorses mild left lower quadrant abdominal pain. He denies chest pain or shortness of breath. He reports that he last took his blood pressure and diabetic agents on Monday. He denies recent illnesses or fevers.^[SM.1M]

Review of Systems:

Review of Systems

Constitutional: Negative for^[SM.1T] fever^[SM.1M]

Respiratory: Negative for^[SM.1T] cough^[SM.1M] and^[SM.1T] shortness of breath^[SM.1M]

Cardiovascular: Negative for^[SM.1T] chest pain^[SM.1M] and^[SM.1T] leg swelling^[SM.1M]

Gastrointestinal: Positive for^[SM.1T] abdominal pain^[SM.1M]. Negative for^[SM.1T] diarrhea^[SM.1M],^[SM.1T] nausea^[SM.1M] and^[SM.1T] vomiting^[SM.1M].

ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Rachel L. Hamilton on 06/06/2023

ELECTRONICALLY FILED - 2024 Apr 12 5:38 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

| | | |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| |) | |
| COUNTY OF CHARLESTON |) | C/A NO.: 22-CP-10-03510 |

| | | |
|-----------------------|---|--------------------|
| Roger Wayne Lynch, |) | VIDEO |
| |) | DEPOSITION OF |
| Plaintiff, |) | |
| |) | RACHEL L. HAMILTON |
| |) | |
| vs. |) | June 6, 2023 |
| |) | |
| Angela West Einstein, |) | |
| |) | |
| Defendant. |) | |

Deposition on oral examination of RACHEL LYNN HAMILTON,
reported by Diane Grubowski, Court Reporter and Notary Public;
Said deposition taken pursuant to Notice and in accordance with
the South Carolina Rules of Civil Procedure, via Zoom, on
Tuesday, the 6th day of June 2023, scheduled for 10:00 a.m. and
commencing at the hour of 10:06 a.m.

1 Q Do you recall, approximately, how long you had been
2 on shift at that time?

3 A So the call came out -- I think at 2022 I was
4 notified. I get on shift at 18 -- no, 1540 -- I'm
5 sorry, 1740. The military time is not my thing.
6 So it had been a couple of hours.

7 Q Okay. What were your typical shifts at this time,
8 if there was a standard one?

9 A It would have been a night shift. So we start at
10 6:40 and we end at 7 o'clock the next day, so 7
11 a.m.

12 Q And in December of 2021, you'd been with the
13 Greenville Police Department for approximately two
14 years, going on two years?

15 A Yeah.

16 Q What do you recall observing when you arrived on
17 scene of the incident?

18 A I observed the -- or I observed Mr. Lynch in the
19 roadway. And officers were trying to stop traffic
20 and kind of contain the scene and try to see if we
21 could get a flow of traffic around that was safe.
22 EMS was on scene. I saw that he was getting
23 medical aid.

24 Q What was Mr Lynch's condition when you arrived?

25 A It was unknown at that time. We were unsure if we

1 Q And I'll represent to you that this is from some
2 body camera footage that we received in response to
3 Requests and some screen grabs that were pulled
4 from that. I'm not testing your knowledge, just
5 want to make sure you have some context for where
6 these came from.

7 A Yeah.

8 Q All right. So you arrived on scene. It was
9 already nighttime, correct?

10 A Yes, ma'am.

11 Q What were the lighting conditions in the area? And
12 by that I mean any streetlights, lights from
13 surrounding businesses. Do you have any
14 recollection of that?

15 A There are some lights from surrounding businesses,
16 but the roadway itself is very dark and there's not
17 a lot of streetlights.

18 Q Were there any streetlights that were out, to your
19 recollection, or there's just not any streetlights
20 in the area generally?

21 A I do not -- I can't speak to that.

22 Q Do you recall if there is a bus stop in this part
23 of Wade Hampton Boulevard?

24 A I do not recall.

25 Q Okay. As you look through these photos, if you'll

1 rendering aid to Mr. Lynch?

2 A Yes, ma'am.

3 Q Is that the condition he was in when you arrived on
4 scene?

5 A Yes, ma'am.

6 Q Approximately, how long after you arrived on scene
7 was it till he was taken away by ambulance?

8 A I do not recall. I know that it wasn't very long
9 due to them kind of unknown what his condition was.

10 Q Do you recall whether any citations were issued in
11 connection with this report?

12 A No, ma'am, there were not.

13 Q Did you make any determinations of who was at fault
14 for this incident in connection with your
15 investigation?

16 A Yes, ma'am.

17 MR. MCCOOL: Objection. You can answer.

18 A Yes, ma'am. It would have been Mr. Lynch.

19 Q Describe to me what you do. You mentioned earlier
20 you had some follow-up investigations that resulted
21 in these supplemental reports. Can you walk me
22 through the investigation process starting with you
23 arrive on scene.

24 A Yep. So I arrive on scene, try to make sure that
25 the scene is safe so there's going to be no further

1 his nephew who called in. And then I talked to
2 him, as well. And then upon talking to them, I
3 concluded my supplementals.

4 **Q Who else was on the scene? You mentioned other**
5 **officers, do you recall, number one, how many**
6 **officers were on scene aside from yourself?**

7 A I don't remember how many officers were on scene.
8 I -- do you want the names of the officers?

9 **Q If you can recall some of the names --**

10 A Yeah.

11 **Q -- yes, please.**

12 A Officer Geabort (phonetic), I'm not sure how to
13 spell that. Officer Halpainy, Officer Davis. I
14 think Sergeant McLean was called, but I don't think
15 he arrived on scene. That's all I can remember.

16 **Q Were you the person primarily responsible for the**
17 **investigation on scene?**

18 A Yes, ma'am.

19 **Q Who were you able to speak with on the scene at the**
20 **incident?**

21 A There were several witnesses. I don't remember
22 exactly the names.

23 **Q Okay.**

24 A Would you like me to refer to the report?

25 **Q Absolutely. I'm going to direct you to -- I think**

1 Einstein's statement. And let me know if there's
2 anything you disagree with in her statement.
3 A Do you want me to read it out loud or just to
4 myself?
5 Q You can read it to yourself.
6 MR. MCCOOL: Objection.
7 A (Reviews document) All right. No, I have no --
8 no.
9 Q We'll go through this piecemeal, as well. So no
10 information to dispute that Ms. Einstein was
11 traveling in the right lane of Wade Hampton
12 Boulevard at the time of the incident?
13 MR. MCCOOL: Objection.
14 A Correct.
15 Q Any information during the course of your
16 investigation to dispute that there was another car
17 in the middle lane beside Mrs. Einstein?
18 MR. MCCOOL: Objection.
19 A Correct.
20 Q You don't have any information to indicate
21 otherwise?
22 A No, ma'am.
23 Q Thank you. Ms. Einstein states she came upon a
24 person lying in the street. During the course of
25 your investigation, did you come across any

1 information that would dispute that there was a
2 person lying in the street?

3 A No, ma'am.

4 Q Ms. Einstein states that she swerved as much as she
5 could, but she could not go into the lane beside
6 her to avoid the person.

7 Anything during the course of your
8 investigation that you came across that would
9 dispute that statement?

10 MR. MCCOOL: Objection.

11 A No, ma'am.

12 Q Do you know whether or not Ms. Einstein called 911?

13 A I don't. If I had the call notes, that tells you
14 who called in.

15 Q During the course of investigation, nothing to
16 dispute that Ms. Einstein turned around and called
17 911?

18 A No, ma'am.

19 Q Do you recall where Ms. Einstein's car was when you
20 arrived on scene?

21 A I don't.

22 Q That's fine, I know this was a couple of years ago.
23 We'll refer back to what we have. Can we look at
24 Lemuel Gaines' statement next, and that was 2nd
25 from the last page, again, of this Exhibit 31, with

1 physically hurt. She was just emotionally upset.
2 Q You did not observe any injuries to Ms. Einstein?
3 A No, ma'am.
4 Q Do you recall when her husband arrived on scene,
5 how far -- or how far along after since you had
6 been on scene?
7 A I do not recall.
8 Q Do you recall anything that Ms. Einstein said to
9 you on scene?
10 A That she attempted to swerve, but there was a car
11 on her left hand side and there was a curb on the
12 right hand side. And it kind of came up suddenly,
13 so she just kind of ran over him.
14 Q Do recall what part of Mr. Lynch's body was struck
15 by Ms. Einstein's vehicle?
16 A I the believe his legs.
17 Q Do you recall what the speed limit is on this part
18 of the roadway?
19 A 45.
20 Q And was there any indication that Ms. Einstein was
21 speeding at the time of the collision?
22 MR. MCCOOL: Objection.
23 A No, ma'am.
24 Q What do you base that on?
25 A The amount of damage that was present when I

1 observed the vehicle.
ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Rachel L. Hamilton on 06/06/2023

2 Q Do you recall whether there was any traffic on this
3 portion of Wade Hampton Boulevard at this time of
4 day?

5 A It's a very busy road. At this time, there were a
6 lot of cars in that area. But I don't know if
7 that's consistently how it always is at that time
8 of day.

9 Q When you spoke with Mrs. Einstein, was there
10 anything to indicate that she was impaired at the
11 time of the incident?

12 A No, ma'am.

13 MR. MCCOOL: Objection.

14 Q Other than Ms. Einstein being visibly upset, any --
15 did you have any concerns about her mental
16 condition at the time of the incident?

17 A No.

18 Q Is it your belief that Mrs. Einstein was upset as a
19 result of the incident?

20 A Yes, ma'am.

21 Q So no indication that she was in that emotional
22 state prior to the collection, correct?

23 MR. MCCOOL: Objection.

24 A Yes, ma'am.

25 Q And you did not issue any citations to Ms.

1 Einstein, correct?

2 MR. MCCOOL: Objection.

3 A No, ma'am.

4 Q Did you determine whether Ms. Einstein was at fault
5 for the collision?

6 MR. MCCOOL: Objection.

7 A It's showing her not to be at fault.

8 Q Okay. And what was that determination based on?

9 MR. MCCOOL: Objection.

10 A She was driving straight in her roadway and she
11 didn't have to stop or anything like that. There
12 was no crosswalk. There was no -- there was no
13 reason for him to be in the roadway at the area
14 that he was in. So it would have been pedestrian
15 in the roadway, and he would have been at fault.

16 Q And what is the significance of the finding that
17 there was no crosswalk in the roadway where the
18 incident occurred?

19 A If there was a crosswalk and he had the go ahead to
20 go, the light says that he can cross, then she
21 would have been found at fault.

22 Q Have you been out to this portion of Wade Hampton
23 Boulevard since this incident?

24 A Yes.

25 Q And that's your patrol area, correct?

1 location this occurred. And I do not recall if
 2 there's a crosswalk or not.
 3 **Q Do you have any knowledge or understanding of where**
 4 **Mr. Lynch was heading at the time of the incident?**
 5 **A I do not.**
 6 **Q You mentioned earlier you do your investigation on**
 7 **the scene and you later are able to speak to Mr.**
 8 **Lynch. Can you tell me how you made that**
 9 **connection and what that conversation led to.**
 10 **A So his nephew had called in reporting or requesting**
 11 **more information about the incident. And he was**
 12 **able to provide me with Mr. Lynch's phone number.**
 13 **I made contact with him over the phone and I asked**
 14 **him several questions regarding the incident.**
 15 **Q Okay. Did you memorialize those questions in your**
 16 **report?**
 17 **A Yes.**
 18 **Q Can you walk us through what that conversation was,**
 19 **both what's included in the report, and if you have**
 20 **any additional recollection of that conversation.**
 21 **A So I pretty much asked him if him being in the**
 22 **roadway was related to a mental health issue, if he**
 23 **was having suicidal thoughts, or just a medical**
 24 **health issue. And he stated that this was not the**
 25 **case in reference to the mental health issue. He**

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1 did admit to drinking a fifth of alcoholic beverage
 2 prior to the incident. He did not mention the
 3 specific alcoholic beverage. And then he did state
 4 that he did have diabetes. He did not state that
 5 that was a contributing factor to the incident and
 6 why he was in the roadway though.

7 **Q So Mr. Lynch acknowledged having diabetes, but he**
 8 **did not attribute the accident to his diabetes?**

9 MR. MCCOOL: Objection.

10 A Correct.

11 **Q What did he attribute accident to, if anything?**

12 A He didn't specify.

13 **Q And when Mr. Lynch reported to you that he had**
 14 **consumed a fifth of alcohol, do you have any**
 15 **knowledge or understanding of what he meant by "a**
 16 **fifth"?**

17 MR. MCCOOL: Objection.

18 A A large amount of alcohol.

19 **Q Okay.**

20 A Depending on the type of alcoholic beverage.

21 **Q Do you have any knowledge of whether or not Mr.**
 22 **Lynch was intoxicated at the time of the incident?**

23 A I do not. I was unable to speak with him at that
 24 time.

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25 **Q So when you were able to make contact it was -- how**

1 long was it after the accident?

2 A I can't remember it was three days, but
 3 it would have been at the maximum three days.

4 Q Was Mr. Lynch still in the hospital when you made
 5 contact with him?

6 A Yes, ma'am.

7 Q Did you inform Mr. Lynch that he was at fault for
 8 this incident?

9 A I did.

10 Q And how did he respond to that?

11 MR. MCCOOL: Objection.

12 A I think he was confused and I had to explain to him
 13 that it was unlawful for him to be in the roadway
 14 in the area that he was, and this is why he'd be
 15 found at fault.

16 Q Other than reviewing this report, do you have an
 17 independent recollection of that conversation?

18 A No. No, I don't.

19 Q Can you say from reviewing what your notes say here
 20 whether or not Mr. Lynch recalled that evening?

21 MR. MCCOOL: Objection.

22 A He mentioned the incident, but he didn't mention if
 23 he recalled it or not. He just mentioned that he
 24 was hit by a vehicle, he recalled that.

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25 Q Anything else about the conversation with Mr. Lynch

1 that you can recall?

2 A No, ma'am.

3 Q Okay. Anything that was considered as a part of
4 your investigation said by Mr. Lynch, would it be
5 documented in this report?

6 MR. MCCOOL: Objection.

7 A Yes, ma'am.

8 Q You mentioned speaking with Mr. Lynch's nephew, as
9 well. Do you recall that conversation?

10 A I do, I briefly recall that.

11 Q When did you speak with the nephew?

12 A It would have been just a couple minutes before I
13 spoke with Mr. Lynch because I didn't have his
14 number.

15 Q Do you recall why the nephew was contacting you?

16 A To my recollection, he had visited him in the
17 hospital and there were some questions that he and
18 his uncle had. And he was reaching out to the
19 officer that was in charge of the incident.

20 Q Did you make a determination as to who was at fault
21 for this incident prior to speaking to Mr. Lynch?

22 MR. MCCOOL: Objection.

23 A No, ma'am, I hadn't gotten Mr. Lynch's side of the
24 story.

25 Q Other than speaking with Mr. Lynch's nephew and Mr.

1 reviewed those reports, as well?

2 A Yes, ma'am.

3 Q Okay. Are you aware of -- based on what you know
4 from your investigation and reading these witness
5 statements, are you aware of anything that my
6 client could have done to avoid this incident?

7 MR. MCCOOL: Objection.

8 A No, ma'am.

9 Q And it's your opinion, to confirm, based on your
10 investigation, as documented in Exhibit 31, that my
11 client was not at fault for this incident, correct?

12 MR. MCCOOL: Objection.

13 A That's correct.

14 Q Do you consider your investigation as documented in
15 Exhibit 31 to be complete at this time?

16 A To the best of my ability, yes, ma'am.

17 Q Are you aware of anything that my client, Angela
18 Einstein, did wrong with respect to this incident?

19 MR. MCCOOL: Objection.

20 A No, ma'am.

21 MS. STACY: Ms. Hamilton, I may be done,
22 I'm going to read through and make sure I don't
23 have anything else for you before I turn you
24 over.

25 Q Other than those conversations you had that we

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

DEPOSITION OF ANGELA WEST EINSTEIN

ROGER WAYNE LYNCH,

Plaintiff,

vs. CASE NO. 2022-CP-23-03510

ANGELA WEST EINSTEIN,

Defendant.

DEPONENT: ANGELA WEST EINSTEIN

DATE: DECEMBER 8, 2022

TIME: 1:00 PM

LOCATION: CLARK BOLEN
GREENVILLE, SOUTH CAROLINA

REPORTED BY: VALERIE G. MELKUS, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
Office@clarkbolen.com

1 mountain.

2 Q. And what was your reason or purpose for
3 being at that home on Paris Mountain before the
4 incident with Mr. Lynch occurred?

5 A. I was dropping my future son-in-law at
6 my daughter's work Christmas party.

7 Q. And before you went to that Paris
8 Mountain home, where had you been?

9 A. Home.

10 Q. Do you recall what you were doing before
11 you left home that day to bring your son-in-law
12 to your daughter's work Christmas party?

13 A. I was gathering Christmas presents and
14 boxing and wrapping, preparing to leave town the
15 next week.

16 Q. And earlier this year when your attorney
17 and I and the other gentlemen were looking at
18 your vehicle at your home, there seemed to be a
19 decent amount of wine bottles and that sort of
20 thing. Is -- are you in the business of selling
21 wine, sharing wine or anything like that?

22 MS. STACY: Object to the form.

23 You can answer.

24 THE WITNESS: Okay.

25 A. I believe at the time we had probably

1 A. No.

2 Q. And when you say, as we approached the
3 scene, who is the we that you're talking about?

4 A. Mr. Gaines was the driver of a car
5 beside me.

6 Q. And when you say Mr. Gaines was the
7 driver of the car beside you, what side was he on
8 of you -- of your vehicle?

9 A. My left.

10 Q. And what boulevard or street did this
11 happen on?

12 A. Wade Hampton.

13 Q. Is that Wade Hampton Boulevard?

14 A. Boulevard.

15 Q. And how many lanes is Wade Hampton
16 Boulevard?

17 A. At that point, it is six lanes with a
18 turn lane.

19 Q. So including the turn lane, seven lanes?

20 A. Yes.

21 Q. And I've been to Wade Hampton Boulevard
22 many times, been on it many times. The time of
23 night that this incident happened, there's not
24 much traffic, correct?

25 A. Correct.

1 straight, flat road, correct?

2 A. Correct. Some incline, decline.

3 Q. But minimal for the most part?

4 A. Yeah. Yeah.

5 Q. And at the time the incident occurred,
6 there were no issues with glare or anything like
7 that, correct?

8 A. I would say lighting would have been an
9 issue as it was extremely dark in that specific
10 area.

11 Q. How about any glare? There's no glare
12 from oncoming vehicles, correct?

13 A. No. Correct.

14 Q. And there's no glare from either the
15 Asada restaurant or the IHOP restaurant, correct?

16 A. I would say IHOP is extremely bright.
17 Asada is extremely dark.

18 Q. And when you say, IHOP is extremely
19 bright and Asada is extremely dark, meaning Asada
20 in comparison to IHOP is dark?

21 A. Correct.

22 Q. And the IHOP being extremely bright,
23 that's from the IHOP interior lights and their
24 exterior lights, correct?

25 A. Correct.

1 Q. Did you exchange any contact information
2 with the individual shown in Exhibit Number 18?

3 A. Not that I recall.

4 Q. Anything else that you recall, any
5 interaction or conversation you've had with the
6 individual in Exhibit Number 18?

7 A. On that night?

8 Q. That night.

9 A. We talked at length.

10 Q. Do you recall what you talked at length
11 about with the individual in Exhibit Number 18?

12 A. He just told me what he had witnessed
13 Mr. Lynch doing prior to walking out into the
14 street and lying down.

15 Q. Tell me specifically what you remember
16 that individual in Exhibit Number 18 telling you.

17 A. He just said that he had been in his
18 parking lot. And then he did not know why, but
19 he walked out into the street and laid down.

20 Q. And you stated that the person in
21 Exhibit Number 18 is, you believe, the owner of
22 the Asada restaurant?

23 A. I believe.

24 Q. And do you recall where the owner of the
25 Asada restaurant was when he observed Mr. Lynch?

1 A. It wouldn't have alarmed me as far as
2 damage to my car. It would have alarmed me as,
3 you know, what was in the street, what was that.
4 But I knew -- no damage to the car.

5 Q. And you continued down Wade Hampton how
6 far after you rolled over Mr. Lynch?

7 A. There is a street just beyond here. I
8 mean, as soon as I rolled over him, I was
9 braking, stopping. This car went on, and so it
10 was an immediate turnaround.

11 Q. When you say, this car went on, what do
12 you mean by that?

13 A. The car that was beside me had gone on,
14 so I was able to immediately turn around.

15 Q. When is the first time you applied your
16 brakes? Was it after you rolled over Mr. Lynch?

17 A. As soon as I realized it was a person, a
18 human lying in the street.

19 Q. Okay. So that would have been 5 feet or
20 less before you rolled over him; is that right?

21 A. Yes.

22 Q. And you did a U-turn on Wade Hampton
23 Boulevard?

24 A. Yes.

25 Q. And then you parked your Range Rover on

1 forward.

2 Q. Were you reaching over into your seat or
3 in the back seat for anything?

4 A. No. Looking straight ahead.

5 Q. And both hands on the wheel?

6 A. Absolutely, yes.

7 Q. Did you have your seatbelt on?

8 A. Yes.

9 Q. And you told us that the weather was
10 dry, the roads were dry, the radio wasn't on --

11 A. The radio was on.

12 Q. Excuse me. The radio was on, and you
13 had both hands on the wheel.

14 A. Yes.

15 Q. But do you consider the radio being on a
16 distraction to you?

17 A. No.

18 Q. So it would be fair to say that as you
19 proceeded down Wade Hampton before this incident
20 with Mr. Lynch occurred that you had no
21 distractions affecting your ability to safely
22 drive, correct?

23 A. No distractions.

24 Q. So I'm correct, right?

25 A. Correct.

1 Q. When you're operating a vehicle, you
2 would agree with me that it is never permissible
3 to you to jeopardize the safety and wellbeing of
4 persons on or about a roadway, correct?

5 A. Correct.

6 Q. And you would agree with me that at all
7 times when you're operating a vehicle, you have
8 the duty and obligation to pay attention to your
9 driving the entire time, correct?

10 A. Correct.

11 Q. Including paying attention to other
12 vehicles and pedestrians on or about the roadway
13 including Wade Hampton Boulevard, correct?

14 A. Correct.

15 Q. And with respect to you applying the
16 brakes within that 5 feet or less of you rolling
17 over Mr. Lynch, did you aggressively apply the
18 brakes or did you tap them? Tell me about that.

19 A. I would call it a tap because there was
20 no time to -- I tapped as hard as I could to
21 stop, swerved all at the same time and then
22 rolled forward to safely do a U-turn and applied
23 my brakes in order to do that.

24 Q. And where was the car to your left when
25 your wheels rolled over Mr. Lynch? Behind you?

1 In front of you?

2 A. Beside me.

3 Q. Directly beside you?

4 A. Slightly edging forward ahead of me.

5 Q. And how long had that car been to your
6 left?

7 A. We had traveled along together for at
8 least -- he was there the entire time that I was
9 driving on Wade Hampton.

10 Q. If that other Range Rover to your left
11 had not been there, would you have been able to
12 swerve entirely into that lane and avoid rolling
13 over Mr. Lynch?

14 A. No. No.

15 MS. STACY: Objection. Calls for
16 speculation. And you could still answer.

17 THE WITNESS: Okay.

18 Q. What type of clothing did Mr. Lynch have
19 on?

20 A. I just remember it being dark.

21 Q. His --

22 A. His clothing being dark.

23 Q. Did you observe Mr. Lynch at the scene
24 after the incident occurred?

25 A. After, I did.

1 Q. And Exhibit Number 3 is the written
2 statement you prepared on December 16th, 2021, at
3 the scene of the incident involving Mr. Lynch,
4 correct?

5 A. Uh-huh.

6 Q. You have to say yes.

7 A. Yes.

8 Q. Now, at the top of Exhibit Number 3,
9 there's what we call redacted boxes, those black
10 boxes at the very top. Do you see those?

11 A. Yes.

12 Q. And it looks like one entry has DOB,
13 which I believe is date of birth. And did you
14 provide your date of birth on this statement, on
15 Exhibit Number 3, if you recall?

16 A. I don't recall. It could have been
17 taken from my driver's license.

18 Q. And is the DOB handwriting at the top of
19 Exhibit Number 3 your handwriting?

20 A. I can't tell.

21 Q. And it looks like below DOB, it has
22 phone in the upper center of Exhibit Number 3.
23 Is that your handwriting?

24 A. That does not look like my handwriting.

25 Q. And then Exhibit Number 3, it provides,

1 I, and then there's a blank with a handwritten
2 name, Angela Einstein. Is that Angela Einstein
3 at the top of Exhibit Number 3 your handwriting?

4 A. It is.

5 Q. And then taking a look at Exhibit
6 Number 3, the paragraph that begins, I am 55, and
7 then the handwriting in that section, is all of
8 that your handwriting?

9 A. Yes.

10 Q. And is Exhibit Number 3 the statement
11 you reviewed in preparing for your deposition
12 today?

13 A. Yes.

14 Q. And what I want you to do is take a look
15 at Exhibit Number 3. Go ahead and read it fully
16 for me, please, and tell me when you've done
17 that.

18 A. Okay.

19 Q. And is there anything in Exhibit
20 Number 3 -- now that you've read it and that
21 you're under oath, is there anything in Exhibit
22 Number 3 that you want to change?

23 A. I would say that I did go into the lane
24 beside me because I remember expecting to
25 sideswipe that car as I swerved.

1 THE WITNESS: Okay.

2 A. I did say that as an explanation of why
3 I was boxed in, but I know that I swerved. And
4 there's no way I did not go into that lane, and
5 this was a split-second thought prior to rolling
6 over Mr. Lynch.

7 Q. And looking at the top portion of
8 Exhibit Number 3, it provides, I, Angela Einstein
9 do hereby give freely and voluntarily this
10 statement to -- do you know whose handwriting
11 that is?

12 A. I'm assuming it is an officer.

13 Q. It looks to me like a name, Davis, on
14 there. Do you recall speaking with anybody or
15 somebody introducing themselves as a Davis?

16 A. I don't recall the name, but that could
17 be the other officer that I did not know in one
18 of these other --

19 Q. Exhibits?

20 A. -- exhibits, yes.

21 Q. Looking at Exhibit Number 3, it has,
22 witnesses, R. Hamilton. Do you know who R.
23 Hamilton is?

24 A. She is the other officer, I believe.

25 Q. And the signature on Exhibit Number 3,

| | | |
|-------------------------|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE 13 TH JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE |) | CASE NO. 2022-CP-23-03510 |
| |) | |
| ROGER WAYNE LYNCH, |) | |
| |) | |
| PLAINTIFF, |) | AMENDED ORDER GRANTING |
| |) | SUMMARY JUDGMENT TO |
| v. |) | DEFENDANT |
| |) | |
| ANGELA WEST EINSTEIN, |) | |
| |) | |
| DEFENDANT. |) | |
| _____ |) | |

A hearing on Defendant Angela West Einstein's Motion for Summary Judgment was held on March 4, 2024, in the Greenville County Courthouse in the subject case. After due and careful consideration of the parties' arguments, memoranda and supporting materials, the Court finds that Plaintiff failed to show the existence of a genuine issue of material fact as to Defendant's negligence and, therefore, grants summary judgment in favor of Defendant Angela West Einstein.

Procedural History

This is an automobile-pedestrian personal injury case. Plaintiff was struck by Defendant's vehicle as he was lying down, drunk, in Defendant's lane of Wade Hampton Boulevard, at night, in the dark, wearing dark clothing. Plaintiff initiated this lawsuit against Angela West Einstein on July 5, 2022. The parties exchanged written discovery and completed the depositions of Plaintiff Roger Wayne Lynch; Defendant Angela West Einstein; and officer Rachel L. Hamilton. Defendant's motion for summary judgment was filed on January 29, 2024. Plaintiff submitted a Memorandum in Opposition to Defendant's Motion.

The court held a hearing on Defendant's Motion for Summary Judgment on March 4, 2024. Plaintiff was represented by Christopher Joseph McCool of the O'Shea Law Firm, LLC, and

Defendant was represented by Adam Peoples and Samuel R. Velasquez of Hall Booth Smith, PC. In supplement of Defendant's Motion, Defendant's attorneys provided a tabbed binder to the Court and Plaintiff's counsel containing materials in support of Defendant's Motion for Summary Judgment which was received, reviewed, and relied upon herein. The binder, including tabs one through twelve, is made a part of the record in this case. Those materials were subsequently filed and made a part of the record as Defendant Angela West Einstein's Exhibits In Support of Motion to Alter/Amend Judgment Pursuant to SCRCP 59(e) and are referenced herein.

Standard of Review

S.C. R. Civ. P. 56(c) sets forth the standard for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The South Carolina Supreme Court has consistently held that a Motion for Summary Judgment must be granted where the undisputed evidence shows no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Laughridge v. Parkinson*, 403 S.E.2d 120, 122 (S.C. 1991) (quoting *S.C. Elec. & Gas Co. v. Combustion Engineering, Inc.*, 322 S.E.2d 453, 457 (S.C. Ct. App. 1984)). In applying Rule 56(c), South Carolina courts apply the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion to show a "reasonable inference" to be drawn from the evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023).

Factual Background

On the evening of December 16, 2021, at or around 10 p.m., Plaintiff stood at a bus stop just south of the intersection of US-29/Wade Hampton Boulevard and Batesview Drive in

Greenville, Greenville County, South Carolina. Wade Hampton Boulevard is a six-lane highway that serves as one of the main corridors to and from Greenville.

A. Testimony of Plaintiff

According to Plaintiff's deposition taken June 6, 2023, sometime after 9 p.m., the Plaintiff took a city bus to Wade Hampton Boulevard, which is reportedly near Plaintiff's mother's apartment. [Exhibit A, Deposition of Plaintiff, p. 37]. The city bus dropped off Plaintiff on Wade Hampton Boulevard, the side opposite an IHOP. [Exhibit A, Deposition of Plaintiff, p. 40-41]. The last thing Plaintiff recalls is going across the street. [Exhibit A, Deposition of Plaintiff, p. 30]. Plaintiff does not recall the time of day the accident occurred, what he was wearing or whether he used a crosswalk. [Exhibit A, Deposition of Plaintiff, p. 43-44]. Plaintiff does not have a reason to believe that the police report is inaccurate. [Exhibit A, Deposition of Plaintiff, p. 45]. Plaintiff does not recall his statements to the police. [Exhibit A, Deposition of Plaintiff, p. 70]. Plaintiff does not dispute the EMS report that he had the smell of alcohol on his breath. [Exhibit A, Deposition of Plaintiff, p. 80]. Plaintiff argued that, even if a medical event resulted in him lying in the roadway, Einstein was still negligent "by hitting me." [Exhibit A, Deposition of Plaintiff, p. 87-90].

Plaintiff's Medical Records

According to Plaintiff's medical records, on the night of the subject accident, at Greenville Memorial Hospital, Plaintiff's treating provider noted "alcohol intoxication on arrival, high risk for withdrawal." [Exhibit B]. A blood test reported an alcohol level of 99; the reference (or normal) range for this test is a level of 10 or less. [Exhibit C]. According to Plaintiff's prior medical records produced in discovery in this litigation, Plaintiff has a history of collapsing secondary to excessive alcohol consumption and failing to take insulin and/or oral diabetic agents. On January 24, 2021 (roughly 11 months before the subject accident), Greenville County EMS transported Plaintiff to

Greenville Memorial Hospital after he was found intoxicated and unconscious lying on the side of the road. [Exhibit E]. After Plaintiff was treated for hypoglycemia, he reported to his providers that he had been out for a night of drinking and smoking crack. [Exhibit E]. Additionally, on Thursday, November 25, 2021 (roughly 3 weeks before the subject accident), Plaintiff was transported by Greenville County EMS to Greenville Memorial Hospital for altered mental status as a result of hypoglycemia and alcohol intoxication. [Exhibit F]. Again, Plaintiff admitted to medical providers that he had been drinking alcohol and smoking crack all day. [Exhibit F]. Plaintiff further revealed that he had not taken any insulin or oral diabetic agents for three to four days. [Exhibit F].

These medical records show that Plaintiff knew or should have known that failing to take medication for his diabetes and/or consuming alcohol could lead to him losing consciousness and collapsing, including in locations where he may be susceptible to further injury.

B. Testimony of Rachel Hamilton

Officer Rachel Hamilton, a police officer with the Greenville City Police Department, responded to the scene of the accident and testified that she found Plaintiff in the roadway, where he was receiving medical aid. [Exhibit G, Deposition of Rachel Hamilton, p. 14]. Thereafter, Officer Hamilton was the primary officer investigating the scene and spoke with multiple witnesses. [Exhibit G, Deposition of Rachel Hamilton, p. 22]. Officer Hamilton testified there was no indication Einstein was speeding at the time of the accident. [Exhibit G, Deposition of Rachel Hamilton, p. 32-33]. Officer Hamilton also said, after speaking with Einstein, there was no reason to believe Einstein was impaired. [Exhibit G, Deposition of Rachel Hamilton, p. 33]. Officer Hamilton described this part of Wade Hampton Boulevard as being “very dark” with “not a lot of streetlights.” [Exhibit G, Deposition of Rachel Hamilton, p. 18].

Following the accident, Officer Hamilton spoke with Plaintiff, and during their conversation, Plaintiff admitted that he had wandered into the roadway. [Exhibit G, Deposition of Rachel Hamilton, p. 37-38]. Plaintiff further admitted to “drinking a fifth of alcoholic beverage prior to the incident....” [Exhibit G, Deposition of Rachel Hamilton, p. 36-37].

Officer Hamilton testified that, upon an investigation, Plaintiff was determined to be at fault for the accident. [Exhibit G, Deposition of Rachel Hamilton, p. 20]. Officer Hamilton did not determine the fault until after speaking with Plaintiff. [Exhibit G, Deposition of Rachel Hamilton, p. 39]. Officer Hamilton described the reasoning behind her determination as follows:

[Mrs. Einstein] was driving straight in her roadway and she didn't have to stop or anything like that. There was no crosswalk [at the location of the collision]. There was no . . . reason for [Plaintiff] to be in the roadway at the area that he was in. So it would have been pedestrian [sic] in the roadway, and he would have been at fault.

[Exhibit G, Deposition of Rachel Hamilton, p. 34]. Nothing discovered during Officer Hamilton's investigation led her to dispute that Plaintiff was lying in the street at the time of the accident. [Exhibit G, Deposition of Rachel Hamilton, p. 26-27]. Officer Hamilton ultimately described the accident as “unavoidable,” and that Einstein did nothing wrong. [Exhibit G, Deposition of Rachel Hamilton, p. 43].

C. Statement of Lemuel Gaines

At the time of the events in question, Gaines was driving in the lane immediately to the left of Einstein. [Exhibit D, Statement of Lemuel Gaines]. After the accident, Gaines gave a sworn statement to investigating officers. [Exhibit D, Statement of Lemuel Gaines]. According to Gaines, after passing the IHOP, he thought there was an animal in the road. He also asserted that as their vehicles approached Plaintiff's unconscious body, Mrs. Einstein “didn't have time to stop/slow and struck the man.” [Exhibit D, Statement of Lemuel Gaines] Gaines stated that Plaintiff was wearing very dark apparel and therefore, he could not be seen. [Exhibit D, Statement of Lemuel

Gaines]. Finally, Gaines stated that hitting the Plaintiff was “unavoidable.” [Exhibit D, Statement of Lemuel Gaines].

D. Testimony of Defendant Angela Einstein

On the evening of the events in question, Einstein was leaving a home in Paris Mountain, SC where she had dropped off her future son-in-law at her daughter’s work party. [Exhibit H, Deposition of Angela Einstein, p. 44]. Einstein was driving north on Wade Hampton Boulevard, a six-lane highway. Einstein was driving in the far right of three (3) lanes northbound, next to the curb. [Exhibit H, Deposition of Angela Einstein, p. 56]. Another vehicle was in the lane immediately to the left of Einstein, so they were driving side-by-side. [Exhibit H, Deposition of Angela Einstein, p. 56]. Einstein was traveling at or just below the speed limit of 45 miles per hour on Wade Hampton. [Exhibit H, Deposition of Angela Einstein, p. 83]. Einstein was driving with both hands on the wheel, looking straight forward. Einstein described the area in question as extremely dark. [Exhibit H, Deposition of Angela Einstein, p. 61].

As soon as Einstein saw a person lying in the street, she applied her brakes as hard as she could. [Exhibit H, Deposition of Angela Einstein, p. 72, 84]. Einstein also testified that she was boxed in but swerved upon seeing Plaintiff lying in the road. Einstein was faced with a split-second decision prior to rolling over Plaintiff. [Exhibit H, Deposition of Angela Einstein, p. 93]. Einstein recalls expecting to sideswipe the car beside her as she swerved but did not. [Exhibit H, Deposition of Angela Einstein, p. 90-91]. Even if the other vehicle were not in the lane immediately to the left of Einstein, Einstein testified that she still would not have been able to avoid Plaintiff. [Exhibit H, p. 85. Einstein described Plaintiff’s clothing at the time of the incident as “dark.” [Exhibit H, Deposition of Angela Einstein, p. 85]. Einstein testified to speaking to one witness at the scene

who stated they saw Plaintiff walk out onto Wade Hampton Boulevard and lie down. [Exhibit H, Deposition of Angela Einstein, p. 69].

Applicable Law

To establish negligence under South Carolina law, the plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty and that the breach was the proximate cause of the plaintiff's injuries. *Bloom v. Ravoir*, 529 S.E.2d 710, 712 (S.C. 2000). Stated differently, “negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation; or doing what such a person, under the existing circumstances, would not have done.” *Jones v. Am. Fid. & Cas. Co.*, 43 S.E.2d 355, 359 (S.C. 1947) (quotation marks omitted). The burden in a negligence case is always on the party asserting the claim. Ralph King Anderson, Jr., Anderson’s South Carolina Request to Charge – Civil, § 20-1 (2d ed.). A plaintiff may not rely on mere speculation or conjecture. *Legette v. Smith*, 220 S.E.2d 429, 430 (S.C. 1975). As the Supreme Court of South Carolina observed in *King v. J.C. Penney Co.*, 120 S.E.2d 229, 230 (S.C. 1961),

In this State it is well settled that the burden rests upon the party to prove negligence. This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence In order, therefore, for a plaintiff to recover damages, she must prove by the greater weight or preponderance of the evidence not only the injury but also that it was caused by the actionable negligence of the defendant.

In *Bloom*, on December 23, 1994, at or around 6:30 p.m., respondent pedestrian Bloom testified to looking both ways before crossing Meeting Street in Charleston, South Carolina. *Bloom*, 529 S.E.2d at 711. Bloom was wearing dark clothing, and “[t]here was a misty rain falling” *Id.* Bloom chose not to cross Meeting Street at the traffic lights, crosswalks and “walk/don’t walk signals” at either end of the relevant block of Meeting Street. *Id.* One witness saw Bloom drinking in the lobby of a hotel. *Id.*, at 712. Ravoir testified to stopping a traffic light, “pull[ing]

forward, hear[ing] his [Ravoira's] wife yell his name, and s[eeing] something out of his peripheral vision." *Id.* Ravoira then heard a thump then "[a]fter a pause, the car's windshield shattered." *Id.* The witnesses to the collision corroborated Ravoira's testimony, including the speed of Ravoira's vehicle and the inability to see Bloom. *Id.*

At issue on appeal was whether the Court of Appeals erred in reversing the trial court's grant of summary judgment.

To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *E.g., Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant. *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991).

Bloom, 529 S.E.2d at 712–13. "In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." *Id.*, at 713 (citing *Creech v. S.C. Wildlife & Marine Res. Dep't*, 491 S.E.2d 571, 575 (S.C. 1997)).

The South Carolina Supreme Court held that "a verdict for Bloom is not reasonably possible under the facts of this case." *Bloom*, 529 S.E.2d at 713.

The only inference to be drawn from this evidence is that Bloom entered the street quickly and without any warning to drivers. Moreover, although there were crosswalks and traffic signals at both corners, Bloom chose to cross in the middle of the block. Thus, by Bloom's own testimony, he breached his duties as a pedestrian. S.C. Code Ann. § 56–5–3150 (1991). This breach is compounded by the fact that it was dark and rainy out, and Bloom—who was dressed in dark clothing—quickly entered the street from between two parked vehicles.

Bloom, 529 S.E.2d at 713. The Court further found that "the issues of fact highlighted by the Court of Appeals do not rise to the level of 'material' issues of fact because, as a matter of law, the evidence shows that Bloom was more than fifty percent negligent." *Id.*, at 713. "Where

evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury." *Id.*, at 714 (citing *Hopson v. Clary*, 465 S.E.2d 305, 307 (S.C. Ct. App. 1996)).

Legal Analysis

Based on the testimony of witnesses and information obtained during the course of discovery in this case, Einstein complied with the applicable rules of the road. Therefore, the undisputed facts in the case show that Einstein did use ordinary care at the time of the incident and, therefore, was not negligent.

The evidence presented shows that it was dark on the night in question; Plaintiff entered Wade Hampton Boulevard at a place where there was not a crosswalk and where there was no lighting; and Plaintiff was lying in the roadway with his head facing the curb and his body jutting out into the lane. The evidence presented further shows that Einstein was not speeding at the time of the accident; Einstein was operating her vehicle appropriately in her lane of travel at the time of the accident; Einstein applied her brakes; Einstein attempted to avoid accident; and it was determined by law enforcement that Einstein could not have reasonably avoided striking Plaintiff. South Carolina law is clear: the fact that an accident occurred is not evidence of negligence. *King*, 120 S.E.2d at 230.

Plaintiff argues that because there was an impact between Einstein's vehicle and Plaintiff, negligence may be inferred. *Id.* Such an argument is speculation and, in contravention of South Carolina law, presumes negligence on the part of Einstein. *Legette v. Smith*, 220 S.E.2d at 430; Anderson's South Carolina Request to Charge – Civil, § 20-1.

Instead, Plaintiff entered Wade Hampton Boulevard in violation of South Carolina Code Section 56-5-3150 which provides:

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Plaintiff 1) crossed Wade Hampton not by a traffic-control signal, 2) outside of a crosswalk and 3) failed to yield to the right-of-way to Einstein's vehicle. Thus, Plaintiff violated South Carolina law and was negligent.

Therefore, as in *Bloom*, the only inference a reasonable juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault.

Accordingly, this Court finds there is no genuine issue as to any material fact regarding whether Einstein failed to use ordinary care at the time of the incident. Plaintiff has not produced any evidence that Einstein breached a duty of care she owed to him. *Kitchen Planner, LLC v. Friedman*, 440 S.C. 456 (2023). The evidence shows Defendant did what a reasonable and prudent person would ordinarily have done under the circumstances. Plaintiff thereby cannot meet his burden on an essential element of his claim. Furthermore, the only inference a reasonable juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault. *Bloom*, 529 S.E.2d at 714; For all of these reasons, Defendant Einstein is entitled to judgment as a matter of law and dismissal of Plaintiff's lawsuit with prejudice.

CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Summary Judgment is **GRANTED**; and it is further **ORDERED, ADJUDGED, AND DECREED** that this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

_____, 2024

The Honorable G.D. Morgan Jr.
Thirteenth Judicial Circuit
Greenville, South Carolina

| | | |
|-------------------------|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE 13 TH JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE |) | CASE NO. 2022-CP-23-03510 |
| |) | |
| ROGER WAYNE LYNCH, |) | |
| |) | |
| PLAINTIFF, |) | DEFENDANT ANGELA WEST |
| |) | EINSTEIN'S MOTION FOR |
| v. |) | SUMMARY JUDGMENT AND |
| |) | INCORPORATED MEMORANDUM |
| ANGELA WEST EINSTEIN, |) | IN SUPPORT OF SUMMARY |
| |) | JUDGMENT |
| DEFENDANT. |) | (HEARING REQUESTED) |
| |) | |

PLEASE TAKE NOTICE THAT Defendant Angela West Einstein ("Defendant"), by and through her undersigned attorneys, hereby moves this Honorable Court pursuant to SCRCP Rule 56 for an Order granting her summary judgment as to all claims asserted by Plaintiff in the subject case. Defendant is entitled to an order granting her summary judgment based on the undisputed evidence that Defendant did not breach any duty of care owed to Plaintiff at the time of the incident. Additionally, Plaintiff's own negligence, as a matter of law, was greater than any negligence attributable to Defendant and the determinative factor in causing the incident.

Procedural History

This is an automobile-pedestrian personal injury case. Plaintiff was struck by Defendant's vehicle as he was lying down, drunk, in Defendant's lane of Wade Hampton Boulevard, at night, in the dark, wearing dark clothing. Plaintiff initiated this lawsuit against Angela West Einstein on July 5, 2022. The parties exchanged written discovery and completed the depositions of Plaintiff Roger Wayne Lynch; Defendant Angela West Einstein; and officer Rachel L. Hamilton. Defendant's motion for summary judgment was filed on January 29, 2024. The court held a hearing on Defendant's Motion for Summary Judgment on March 4, 2024. Plaintiff was represented by

Christopher Joseph McCool of the O'Shea Law Firm, LLC, and Defendant was represented by Adam Peoples and Samuel R. Velasquez of Hall Booth Smith, PC. On April 3, 2024, the Court granted Defendant's Motion for Summary Judgment, and on April 29, 2024, the Court vacated the judgment while allowing the parties to refile any motions for summary judgment.

Standard of Review

S.C. R. Civ. P. 56(c) sets forth the standard for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The South Carolina Supreme Court has consistently held that a Motion for Summary Judgment must be granted where the undisputed evidence shows no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Laughridge v. Parkinson*, 403 S.E.2d 120, 122 (S.C. 1991) (quoting *S.C. Elec. & Gas Co. v. Combustion Engineering, Inc.*, 322 S.E.2d 453, 457 (S.C. Ct. App. 1984)). In applying Rule 56(c), South Carolina courts apply the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion to show a "reasonable inference" to be drawn from the evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023).

Factual Background

On the evening of December 16, 2021, at or around 10 p.m., Plaintiff stood at a bus stop just south of the intersection of US-29/Wade Hampton Boulevard and Batesview Drive in Greenville, Greenville County, South Carolina. Wade Hampton Boulevard is a six-lane highway that serves as one of the main corridors to and from Greenville.

A. Testimony of Plaintiff

According to Plaintiff's deposition taken June 6, 2023, sometime after 9 p.m., Plaintiff took a city bus to Wade Hampton Boulevard, which is reportedly near Plaintiff's mother's apartment. [Exhibit A, Deposition of Plaintiff, p. 37]. The city bus dropped Plaintiff on Wade Hampton Boulevard, the side opposite an IHOP. [Exhibit A, Deposition of Plaintiff, p. 40-41]. The last thing Plaintiff recalls is going across the street. [Exhibit A, Deposition of Plaintiff, p. 30]. Plaintiff does not recall the time of day the accident occurred, what he was wearing or whether he used a crosswalk. [Exhibit A, Deposition of Plaintiff, p. 43-44]. Plaintiff does not have a reason to believe that the police report is inaccurate. [Exhibit A, Deposition of Plaintiff, p. 45]. Plaintiff does not recall his statements to the police. [Exhibit A, Deposition of Plaintiff, p. 70]. Plaintiff does not dispute the EMS report that he had the smell of alcohol on his breath. [Exhibit A, Deposition of Plaintiff, p. 80]. Plaintiff has argued that, even if a medical event resulted in him lying in the roadway, Einstein was still negligent "by hitting me." [Exhibit A, Deposition of Plaintiff, p. 87-90].

B. Plaintiff's Medical Records

According to Greenville Memorial Hospital records from the night of the subject accident, Plaintiff's treating provider noted "alcohol intoxication on arrival, high risk for withdrawal." [Exhibit B, Prisma Health Greenville Memorial Hospital (GMH) Orthopedic Surgery record from 12/16/21].¹ A blood test reported an alcohol level of 99; the reference (or normal) range for this test is a level of 10 or less. [Exhibit C, Ethyl Alcohol Results from 12/16/21].² According to Plaintiff's prior medical records produced in discovery, Plaintiff has a history of collapsing

¹ These records are incorporated by reference but will be submitted at a hearing scheduled at the Court's discretion. Upon information and belief, Plaintiff's counsel objects to Exhibit B on the basis that it is Plaintiff's protected health information.

² These records are incorporated by reference but will be submitted at a hearing scheduled at the Court's discretion. Upon information and belief, Plaintiff's counsel objects to Exhibit C on the basis that it is Plaintiff's protected health information.

secondary to excessive alcohol consumption and failing to take insulin and/or oral diabetic agents. On January 24, 2021 (roughly 11 months before the subject accident), Greenville County EMS transported Plaintiff to Greenville Memorial Hospital after he was found intoxicated and unconscious lying on the side of the road. [Exhibit E, GMH Emergency Department/Greenville County EMS record from 1/24/21].³ After Plaintiff was treated for hypoglycemia, he reported to his providers that he had been out for a night of drinking and smoking crack. [Exhibit E]. Additionally, on Thursday, November 25, 2021 (roughly 3 weeks before the subject accident), Plaintiff was transported by Greenville County EMS to Greenville Memorial Hospital for altered mental status as a result of hypoglycemia and alcohol intoxication. [Exhibit F, GMH Emergency Department record from 11/25/21].⁴ Again, Plaintiff admitted to medical providers that he had been drinking alcohol and smoking crack all day. [Exhibit F]. Plaintiff further revealed that he had not taken any insulin or oral diabetic agents for three to four days. [Exhibit F].

These medical records show that Plaintiff knew or should have known that failing to take medication for his diabetes and/or consuming alcohol could lead to him losing consciousness and collapsing, including in locations where he may be susceptible to further injury.

C. Testimony of Rachel Hamilton

Officer Rachel Hamilton, a police officer with the Greenville City Police Department, responded to the scene of the accident and testified that she found Plaintiff in the roadway, where he was receiving medical aid. [Exhibit G, Deposition of Rachel Hamilton, p. 14]. Thereafter, Officer Hamilton was the primary officer investigating the scene and spoke with multiple

³ These records are incorporated by reference but will be submitted at a hearing scheduled at the Court's discretion. Upon information and belief, Plaintiff's counsel objects to Exhibit E on the basis that it is Plaintiff's protected health information.

⁴ These records are incorporated by reference but will be submitted at a hearing scheduled at the Court's discretion. Upon information and belief, Plaintiff's counsel objects to Exhibit F on the basis that it is Plaintiff's protected health information.

witnesses. [Exhibit G, Deposition of Rachel Hamilton, p. 22]. Officer Hamilton testified there was no indication Einstein was speeding at the time of the accident. [Exhibit G, Deposition of Rachel Hamilton, p. 32-33]. Officer Hamilton also said, after speaking with Einstein, there was no reason to believe Einstein was impaired. [Exhibit G, Deposition of Rachel Hamilton, p. 33]. Officer Hamilton described this part of Wade Hampton Boulevard as being “very dark” with “not a lot of streetlights.” [Exhibit G, Deposition of Rachel Hamilton, p. 18].

Following the accident, Officer Hamilton spoke with Plaintiff, and during their conversation, Plaintiff admitted that he had wandered into the roadway. [Exhibit G, Deposition of Rachel Hamilton, p. 37-38]. Plaintiff further admitted to “drinking a fifth of alcoholic beverage prior to the incident...” [Exhibit G, Deposition of Rachel Hamilton, p. 36-37].

Officer Hamilton testified that, upon an investigation, Plaintiff was determined to be at fault for the accident. [Exhibit G, Deposition of Rachel Hamilton, p. 20]. Officer Hamilton did not determine the fault until after speaking with Plaintiff. [Exhibit G, Deposition of Rachel Hamilton, p. 39]. Officer Hamilton described the reasoning behind her determination as follows:

[Mrs. Einstein] was driving straight in her roadway and she didn't have to stop or anything like that. There was no crosswalk [at the location of the collision]. There was no . . . reason for [Plaintiff] to be in the roadway at the area that he was in. So it would have been pedestrian [sic] in the roadway, and he would have been at fault.

[Exhibit G, Deposition of Rachel Hamilton, p. 34]. Nothing discovered during Officer Hamilton's investigation led her to dispute that Plaintiff was lying in the street at the time of the accident. [Exhibit G, Deposition of Rachel Hamilton, p. 26-27]. Officer Hamilton ultimately described the accident as “unavoidable,” and that Einstein did nothing wrong. [Exhibit G, Deposition of Rachel Hamilton, p. 43].

D. Statement of Lemuel Gaines

At the time of the events in question, Gaines was driving in the lane immediately to the left of Einstein. [Exhibit D, Statement of Lemuel Gaines]. After the accident, Gaines gave a sworn statement to investigating officers. [Exhibit D, Statement of Lemuel Gaines]. According to Gaines, after passing the IHOP, he thought there was an animal in the road. He also asserted that as their vehicles approached Plaintiff's unconscious body, Mrs. Einstein "didn't have time to stop/slow and struck the man." [Exhibit D, Statement of Lemuel Gaines] Gaines stated that Plaintiff was wearing very dark apparel and therefore, he could not be seen. [Exhibit D, Statement of Lemuel Gaines]. Finally, Gaines stated that hitting the Plaintiff was "unavoidable." [Exhibit D, Statement of Lemuel Gaines].

E. Testimony of Defendant Angela Einstein

On the evening of the events in question, Einstein was leaving a home in Paris Mountain, SC where she had dropped off her future son-in-law at her daughter's work party. [Exhibit H, Deposition of Angela Einstein, p. 44]. Einstein was driving north on Wade Hampton Boulevard, a six-lane highway. Einstein was driving in the far right of three (3) lanes northbound, next to the curb. [Exhibit H, Deposition of Angela Einstein, p. 56]. Another vehicle was in the lane immediately to the left of Einstein, so they were driving side-by-side. [Exhibit H, Deposition of Angela Einstein, p. 56]. Einstein was traveling at or just below the speed limit of 45 miles per hour on Wade Hampton. [Exhibit H, Deposition of Angela Einstein, p. 83]. Einstein was driving with both hands on the wheel, looking straight forward. Einstein described the area in question as extremely dark. [Exhibit H, Deposition of Angela Einstein, p. 61].

As soon as Einstein saw a person lying in the street, she applied her brakes as hard as she could. [Exhibit H, Deposition of Angela Einstein, p. 72, 84]. Einstein also testified that she was boxed in but swerved upon seeing Plaintiff lying in the road. Einstein was faced with a split-second

decision prior to rolling over Plaintiff. [Exhibit H, Deposition of Angela Einstein, p. 93]. Einstein recalls expecting to sideswipe the car beside her as she swerved but did not. [Exhibit H, Deposition of Angela Einstein, p. 90-91]. Even if the other vehicle was not in the lane immediately to the left of Einstein, Einstein testified that she still would not have been able to avoid Plaintiff. [Exhibit H, p. 85. Einstein described Plaintiff's clothing at the time of the incident as "dark." [Exhibit H, Deposition of Angela Einstein, p. 85]. Einstein testified to speaking to one witness at the scene who stated they saw Plaintiff walk out onto Wade Hampton Boulevard and lie down. [Exhibit H, Deposition of Angela Einstein, p. 69].

Applicable Law

To establish negligence under South Carolina law, the plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty and that the breach was the proximate cause of the plaintiff's injuries. *Bloom v. Ravoira*, 529 S.E.2d 710, 712 (S.C. 2000). Stated differently, "negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation; or doing what such a person, under the existing circumstances, would not have done." *Jones v. Am. Fid. & Cas. Co.*, 43 S.E.2d 355, 359 (S.C. 1947) (quotation marks omitted). The burden in a negligence case is always on the party asserting the claim. Ralph King Anderson, Jr., Anderson's South Carolina Request to Charge – Civil, § 20-1 (2d ed.). A plaintiff may not rely on mere speculation or conjecture. *Legette v. Smith*, 220 S.E.2d 429, 430 (S.C. 1975). As the Supreme Court of South Carolina observed in *King v. J.C. Penney Co.*, 120 S.E.2d 229, 230 (S.C. 1961),

In this State it is well settled that the burden rests upon the party to prove negligence. This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence In order, therefore, for a plaintiff to recover damages, she must prove by the greater weight or preponderance of the evidence not only the injury but also that it was caused by the actionable negligence of the defendant.

In *Bloom*, on December 23, 1994, at or around 6:30 p.m., respondent pedestrian Bloom testified to looking both ways before crossing Meeting Street in Charleston, South Carolina. *Bloom*, 529 S.E.2d at 711. Bloom was wearing dark clothing, and “[t]here was a misty rain falling” *Id.* Bloom chose not to cross Meeting Street at the traffic lights, crosswalks and “walk/don’t walk signals” at either end of the relevant block of Meeting Street. *Id.* One witness saw Bloom drinking in the lobby of a hotel. *Id.*, at 712. Ravoira testified to stopping a traffic light, “pull[ing] forward, hear[ing] his [Ravoira’s] wife yell his name, and s[eeing] something out of his peripheral vision.” *Id.* Ravoira then heard a thump then “[a]fter a pause, the car’s windshield shattered.” *Id.* The witnesses to the collision corroborated Ravoira’s testimony, including the speed of Ravoira’s vehicle and the inability to see Bloom. *Id.*

At issue on appeal was whether the Court of Appeals erred in reversing the trial court’s grant of summary judgment.

To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *E.g.*, *Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under South Carolina’s doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant. *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991).

Bloom, 529 S.E.2d at 712–13. “In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” *Id.*, at 713 (citing *Creech v. S.C. Wildlife & Marine Res. Dep’t*, 491 S.E.2d 571, 575 (S.C. 1997)).

The South Carolina Supreme Court held that “a verdict for Bloom is not reasonably possible under the facts of this case.” *Bloom*, 529 S.E.2d at 713.

The only inference to be drawn from this evidence is that Bloom entered the street quickly and without any warning to drivers. Moreover, although there were crosswalks and traffic signals at both corners, Bloom chose to cross in the middle of the block. Thus, by Bloom's own testimony, he breached his duties as a pedestrian. S.C. Code Ann. § 56-5-3150 (1991). This breach is compounded by the fact that it was dark and rainy out, and Bloom—who was dressed in dark clothing—quickly entered the street from between two parked vehicles.

Bloom, 529 S.E.2d at 713. The Court further found that “the issues of fact highlighted by the Court of Appeals do not rise to the level of ‘material’ issues of fact because, as a matter of law, the evidence shows that Bloom was more than fifty percent negligent.” *Id.*, at 713. “Where evidence of the plaintiff’s greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Id.*, at 714 (citing *Hopson v. Clary*, 465 S.E.2d 305, 307 (S.C. Ct. App. 1996)).

Legal Analysis

Based on the testimony of witnesses and information obtained during the course of discovery in this case, Einstein complied with the applicable rules of the road. Therefore, the undisputed facts in the case show that Einstein exercised ordinary care at the time of the incident and, therefore, was not negligent.

The evidence presented shows that it was dark on the night in question; Plaintiff entered Wade Hampton Boulevard at a place where there was not a crosswalk and where there was no lighting; and Plaintiff was lying in the roadway with his head facing the curb and his body jutting out into the lane. The evidence presented further shows that Einstein was not speeding at the time of the accident; Einstein was operating her vehicle appropriately in her lane of travel; Einstein applied her brakes; Einstein attempted to avoid the accident; and it was determined by law enforcement that Einstein could not have reasonably avoided striking Plaintiff. South Carolina law is clear: the fact that an accident occurred is not evidence of negligence. *King*, 120 S.E.2d at 230.

Plaintiff argues that because there was an impact between Einstein's vehicle and Plaintiff, negligence may be inferred. *Id.* Such an argument is speculation and, in contravention of South Carolina law, presumes negligence on the part of Einstein. *Legette v. Smith*, 220 S.E.2d at 430; Anderson's South Carolina Request to Charge – Civil, § 20-1.

Instead, Plaintiff entered Wade Hampton Boulevard in violation of South Carolina Code Section 56-5-3150 which provides:

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Plaintiff 1) crossed Wade Hampton not by a traffic-control signal, 2) outside of a crosswalk and 3) failed to yield to the right-of-way to Einstein's vehicle. Thus, Plaintiff violated South Carolina law and was negligent. As in *Bloom*, the only reasonable inference a juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault.

Accordingly, there is no genuine issue as to any material fact regarding whether Defendant Einstein failed to use ordinary care at the time of the incident. Plaintiff has not produced any evidence that Einstein breached a duty of care owed to him. *Kitchen Planner, LLC v. Friedman*, 440 S.C. 456 (2023). The evidence shows Defendant did what a reasonable and prudent person would ordinarily have done under the circumstances. Plaintiff thereby cannot meet his burden on an essential element of his claim. Furthermore, the only reasonable inference a juror could make is that Plaintiff's own negligence accounted for more than fifty percent of the fault. *Bloom*, 529 S.E.2d at 714; For all of these reasons, Defendant Einstein is entitled to judgment as a matter of law and dismissal of Plaintiff's lawsuit with prejudice.

CONCLUSION

Based on the foregoing, Defendant Angela West Einstein respectfully submits that she is entitled to an order granting her Motion for Summary Judgment.

Respectfully submitted,

HALL BOOTH SMITH, P.C.

/s/ **Samuel Velasquez**

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Attorneys for Defendant Angela Einstein

May 23, 2024

Mount Pleasant, South Carolina

ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023

ELECTRONICALLY FILED - 2024 May 23 5:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

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|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| |) | |
| |) | |
| COUNTY OF CHARLESTON |) | C/A NO.: 22-CP-22-03510 |

| | | |
|-----------------------|---|-------------------|
| Roger Wayne Lynch, |) | VIDEO |
| |) | DEPOSITION OF |
| Plaintiff, |) | |
| |) | ROGER WAYNE LYNCH |
| |) | |
| vs. |) | April 26, 2023 |
| |) | |
| Angela West Einstein, |) | |
| |) | |
| Defendant. |) | |

Deposition on oral examination of ROGER W. LYNCH, reported by Diane Grubowski, Court Reporter and Notary Public; Said deposition taken pursuant to Notice and in accordance with the South Carolina Rules of Civil Procedure, via Zoom, on Wednesday, the 26th day of April 2023, scheduled for 10:00 a.m. and commencing at the hour of 10:08 a.m.

1 a copy of the police report and the EMS report for
2 the incident. I expect you've never seen these
3 documents before?

4 A No, ma'am.

5 Q Okay. I want to start from the top. If you could,
6 describe for me in your own words what happened on
7 the night of the incident?

8 A Only thing I can say, I got off the city bus going
9 across the street. And after that, I don't know
10 nothing else. I don't.

11 Q You saw a bus across the street?

12 A No. I had got off the bus going to my mother's
13 house to get my medicine. And after that, I don't
14 know what happened. I don't know. All I know is
15 they cut me up in the hospital with two broke legs.

16 Q Let's break that down. You were going to whose
17 house?

18 A My mother's.

19 Q So you were going to your mother's house to get
20 your medicine.

21 A Right.

22 Q What kind of medicine was there that you needed to
23 retrieve?

24 A I needed to get my blood sugar medicine.

25 Q The blood sugar medicine?

1 Q What is your mother's address?

2 A Her address is [REDACTED]
3 [REDACTED]. It should be in the
4 record.

5 Q I am checking now to make sure we have that
6 address. I don't recall seeing that.

7 MR. MCCOOL: I think it's the apartments
8 right by the IHOP.

9 A Right behind IHOP.

10 Q So you took the bus to Wade Hampton Boulevard and
11 it dropped you off right near your mother's
12 apartment?

13 A Yes.

14 Q Do you know the name of that apartment complex?

15 A Huh-uh. [REDACTED]. That will be on the ...
16 inaudible ..., too, I think. I ain't for sure. I
17 didn't know how to get there.

18 MR. MCCOOL: [REDACTED]?

19 A Yes, I think it's [REDACTED]. Right behind IHOP.

20 Q Behind IHOP.

21 A Yeah.

22 Q The apartment number is?

23 MR. MCCOOL: [REDACTED].

24 A [REDACTED].

25 Q Okay. [REDACTED] Greenville,

1 ~~ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN~~
MS. LEAPHART: I can go ask.
2 MS. STACY: Thank you, I don't want to
3 forget to come back to that.
4 (MOMENTARILY OFF THE RECORD)
5 MS. LEAPHART: Clara Mae.
6 MS. STACY: That is a pretty name. Thank
7 you, Mr. Lynch, I'm sorry about that.
8 Q You said a bus dropped you off in front of the IHOP
9 at the bus stop, correct?
10 A Yes.
11 Q Do you typically take the bus to get around town?
12 A Yeah.
13 Q You don't own a car, correct?
14 A No.
15 Q At the time of the incident, had you made it to
16 your mother's apartment yet?
17 A No.
18 Q The bus drop you off, tell me what happened next
19 that you remember.
20 A The bus dropped me off and I was going across the
21 street. I don't remember nothing else.
22 Q All right. So --
23 A I don't remember nothing else.
24 Q The bus dropped you off on which side of the
25 street? On the side of the street with the IHOP or

1 the other side?
2 A Other side.
3 Q Other side. So when the bus drops you off, you
4 have to then cross the street, is that correct?
5 A Yeah.
6 Q Do you remember crossing the street at night?
7 A No. I remember getting out of the bus getting
8 ready to go across the street. My blood sugar
9 level going up and down. I don't have no car.
10 Q And you're sure the bus dropped you off across the
11 street from the IHOP, not on the same side?
12 A Yeah, I'm sure.
13 Q The impact, the reason we're here today. Which
14 side of the street did that occur on?
15 A I don't know.
16 Q You don't know to this day?
17 A No.
18 Q Have you ever been back to the scene of where this
19 happened?
20 A I ain't go back there -- yeah, two or three times,
21 but I can't remember where it happened.
22 Q So no one has told you -- you don't have any
23 understanding of which side of the street this
24 happened on?
25 A Huh-uh.

1 A Uh-huh.

2 ~~ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN~~
~~IS THAT A "yes?"~~
~~Roger Wayne Lynch on 04/26/2023~~

3 A Yeah.

4 Q I know it sounds silly because it's not

5 conversational, it makes it a lot easier for us

6 looking at it later.

7 A Yeah.

8 Q So you step off the bus. You believe you're about

9 to cross the street to go to your mother's

10 apartment, but you don't remember what happens

11 next?

12 A No.

13 Q You understand that you were struck by a vehicle as

14 you sit here today, correct?

15 A Yeah, I understand. Yeah.

16 Q Okay. Do you know who was driving that car?

17 A Nope.

18 Q Do you know what kind of car struck you?

19 A No.

20 Q Do you know which lane that car was in?

21 A Nope.

22 Q Do you know what speed that car was going?

23 A Nope.

24 Q Do you know what other cars were present on the
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25 road at the time?

1 A Nope.

2 Q Do you know what time of day this happened?

3 A Nope.

4 Q Do you know whether it was still daylight or
 5 whether it was already dark outside?

6 A No.

7 Q Do you recall what you were wearing?

8 A No.

9 Q These sound obvious, but we have to walk through
 10 all of this. Do you recall whether there were
 11 people in the surrounding area at the time?

12 A No.

13 Q We're going to go through these accident reports,
 14 I'm going to ask you about some information in
 15 those.

16 A Uh-huh.

17 Q I assume you don't recall, based on what we just
 18 talked about, but we're still going to walk through
 19 it. What I want to know is if you have any
 20 information to contradict these reports. Since you
 21 don't recall, is there anything that would lead you
 22 to believe these reports are not accurate? Is that
 23 fair?

24 A Yes, that's fair.

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25 Q You let me know if you disagree with anything.

1 Okay?

2 A Uh-huh. ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023

3 Q Was anyone else with you at the time of the
4 accident?

5 A No.

6 Q Mr. Lynch, if you'll turn to Exhibit 29, it looks
7 like it's right on top. It's a copy of that police
8 report.

9 A Uh-huh.

10 Q Do you recall speaking with an officer after the
11 incident?

12 A Not -- not really.

13 Q Okay. Do you recall an officer visiting you in the
14 hospital or speaking with you on the telephone
15 after the incident?

16 A Yeah, she called, but I didn't talk to her because
17 I didn't know who it was.

18 Q So you have not spoken with an officer about the
19 incident, to your recollection?

20 A Not to my recollection, no.

21 Q Do you have any memory issues as a result of the
22 incident?

23 A Yeah.

24 Q And we'll talk about that later, I want to make a
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25 note of that.

1 Q Okay. So you have not drank any liquor since you
2 were --

3 A No.

4 Q -- 16 or 17?

5 A No, I don't do that.

6 Q Do you have any understanding of why the officer
7 would have this in her report that you admitted to
8 drinking a fifth?

9 A I don't know.

10 Q Okay.

11 A I don't know what I said. I can't remember what I
12 said.

13 Q Her statement indicates that you also told her that
14 the combination of your drinking and your diabetes
15 had caused you to wander into the roadway.

16 You don't remember saying that, do you?

17 A No.

18 Q And you mentioned having some memory issues since
19 the incident, correct?

20 A A lot of them.

21 Q Do you know whether you were experiencing any
22 memory issues at the time of making this statement?

23 A Yeah.

24 Q You do recall or you don't recall?

25 A I don't recall.

1 Q I'm going to ask you a couple questions about some
2 notes that are in this report. I understand you
3 may not remember, but I'm going to ask anyway just
4 to make sure.

5 On page 1 the EMTs note the smell of alcohol on
6 your breath. Any reason to dispute that?

7 A No.

8 Q Would you be surprised that there was still alcohol
9 on your breath if you had not drank anything since
10 8 a.m. that morning?

11 A It could be.

12 Q There still could be alcohol on your breathe?

13 A Yeah, there could be a smell.

14 Q That's actually all I have for that one.

15 MR. LYNCH: Can we take another break, I
16 have to go to the bathroom.

17 MS. STACY: Absolutely, let's take another
18 break. However long you need, maybe back at
19 11:45. If you need more, take it.

20 (OFF THE RECORD 11:34 - 11:45)

21 MS. STACY: Mr. Lynch, we are back on
22 after another break.

23 Q We were just talking about the incident. I'm going
24 to show you some photographs now. These were
25 actually marked in my client's deposition, so I'm

- 1 Q Mr. Lynch, who do you think is at fault for the
2 incident?
- 3 A She is. ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Roger Wayne Lynch on 04/26/2023
- 4 Q "She is", are you referring to my client?
- 5 A Yes, your client.
- 6 Q Could my client have avoided this accident?
- 7 A I don't know.
- 8 Q Okay.
- 9 A Could she?
- 10 Q Why do you think my client is at fault?
- 11 A Because she had a car. I didn't have no car. She
12 hit me, I didn't hit her. She hit me.
- 13 Q You filed a Complaint against my client asserting
14 some negligence claims, and in fact, a gross
15 negligence claim. I don't expect you to know what
16 that means. What did my client do that was
17 negligent?
- 18 A For hitting me.
- 19 Q She hit you?
- 20 A Yes.
- 21 Q Anything else?
- 22 A For not paying attention. What else? She might
23 have been on the phone, we don't know.
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- 24 Q So on her phone or not paying attention?
- 25 A Yes. Really she's at fault. She's got a car. I

1 ain't got no car.

2 **Q So her owning a car is why she's at fault?**

3 **A Do you see how many people get hit by a car in your**
 4 life?

5 **Q If a person gets hit by a car, is it always the**
 6 driver's fault of the car and not the person?

7 **A I'm not going to say that. I'm not going to speak**
 8 on that.

9 **Q Okay.**

10 **A I speak on what I know, what happened to me.**

11 **Q And you don't know a lot about what happened to you**
 12 --

13 **A No, I don't really know. I don't know what went**
 14 on. I can't tell you something I don't know.

15 **Q Let's talk in hypothetical real quick. If you had**
 16 a medical event that resulted in you lying in the
 17 roadway, would it be my client's fault for hitting
 18 you?

19 **A Yes.**

20 **Q What if she had no time to stop?**

21 **A I ain't going to speak on that. I will not speak**
 22 on that.

23 **Q What if you were wearing dark clothing?**
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24 **A I will not speak on that.**

25 **Q Why are you not speaking on that?**

1 A Because I don't know.

2 Q You don't know.

3 A I ain't going to say something I don't know.
ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
 Roger Wayne Lynch on 04/26/2023

4 Q Okay. I'll represent to you then that my client
 5 testified that she was not on her phone and her
 6 eyes were on the road at the time of the incident.

7 Since you did not see the car or see my client
 8 driving the car, do you have any basis to dispute
 9 that?

10 MR. MCCOOL: Objection.

11 A No. I ain't got nothing to say on that.

12 Q Nothing to say. You are here for your deposition
 13 today. You filed a lawsuit against my client. We
 14 are defending this. We have the right to depose
 15 you and to ask you these questions.

16 A Yeah, I know that.

17 Q You are under oath, so unfortunately you can't --
 18 unless your attorney instructs you not to answer,
 19 you do have to answer the questions.

20 A Okay.

21 Q I understand that these are difficult questions and
 22 you may not want to speak on it. But you filed the
 23 lawsuit, you dragged us into this, so I'm going to
 24 ask you some questions --
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25 MR. MCCOOL: Objection.

1 Q -- Mr. Lynch.

2 MR. MCCOOL: Objection. Being combative.

3 Q You don't want to speak on this. My client
 4 testified she was not on her phone.

5 Any reason to dispute that?

6 MR. MCCOOL: Objection.

7 A (Non-verbal response)

8 Q Do you have any reason -- I'm sorry. Will you
 9 answer that verbally.

10 A No.

11 Q My client stated that she was paying attention to
 12 the road, her eyes were on the road. Are you aware
 13 of anything that would make that testimony
 14 untruthful?

15 MR. MCCOOL: Objection.

16 A No.

17 Q To ask this again, because I believe you did not
 18 want to answer earlier. What specifically did my
 19 client do wrong?

20 A By hitting me.

21 Q Do you know whether my client had time to avoid
 22 hitting you?

23 A I don't know.

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24 Q Do you know whether there were any other cars
 25 around my client?

EXHIBIT D

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 21-087347DATE 12/16/2021

I, Lemuel Gaines do hereby give freely and voluntarily this statement to
M. Halpay #857 and _____ who have identified themselves as officers of
the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and
that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice,
that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised
any reward to make this statement and do so voluntarily. I understand that I have the right to stop at any time. I hereby waive these rights.

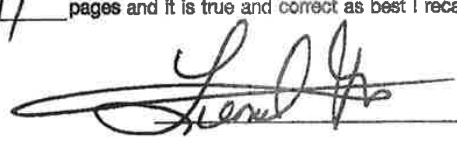
I am _____ years old and reside at _____ Greenville SC _____

Driving towards downtown, I was riding beside (left) of white
range rover. Suddenly after passing IHOP on right I thought an animal
was in the road. I saw clearly as I approached it was a man
that fell on the road and the white Range Rover didn't have
time to stop/slow and struck the man. He was in very
dark clothes, so he could not be seen and was unavoidable.

2021 DEC 17 A 6:03

I have read or had read to me, the above statement of 1/1 pages and it is true and correct as best I recall, and I have received a copy
of this statement.

WITNESSES:

Sworn before me this 16 day of Dec 20 21.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

eJY/01/23/202209 09:05

ELECTRONICALLY FILED - 2024 May 23 5:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Rachel L. Hamilton on 06/06/2023

| | | |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| |) | |
| COUNTY OF CHARLESTON |) | C/A NO.: 22-CP-10-03510 |

| | | |
|-----------------------|---|--------------------|
| Roger Wayne Lynch, |) | VIDEO |
| |) | DEPOSITION OF |
| Plaintiff, |) | |
| |) | RACHEL L. HAMILTON |
| |) | |
| vs. |) | June 6, 2023 |
| |) | |
| Angela West Einstein, |) | |
| |) | |
| Defendant. |) | |

Deposition on oral examination of RACHEL LYNN HAMILTON,
 reported by Diane Grubowski, Court Reporter and Notary Public;
 Said deposition taken pursuant to Notice and in accordance with
 the South Carolina Rules of Civil Procedure, via Zoom, on
 Tuesday, the 6th day of June 2023, scheduled for 10:00 a.m. and
 commencing at the hour of 10:06 a.m.

1 Q Do you recall, approximately, how long you had been
2 on shift at that time?

3 A So the call came out -- I think at 2022 I was
4 notified. I get on shift at 18 -- no, 1540 -- I'm
5 sorry, 1740. The military time is not my thing.
6 So it had been a couple of hours.

7 Q Okay. What were your typical shifts at this time,
8 if there was a standard one?

9 A It would have been a night shift. So we start at
10 6:40 and we end at 7 o'clock the next day, so 7
11 a.m.

12 Q And in December of 2021, you'd been with the
13 Greenville Police Department for approximately two
14 years, going on two years?

15 A Yeah.

16 Q What do you recall observing when you arrived on
17 scene of the incident?

18 A I observed the -- or I observed Mr. Lynch in the
19 roadway. And officers were trying to stop traffic
20 and kind of contain the scene and try to see if we
21 could get a flow of traffic around that was safe.
22 EMS was on scene. I saw that he was getting
23 medical aid.

24 Q What was Mr Lynch's condition when you arrived?

25 A It was unknown at that time. We were unsure if we

1 Q And I'll represent to you that this is from some
2 body camera footage that we received in response to
3 Requests and some screen grabs that were pulled
4 from that. I'm not testing your knowledge, just
5 want to make sure you have some context for where
6 these came from.

7 A Yeah.

8 Q All right. So you arrived on scene. It was
9 already nighttime, correct?

10 A Yes, ma'am.

11 Q What were the lighting conditions in the area? And
12 by that I mean any streetlights, lights from
13 surrounding businesses. Do you have any
14 recollection of that?

15 A There are some lights from surrounding businesses,
16 but the roadway itself is very dark and there's not
17 a lot of streetlights.

18 Q Were there any streetlights that were out, to your
19 recollection, or there's just not any streetlights
20 in the area generally?

21 A I do not -- I can't speak to that.

22 Q Do you recall if there is a bus stop in this part
23 of Wade Hampton Boulevard?

24 A I do not recall.

25 Q Okay. As you look through these photos, if you'll

1 rendering aid to Mr. Lynch?

2 A Yes, ma'am.

3 Q Is that the condition he was in when you arrived on
4 scene?

5 A Yes, ma'am.

6 Q Approximately, how long after you arrived on scene
7 was it till he was taken away by ambulance?

8 A I do not recall. I know that it wasn't very long
9 due to them kind of unknown what his condition was.

10 Q Do you recall whether any citations were issued in
11 connection with this report?

12 A No, ma'am, there were not.

13 Q Did you make any determinations of who was at fault
14 for this incident in connection with your
15 investigation?

16 A Yes, ma'am.

17 MR. MCCOOL: Objection. You can answer.

18 A Yes, ma'am. It would have been Mr. Lynch.

19 Q Describe to me what you do. You mentioned earlier
20 you had some follow-up investigations that resulted
21 in these supplemental reports. Can you walk me
22 through the investigation process starting with you
23 arrive on scene.

24 A Yep. So I arrive on scene, try to make sure that
25 the scene is safe so there's going to be no further

1 his nephew who called in. And then I talked to
2 him, as well. And then upon talking to them, I
3 concluded my supplementals.

4 **Q Who else was on the scene? You mentioned other**
5 **officers, do you recall, number one, how many**
6 **officers were on scene aside from yourself?**

7 A I don't remember how many officers were on scene.
8 I -- do you want the names of the officers?

9 **Q If you can recall some of the names --**

10 A Yeah.

11 **Q -- yes, please.**

12 A Officer Geabort (phonetic), I'm not sure how to
13 spell that. Officer Halpainy, Officer Davis. I
14 think Sergeant McLean was called, but I don't think
15 he arrived on scene. That's all I can remember.

16 **Q Were you the person primarily responsible for the**
17 **investigation on scene?**

18 A Yes, ma'am.

19 **Q Who were you able to speak with on the scene at the**
20 **incident?**

21 A There were several witnesses. I don't remember
22 exactly the names.

23 **Q Okay.**

24 A Would you like me to refer to the report?

25 **Q Absolutely. I'm going to direct you to -- I think**

1 Einstein's statement. And let me know if there's
2 anything you disagree with in her statement.
3 A Do you want me to read it out loud or just to
4 myself?
5 Q You can read it to yourself.
6 MR. MCCOOL: Objection.
7 A (Reviews document) All right. No, I have no --
8 no.
9 Q We'll go through this piecemeal, as well. So no
10 information to dispute that Ms. Einstein was
11 traveling in the right lane of Wade Hampton
12 Boulevard at the time of the incident?
13 MR. MCCOOL: Objection.
14 A Correct.
15 Q Any information during the course of your
16 investigation to dispute that there was another car
17 in the middle lane beside Mrs. Einstein?
18 MR. MCCOOL: Objection.
19 A Correct.
20 Q You don't have any information to indicate
21 otherwise?
22 A No, ma'am.
23 Q Thank you. Ms. Einstein states she came upon a
24 person lying in the street. During the course of
25 your investigation, did you come across any

1 information that would dispute that there was a
2 person lying in the street?

3 A No, ma'am.

4 Q Ms. Einstein states that she swerved as much as she
5 could, but she could not go into the lane beside
6 her to avoid the person.

7 Anything during the course of your
8 investigation that you came across that would
9 dispute that statement?

10 MR. MCCOOL: Objection.

11 A No, ma'am.

12 Q Do you know whether or not Ms. Einstein called 911?

13 A I don't. If I had the call notes, that tells you
14 who called in.

15 Q During the course of investigation, nothing to
16 dispute that Ms. Einstein turned around and called
17 911?

18 A No, ma'am.

19 Q Do you recall where Ms. Einstein's car was when you
20 arrived on scene?

21 A I don't.

22 Q That's fine, I know this was a couple of years ago.
23 We'll refer back to what we have. Can we look at
24 Lemuel Gaines' statement next, and that was 2nd
25 from the last page, again, of this Exhibit 31, with

Page 32

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1 observed the vehicle
ROGER WAYNE LYNCH vs ANGELA WEST EINSTEIN
Rachel L. Hamilton on 06/06/2023

2 Q Do you recall whether there was any traffic on this
3 portion of Wade Hampton Boulevard at this time of
4 day?

5 A It's a very busy road. At this time, there were a
6 lot of cars in that area. But I don't know if
7 that's consistently how it always is at that time
8 of day.

9 Q When you spoke with Mrs. Einstein, was there
10 anything to indicate that she was impaired at the
11 time of the incident?

12 A No, ma'am.

13 MR. MCCOOL: Objection.

14 Q Other than Ms. Einstein being visibly upset, any --
15 did you have any concerns about her mental
16 condition at the time of the incident?

17 A No.

18 Q Is it your belief that Mrs. Einstein was upset as a
19 result of the incident?

20 A Yes, ma'am.

21 Q So no indication that she was in that emotional
22 state prior to the collection, correct?

23 MR. MCCOOL: Objection.

24 A Yes, ma'am.

25 Q And you did not issue any citations to Ms.

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1 Einstein, correct?

2 MR. MCCOOL: Objection.

3 A No, ma'am.

4 Q Did you determine whether Ms. Einstein was at fault
5 for the collision?

6 MR. MCCOOL: Objection.

7 A It's showing her not to be at fault.

8 Q Okay. And what was that determination based on?

9 MR. MCCOOL: Objection.

10 A She was driving straight in her roadway and she
11 didn't have to stop or anything like that. There
12 was no crosswalk. There was no -- there was no
13 reason for him to be in the roadway at the area
14 that he was in. So it would have been pedestrian
15 in the roadway, and he would have been at fault.

16 Q And what is the significance of the finding that
17 there was no crosswalk in the roadway where the
18 incident occurred?

19 A If there was a crosswalk and he had the go ahead to
20 go, the light says that he can cross, then she
21 would have been found at fault.

22 Q Have you been out to this portion of Wade Hampton
23 Boulevard since this incident?

24 A Yes.

25 Q And that's your patrol area, correct?

1 location this occurred. And I do not recall if
2 there's a crosswalk or not.

3 **Q Do you have any knowledge or understanding of where**
4 **Mr. Lynch was heading at the time of the incident?**

5 **A** I do not.

6 **Q** You mentioned earlier you do your investigation on
7 the scene and you later are able to speak to Mr.
8 Lynch. Can you tell me how you made that
9 connection and what that conversation led to.

10 **A** So his nephew had called in reporting or requesting
11 more information about the incident. And he was
12 able to provide me with Mr. Lynch's phone number.
13 I made contact with him over the phone and I asked
14 him several questions regarding the incident.

15 **Q** Okay. Did you memorialize those questions in your
16 report?

17 **A** Yes.

18 **Q** Can you walk us through what that conversation was,
19 both what's included in the report, and if you have
20 any additional recollection of that conversation.

21 **A** So I pretty much asked him if him being in the
22 roadway was related to a mental health issue, if he
23 was having suicidal thoughts, or just a medical
24 health issue. And he stated that this was not the
25 case in reference to the mental health issue. He

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1 did admit to drinking a fifth of alcoholic beverage
2 prior to the incident. He did not mention the
3 specific alcoholic beverage. And then he did state
4 that he did have diabetes. He did not state that
5 that was a contributing factor to the incident and
6 why he was in the roadway though.

7 Q So Mr. Lynch acknowledged having diabetes, but he
8 did not attribute the accident to his diabetes?

9 MR. MCCOOL: Objection.

10 A Correct.

11 Q What did he attribute accident to, if anything?

12 A He didn't specify.

13 Q And when Mr. Lynch reported to you that he had
14 consumed a fifth of alcohol, do you have any
15 knowledge or understanding of what he meant by "a
16 fifth"?

17 MR. MCCOOL: Objection.

18 A A large amount of alcohol.

19 Q Okay.

20 A Depending on the type of alcoholic beverage.

21 Q Do you have any knowledge of whether or not Mr.
22 Lynch was intoxicated at the time of the incident?

23 A I do not. I was unable to speak with him at that
24 time.

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25 Q So when you were able to make contact it was -- how

1 long was it after the accident?

2 A I can't remember it was three days, but
3 it would have been at the maximum three days.

4 Q Was Mr. Lynch still in the hospital when you made
5 contact with him?

6 A Yes, ma'am.

7 Q Did you inform Mr. Lynch that he was at fault for
8 this incident?

9 A I did.

10 Q And how did he respond to that?

11 MR. MCCOOL: Objection.

12 A I think he was confused and I had to explain to him
13 that it was unlawful for him to be in the roadway
14 in the area that he was, and this is why he'd be
15 found at fault.

16 Q Other than reviewing this report, do you have an
17 independent recollection of that conversation?

18 A No. No, I don't.

19 Q Can you say from reviewing what your notes say here
20 whether or not Mr. Lynch recalled that evening?

21 MR. MCCOOL: Objection.

22 A He mentioned the incident, but he didn't mention if
23 he recalled it or not. He just mentioned that he
24 was hit by a vehicle, he recalled that.

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800-333-2082

25 Q Anything else about the conversation with Mr. Lynch

1 that you can recall?

2 A No, ma'am.

3 Q Okay. Anything that was considered as a part of
4 your investigation said by Mr. Lynch, would it be
5 documented in this report?

6 MR. MCCOOL: Objection.

7 A Yes, ma'am.

8 Q You mentioned speaking with Mr. Lynch's nephew, as
9 well. Do you recall that conversation?

10 A I do, I briefly recall that.

11 Q When did you speak with the nephew?

12 A It would have been just a couple minutes before I
13 spoke with Mr. Lynch because I didn't have his
14 number.

15 Q Do you recall why the nephew was contacting you?

16 A To my recollection, he had visited him in the
17 hospital and there were some questions that he and
18 his uncle had. And he was reaching out to the
19 officer that was in charge of the incident.

20 Q Did you make a determination as to who was at fault
21 for this incident prior to speaking to Mr. Lynch?

22 MR. MCCOOL: Objection.

23 A No, ma'am, I hadn't gotten Mr. Lynch's side of the
24 story.

25 Q Other than speaking with Mr. Lynch's nephew and Mr.

1 reviewed those reports, as well?

2 A Yes, ma'am.

3 Q Okay. Are you aware of -- based on what you know
4 from your investigation and reading these witness
5 statements, are you aware of anything that my
6 client could have done to avoid this incident?

7 MR. MCCOOL: Objection.

8 A No, ma'am.

9 Q And it's your opinion, to confirm, based on your
10 investigation, as documented in Exhibit 31, that my
11 client was not at fault for this incident, correct?

12 MR. MCCOOL: Objection.

13 A That's correct.

14 Q Do you consider your investigation as documented in
15 Exhibit 31 to be complete at this time?

16 A To the best of my ability, yes, ma'am.

17 Q Are you aware of anything that my client, Angela
18 Einstein, did wrong with respect to this incident?

19 MR. MCCOOL: Objection.

20 A No, ma'am.

21 MS. STACY: Ms. Hamilton, I may be done,
22 I'm going to read through and make sure I don't
23 have anything else for you before I turn you
24 over.

25 Q Other than those conversations you had that we

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

DEPOSITION OF ANGELA WEST EINSTEIN

ROGER WAYNE LYNCH,

Plaintiff,

vs. CASE NO. 2022-CP-23-03510

ANGELA WEST EINSTEIN,

Defendant.

DEPONENT: ANGELA WEST EINSTEIN

DATE: DECEMBER 8, 2022

TIME: 1:00 PM

LOCATION: CLARK BOLEN
GREENVILLE, SOUTH CAROLINA

REPORTED BY: VALERIE G. MELKUS, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
Office@clarkbolen.com

1 mountain.

2 Q. And what was your reason or purpose for
3 being at that home on Paris Mountain before the
4 incident with Mr. Lynch occurred?

5 A. I was dropping my future son-in-law at
6 my daughter's work Christmas party.

7 Q. And before you went to that Paris
8 Mountain home, where had you been?

9 A. Home.

10 Q. Do you recall what you were doing before
11 you left home that day to bring your son-in-law
12 to your daughter's work Christmas party?

13 A. I was gathering Christmas presents and
14 boxing and wrapping, preparing to leave town the
15 next week.

16 Q. And earlier this year when your attorney
17 and I and the other gentlemen were looking at
18 your vehicle at your home, there seemed to be a
19 decent amount of wine bottles and that sort of
20 thing. Is -- are you in the business of selling
21 wine, sharing wine or anything like that?

22 MS. STACY: Object to the form.

23 You can answer.

24 THE WITNESS: Okay.

25 A. I believe at the time we had probably

1 A. No.

2 Q. And when you say, as we approached the
3 scene, who is the we that you're talking about?

4 A. Mr. Gaines was the driver of a car
5 beside me.

6 Q. And when you say Mr. Gaines was the
7 driver of the car beside you, what side was he on
8 of you -- of your vehicle?

9 A. My left.

10 Q. And what boulevard or street did this
11 happen on?

12 A. Wade Hampton.

13 Q. Is that Wade Hampton Boulevard?

14 A. Boulevard.

15 Q. And how many lanes is Wade Hampton
16 Boulevard?

17 A. At that point, it is six lanes with a
18 turn lane.

19 Q. So including the turn lane, seven lanes?

20 A. Yes.

21 Q. And I've been to Wade Hampton Boulevard
22 many times, been on it many times. The time of
23 night that this incident happened, there's not
24 much traffic, correct?

25 A. Correct.

1 straight, flat road, correct?

2 A. Correct. Some incline, decline.

3 Q. But minimal for the most part?

4 A. Yeah. Yeah.

5 Q. And at the time the incident occurred,
6 there were no issues with glare or anything like
7 that, correct?

8 A. I would say lighting would have been an
9 issue as it was extremely dark in that specific
10 area.

11 Q. How about any glare? There's no glare
12 from oncoming vehicles, correct?

13 A. No. Correct.

14 Q. And there's no glare from either the
15 Asada restaurant or the IHOP restaurant, correct?

16 A. I would say IHOP is extremely bright.
17 Asada is extremely dark.

18 Q. And when you say, IHOP is extremely
19 bright and Asada is extremely dark, meaning Asada
20 in comparison to IHOP is dark?

21 A. Correct.

22 Q. And the IHOP being extremely bright,
23 that's from the IHOP interior lights and their
24 exterior lights, correct?

25 A. Correct.

1 Q. Did you exchange any contact information
2 with the individual shown in Exhibit Number 18?

3 A. Not that I recall.

4 Q. Anything else that you recall, any
5 interaction or conversation you've had with the
6 individual in Exhibit Number 18?

7 A. On that night?

8 Q. That night.

9 A. We talked at length.

10 Q. Do you recall what you talked at length
11 about with the individual in Exhibit Number 18?

12 A. He just told me what he had witnessed
13 Mr. Lynch doing prior to walking out into the
14 street and lying down.

15 Q. Tell me specifically what you remember
16 that individual in Exhibit Number 18 telling you.

17 A. He just said that he had been in his
18 parking lot. And then he did not know why, but
19 he walked out into the street and laid down.

20 Q. And you stated that the person in
21 Exhibit Number 18 is, you believe, the owner of
22 the Asada restaurant?

23 A. I believe.

24 Q. And do you recall where the owner of the
25 Asada restaurant was when he observed Mr. Lynch?

1 A. It wouldn't have alarmed me as far as
2 damage to my car. It would have alarmed me as,
3 you know, what was in the street, what was that.
4 But I knew -- no damage to the car.

5 Q. And you continued down Wade Hampton how
6 far after you rolled over Mr. Lynch?

7 A. There is a street just beyond here. I
8 mean, as soon as I rolled over him, I was
9 braking, stopping. This car went on, and so it
10 was an immediate turnaround.

11 Q. When you say, this car went on, what do
12 you mean by that?

13 A. The car that was beside me had gone on,
14 so I was able to immediately turn around.

15 Q. When is the first time you applied your
16 brakes? Was it after you rolled over Mr. Lynch?

17 A. As soon as I realized it was a person, a
18 human lying in the street.

19 Q. Okay. So that would have been 5 feet or
20 less before you rolled over him; is that right?

21 A. Yes.

22 Q. And you did a U-turn on Wade Hampton
23 Boulevard?

24 A. Yes.

25 Q. And then you parked your Range Rover on

1 forward.

2 Q. Were you reaching over into your seat or
3 in the back seat for anything?

4 A. No. Looking straight ahead.

5 Q. And both hands on the wheel?

6 A. Absolutely, yes.

7 Q. Did you have your seatbelt on?

8 A. Yes.

9 Q. And you told us that the weather was
10 dry, the roads were dry, the radio wasn't on --

11 A. The radio was on.

12 Q. Excuse me. The radio was on, and you
13 had both hands on the wheel.

14 A. Yes.

15 Q. But do you consider the radio being on a
16 distraction to you?

17 A. No.

18 Q. So it would be fair to say that as you
19 proceeded down Wade Hampton before this incident
20 with Mr. Lynch occurred that you had no
21 distractions affecting your ability to safely
22 drive, correct?

23 A. No distractions.

24 Q. So I'm correct, right?

25 A. Correct.

1 Q. When you're operating a vehicle, you
2 would agree with me that it is never permissible
3 to you to jeopardize the safety and wellbeing of
4 persons on or about a roadway, correct?

5 A. Correct.

6 Q. And you would agree with me that at all
7 times when you're operating a vehicle, you have
8 the duty and obligation to pay attention to your
9 driving the entire time, correct?

10 A. Correct.

11 Q. Including paying attention to other
12 vehicles and pedestrians on or about the roadway
13 including Wade Hampton Boulevard, correct?

14 A. Correct.

15 Q. And with respect to you applying the
16 brakes within that 5 feet or less of you rolling
17 over Mr. Lynch, did you aggressively apply the
18 brakes or did you tap them? Tell me about that.

19 A. I would call it a tap because there was
20 no time to -- I tapped as hard as I could to
21 stop, swerved all at the same time and then
22 rolled forward to safely do a U-turn and applied
23 my brakes in order to do that.

24 Q. And where was the car to your left when
25 your wheels rolled over Mr. Lynch? Behind you?

1 In front of you?

2 A. Beside me.

3 Q. Directly beside you?

4 A. Slightly edging forward ahead of me.

5 Q. And how long had that car been to your
6 left?

7 A. We had traveled along together for at
8 least -- he was there the entire time that I was
9 driving on Wade Hampton.

10 Q. If that other Range Rover to your left
11 had not been there, would you have been able to
12 swerve entirely into that lane and avoid rolling
13 over Mr. Lynch?

14 A. No. No.

15 MS. STACY: Objection. Calls for
16 speculation. And you could still answer.

17 THE WITNESS: Okay.

18 Q. What type of clothing did Mr. Lynch have
19 on?

20 A. I just remember it being dark.

21 Q. His --

22 A. His clothing being dark.

23 Q. Did you observe Mr. Lynch at the scene
24 after the incident occurred?

25 A. After, I did.

1 Q. And Exhibit Number 3 is the written
2 statement you prepared on December 16th, 2021, at
3 the scene of the incident involving Mr. Lynch,
4 correct?

5 A. Uh-huh.

6 Q. You have to say yes.

7 A. Yes.

8 Q. Now, at the top of Exhibit Number 3,
9 there's what we call redacted boxes, those black
10 boxes at the very top. Do you see those?

11 A. Yes.

12 Q. And it looks like one entry has DOB,
13 which I believe is date of birth. And did you
14 provide your date of birth on this statement, on
15 Exhibit Number 3, if you recall?

16 A. I don't recall. It could have been
17 taken from my driver's license.

18 Q. And is the DOB handwriting at the top of
19 Exhibit Number 3 your handwriting?

20 A. I can't tell.

21 Q. And it looks like below DOB, it has
22 phone in the upper center of Exhibit Number 3.
23 Is that your handwriting?

24 A. That does not look like my handwriting.

25 Q. And then Exhibit Number 3, it provides,

1 I, and then there's a blank with a handwritten
2 name, Angela Einstein. Is that Angela Einstein
3 at the top of Exhibit Number 3 your handwriting?

4 A. It is.

5 Q. And then taking a look at Exhibit
6 Number 3, the paragraph that begins, I am 55, and
7 then the handwriting in that section, is all of
8 that your handwriting?

9 A. Yes.

10 Q. And is Exhibit Number 3 the statement
11 you reviewed in preparing for your deposition
12 today?

13 A. Yes.

14 Q. And what I want you to do is take a look
15 at Exhibit Number 3. Go ahead and read it fully
16 for me, please, and tell me when you've done
17 that.

18 A. Okay.

19 Q. And is there anything in Exhibit
20 Number 3 -- now that you've read it and that
21 you're under oath, is there anything in Exhibit
22 Number 3 that you want to change?

23 A. I would say that I did go into the lane
24 beside me because I remember expecting to
25 sideswipe that car as I swerved.

1 THE WITNESS: Okay.

2 A. I did say that as an explanation of why
3 I was boxed in, but I know that I swerved. And
4 there's no way I did not go into that lane, and
5 this was a split-second thought prior to rolling
6 over Mr. Lynch.

7 Q. And looking at the top portion of
8 Exhibit Number 3, it provides, I, Angela Einstein
9 do hereby give freely and voluntarily this
10 statement to -- do you know whose handwriting
11 that is?

12 A. I'm assuming it is an officer.

13 Q. It looks to me like a name, Davis, on
14 there. Do you recall speaking with anybody or
15 somebody introducing themselves as a Davis?

16 A. I don't recall the name, but that could
17 be the other officer that I did not know in one
18 of these other --

19 Q. Exhibits?

20 A. -- exhibits, yes.

21 Q. Looking at Exhibit Number 3, it has,
22 witnesses, R. Hamilton. Do you know who R.
23 Hamilton is?

24 A. She is the other officer, I believe.

25 Q. And the signature on Exhibit Number 3,

| | | |
|-------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE THIRTEENTH JUDICIAL DISTRICT |
| COUNTY OF GREENVILLE |) | C.A. No. 2022-CP-23-03510 |
| Roger Wayne Lynch, |) | |
| |) | DEFENDANT'S MOTION FOR |
| Plaintiff, |) | SUMMARY JUDGMENT |
| |) | |
| vs. |) | |
| |) | |
| Angela West Einstein, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

TO: PLAINTIFF ROGER WAYNE LYNCH AND HIS ATTORNEYS, BROOKLYN O'SHEA, CHRISTOPHER J. MCCOOL, TARA A. LEAPHART AND WHITNEY B. HARRISON

YOU WILL PLEASE TAKE NOTICE, that ten (10) days after the service hereof, the defendant, Angela West Einstein, will move the Court pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, for an Order granting summary judgment to her in the above-entitled matter. The grounds for the motion are that there are no genuine issues as to any material fact and the defendant is entitled to judgment as a matter of law.

The defendant submits the pleadings in this matter and such memorandum of law and exhibits as may be filed with the Court prior to the hearing of this matter in support hereof.

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted,

s/T. David Rheney

T. David Rheney, S.C. Bar No. 13148
Ronald G. Tate, Jr., S.C. Bar No. 5475
Gray T. Culbreath, S.C. Bar No. 11907
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Attorneys for Defendant Angela West Einstein

May 30, 2025
Greenville, SC

The undersigned affirms pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that he is not required to consult with opposing counsel prior to the filing of this motion.

s/T. David Rheney
T. David Rheney



GRETCHEN W. MULLINAX
Legal Assistant to Ronald G. Tate, Jr.
Direct Dial: (864) 271-5352
gmullinax@GWBlawfirm.com

October 8, 2025

The Honorable Jay Gresham
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: *Roger Wayne Lynch v. Angela West Einstein*
C.A. No. 2022-CP-23-03510

Dear Mr. Gresham:

Our firm represents the Defendant, Angela West Einstein, in the above-referenced matter. Please allow this correspondence to file Exhibit 2 to Defendant's Memorandum in Opposition to Plaintiff's Motion for Sanctions filed on October 6, 2025, in this case

If you have any questions or need any further information, please do not hesitate to contact me. As always, thank you for your attention to and help in this matter.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

Gretchen W. Mullinax
Legal Assistant to Ronald G. Tate, Jr., S.C. Bar No. 5475

/gwm
Exhibit

ELECTRONICALLY FILED - 2025 Oct 08 10:23 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

EXHIBIT 2

Gretchen Mullinax

From: David Rheney
Sent: Tuesday, April 22, 2025 6:31 PM
To: chris@oshealaw.com
Cc: Brooklyn O'Shea; wharrison@mcgowanhood.com; APeoples@hallboothsmith.com; Ron Tate; Gray Culbreath
Subject: RE: Lynch vs. Einstein

Good afternoon, Chris. Please pardon my delay in responding to your email. I have been traveling to and attending depositions in Charleston today. We can agree to limit the subpoenas to 10 years prior to the day of the accident. There are a number of things that are unclear about Mr. Lynch's prior medical background that we need to explore. 10 years of records should be sufficient, but we reserve the right to request additional records should that be necessary after reviewing those that are provided. We will, of course, provide copies of any records that are received to you.

We understand that Adam's office was hacked early in 2024. As such, we are not sure that we have copies of all of the plaintiff's answers/supplemental answers to interrogatories and responses/supplemental responses to requests for production from the defendant. We would appreciate your providing copies of those discovery responses to us so we can confirm we have a complete set. We only need the answers/responses and do not need any documents that may have been provided at this time. We will reach out you again for any documents we may not have once we have the chance to review the answers/responses. Please let us know if there is any objection to providing that information to us. Assuming there is no objection, please provide that as soon as possible.

Also, I wanted to note that Ron Tate and Gray Culbreath are also working on this file with Adam and me. They are copied above.

Thank you.



T. David Rheney
 Partner
 drheney@gwblawfirm.com

Gallivan, White & Boyd P.A.
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From: Christopher McCool <chris@oshealaw.com>
Sent: Tuesday, April 22, 2025 11:10 AM
To: Dana Whaley <dwhaley@gwblawfirm.com>
Cc: brooklyn@oshealaw.com; wharrison@mcgowanhood.com; svelasquez@hallboothsmith.com; apeoples@hallboothsmith.com; Melissa Morris <melissa@oshealaw.com>; Taraleaphartlaw@outlook.com
Subject: Re: Lynch vs. Einstein

CAUTION: EXTERNAL EMAIL ORIGINATING OUTSIDE OF GWB's EMAIL SYSTEM

Dan, thank you for providing the actual subpoenas. We object to the subpoenas to St. Francis Hospital, Kash & Karry Pharmacy, New Horizon Health, Devin Trinity House of Hope c/o Prisma Legal Affairs, Greenville Memorial Hospital c/o Prisma Legal Affairs, Greenville Free Clinic because the subpoenas are not limited to a reasonable number of years. Please provide us with updated subpoenas to review. Thanks. Chris

On Apr 17, 2025, at 3:01 PM, Dana Whaley <dwhaley@gwblawfirm.com> wrote:

Please see attached Subpoenas being issued today. Thank you so much.

<image003.png>—

Dana Whaley

Paralegal

dwhaley@gwblawfirm.com

Gallivan, White & Boyd P.A.

55 Beattie Place, Suite 1200

Greenville, South Carolina 29601

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From: Christopher McCool <chris@oshealaw.com>

Sent: Thursday, April 17, 2025 11:58 AM

To: Dana Whaley <dwhaley@gwblawfirm.com>

Cc: brooklyn@oshealaw.com; taraleaphart@outlook.com; wharrison@mcgowanhood.com; svelasquez@hallboothsmith.com; apeoples@hallboothsmith.com; Melissa Morris <melissa@oshealaw.com>

Subject: Re: (No subject)

CAUTION: EXTERNAL EMAIL ORIGINATING OUTSIDE OF GWB's EMAIL SYSTEM

Dana, no subpoenas were attached to your email. Please send at your earliest convenience. Thanks. Chris

On Apr 17, 2025, at 11:50 AM, Dana Whaley <dwhaley@gwblawfirm.com> wrote:

Please see attached Notice of Issuance of Subpoenas in the referenced case. Should you have any questions, or if you object to the issuance of these subpoenas, please advise immediately.

Thank you so much.

<image001.jpg>

Dana Whaley

Paralegal

dwhaley@gwblawfirm.com

Gallivan, White & Boyd P.A.

55 Beattie Place, Suite 1200

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