

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 2)

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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 MEMORANDUM IN
v.	)	OPPOSITION TO DEFENDANT'S THIRD
	)	MOTION FOR SUMMARY JUDGMENT
Angela West Einstein	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiff Roger Wayne Lynch ("Plaintiff") hereby submits this Memorandum in Opposition to Defendant Angela West Einstein's ("Defendant") Third Motion for Summary Judgment filed on May 30, 2025, in this action. Plaintiff files this memorandum pursuant to Rules 1, 5, 6, 7, 11, 37, 38, 56, SCRCP; the common law; the filings and record in this case; and the South Carolina Constitution and United States Constitution. Plaintiff seeks an order denying Defendant's renewed Motion for Summary Judgment.

"You can flip me over now. I am done on this side," said Saint Lawrence as he was being roasted alive on the gridiron by Roman authorities. This is the fourth time the parties have appeared for a hearing on summary judgment motions filed by the same Defendant. This two-party auto-pedestrian collision case has become an overly complicated procedural maverick. Exorbitant effort has been made in this case to overcome unnecessary hurdles as shown in the prior filings. Defendant is entitled to make her arguments on comparative negligence, but if the law and rules are applied with respect to the summary judgment threshold, then this matter must proceed to a jury trial.

FACTUAL BACKGROUND

The subject auto-pedestrian incident occurred on Wade Hampton Boulevard in Greenville, South Carolina on December 16, 2021, at approximately 8:22 PM. Plaintiff, a pedestrian near the bus stop, was walking to his mother's house to retrieve his medication. At the time he was injured, he was having a medical emergency (hypoglycemia, extremely low glucose levels associated with his diabetes) which led him to collapse to the asphalt. While on the asphalt, Defendant struck Plaintiff with her Range Rover SUV, causing Plaintiff to sustain numerous fractures and injuries, including an above the knee amputation of his right leg. Defendant failed to operate her vehicle with due care, failed to maintain a proper lookout, and failed to comply with applicable motor vehicle statutes, all of which led to this tragic incident.

LEGAL STANDARD

Summary Judgment

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(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), SCRC. “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)).

Comparative Negligence in a Motor Vehicle Pedestrian Case

The quantification and comparison of a plaintiff and defendant's alleged negligence present 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 there is a "sole reasonable inference which may be drawn from the evidence." *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). As part of South Carolina's comparative negligence system, a plaintiff's recovery "shall be reduced in proportion to the amount of his or her negligence." *Id.* 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 the jury's allocation of fault among driver and pedestrian in pedestrian's negligence claim).

Violation of a Motorist Statute

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"))).

The Judge's Function

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 ... 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)).

If the record contains evidence attributable to both the plaintiff and the defendant “the court cannot conclude as a matter of law that the former outweighs the latter” and “[l]ike 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.

ARGUMENT

- 1. Summary judgment should be denied because Plaintiff has submitted substantial evidence demonstrating a genuine issue of material fact exists.**
- 2. Comparative negligence is a jury question unless the *sole* inference that can be drawn from the evidence is that the incident resulted from Plaintiff's negligence.**
- 3. Evidence exists showing Defendant violated motor vehicle statutes and whether such statutes have been violated and the degree of fault attributable to Defendant for violating these statutes is also a jury question.**

4. Evidence of a statutory violation warrants presenting the issue of punitive damages to a jury to decide.
5. A reasonable juror viewing the evidence in the light most favorable to Plaintiff could easily draw more than one inference in this case; therefore, summary judgment must be denied.
6. Even when the record contains evidence of negligence attributable to both Plaintiff and Defendant, the Court cannot conclude as a matter of law that the former outweighs the latter.
7. Proximate cause is a jury question.
8. To the extent the Court decides enough evidence has not been presented to demonstrate more than one inference can be drawn by a jury and that a genuine issue of material fact exists, discovery is incomplete and Plaintiff has been stonewalled throughout the discovery process.
9. All litigants deserve fairness and equal application of the law and rules.

Genuine Issues of Material Fact, Evidence in Support, and Reasonable Inferences

GENUINE ISSUE OF MATERIAL FACT	PLAINTIFF	DEFENDANT	INFERENCES REASONABLE JUROR COULD DRAW IN FAVOR OF PLAINTIFF
Visibility	<p>The road was well lit, and Plaintiff was visible for anyone keeping a proper lookout and driving safely.</p> <p><u>Evidence:</u> Wade Hampton Blvd. is a straight flat, road with excellent sight lines for operators of vehicles. Ex. 3 (Daytime photos of scene).</p> <p>Defendant was driving a 2021 Land Rover Range</p>	<p>“the road not well-lit.” Def. Memo filed 1/8/2026 at 1.</p> <p>Plaintiff is “a Black man.” Def. Memo filed 1/8/2026 at 1.</p> <p>Defendant “suddenly” saw Plaintiff as she proceeded toward Asada and IHOP. Def. Memo filed 1/8/2026 at 2.</p>	<p>The road was well lit.</p> <p>The road had excellent sight lines.</p> <p>Plaintiff was visible for a driver keeping a proper lookout and driving safely.</p> <p>Witness Lemuel Gaines was driving by Defendant in the same type of vehicle at the same time and was able to see Plaintiff walking fall down and Defendant should have seen the same.</p>

	<p>Rover Sport (a high dollar luxury SUV) with functioning and in-use state of the art headlights that illuminated the roadway. Ex. 5 (Depo. of Defendant at 30:2-7; 62:25-63:3; 64:6-11).</p> <p>The headlights from a vehicle in the direct vicinity of Defendant's vehicle were also illuminating the roadway and Plaintiff. Ex. 5 (Depo. of Defendant at 63:15-64:5; 56:2-9; 85:5-9) and Ex. 6 (Depo. of Officer Hamilton at 77:20-79:1-9).</p> <p>The lights from adjacent restaurants IHOP and Asada were illuminating the roadway. Ex. 5 (Depo. of Defendant at 61:22-25), Ex. 6 (Depo. of Officer Hamilton at 47:8-16), Ex. 7 (still from Body Camera video of Officer Hamilton), and Ex. 8 (Body Cam video of Officer Hamilton).</p> <p>"Headlights were on." Ex. 8 (PURE Claim File at 1)</p> <p>"Commercial area, fairly well-lighted area." Ex. 8 (PURE Claim File at 1).</p> <p>"diner is nearby." Ex. 8 (PURE Claim File at 1).</p>		<p>Defendant should have seen Plaintiff before she was 5 ft. away from him.</p> <p>Drivers, including Defendant, should be able to see a man on Wade Hampton Blvd. regardless of his skin color or clothing.</p> <p>Defendant was not keeping a proper lookout when she ran over Plaintiff.</p> <p>Defendant did not operate with due care under the conditions of the roadway.</p> <p>Defendant's speeding/driving too fast for conditions and her attempt to pass Lemuel Gaines on the right impacted visibility.</p> <p>Defendant was negligent.</p>
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	<p>Defendant described the road and conditions as “dry” and a “straight shot.” Ex. 5 (Depo. of Defendant at 60:9-16).</p> <p>Witness Lemuel Gaines was driving by Defendant in the same type of vehicle at the same time and was able to see Plaintiff walking and fall down. Ex. 8 (Officer Body Worn Camera Video).</p>		
Plaintiff's Impairment	<p>Plaintiff was suffering from hypoglycemia and this condition caused him to collapse and be confused. Mr. Lynch was not under the influence of illicit drugs at the time of the incident.</p> <p><u>Evidence:</u> Ex. 10 (Report of Dr. Eagerton); Ex.11 (Depo. of Dr. Eagerton at 12:13-21; 62:7-12).</p> <p>Plaintiff had zero illicit drugs in his system at the time he was run over. Ex. 10 (Report of Dr. Eagerton); Ex. 12 (Prisma Health Lab Work Up).</p> <p>Plaintiff's behavior was caused by and was consistent with</p>	<p>The defense repeatedly references <i>Plaintiff's prior visits</i> to the hospital related to crack cocaine and asserts the prior visits are “similar to what occurred on the evening of this accident.” Def. Memo filed 1/8/26 at 11.</p> <p>Defendant does not have an expert in forensic toxicology or pharmacology.</p> <p>Defendant ignores the relevant medical records and relies on inadmissible records.</p>	<p>The prior hospital visits upon which Defendant is relying for summary judgment are irrelevant, unfairly prejudicial, and inadmissible. A jury should not hear about the prior drug use nor should the Court consider it for summary judgment.</p> <p>Plaintiff was not under the influence of illicit drugs at the time of the subject incident. Plaintiff was not “on crack” and there is <i>zero</i> evidence Mr. Lynch was on crack or any other illicit drug when Defendant ran him over.</p> <p>The subject incident is not similar to any alleged prior incident.</p> <p>Plaintiff collapsed due to hypoglycemia.</p>

	<p>hypoglycemia. Ex. 10 (Report of Dr. Eagerton).</p> <p>Hypoglycemia can cause behavior similar to alcohol. Ex. 10 (Report of Dr. Eagerton).</p> <p>“It is further my opinion that there is no evidence of any illicit drug use by Mr. Lynch on the day of the incident.” Ex. 10 (Report of Dr. Eagerton); Ex. 12 (Prisma Health Lab Work Up).</p> <p>Plaintiff was a pedestrian and not an operator of a motor vehicle.</p>		<p>Alcohol did not cause Plaintiff’s condition. Drugs did not cause Plaintiff’s condition. The hypoglycemia caused confusion and the fall.</p> <p>Defendant had a duty to keep a lookout for all pedestrians regardless of their physical condition.</p>
Defendant’s Impairment	<p>Defendant regularly consumes alcohol and was impaired by prescription drugs and/or a combination of drugs and alcohol at the time of the incident.</p> <p>Defendant was impaired by her vertigo, a condition medically known to adversely affect a person’s ability to safely drive.</p> <p><u>Evidence:</u> Defendant consumed alcohol within 48 hours of the subject incident (Ex. 14 – Defendant’s</p>	<p>Defendant admits/does not dispute she consumed alcohol within 48 hours of incident while under the influence of Cymbalta. Ex. 14 (Defendant’s Responses to Plaintiff’s Interrogatories/ Interrogatory No. 13); Ex. 16 (Defendant’s Responses to Plaintiff’s Second Supp. Interrogatories/Interrogatory No. 3).</p> <p>Defendant does not dispute she suffers from vertigo. She merely claims it is “intermittent.”</p>	<p>Defendant was impaired by prescription drugs and/or alcohol. Defendant admits she was under influence of medication and alcohol in a time frame that is medical known to impair a person’s ability to safely operate a vehicle.</p> <p>Defendant was impaired based on her medically confirmed condition of vertigo.</p> <p>Defendant’s text message is likely from a person who was impaired at the time of the incident and was</p>

	<p>Responses to Plaintiff's Interrogatories (Interrogatory No. 13) while taking Ativan, Cymbalta, and Restoril (Ex. 15 – Defendant's records from Primary Choice Medical dated 10/24/2021). In the fields of Pharmacology and Toxicology, it is known that the side effects of said medications, taken alone, include drowsiness, tiredness, dizziness, loss of/ lessened/ reduced coordination, blurred vision, memory impairment. "When combined with alcohol, the risk of these side effects is higher and may be more severe, up to 48 hours after the consumption of alcohol." Ex. 13 (Affidavit of Dr. Eagerton).</p> <p>Defendant's physician confirmed that Defendant has a history of vertigo requiring medical treatment, including the prescribing of medication. Ex. 17 (Letter from D. Johnstone, III, M.D. to To Whom it May Concern dated 11/19/25).</p>		<p>prepared and sent as cover up of the impairment.</p>
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	<p>It is medically known that vertigo may adversely impact a person's ability to safely drive a vehicle and lack of prescription for the condition does not mean the condition does not exist. Ex. 11 (Depo. of David Eagerton, M.D. at 62:13-23).</p> <p>Defendant works for a local magazine and authors articles entitled "Drinkin' on the Job" and consumes alcohol on a regular basis. Ex. 5 (Depo. of Defendant at 23:16-25; 45:8-16; 107:4-16); Ex. 18 (Let's Talk Greenville tagged interview of articles.</p> <p>Defendant texted her friends "what if I had been coming from a party myself and had been drinking?" Ex. 19 (12/17/21 text message from Defendant at 3).</p>		
Defendant's Distracted Driving	Defendant was listening to the radio at the time of the incident. Ex. 5 (Depo. of Defendant at 64:18:22).	Defendant admits she was listening to the radio at the time of the incident. Ex. 5 (Depo. of Defendant at 64:18:22).	Defendant was distracted by listening to music.
Defendant's Breach of	Defendant was traveling in excess of the speed limit.	Defendant admits she was speeding but says she hit the brakes just before running	Defendant was speeding.

Duty of Due Care	Defendant attempted to pass another vehicle on the right while traveling in excess of the speed limit.	over Plaintiff when she saw him from 5ft away.	Defendant was making an improper lane change.
Duty to Keep Proper Lookout			Defendant did not keep a proper lookout.
Duty to Maintain Safe Distance and Space Management	Defendant failed to keep proper “space management” around her vehicle. <u>Evidence:</u>		Defendant did not maintain a safe distance. Defendant did not maintain “space management.”
Violations of Motor Vehicle Statutes	Defendant reported/ admitted to adjuster she was in the far right lane with a vehicle to her left and sped up to 50 mph in a 45 mph zone in an effort to pass the vehicle immediately prior to the incident. Ex. 9 (Pure Claim file at 3).		Defendant was driving while impaired.
Violation of safe operation of a motor vehicle	Defendant, who was driving a high end vehicle with state of the art headlights, admits that the first time she saw Plaintiff was when she was “no more than 5 feet from him.” Ex. 5 (Depo. of Defendant at 49:8-10). Defendant had the duty to be aware of her surroundings, look for objects on the roadway, and utilize the headlights		Defendant was driving too fast for conditions and passing on the right or she would have seen Plaintiff like Lemuel Gaines did. Defendant was negligent and negligent per se.

	<p>on her vehicle to recognize pedestrians on the roadway. Ex. 6 (Depo. of Officer Hamilton at 73:24-74:10).</p> <p>Defendant admits as she approached the incident scene, she had been to the right of the vehicle she attempted to pass for 1 mile. Ex. 5 (Depo. of Defendant at 64:12-17; 85:5-9). Defendant's actions were unsafe and a failure to keep the necessary "space management" for safe passing and maneuvering. Ex. 6 (Depo. of Officer Hamilton at 65:20-67:4).</p> <p>Witness Lemuel Gaines confirms the improper lane change: "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." Ex. 8 (Officer Body Worn Camera Video).</p>		
Plaintiff's Ability to	Plaintiff, a pedestrian, was suffering from a	Defendant contends Plaintiff "the sole author of his own injuries." Memo.	Plaintiff could not avoid the incident.

Avoid Incident	<p>medical emergency related to his diabetes.</p> <p>Plaintiff was not suicidal and did not collapse on purpose.</p>	<p>filed 1/8/26 at 12. In support of this contention, Defendant relies on cases involving diabetic drivers and drunk drivers. Plaintiff was not driving a motor vehicle.</p>	
Credibility of Defendant	<p>Defendant has told various versions of how the incident occurred.</p> <p>Defendant's text messages are suspicious.</p> <p><u>Evidence:</u> In her 911 call, Defendant stated, "I just hit a man on Wade Hampton, he was in the street." Ex. 20 (Recording of Defendant's 911 call). In her deposition, Defendant testified she did not hit Plaintiff, but explained she "rolled over him." Ex. 4 (Depo. of Defendant at 47:1-48:4).</p> <p>Defendant's conflicting testimony and evidence of fragility from grief and prescription drugs for her condition.</p>		<p>The jury determines credibility of witnesses and the inferences therefrom.</p>
Proximate Cause	<p>Defendant's negligence was the proximate cause.</p>	<p>Plaintiff's negligence was the proximate cause.</p>	<p>Defendant's negligence was the proximate cause.</p> <p>Defendant's violation of a motorist statute was the proximate cause.</p>

			<p>Defendant's failure to operate her vehicle in a reasonable manner was the proximate cause.</p> <p>Defendant's willful, wanton, negligent per se, grossly negligent conduct was the proximate cause.</p>
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Visibility is a genuine issue of material fact and a jury question.

At the time of the incident, it is undisputed that:

1. Wade Hampton Boulevard is a straight flat, road with excellent sight lines for operators of vehicles. Ex. 4 – Daytime photographs of scene; Ex. 5 - Depo. of Defendant at 60:9-16.





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. Ex. 5 – Depo. of Defendant at 30:2-7, 62:25-63:3, 63:15-64:5, and 64:6-11.
3. The headlights from a vehicle in the direct vicinity of Defendant’s vehicle were also illuminating the roadway and Plaintiff. Ex. 5 – Depo. of Defendant at 63:15-64:5, 56:2-9, 85:5-9 and Ex. 6 – Depo. of Investigating Officer Hamilton at 77:20-79:9.
4. The lights from adjacent restaurants were illuminating the roadway. Ex. 5 – Depo. of Defendant at 61:22-25 and Ex. 6 – Depo. of Investigating Officer Hamilton at 47:8-16.

Q And with respect to Exhibit Number 32, that first page Exhibit Number 15, when you arrived on scene, the ASADA lights were illuminated and the IHOP lights were illuminated, correct?

A Yes, sir.

Q In your investigation you determined that those lights were on at the time the incident happened involving Mr. Lynch being injured, correct?

A Yes, sir.

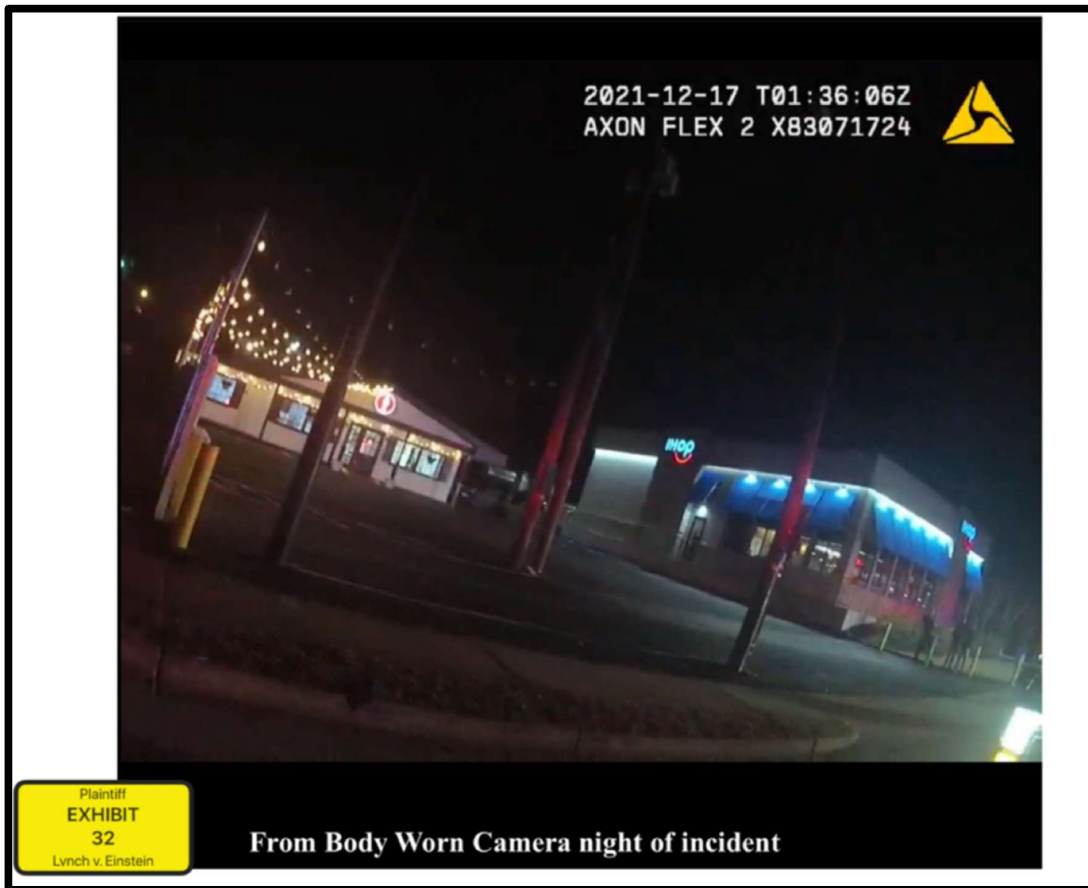
*Deposition of Investigating
Officer Hamilton*

Q Yes. Okay, so let's say it's just me on a roadway. And then you come up and you drive next to me. All of a sudden there's additional lights from your headlights, as well, correct?

A Yes, sir.

*Deposition of Investigating
Officer Hamilton*

The following still photograph from the Body Camera of Investigating Officer Hamilton (attached as Ex. 7) establishes the restaurants were illuminating the road at the time of the incident:



The following excerpt from the Claim File obtained from PURE Specialty Risk Management, LLC via a subpoena (attached as Ex. 9) further confirms the restaurants were illuminating the roadway:

Headlights were on

Commercial area, fairly well-lighted area, no street light right there, however, small diner is nearby

If the Court is going to credit testimony cited by Defendant that the area was dark and not well lit, 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." Ex. 5 – Depo. of Defendant at 61:22:25, 63:15-64:5, 56:2-9, and 85:5-9.

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's breach of the duties owed is a genuine issue of material fact and jury question.

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. Ex. 21 – Written Statement of Lemuel Gaines. 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. Ex. 5 – Depo. of Defendant at 49:8-10. Her statements in the claim file show she told PURE she was speeding and using the right lane to pass, which are both statutory violations. Ex. 9 – PURE Claim File at 3.

Following the incident, the body cam video 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.” Ex. 8 – Officer Body Worn Camera Video.

Plaintiff's ability or inability to avoid the incident is a genuine issue of material fact and jury question.

The Report of David H. Eagerton, Ph.D., F-ABFT (Ex. 10), provides:

It is my opinion that, within a reasonable degree of scientific certainty, Mr. Lynch was suffering from severe hypoglycemia at the time of the incident, and this condition caused his erratic behavior and confusion. Mr. Lynch had also consumed some alcohol prior to the incident, but his blood alcohol level was a relatively low level. This level alone would not have resulted in his behavior as it was documented on December 16, 2021. Any statements given by Mr. Lynch at the time of the incident were not likely reliable due to the effects of the hypoglycemia. It is further my opinion, that there is no evidence of any illicit drug use by Mr. Lynch on the day of the incident.

These opinions are based on my education and training as a Board-Certified Forensic Toxicologist as outlined in my C.V. Each of the above conclusions and opinions are given to a reasonable degree of scientific certainty based upon the information that I have been provided to date.

Please let me know if you have any questions or if I can be of further assistance in this matter.

Sincerely,



David H. Eagerton, Ph.D., F-ABFT

At the time of medical emergency, Plaintiff was walking to his mother's house retrieve his "medicine" which he left at the house. Ex. 23 – Depo. of Plaintiff at 31:19-24. While on the asphalt, Defendant struck Plaintiff with her vehicle, causing Plaintiff to sustain numerous fractures and injuries, including an above the knee amputation of his right leg.



Ex. 24 - Photographs of Plaintiff's Injuries.

The driver adjacent to Defendant saw Plaintiff walking across the road and fall, yet Defendant first saw Plaintiff when she was a mere five feet from him.

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. Ex 5 – Depo. of Defendant at 56:2-9, 64:12-17, and 85:5-9. Following the incident, an on-scene police officer's body camera 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.” Ex. 8 – Body Worn Camera video. 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. Ex. 5 – Depo. of Defendant at 49:8-10.

Defendant’s ability or inability to avoid the incident is a genuine issue of material fact and jury question.

A. Defendant Einstein failed to use due care by driving parallel to Mr. Gaines, leaving no space to avoid danger, including running over Mr. Lynch.

Investigating Officer Rachel Hamilton and Defendant provided the following testimony regarding this driver duty and safety issue:

Q	Based on your training and experience, and going through the South Carolina Criminal Justice Academy, the operator of a vehicle has the duty and obligation to be aware of their surroundings and look for objects on the roadway, including pedestrians, correct?
A	Yes, sir.
Q	And they have the duty and obligation to utilize the headlights on the vehicle to recognize pedestrians and other objects on the roadway, correct?
A	Yes, sir.

Ex. 6 – Depo. of Hamilton at 73: 24 – 74:10.

Q. And when you say, as we approached the scene, who is the we that you're talking about?

A. Mr. Gaines was the driver of a car beside me.

Q. And when you say Mr. Gaines was the driver of the car beside you, what side was he on of you -- of your vehicle?

A. My left.

Ex. 5 – Depo. of Defendant at 56:2-9.

Q. And how long had that car been to your left?

A. We had traveled along together for at least -- he was there the entire time that I was driving on Wade Hampton.

Ex. 5 – Depo. of Defendant at 85:5-9.

Q Very good. And based on your training, and what you learned at the Academy, and your overall experience since you've been a police officer, you have come to learn that you and other drivers space management in and around your vehicle is important, correct?

A Yes, sir.

Q Space management is necessary for an operator of a vehicle to maintain so that they use due care and operate their vehicle safely, correct?

MS. STACY: Object to the form.

A Yes, sir.

Ex. 6 – Depo. of Officer Hamilton at 65:20-66:6.

Q And space management means leaving a cushion, front, back and to the sides, correct?

A Yes, sir.

Q And the space cushion, the space management concept, is part of a driver's obligation and duty to operate the vehicle with due care, and responsibly, and reasonably, correct?

MS. STACY: Object to the form.

A Yes, sir.

Ex. 6 – Depo. of Officer Hamilton at 66:7-15.

Q Right. And that ability to move to the left or the right is a duty and obligation that's part of safe operation of a vehicle, correct?

MS. STACY: Object to the form.

MR. MCCOOL: You can answer.

A Yes, sir.

Ex. 6 – Depo. of Officer Hamilton at 66:24-67:4.

Q I know. What I'm talking about is the intelligent, safe and reasonable driver, based on your training and experience, should leave a space cushion in and around the vehicle?

A Yes, sir, they should.

Ex. 6 – Depo. of Officer Hamilton at 72:22-73:1.



SC-008-811

Pol: PA217308202Ins: Howard EinsteinDoL: 12/16/2021St: OpenAdj: David Bauck (Do Not Use - SECA)External Status: In ProgreessMember Since: 04/18/2019 (5 years)

Clmt was laying in road way with head towards curb and legs in members lane of travel

Time was around 830 pmt

member was in rt lane and saw car ahead move to left and member saw pedestrian laying in roadway. member swerved left but the was car in left middle lane

IV front and rear rt tires went over members legs

member claims no other cars hit clmt and clmt was just lying in roadway for no reason

After impact member stopped and put hazard lights on and someone already called 911.

Clmt was taken to hospital by EMS

member states there are witnesses on p/r to confirms behavior

2. no damage to iv
-Douglas Mook (02/15/2022 1:15 PM)

General
allied assignment made to assist in investigation

Ex. 9 at 2 – Claim File obtained from PURE Specialty Risk Management, LLC via a subpoena.

General

Spoke to Mrs Insd. Insd was in the far right lane of 3 on Wade Hampton Blvd and she advised that there was another Range Rover in the middle lane and insd was going to want to move over to the far left eventually up ahead. She was traveling approx 45 mph in a 45 mph zone and sped up to about 50 mph to try to get ahead of the other veh to her left and then realized this other veh was going a bit too fast so she dropped back down to 48 mph.

All of a sudden, insd saw man lying down in roadway, not sure if he was just getting into this position or not

Page 22

May 9, 2024 2:57 PM

PURE_Einstein 0159

Insd swerved left as much as she could to avoid hitting his torso or head, insd could not go any further to the left because there was another vehicle (the other Range Rover) there.

She did not slam on brakes as she was worried she was afraid she would skid and pin him under car.

Clmt was lying perpendicular to the insd across the right lane with his head closest to the curb

Time of day: approx 9:30 p.m., dark outside

Headlights were on

Commercial area, fairly well-lighted area, no street light right there, however, small diner is nearby

Witnesses say clmt was likely high on drugs

Always walking around the area

EMTs said they take clmt in all the time

-David Bauck (02/17/2022 10:59 AM)

Ex. 9 at 3 – Claim File obtained from PURE Specialty Risk Management, LLC via a subpoena.

Defendant's Impairment

Greenville News

TALK GREENVILLE

Drinkin' on the job ... welcoming a new 'neighbor'!

The Vista on Augusta Street at Faris Road, restaurateur Rick Erwin's latest venture, is named for the nearby Alta Vista neighborhood

Angie Einstein and Alex Burgamy For TALK Greenville

Swordfish Cocktail Club in Greenville references the Marx Brothers with its speakeasy vibe

Angi Einstein and Alex Ryan, therarebelle.com



We've been at this drinking gig for a while now and have enjoyed every establishment, sip, creation, bartender/mixologist/beverage manager/owner-operator, etc... but this month's experience takes the cake on preparation, thoughtfulness, service and genuine LOVE of the perfectly crafted cocktail! We sat down with Brad at Swordfish Cocktail Club for an in-depth look at his and Evan's amazing little spot and to sample the wares. We were quite impressed.

Defendant regularly consumes alcohol and a reasonable juror could conclude Defendant was impaired by prescription drugs and/or a combination of drugs and alcohol at the time of the incident and that Defendant was impaired by her vertigo, a condition medically known to adversely affect a person's ability to safely drive. Defendant admits she consumed alcohol within 48 hours of the subject incident. See Ex. 14 – Defendant's Responses to Plaintiff's Interrogatories (Interrogatory No. 13) while prescribed drugs Ativan, Cymbalta, and Restoril. See Ex. 15 – Defendant's records from Primary Choice Medical dated 10/24/2021. In the fields of Pharmacology and Toxicology, it is known that the side effects of said medications, taken alone, include drowsiness, tiredness, dizziness, loss of/ lessened/ reduced coordination, blurred vision, memory impairment. "When combined with alcohol, the risk of these side effects is higher and may be more severe, up to 48 hours after the consumption of alcohol." Ex. 13 - Affidavit of Dr. Eagerton.

Defendant's physician confirmed that Defendant has a history of vertigo requiring medical treatment, including the prescribing of medication. Ex. 17 - Letter from D. Johnstone, III, M.D. to To Whom it May Concern dated 11/19/25. It is medically known that vertigo may adversely impact a person's ability to safely drive a vehicle and lack of prescription for the condition does not mean the condition does not exist. Ex. 11 - Depo. of David Eagerton, M.D. at 62:13-23.

Defendant works for a local magazine and authors articles entitled "Drinkin' on the Job" and consumes alcohol on a regular basis. Ex. 5 - Depo. of Defendant at 23:16-25; 45:8-16; 107:4-16); Ex. 18 - Let's Talk Greenville tagged interview of articles and social media. Defendant texted her friends "what if I had been coming from a party myself and had been drinking?" Ex. 19 - 12/17/21 text message from Defendant at 3. Defendant's cell phone data is still under review in

the discovery process by a neutral and has been provided to Defendant, but Plaintiff does not have all of Defendant's relevant texts, GPS, and other cell phone data to date.

Weighing the credibility of the witnesses' testimony is the jury's job.

From: David Bauck <DBauck@pureinsurance.com>
Sent: Thursday, February 17, 2022 10:51 AM
To: Bish, Kenneth <Kenneth.Bish@aus.com>; Fedorski, Daniel <Daniel.Fedorski@aus.com>
Cc: Saadiq, Ammar <Ammar.Saadiq@aus.com>
Subject: RE: PURE Claim #SC-008-811

Mrs. Angela Einstein will be point person for vehicle inspection. Please don't mention severity of the injs being claimed by the claimant to her at this time, per her husband's request. She is fragile emotionally – according to him – and he'd like to keep things on his terms at this time. Mrs. Einstein can be reached at [REDACTED]

Thank you, and have a great day.

David Bauck, CPCU, Senior Claims Analyst

Mr Insd called me back. He advised that his wife just lost her dad a few weeks ago and she is in a fragile state. She is quite angry that clmt has hired an atty and is alleging negligence on her when the clmt was just laying in the roadway. There was nothing she could do so avoid. Mr. Insd advised that his wife would like to sell her vehicle and I advised they should not do that at this time as the clmt atty has placed them on notice not to destroy or discard any evidence related to this matter. Advised that I am awaiting approval to retain counsel to walk with them on this matter. He advised there is no damage to the IV and I advised that I will ask investigator to come out and take photos. He said ok for me to talk to his wife about the incident but not to mention the severity of the clmt's injuries right now as he worries that will really upset her and he needs to manage that.

-David Bauck (02/17/2022 10:26 AM)

Claim: SC-008-811	 Pol: PA217308202Ins: Howard EinsteinDoL: 12/16/2021St: OpenAdj: David Bauck (Do Not Use - SECA)External Status: In ProgressMember Since: 04/18/2019 (5 years)
-Advised they received a letter from the at fault party's attorney but she did not have much more info -Advised I should call Mbr directly to set up the claim with him -Asked that she is copied on the FNOL email so that she can send a copy of the attorney's letter and police report	
OBC to Mbr, Howard Einstein- [REDACTED]	
-Mbr reported that his wife was driving their daughter to a Christmas party -A man ran out into the middle of the road and Mbr's wife could not stop, ran over him -No damage to IV, IV has been sold and replaced since -Mbr's wife was very shaken up and scarred following the incident -Unsure of the other party's injuries at this time, but Mbr received a letter from an attorney's office -Mbr does not want to hire an attorney for himself and is hoping PURE can help	
Advised of: - Next steps: FNOL email, adjuster contact - Member portal Thanked and call concluded	
*** Policy Number- PA217308201	
User: Criscinda Katogiritis	Page 4 May 9, 2024 2:57 PM PURE_Einstein 0141

As stated in the Report of Dr. Eagerton (the forensic toxicologist), “[a]ny statements given by Mr. Lynch at the time of the incident were not likely reliable due to the effects of the hypoglycemia.” Ex. 10. Statements given by Plaintiff to law enforcement while suffering from the effects of his severe hypoglycemia are unreliable.

B. Summary judgment is inappropriate 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.

Defendant relies heavily on *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710, 712 (2000). Even under a *Bloom* analysis, Defendant must convince this Court a verdict in favor is not

reasonably *possible* under the facts presented. 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) (emphasis added). In light of the Court of Appeals’ holding in *Abdelgheny*, summary judgment should be 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).

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 does not rely on a mere scintilla of evidence. Plaintiff has 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 filed August 5, 2022. At the first 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. 22 – 3/4/24 Hearing Transcript at 4-5. It is clear the evidence presented, 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.

Beyond applying the requisite legal framework which requires the denial of summary judgment, the facts of this case cannot be reconciled with our jurisprudence as suggested by

Defendant. 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. Ex. 10 – Report of Dr. Eagerton; Ex. 23– Depo. of Plaintiff at 32:19-24.

Additionally, Defendant's conduct is much more culpable than the *Bloom* defendant. Defendant struck a pedestrian visible to the driver of the vehicle next to her, Mr. Lemuel Gaines, who was able to observe Plaintiff walking and fall before Defendant struck him as she was making a lane change and speeding on approach. Defendant's luxury vehicle, equipped with state-of-the-art headlights, was traveling in a well-lit area with no rain and a dry road. As noted above, Defendant described the road and conditions as "dry" and a "straight shot." 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 the *only* reasonable inference that could be drawn from all of the evidence is that Plaintiff 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.

C. Whether motorist statutes have been violated and the degree of fault attributable to a motorist for violating these statutes is also a jury question. Furthermore, Defendant's contention summary judgment should be granted as to punitive damages is without merit.

South Carolina law prohibits speeding:

A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person,

vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

See S.C. Code Ann. § 56-5-1520(A).

Defendant was passing on the right. S.C. Code Ann. § 56-5-1850 provides “when passing on the right is permitted” and none of those scenarios apply. Lemuel Gaines was not turning left and the pass was obviously not done safely because a pedestrian was struck. South Carolina also 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 Plaintiff 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)).¹ 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. There is no question that Defendant owed a duty of care. For that reason, it remains a question for the jury to determine.

Under long-standing South Carolina precedent, the violation of a statute constitutes negligence per se, and negligence per se is some evidence of recklessness and willfulness that requires submission of the issue of punitive damages to the jury. *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 97–98, 727 S.E.2d 407, 411 (2012); *Wise v. Broadway*, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993) (“The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury.”); *Rhodes v. Lawrence*, 279 S.C. 96, 97–98, 302 S.E.2d 343, 344 (1983) (“In these circumstances, a jury question as to punitive damages was clearly presented given the well settled rule that a showing of statutory violation can be evidence of recklessness and willfulness.”); *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 314, 594 S.E.2d 867, 875 (Ct.App.2004) (“A factual question as to punitive damages is presented when there is evidence of a statutory violation.”).

¹ 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).

The issue of punitive damages at the directed verdict stage was recently addressed in the advance sheets in *Gurwood v. GCA Servs. Grp., Inc.*, finding the issue must be presented to the jury to determine if the evidence could reasonably support a jury verdict that the conduct was willful, wanton, or reckless (“Thus, the trial court erred by granting GCA's motion for a directed verdict on punitive damages because a jury could reasonably have found by clear and convincing evidence that Every and GCA acted recklessly.” *Gurwood v. GCA Servs. Grp., Inc.*, 445 S.C. 324, 336, 914 S.E.2d 149, 156 (2025).

D. Discovery is ongoing.

The Court has been provided with an abundance of evidence to deny summary judgment, but to the extent the Court finds otherwise, discovery is ongoing. Depositions are still taking place and Defendant’s cell phone data is in review by a third-party neutral for production after a download took place. While Plaintiff has had time to conduct discovery, Plaintiff has been stonewalled throughout the litigation, and it has not been a “full and fair” opportunity to date.

CONCLUSION

The jury as trier of fact should weigh the evidence. For these reasons, Plaintiff requests the Court deny summary judgment and allow this case to proceed to a jury trial.

[Signature Page to Follow]

Respectfully submitted,

O'Shea Law Firm, LLC

s/Brooklyn A. O'Shea

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

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Attorneys for Plaintiff

January 12, 2026

Charleston, South Carolina

Exhibit No. 1

Abdelgheny v. Moody, 432 S.C. 346, 852
S.E.2d 225 (Ct. App. 2020)

432 S.C. 346

Court of Appeals of South Carolina.

Chelsea ABDELGHENY f/k/
a Chelsea Jackson, Appellant,

v.

Gerald L. MOODY, Respondent.

Appellate Case No. 2018-000102

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Opinion No. 5780

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Heard September 10, 2020

|

Filed October 28, 2020

Synopsis

Background: Pedestrian brought negligence action against motorist after pedestrian was struck by motorist while crossing four-lane highway. The Circuit Court, Pickens County, [Perry H. Gravely, J.](#), granted motorist's motion for summary judgment, ruling pedestrian's negligence in not using crosswalk exceeded 50 percent of total fault, and therefore, doctrine of comparative negligence barred recovery for pedestrian's injuries. Pedestrian appealed.

[Holding:] The Court of Appeals, Hill, J., held that issue of whether pedestrian's own negligence accounted for more than 50 percent of comparative fault precluded summary judgment.

Reversed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (8)

- [1] **Appeal and Error** 🔑 Review using standard applied below
Appeal and Error 🔑 Summary Judgment
Summary Judgment 🔑 Favoring nonmovant; disfavoring movant

Court of Appeals reviews a grant of summary judgment using the same “yardstick” as the trial court: it views the facts in the light most favorable to the non-moving party, and draws all reasonable inferences in her favor. *S.C. R. Civ. P. 56(c)*.

1 Case that cites this headnote

- [2] **Summary Judgment** 🔑 Drastic or extreme remedy; use of caution

Summary Judgment 🔑 Scintilla of evidence; minimal amount

Summary judgment is a drastic remedy to be invoked cautiously and must be denied if a non-moving party demonstrates a scintilla of evidence in support of her claims. *S.C. R. Civ. P. 56(c)*.

1 Case that cites this headnote

- [3] **Summary Judgment** 🔑 Negligence in general

To survive summary judgment on a negligence claim, plaintiff must put forth a scintilla of evidence as to each element, including that defendant breached a duty of care he owed to her. *S.C. R. Civ. P. 56(c)*.

- [4] **Summary Judgment** 🔑 Negligence in general

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. *S.C. R. Civ. P. 56(c)*.

1 Case that cites this headnote

- [5] **Negligence** 🔑 Effect of others' fault; comparative negligence

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.

[6] **Summary Judgment** 🔑 Favoring nonmovant; disfavoring movant

Summary Judgment 🔑 Conflicting inferences or conclusions

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. S.C. R. Civ. P. 56(c).

[7] **Summary Judgment** 🔑 Negligence in general

It is only in the rare instance, when the evidence generates only a single inference, that summary judgment is proper in a comparative negligence action. S.C. R. Civ. P. 56(c).

[8] **Automobiles** 🔑 Comparative negligence and apportionment of fault

Summary Judgment 🔑 Motor vehicles

Genuine issue of material fact as to whether pedestrian's own negligence of crossing four-lane highway without using crosswalk accounted for more than 50 percent of comparative fault in accident in which motorist struck and injured pedestrian precluded summary judgment for motorist in pedestrian's negligence action. 🚩 S.C. Code Ann. §§ 56-5-1520(A), 56-5-3150(c), 56-5-3230; S.C. R. Civ. P. 56(c).

****226** Appeal From Pickens County, [Perry H. Gravely](#), Circuit Court Judge

Attorneys and Law Firms

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Opinion

HILL, J.:

348** A little before 8:00 p.m. on October 26, 2015, Chelsea Abdelgheny had just finished teaching a Zumba class at Mission Fitness in Easley when her boss asked her to check on an order he had placed at the sign store across the street. Wearing a neon pink hooded sweatshirt and bright blue exercise pants, Chelsea ventured across the street, a broad, four-lane section of Highway 8 with a wide center median. The highway serves as the main thoroughfare between Easley and the city of Pickens, which lies eight miles north. Chelsea chose to cross the highway at the point closest to her in front of Mission Fitness. The nearest cross walk was several hundred yards to the northwest, at a signaled intersection next to an American Waffle restaurant, well above the sign store. It was dark, and a moderate to heavy rain was *227** falling. The traffic was also moderate. Chelsea, who was talking to her boss on her cell phone, reached the center median and stopped to look to make sure all was clear before crossing the southbound lanes.

Driving a pickup truck in the far right southbound lane, Gerald L. Moody was returning from Pickens to Easley. Resuming his journey after stopping for a light at the American Waffle intersection, he reached a speed of twenty-five to thirty miles per hour, his windshield wipers beating, the truck's low beams fixed on a straight stretch of road when he "looked up and ... saw this lady in front of my driver's headlight with her hand up. She turned and looked at me and made approximately two fast steps, and I hit her with the ***349** right passenger headlight." Moody testified that when he looked up and saw Chelsea, she was only ten feet in front of his truck; he hit the brakes but still struck her. The point of impact was the passenger side headlight. Chelsea, her memory of the crash fuzzy, testified she first saw Moody's truck when it hit her. The impact broke her right hip and caused her other significant injuries.

Chelsea brought this negligence action against Moody. Moody's answer averred comparative negligence. The trial court granted Moody summary judgment, ruling Chelsea's negligence in not using the crosswalk exceeded fifty percent

of the total fault, and therefore, the doctrine of comparative negligence barred recovery. Chelsea now appeals.

I.

[1] [2] We review a grant of summary judgment using the same yardstick as the trial court: we view the facts in the light most favorable to Chelsea, the non-moving party, and draw all reasonable inferences in her favor. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). Moody is entitled to summary judgment only if “there is no genuine issue as to any material fact” Rule 56(c), SCRPC. Summary judgment is a drastic remedy to be invoked cautiously and must be denied if Chelsea demonstrates a scintilla of evidence in support of her claims. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

[3] To survive summary judgment on her negligence claim, Chelsea must put forth a scintilla of evidence as to each element, including that Moody breached a duty of care he owed to her. The duty at issue here is the duty to act as a reasonably prudent driver would have under the same circumstances. Even if Moody was negligent, the comparative negligence doctrine bars Chelsea from recovery if her own negligence amounted to more than fifty percent of the total fault.

[4] [5] [6] [7] 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 *350 credibility of the evidence. 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. *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. *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). It is only in the “rare” instance—when the evidence generates only a single inference—that summary judgment is proper in

a comparative negligence action. *Bloom v. Ravoir*, 339 S.C. 417, 424–25, 529 S.E.2d 710, 714 (2000).

II.

[8] We agree with the trial court that by crossing the highway outside a crosswalk, Chelsea was negligent. See S.C. Code Ann. § 56-5-3150(c) (2018) (“Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.”). But we cannot agree that the only inference a reasonable juror could make is Chelsea's **228 own negligence accounted for more than fifty percent of the fault.

Chelsea and Moody owed each other the duty to keep a proper lookout. Chelsea's unfortunate choice to not use the crosswalk did not excuse Moody from his urgent duty to not only look, but to see. See *Thomasko*, 349 S.C. at 11–12, 561 S.E.2d at 599 (whether driver kept a proper lookout is a jury question if the evidence yields multiple inferences); *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975) (“It is inescapable that the respondent was in the road to be seen. Whether the driver-appellant should have seen him in time to stop or slow down to avoid the accident was a question of fact for the jury.”); see also S.C. Code Ann. § 56-5-3230 (2018) (“[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian”). The law also obligates a driver to adjust his speed to the road conditions. S.C. Code Ann. § 56-5-1520(A) (2018) (“A person shall not drive a vehicle on a highway at a speed greater than is reasonable and *351 prudent under the conditions and having regard to the actual and potential hazards then existing.”). A reasonable juror could interpret Moody's testimony that he first saw Chelsea when he “looked up” to find her walking ten feet in front of his truck as incompatible with a careful lookout. The same reasonable juror might infer Moody's speed was too fast for the rainy and dark conditions if his range of vision was a mere ten feet. An equally reasonable juror might deem Moody's driving perfectly prudent, or at least less negligent than Chelsea's walking.

Moody sees little difference between his facts and those justifying summary judgment to the driver who struck a pedestrian in *Bloom v. Ravoir*. We see many, starting with the contrast between the broad upland expanse of Highway 8 and the narrowness of the dense, two-lane urban byway of downtown Charleston's Meeting Street, clogged as it was by

cars parked upon it. Mr. Bloom, the pedestrian, was wearing dark clothes, the rain more an Irish mist than the downpour here, and Bloom “ran” into the street between two parked cars.  339 S.C. 417, 419–21, 529 S.E.2d 710, 711–12. The driver's speed was five miles per hour less than Moody's. Bloom was struck a “split second” after he ran into the street without warning (but with a taxidermied pig tucked under his arm), while here Chelsea was wearing bright clothes, had managed to cross two lanes of traffic without incident, and paused in the median to look out before proceeding.

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.

THOMAS and HEWITT, JJ., concur.

All Citations

432 S.C. 346, 852 S.E.2d 225

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Exhibit No. 2

Littrell guardian of Littrell v. Landmark Builders of S.C. LLC, 2:19-CV-0637-DCN, 2021 WL 795579 (D.S.C. Mar. 2, 2021)

2021 WL 795579

Only the Westlaw citation is currently available.

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

I

Signed 03/02/2021

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Grantland PA, Columbia, SC, for Defendant.**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.

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.”).

End of Document

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Exhibit No. 3

Sharp v. Rutherford, 2024 WL 5074816 (Ct. App. S.C. 2024)
Unpublished Opinion

2024 WL 5074816

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.**THIS OPINION HAS NO PRECEDENTIAL VALUE.
IT SHOULD NOT BE CITED OR RELIED ON AS
PRECEDENT IN ANY PROCEEDING EXCEPT
AS PROVIDED BY RULE 268(d)(2), SCACR.**

Court of Appeals of South Carolina.

Bill R. SHARPE and Angela Sharpe, Respondents,

v.

Rocky RUTHERFORD, Legacy Equipment, Inc.,

and G.A. West and Company, Inc., Appellants.

Appellate Case No. 2023-000060

|

Unpublished Opinion No. 2024-UP-415

|

Submitted October 1, 2024

|

Filed December 11, 2024

Appeal From Richland County, [Jean Hoefer Toal](#), Circuit
Court Judge**Attorneys and Law Firms**[Phillip Florence, Jr.](#) and [Everett Augustus Kendall, II](#), both of
Murphy & Grantland, PA, of Columbia, for Appellants.[Gary Walton Popwell, Jr.](#), of Lee Eadon Isgett & Popwell, of
Columbia, for Respondents.**Opinion**

PER CURIAM:

*1 This comparative negligence case stems from a collision between a pickup truck and an eighteen-wheeler at the intersection of South Beltline Boulevard and Bluff Road in Columbia. The circuit court granted summary judgment on liability, finding there was no genuine dispute that the driver of the eighteen-wheeler was responsible for the collision. We respectfully disagree with the finding that there are no genuine issues of material fact. For that reason, we reverse.

“An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to

Rule 56(c), SCRCP.” [Lanham v. Blue Cross & Blue Shield of S.C., Inc.](#), 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). South Carolina courts no longer apply the “mere scintilla” standard when reviewing motions for summary judgment. [Kitchen Planners, LLC v. Friedman](#), 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). Instead, “summary judgment is proper when ‘there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.’ ” [Baughman v. Am. Tel. and Tel. Co.](#), 306 S.C. 101, 114–15, 410 S.E.2d 537, 545 (1991) (alteration in original) (quoting Rule 56(c), SCRCP).

To prove negligence, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty through a negligent act or omission; (3) the breach resulted in damages to the plaintiff; and (4) those damages proximately resulted from the breach. [Thomasko v. Poole](#), 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002) (citing [Bloom v. Ravoira](#), 339 S.C. 417, 529 S.E.2d 710 (2000)). The law bars recovery if the plaintiff’s negligence exceeds fifty percent of the comparative fault. *Id.* (citing [Nelson v. Concrete Supply Co.](#), 303 S.C. 243, 399 S.E.2d 783 (1991)). “It is only in the ‘rare’ instance—when the evidence generates only a single inference—that summary judgment is proper in a comparative negligence action.” [Abdelgheny v. Moody](#), 432 S.C. 346, 350, 852 S.E.2d 225, 227 (Ct. App. 2020) (citing [Bloom](#), 339 S.C. at 424–25, 529 S.E.2d at 714).

As drivers in South Carolina, both parties here had respective duties they were obligated to uphold. Rocky Rutherford, the driver of the eighteen-wheeler, was required to yield to oncoming traffic when making his left turn onto South Beltline. See [S.C. Code Ann. § 56-5-2320](#) (2018); see also [Warren v. Watkins Motor Lines](#), 242 S.C. 331, 340, 130 S.E.2d 896, 901 (1963) (“A motorist ... must yield the right of way to vehicles approaching so closely as to constitute an immediate hazard.”). Bill Sharpe, the driver of the pickup truck, was obligated to “keep a reasonable lookout to avoid hazards on the [roadway],” even if he had the right-of-way. See [Thomasko](#), 349 S.C. at 12, 561 S.E.2d at 598.

Sharpe’s main argument on appeal is that Rutherford presented no evidence, other than his own deposition testimony, suggesting that Sharpe was comparatively negligent in causing this accident. This is a strong argument, and we considered whether Rutherford’s testimony—the only evidence he relies on in opposing summary judgment—was

enough to withstand Sharpe's summary judgment motion. See, e.g., *Kitchen Planners*, 440 S.C. at 464, 892 S.E.2d at 302 (stating the nonmoving party failed to “provide a meaningful factual basis on which a factfinder could [find in that party's favor]”). Still, we conclude summary judgment was improper here for at least two reasons.

*2 First, “[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable” to adjudicate a case as a matter of law. *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995). As outlined below, the scant evidence in the record presents a classic case of conflicting witness testimony and raises colorable questions of comparative negligence.

Rutherford claimed that he waited for traffic to clear before beginning his left turn and said Sharpe “came out of nowhere.” Rutherford stated that at that point, the collision was unavoidable. Rutherford believed Sharpe's speed “had to have been pretty excessive” based on how hard the collision shook his truck. Rutherford's account requires an inference that Sharpe was driving at such a significant speed that he was not visible when Rutherford initiated his turn but came fast enough to strike Rutherford's vehicle before Rutherford could complete the turn. His account also requires the inference that Sharpe was not properly looking out before entering the intersection.

Sharpe asserted that he was driving at or under the speed limit when he arrived at the intersection and saw Rutherford stopped in the turn lane. Sharpe said that Rutherford did not start his turn until after Sharpe arrived at or had already begun driving through the intersection. Sharpe said that he did not have time to avoid the collision because Rutherford turned in front of him so quickly. This account requires an inference that Rutherford's vehicle—an eighteen-wheeler, which, according to Sharpe, was stationary when Sharpe entered the intersection—accelerated, crossed over multiple traffic lanes, and ended up directly in front of and perpendicular to Sharpe's oncoming vehicle within a few seconds.

There is also a direct conflict as to how far along Rutherford was in his turn when the collision occurred. Sharpe said he hit the “tail end” of Rutherford's truck and “the front of the trailer [Rutherford] was toting.” This would suggest that Rutherford was decently far along in his turn at the time of the collision. Rutherford stated that Sharpe hit the front tire and

front bumper on Rutherford's passenger side, which would indicate the opposite. The only photographic evidence before us captures the damage to Sharpe's vehicle but does not show the point of impact on Rutherford's eighteen-wheeler.

We read the conflicting deposition testimonies as pointing to opposing inferences about how the accident occurred and which party is at fault. We emphasize that we make no determination as to the weight of either party's testimony.

See  *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006) (“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony”); cf. *Abdelgheny*, 432 S.C. at 349–50, 852 S.E.2d at 227 (“[T]he court's duty at [the summary judgment] stage is to presume the credibility of the evidence.”). Instead, we have summarized the testimony only to illustrate why summary judgment was inappropriate. See *Standard Fire Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990) (“All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment.”); *id.* (“The grant of summary judgment is appropriate only if it is clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that the movant is entitled to judgment as a matter of law.”).

*3 The second reason we find summary judgment should not have been granted is that questions of comparative negligence are typically left for the factfinder. See *Abdelgheny*, 432 S.C. at 350, 852 S.E.2d at 228 (“It is only in the ‘rare’ instance—when the evidence generates only a *single inference*—that summary judgment is proper in a comparative negligence action.” (emphases added) (citing  *Bloom*, 339 S.C. at 424–25, 529 S.E.2d at 714)); see also, e.g., *Thomasko*, 349 S.C. at 13–14, 561 S.E.2d at 600 (finding comparative negligence, specifically in terms of whether a driver kept a proper lookout, to be an issue for the jury when “[s]everal inferences could be drawn from the facts, including finding [the defendant or plaintiff] could have failed to keep a proper lookout”); *Wilson v. Marshall*, 260 S.C. 271, 276, 195 S.E.2d 610, 612 (1973) (reversing a direct verdict and remanding for a new trial when the appellate court concluded the evidence was susceptible to a reasonable inference that the plaintiff failed “to exercise due care in keeping a proper lookout and driving at an appropriately reduced speed under the circumstances,” even though the evidence left little doubt that the defendant was the primary cause of the collision).

We decline to address any remaining issues based on the dispositive nature of the grounds outlined above. *See*

 *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling it unnecessary for an appellate court to address remaining issues when its resolution of a prior issue is dispositive).

Accordingly, the circuit court's order is

REVERSED AND REMANDED. ¹

THOMAS, HEWITT, and VINSON, JJ., concur.

All Citations

Not Reported in S.E. Rptr., 2024 WL 5074816

Footnotes

- 1 We decide this case without oral argument pursuant to [Rule 215, SCACR](#).

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Exhibit 4
Daytime Photographs of Scene



Exhibit 5
Depo. Testimony of Defendant

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

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

O'SHEA LAW FIRM
BY: CHRISTOPHER J. McCOOL
1120 Folly Road
Charleston, SC 29412

-and-

TARA A. LEAPHART, ATTORNEY AT LAW
BY: TARA A. LEAPHART
Post Office Box 6145
Columbia, SC 29260

ON BEHALF OF DEFENDANT:

HALL BOOTH SMITH
BY: MEGAN MCGEE STACY
11215 North Community House Road
Suite 750
Charlotte, NC 28277

ALSO PRESENT: Howard Einstein

23 / 120

16 **Q. And do you publish or author any sort of**
17 **blogs?**

18 A. I do.

19 **Q. And what blogs do you author?**

20 A. The blog is The Rare Belle.

21 **Q. And The Rare Belle, is the blog**
22 **subtitled or affiliated with an ongoing**
23 **publication called Drinkin' on the Job?**

24 A. It is a -- Drinkin' on the Job is an
25 article that my coauthor and I write.

030 / 120

Einstein, Angela 12/8/22 VOL 1

02 **Q. And what type of vehicle were you**
03 **driving at the time of this incident in December**
04 **of 2021?**

05 A. A Range Rover.

06 **Q. What year was it?**

07 A. 2021.

08 **Q. Do you drink alcohol on a regular basis?**

09 A. I do drink alcohol.

10 **Q. How often?**

11 A. Probably three times a week.

12 **Q. And are you out and about when you have**
13 **alcohol three times a week or do you consume it**
14 **at your home or both?**

15 A. Most often, out at dinner. Seldom at
16 home.

049 / 120

Einstein, Angela 12/8/22 VOL 1

08 **Q. And you noticed Mr. Lynch for the very**
09 **first time 5 feet before you rolled across him?**

10 **A. I would say it was no more than 5 feet.**

056 / 120

Einstein, Angela 12/8/22 VOL 1

02 **Q. And when you say, as we approached the**
03 **scene, who is the we that you're talking about?**

04 A. Mr. Gaines was the driver of a car
05 beside me.

06 **Q. And when you say Mr. Gaines was the**
07 **driver of the car beside you, what side was he on**
08 **of you -- of your vehicle?**

09 A. My left.

056 / 120

Einstein, Angela 12/8/22 VOL 1

02 **Q. And when you say, as we approached the**
03 **scene, who is the we that you're talking about?**

04 **A. Mr. Gaines was the driver of a car**
05 **beside me.**

06 **Q. And when you say Mr. Gaines was the**
07 **driver of the car beside you, what side was he on**
08 **of you -- of your vehicle?**

09 **A. My left.**

060 / 120

Einstein, Angela 12/8/22 VOL 1

09 Q. And the road conditions were dry,

10 correct?

11 A. Yes.

12 Q. Weather was dry, correct?

13 A. Yes.

14 Q. And Wade Hampton Boulevard, that's a

15 straight shot, as they call it?

16 A. Yes.

061 / 120

Einstein, Angela 12/8/22 VOL 1

- 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.**

062 / 120

Einstein, Angela 12/8/22 VOL 1

25

Q. And you had your headlights on on your

063:01

Range Rover as you proceeded down Wade Hampton,

02

correct?

03

A. Correct.

063 / 120

Einstein, Angela 12/8/22 VOL 1

15 Q. So with your Range Rover, you had to
16 actually manually with your hand turn on your
17 headlights?

18 A. I would.

19 Q. I'm just asking you if that's what you
20 had to do in order to turn on your headlights.

21 A. I'm sorry. It had auto lights. There
22 were always lights on. They were daytime running
23 lights. In order to make them high beam, I would
24 do that manually.

25 Q. But the low beams were auto --

64:01 A. Yes.

02 Q. -- on your Range Rover, meaning they
03 automatically came on? It would sense the time
04 of day or dusk and automatically come on?

05 A. Correct.

064 / 120

Einstein, Angela 12/8/22 VOL 1

06 **Q. Any issues with your headlights during**
07 **your ownership of the Range Rover?**

08 **A. No.**

09 **Q. Any issues with the headlights on**
10 **December 16th, 2021?**

11 **A. No.**

12 **Q. And how long had you been on Wade**
13 **Hampton Boulevard before the incident occurred?**

14 **A. I had turned off of North Pleasantburg**
15 **onto Wade Hampton.**

16 **Q. And how far up the road is that?**

17 **A. Approximately a mile.**

064 / 120

Einstein, Angela 12/8/22 VOL 1

18 Q. And did you have your radio on?

19 A. Yes.

20 Q. Do you recall what you were listening
21 to?

22 A. Christmas music.

085 / 120

Einstein, Angela 12/8/22 VOL 1

05 **Q. And how long had that car been to your**
06 **left?**

07 A. We had traveled along together for at
08 least -- he was there the entire time that I was
09 driving on Wade Hampton.

04 **Q. Okay. So -- and so the blog, The Rare**
05 **Belle blog --**

06 A. Yes.

07 **Q. Has it always had the subtitle or the**
08 **working title of Drinkin' on the Job?**

09 A. The blog is not Drinkin' on the Job.

10 **Q. What is Drinkin' on the Job then?**

11 A. It is an article that we write for a
12 local magazine.

13 **Q. And what's the name of the local**
14 **magazine?**

15 A. TALK Greenville produced by the
16 Greenville News.

Exhibit 6
Depo. Testimony of Investigating Officer Hamilton

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.

047 / 097

HAMILTON, RACHEL 6/6/23 VOL 1

08 **Q** And with respect to Exhibit Number 32, that first
09 page Exhibit Number 15, when you arrived on scene,
10 the ASADA lights were illuminated and the IHOP
11 lights were illuminated, correct?

12 **A** Yes, sir.

13 **Q** In your investigation you determined that those
14 lights were on at the time the incident happened
15 involving Mr. Lynch being injured, correct?

16 **A** Yes, sir.

065 / 097

20 Q Very good. And based on your training, and what
21 you learned at the Academy, and your overall
22 experience since you've been a police officer, you
23 have come to learn that you and other drivers space
24 management in and around your vehicle is important,
25 correct?

066:01 A Yes, sir.

02 Q Space management is necessary for an operator of a
03 vehicle to maintain so that they use due care and
04 operate their vehicle safely, correct?

MS. STACY: Object to the form.

06 A Yes, sir.

07 Q And space management means leaving a cushion,
08 front, back and to the sides, correct?

09 A Yes, sir.

10 Q And the space cushion, the space management
11 concept, is part of a driver's obligation and duty
12 to operate the vehicle with due care, and
13 responsibly, and reasonably, correct?

MS. STACY: Object to the form.

15 A Yes, sir.

16 Q And you would agree with me that based on your
17 training and experience as a police officer, and
18 the training and testing at the South Carolina
19 Criminal Justice Academy, that a space cushion on
20 the left or right of a vehicle allows the vehicle
21 to move to the left or the right when they need to,
22 correct?

23 A Yes, sir.

24 Q Right. And that ability to move to the left or the
25 right is a duty and obligation that's part of safe

HAMILTON, RACHEL 6/6/23 VOL 1

067:01

operation of a vehicle, correct?

02

MS. STACY: Object to the form.

03

MR. MCCOOL: You can answer.

04

A Yes, sir.

072 / 097

HAMILTON, RACHEL 6/6/23 VOL 1

22 **Q I know. What I'm talking about is the intelligent,**
23 **safe and reasonable driver, based on your training**
24 **and experience, should leave a space cushion in and**
25 **around the vehicle?**

073:01 **A Yes, sir, they should.**

073 / 097

HAMILTON, RACHEL 6/6/23 VOL 1

24 **Q** Based on your training and experience, and going
25 through the South Carolina Criminal Justice
074:01 Academy, the operator of a vehicle has the duty and
02 obligation to be aware of their surroundings and
03 look for objects on the roadway, including
04 pedestrians, correct?

05 **A** Yes, sir.

06 **Q** And they have the duty and obligation to utilize
07 the headlights on the vehicle to recognize
08 pedestrians and other objects on the roadway,
09 correct?

10 **A** Yes, sir.

20 Q Yes. Okay, so let's say it's just me on a roadway.
21 And then you come up and you drive next to me. All
22 of a sudden there's additional lights from your
23 headlights, as well, correct?

24 A Yes, sir.

25 Q That would better illuminate the roadway than if it
078:01 were just my headlights, correct?

02 A I could assume so, yes.

03 Q That's not just assuming, that's just based on your
04 experience and training as a police officer, right?

05 A Some times it can kind of impair you, as well,
06 because they're reflective, so it kind of -- it
07 kind of can impair it some times. Like when you're
08 -- there's fog or if there's anything like that, it
09 can't reflect as clear.

10 Q Just a regular night, straight road, nighttime. If
11 I had my headlights on and I'm driving, and you
12 come up next to me and you have your headlights on,
13 your headlights will increase the light ahead of
14 you in the roadway, correct?

15 MS. STACY: Object to the form.

16 A I would say it depends if I have poor night vision,
17 there's a whole bunch of factors.

18 Q I'm talking about myself.

19 A Okay.

20 Q My vision, my night vision is good. I'm able to
21 see. I'm not talking about what you see in front
22 of you. I'm talking about me with good vision,
23 don't have any night vision problems, that sort of
24 thing. It's a clear night, the roads are dry, that
25 sort of thing.

079:01

If I'm driving down the road with my headlights on at night, and then you come up next to me with your headlights on, I -- my vision in front of me, the illumination is now greater because you're next to me, correct?

02

03

04

05

06

A I can't speak to the vision, but the light would increase.

07

08

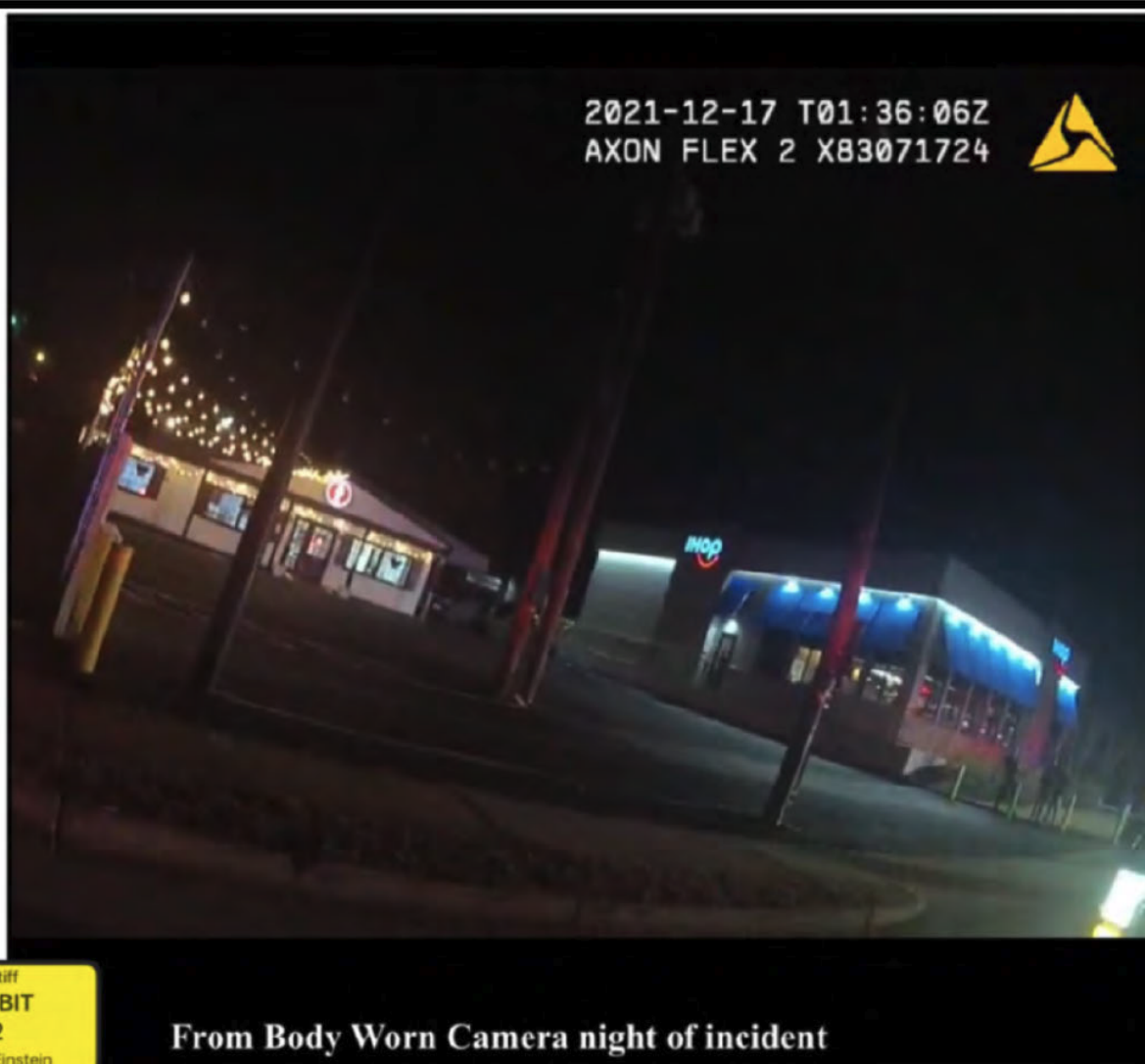
Q So the illumination in front of me is now greater?

09

A Yes, sir.

Exhibit 7

Still from Body Camera of Investigating Officer Hamilton



Plaintiff
EXHIBIT
32
Lynch v. Einstein

Exhibit 8
Body Camera Video of Investigating Officer

Exhibit 9
Claim File Materials of PURE Specialty
Risk Management, LLC

General
ordered p/r copy

Recd call from member, Howard

He is adamant his wife is not at fault and does not want pure to accept liab

he claims clmt just suddenly lied down in roadway with his head toward curb and IV had no place to go with traffic and clmt sudden action

MV ran over clmt legs

Member has sold iv due to issues with wife and accident

Headlights were on

Commercial area, fairly well-lighted area, no street light right there, however, small diner is nearby

From: David Bauck <DBauck@pureinsurance.com>

Sent: Thursday, February 17, 2022 10:51 AM

To: Bish, Kenneth <Kenneth.Bish@aus.com>; Fedorski, Daniel <Daniel.Fedorski@aus.com>

Cc: Saadiq, Ammar <Ammar.Saadiq@aus.com>

Subject: RE: PURE Claim #SC-008-811

Mrs. Angela Einstein will be point person for vehicle inspection. Please don't mention severity of the injs being claimed by the claimant to her at this time, per her husband's request. She is fragile emotionally – according to him – and he'd like to keep things on his terms at this time. Mrs. Einstein can be reached at

Thank you, and have a great day.

David Bauck, CPCU, Senior Claims Analyst

SC-008-811	 Pol: PA217308202Ins: Howard EinsteinDoL: 12/16/2021St: OpenAdj: David Bauck (Do Not Use - SECA)External Status: In ProgressMember Since: 04/18/2019 (5 years)
	<p>Clmt was laying in road way with head towards curb and legs in members lane of travel</p> <p>Time was around 830 pmt</p> <p>member was in rt lane and saw car ahead move to left and member saw pedestrian laying in roadway. member swerved left but the was car in left middle lane</p> <p>IV front and rear rt tires went over members legs</p> <p>member claims no other cars hit clmt and clmt was just lying in roadway for no reason</p> <p>After impact member stopped and put hazard lights on and someone already called 911.</p> <p>Clmt was taken to hospital by EMS</p> <p>member states there are witnesses on p/r to confirms behavior</p> <p>2. no damage to iv</p> <p>-Douglas Mook (02/15/2022 1:15 PM)</p> <p>General</p> <p>allied assignment made to assist in investigation</p>

General

Spoke to Mrs Insd. Insd was in the far right lane of 3 on Wade Hampton Blvd and she advised that there was another Range Rover in the middle lane and insd was going to want to move over to the far left eventually up ahead. She was traveling approx 45 mph in a 45 mph zone and sped up to about 50 mph to try to get ahead of the other veh to her left and then realized this other veh was going a bit too fast so she dropped back down to 48 mph.

All of a sudden, insd saw man lying down in roadway, not sure if he was just getting into this position or not

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PURE_Einstein 0159

Insd swerved left as much as she could to avoid hitting his torso or head, insd could not go any further to the left because there was another vehicle (the other Range Rover) there.

She did not slam on brakes as she was worried she was afraid she would skid and pin him under car.

Clmt was lying perpendicular to the insd across the right lane with his head closest to the curb

Time of day: approx 9:30 p.m., dark outside

Headlights were on

Commercial area, fairly well-lighted area, no street light right there, however, small diner is nearby

Witnesses say clmt was likely high on drugs

Always walking around the area

EMTs said they take clmt in all the time

-David Bauck (02/17/2022 10:59 AM)

Mr Insd called me back. He advised that his wife just lost her dad a few weeks ago and she is in a fragile state. She is quite angry that clmt has hired an atty and is alleging negligence on her when the clmt was just laying in the roadway. There was nothing she could do so avoid. Mr. Insd advised that his wife would like to sell her vehicle and I advised they should not do that at this time as the clmt atty has placed them on notice not to destroy or discard any evidence related to this matter. Advised that I am awaiting approval to retain counsel to walk with them on this matter. He advised there is no damage to the IV and I advised that I will ask investigator to come out and take photos. He said ok for me to talk to his wife about the incident but not to mention the severity of the clmt's injuries right now as he worries that will really upset her and he needs to manage that.

-David Bauck (02/17/2022 10:26 AM)

Claim: SC-008-811



Pol: PA217308202Ins: Howard EinsteinDoL: 12/16/2021St: OpenAdj: David Bauck (Do Not Use - SECA)External Status: In ProgressMember Since: 04/18/2019 (5 years)

-Advised they received a letter from the at fault party's attorney but she did not have much more info

-Advised I should call Mbr directly to set up the claim with him

-Asked that she is copied on the FNOL email so that she can send a copy of the attorney's letter and police report

OBC to Mbr, Howard Einstein-

-Mbr reported that his wife was driving their daughter to a Christmas party

-A man ran out into the middle of the road and Mbr's wife could not stop, ran over him

-No damage to IV, IV has been sold and replaced since

-Mbr's wife was very shaken up and scarred following the incident

-Unsure of the other party's injuries at this time, but Mbr received a letter from an attorney's office

-Mbr does not want to hire an attorney for himself and is hoping PURE can help

Advised of:

- Next steps: FNOL email, adjuster contact

- Member portal

Thanked and call concluded

Policy Number- PA217308201

User: Criscinda Katogirtis

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PURE_Einstein 0141

Exhibit 10
Report of Dr. David H. Eagerton, Ph.D., F-ABFT
dated June 28, 2024

David Eagerton Toxicology Consulting, LLC

David H. Eagerton, Ph.D., F-ABFT

1855 E Main St.
Suite 14 #112
Spartanburg, SC 29307

June 28, 2024

Ms. Brooklyn O'Shea
O'Shea Law Firm LLC
1120 Folly Road
Charleston, SC 29412

Re: Lynch v. Einstein

Dear Ms. O'Shea:

I have reviewed the documents that you sent me and have formed an opinion on this matter. Specifically, I have reviewed the following documents:

- 1) South Carolina Traffic Collision Report, 02-2021-087347, 12/16/2021;
- 2) Greenville City Police Department Incident Report, 21000087347, 12/17/2021;
- 3) Greenville City Police Department Supplemental Report, 21000087347, 12/17/2021;
- 4) Greenville County EMS Patient Care Record, Roger Lynch, 12/16/2021;
- 5) Prisma Health Medical Records, Roger Wayne Lynch, 12/16/2021;
- 6) Deposition of Angela West Einstein, 12/08/2022;
- 7) Deposition of Rachel L. Hamilton, 06/06/2023; and
- 8) Deposition of Roger Wayne Lynch, 04/26/2023.

According to the information given, at approximately 10:22 p.m. on December 16, 2021, the vehicle that was being operated by Ms. Angela Einstein struck Mr. Roger Wayne Lynch. Mr. Lynch was seriously injured and transported to a hospital for treatment. As part of his medical treatment, blood was collected from Mr. Lynch for analysis. That analysis revealed a blood glucose level of 29 mg/dL, and an alcohol level of 99 mg/dL. Hospital alcohol measurements are often performed on serum and must be converted to whole blood numbers for forensic purposes. The level of 99 mg/dL is equivalent to 0.083% in whole blood.

Mr. Lynch was noted to be behaving erratically and had an odor on his breath that was similar to the smell of alcohol. He also admitted to consuming alcohol prior to the incident.

A blood glucose level of 29 mg/dL is a seriously low amount of glucose and is indicative of a condition known as hypoglycemia. This condition results in symptoms such as feeling shaky, nervousness, anxiousness, sweating, chills, nausea, confusion, light headedness, sleepiness, incoordination, and impaired vision. Many of these symptoms are similar to those produced by alcohol and can be difficult to distinguish.

Ethanol enhances the actions of gamma-aminobutyric acid (GABA), the primary inhibitory neurotransmitter in the brain and is classified as a central nervous system depressant. The intensity of the effects of ethanol is proportional to the blood alcohol concentration. At relatively low concentrations, 0.03% w/v, ethanol begins to affect the frontal lobe of the brain. This area, which is the most highly developed region of the brain, controls higher order processes such as thinking, reasoning, problem-solving, impulse-control, judgment, and decision-making. As the blood alcohol level increases, the frontal lobe becomes more inhibited, and the effects of this inhibition become more pronounced. As the blood alcohol level continues to rise, more primitive regions of the brain become inhibited and senses such as vision and hearing along with motor coordination and balance become impaired. This continues until the blood alcohol level passes 0.35% and the area of the brain that controls heartbeat and respiration is inhibited and death occurs. As the blood alcohol level exceeds 0.15% w/v, the person becomes grossly intoxicated with a loss of critical judgment.

It is my opinion that, within a reasonable degree of scientific certainty, Mr. Lynch was suffering from severe hypoglycemia at the time of the incident, and this condition caused his erratic behavior and confusion. Mr. Lynch had also consumed some alcohol prior to the incident, but his blood alcohol level was a relatively low level. This level alone would not have resulted in his behavior as it was documented on December 16, 2021. Any statements given by Mr. Lynch at the time of the incident were not likely reliable due to the effects of the hypoglycemia. It is further my opinion, that there is no evidence of any illicit drug use by Mr. Lynch on the day of the incident.

These opinions are based on my education and training as a Board-Certified Forensic Toxicologist as outlined in my C.V. Each of the above conclusions and opinions are given to a reasonable degree of scientific certainty based upon the information that I have been provided to date.

Please let me know if you have any questions or if I can be of further assistance in this matter.

Sincerely,



David H. Eagerton, Ph.D., F-ABFT

Attachment

References

Dubowski, K. M. “Stages of Acute Alcoholic Influence/Intoxication”

Eagerton, DH. The Toxicology of Ethanol. In: Yarborough and Savage eds. *South Carolina Dram Shop Litigation: A Practice Guide*. Columbia, SC: SC Bar Association; 2016: 113-128.

Middleberg RA and Langman LJ. Clinical Aspects of Alcohol Testing. In Caplan Y Goldberger B eds. *Garriott’s Medicolegal Aspects of Alcohol*, 6th ed. Tucson Arizona: Lawyers and Judges Publishing Co.; 2015:435-447.

Goldberger BA, Caplan YH, and Levine B. Methods for Biological Specimen Alcohol Testing. In Caplan Y Goldberger B eds. *Garriott’s Medicolegal Aspects of Alcohol*, 6th ed. Tucson Arizona: Lawyers and Judges Publishing Co.; 2015:253-269.

Understanding and Managing Low Blood Glucose (Hypoglycemia), American Diabetes Association; <https://diabetes.org/living-with-diabetes/treatment-care/hypoglycemia> Last accessed 6/26/2024

Matthew P and Thoppil D. Hypoglycemia, *StatPearls*, <https://www.ncbi.nlm.nih.gov/books/NBK534841/> accessed 6/26/2024.

David H. Eagerton, Ph.D., F-ABFT

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W: (864) 327-9831
detoxsc@gmail.com

1855 E Main Street
Suite 14, # 112
Spartanburg, SC 29307

7/23

PROFESSIONAL EXPERIENCE

- April 2023-
Present **Associate Dean of Biomedical Affairs and Research**
Biomedical Sciences
Edward Via College of Osteopathic Medicine
Spartanburg, South Carolina
Oversee Biomedical Division of the Carolinas Campus; Oversee Research Programs and Facilities at the Carolinas Campus; Serve as a Liaison with Research Coordinators at other campuses and schools; teach Pharmacology and Clinical Toxicology to medical students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Osteopathic Medicine students.
- Jan. 2022-
Present **Associate Professor of Pharmacology**
Biomedical Sciences
Edward Via College of Osteopathic Medicine
Spartanburg, South Carolina
Design, coordinate, and teach Pharmacology and Clinical Toxicology to medical students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Osteopathic Medicine students.
- April 2023-
Present **Laboratory Director**
Better Life Science Laboratories
Alpharetta, Georgia
Serve as Laboratory Director for Better Life Science laboratory which performs clinical testing including pharmacogenetics and testing for infectious pathogens; Responsible for the overall operation of the laboratory and the competency of all laboratory personnel. Duties include review and approval of all procedures, quality assurance and quality control documentation; review of all proficiency test data; and maintenance of accreditation.
- April 2019-
Present **Laboratory Director**
LifeHope Laboratories
Sandy Springs, Georgia
Serve as Laboratory Director for LifeHope laboratory which performs clinical testing including toxicology and pharmacogenetics, and testing for criminal justice programs; Responsible for the overall operation of the laboratory and the competency of all laboratory personnel. Duties include review and approval of all

PROFESSIONAL EXPERIENCE (continued)

procedures, quality assurance and quality control documentation; review of all proficiency test data; and maintenance of accreditation.

- June 2017-
Dec. 2021 **Chair and Associate Professor**
Pharmaceutical Sciences
Campbell University, College of Pharmacy & Health Sciences
Buies Creek, North Carolina
Serve as the senior administrator of the department; oversee the development of the strategic vision and direction of the department; provide leadership in the recruitment, mentoring and retention of faculty and staff appointed to the department. Represent the department as a whole to the college, university, community and external stakeholders. Serve as part of the executive administrative team through service on the Executive Committee, and active participation in various institutional planning, implementation and evaluation of activities for the college and university. Design, coordinate, and teach Pharmacology, Pathophysiology, Biochemistry, and Clinical Toxicology to pharmacy, B.S, and Master's students; perform research in Clinical and Forensic Toxicology; and participate as a faculty member on committees.
- June 2017-
Dec. 2021 **Executive Director**
Campbell University Pharmacy Educational Research Center (PERC)
Buies Creek, North Carolina
Oversee activities associated with analytical laboratory and manufacturing processes of PERC, a pharmaceutical contracting organization which provides analytical, research, and formulation development and clinical manufacturing to the pharmaceutical industry, pharmacies, government agencies, and other universities.
- July 2015-
May 2017 **Associate Professor of Pharmacology**
Presbyterian College, School of Pharmacy
Clinton, South Carolina
Design, coordinate, and teach Pharmacology, Pathophysiology, Biochemistry, and Clinical Toxicology to pharmacy students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Pharmacy students.
- Nov. 2016-
April 2019 **Laboratory Director**
eLab Solutions
Sandy Springs, Georgia
Serve as Laboratory Director for eLab laboratory which performs clinical testing including toxicology and pharmacogenetics, and testing for criminal justice programs; Responsible for the overall operation of the laboratory and the competency of all laboratory personnel. Duties include review and approval of all procedures, quality assurance and quality control documentation; review of all

PROFESSIONAL EXPERIENCE (continued)

proficiency test data; and maintenance of accreditation.

- Oct. 2009-
June 2015 **Assistant Professor of Pharmacology**
Presbyterian College, School of Pharmacy
Clinton, South Carolina
Design, coordinate, and teach Pharmacology, Pathophysiology, Biochemistry, and Clinical Toxicology to pharmacy students; perform research in Clinical and Forensic Toxicology; participate as a faculty member on committees; and serve as professional advisor to Doctor of Pharmacy students.
- Aug. 2011-
April 2019 **Consultant Laboratory Director**
eLab Solutions
Sandy Springs, Georgia
Serve as Laboratory Director and Technical Supervisor for COLA accredited Physician Office Laboratories who contract with eLab to perform toxicological testing. Review and approve of all procedures, quality assurance and quality control documentation; review of all proficiency test data; and maintenance of accreditation.
- Aug. 1997-
Oct. 2009 **Chief Toxicologist**
South Carolina Law Enforcement Division
Columbia, South Carolina
Plan, coordinate, and direct all operations of the SLED Forensic Toxicology Department, which includes both death investigation and DUI sections; Maintain Training, Certification, and QA/QC programs for the Toxicology Department; Serve as consultant and expert witness in regard to Forensic Toxicology.
- July 2007-
Aug. 2009 **Preceptor**
University of South Carolina, College of Pharmacy
Columbia, South Carolina
Supervise Pharmacy students in an advanced practice rotation.
- Feb. 1993-
Aug. 1997 **Forensic Toxicologist**
South Carolina Law Enforcement Division
Columbia, South Carolina
Analyze biological samples for the presence of alcohol, other drugs, or poisons; interpret the results of those analyses, and testify in a court of law regarding those analyses and as to the effects those substances may have on a person.
- Jan. 1995-
Dec. 1998 **Adjunct Professor**
University of South Carolina, College of Pharmacy
Columbia, South Carolina
Teach Pharmacology/Toxicology to pharmacy students and graduate students.

PROFESSIONAL EXPERIENCE (continued)

- Sept. 1986- **Poison Control Consultant**
 Jan. 1993 Palmetto Poison Center
 Columbia, South Carolina
 Answer emergency calls concerning toxicological exposures from both the lay public and physicians, and to recommend the appropriate treatment protocols for those exposures.
- May 1989- **Research Assistant**
 June 1992 University of South Carolina, College of Pharmacy
 Columbia, South Carolina
 Perform novel research in the area of cancer pharmacology for doctoral degree.
- June 1986- **Teaching Assistant**
 May 1989 University of South Carolina, College of Pharmacy
 Columbia, South Carolina
 Teach Pharmacology and Pharmaceutics laboratories.

EDUCATION

- June 1986- University of South Carolina, College of Pharmacy,
 Dec. 1992 Columbia South Carolina. Ph.D. in Pharmacology; "Biochemical Factors Influencing The Function of Thymidylate Synthase As A Target For Fluoropyrimidines"
- Aug. 1985- University of South Carolina, College of Pharmacy,
 May 1986 Columbia, South Carolina. Third Year Pharmacy School.
- Aug. 1980- University of South Carolina, Department of Biological
 Aug. 1985 Sciences, Columbia, South Carolina. B.S. in Biology.

CONTINUING EDUCATION

- 1993- South Carolina Law Enforcement Toxicology Lecture Series,
 2009 Columbia, South Carolina.
- 1993 South Carolina Criminal Justice Academy, Columbia, South Carolina. Basic Police Officer Training.
- 1993 Abbott Laboratories, Irving, Texas. Abbott Datatrak training.
- 1993 Forensic Toxicology workshop presented at the meeting of the Southern Association of Forensic Scientists, Savannah, Georgia.

CONTINUING EDUCATION (continued)

- 1994 "Current Approaches In Forensic Toxicology" workshop presented by the Forensic Toxicologist Certification Board at the Joint Congress of The International Association of Forensic Toxicologists and The Society of Forensic Toxicologists, Tampa, Florida.
- 1995 "Rapid Drug Detection" workshop presented by ANSYS, Inc., Columbia, South Carolina.
- 1997 "Homicide by Child Abuse" workshop presented by The South Carolina Health Alliance, Charleston, South Carolina.
- 1997 "Fetal and Pediatric Pharmacology" workshop presented by The Society of Forensic Toxicologists, Snowbird, Utah.
- 1997 "The Pharmacology of Herbal Preparations" workshop presented by the Society of Forensic Toxicologists, Snowbird, Utah.
- 1997-2009 South Carolina Law Enforcement Division Supervisor/Management Training Series, Columbia, South Carolina.
- 1997 "Leadership Skills" workshop presented in conjunction with the Moscow Police Command College, Columbia, South Carolina.
- 1998 American Society of Crime Lab Directors / Laboratory Accreditation Board (ASCLD/LAB) Inspector Training, Columbia SC.
- 1998 "Forensic Ethanol Analysis and Interpretation" workshop presented by the Forensic Toxicologist Certification Board at the Spring 1998 Meeting of the Southern Association of Forensic Scientists, New Orleans, LA.
- 1998 "Contemporary Practice in Clinical Toxicology" workshop presented by the American Association of Clinical Chemists, Baltimore, MD.
- 1998 "Medical Response to Biological Warfare and Terrorism" workshop presented by the CDC and USAMRID, Columbia, SC.
- 1998-2009 South Carolina Law Enforcement Forensic Sciences Lecture Series, Columbia, South Carolina.
- 1999 "Post Mortem Pediatric Forensic Toxicology" workshop presented by the American Academy of Forensic Sciences, Orlando, Florida.

CONTINUING EDUCATION (continued)

- 1999 “Fatal Child Abuse” workshop presented by The South Carolina Health Alliance, Charleston, South Carolina.
- 1999 “Hazardous Materials Technician” presented by The Columbia Fire Department, Columbia, South Carolina.
- 1999 “Supervisory/Management Training for Criminal Justice Professionals” workshop presented by Gordon Graham at Midlands Area Technical College, Columbia, South Carolina.
- 1999 “Risk Assessment/ Management” workshop sponsored by SLED, Columbia, South Carolina.
- 2000 “South Carolina Summit on Traffic Safety” workshop presented by The South Carolina Department of Transportation, Greenville, South Carolina.
- 2000 “DUI 101” workshop presented by The South Carolina Commission on Prosecution Coordination, Columbia, South Carolina.
- 2000 “WMD HAZMAT Technician (COBRA)” training by The United States Department of Justice Center for Domestic Preparedness, Anniston, Alabama.
- 2000 “Counter-Terrorism for the 21st Century” workshop presented by L.E.O.S.T Inc., Columbia, South Carolina.
- 2001 “NHTSA Faculty Development Workshop” presented by The National Highway Safety Administration and the National Judicial College, Reno, Nevada.
- 2001 “TERM - Vulnerability Analysis” presented by Total Security Services International, Inc., Boston Massachusetts.
- 2001 “The Science of Solid Phase Extraction” presented by United Chemical Technologies, Inc., Columbia, South Carolina.
- 2001 “TWGFEX Symposium on Fire and Explosion Debris Analysis and Scene Investigation” presented by The National Center for Forensic Science, Orlando, Florida.
- 2001 “Weapons of Mass Destruction Technician Training” presented by The Special Operations Response Team, Columbia, South Carolina.

CONTINUING EDUCATION (continued)

- 2001 “National Terrorism Response Workshop” presented by Hicks and Associates and the Terrorism Research Center, McLean Virginia.
- 2001 “Felony DUI and Accident Reconstruction” workshop presented by The South Carolina Commission on Prosecution Coordination, Columbia, South Carolina
- 2002 "Biological Sampling and Detection" 40 hour course on Detection, Sampling, and Analysis of Weapons Grade Biological Agents, West Desert Test Center, Dugway Proving Ground, Dugway, Utah.
- 2003 “WMD Tactical Operations” 40 hour course on operations level WMD Tactical Operations, Louisiana State University.
- 2003 “Agilent 5973 MSD Instrument Operations” 24-hour course presented by Agilent Technologies.
- 2003 “31st Annual Symposium on Crime Laboratory Development” presented by the FBI and the Carlsen School of Business, Minneapolis, Minnesota.
- 2003 “Forensic Toxicology Review” presented by the Society of Forensic Toxicologists and the American Association of Clinical Chemists, Raleigh, North Carolina.
- 2004 “NGA Regional Bioterrorism Workshop” presented by the National Governors Association Center for Best Practices, New Orleans, Louisiana.
- 2004 “Interviewing: Identifying and Overcoming Deception” presented by the South Carolina Law Enforcement Division, Columbia, South Carolina.
- 2004 “Laboratory Symposium on Forensic Toxicology” presented by the FBI Laboratory and National Institute of Justice, Washington, DC.
- 2004 “Joint SOFT/TIAFT Meeting” presented by the FBI Laboratory and Society of Forensic Toxicologists and The International Association of Forensic Toxicologists, Washington, DC.
- 2004 “I-100 Introduction To The Incident Command System” presented by the South Carolina Forestry Commission, Columbia, South Carolina.
- 2004 “I-200 Basic Incident Command System” presented by the South Carolina Forestry Commission, Columbia, South Carolina.
- 2005 “NIMS-ICS 300 Intermediate Training Course” presented by EMAC International, Columbia, South Carolina.

CONTINUING EDUCATION (continued)

- 2005 “NIMS-ICS 400 Advanced Training Course” presented by EMAC International, Columbia, South Carolina.
- 2005 “IS-00700 National Incident Management System (NIMS)” presented by FEMA, Columbia, South Carolina.
- 2005 “ISO/IEC 17025:1999” presented by the American Society of Crime Laboratory Directors Laboratory Accreditation Board, Columbia, South Carolina.
- 2005 “ASCLD/LAB International Assessor Training ” presented by the American Society of Crime Laboratory Directors Laboratory Accreditation Board, Columbia, South Carolina.
- 2005 “Forensic Toxicology of Pesticides” presented by the Society of Forensic Toxicologists, Nashville, Tennessee.
- 2005 “Receptor Site Theory and Drug Interactions” presented by the Society of Forensic Toxicologists, Nashville, Tennessee.
- 2005 “Oral Fluids – Research and Applications” presented by the Society of Forensic Toxicologists, Nashville, Tennessee.
- 2006 “Method Validation and Measurement Uncertainty” presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 “Postmortem Pharmacokinetics” presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 “Addiction and Pain Management for Forensic Toxicologists” presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 “New Antidepressants and Antiepileptics: Clinical Pharmacology, Pharmacogenomics, Gene Expression, and Neurobiology of Depression and Suicide and Forensic Toxicology” presented by the Society of Forensic Toxicologists, Austin, Texas.
- 2006 “BEAST LIMS Training” presented by Porter Lee, Columbia, South Carolina.
- 2006 “Supervisor Training” presented by Jack Enter and SLED, Columbia, South Carolina.
- 2007 Agilent Technologies Speed School , Charleston, South Carolina.

CONTINUING EDUCATION (continued)

- 2007 “Drugs and Driving” presented by the American Academy of Forensic Sciences, San Antonio, Texas.
- 2007 “Pediatric Toxicology” presented by the American Academy of Forensic Sciences, San Antonio, Texas.
- 2007 “Public safety Sampling for WMD” presented by Louisiana State University and the Office for Domestic Preparedness, Lexington, South Carolina.
- 2007 “The Toxicology of Plants” presented by the Society of Forensic Toxicologists, Raleigh-Durham, North Carolina.
- 2007 “Toxicological Analysis of Drug-Facilitated Crimes” presented by the Society of Forensic Toxicologists, Raleigh-Durham, North Carolina.
- 2007 “LC/MS in the 21st Century” presented by the Society of Forensic Toxicologists, Raleigh-Durham, North Carolina.
- 2007 “Anti-Terrorism for SC Law Enforcement” presented by the LECC Anti-terrorism Training Subcommittee, Columbia, South Carolina.
- 2008 FirstDefender Chemical Identification System, Columbia, South Carolina.
- 2008 “WMD/Terrorism Awareness For Emergency Responders”, presented by Texas A&M University and the Department of Homeland Security.
- 2008 “Botulism”, presented by Texas A&M University and the Department of Homeland Security.
- 2008 “Children and Nerve Agents”, presented by Texas A&M University and the Department of Homeland Security.
- 2009 “Best Practices for Volumetric Measurement”, presented by RTI International.
- 2010 Collaborative Institutional Training Initiative (CITI) Human Subject Protection Training Course for Clemson University, Greenville Hospital Systems, and Palmetto Health Richland.
- 2012 School on Alcoholism and Other Drug Dependencies, University of Utah School of Medicine.
- 2012 “Updating Knowledge of 17025 (1999 to 2005)” ASCLD/LAB.

CONTINUING EDUCATION (continued)

- 2013 School on Alcoholism and Other Drug Dependencies, University of Utah School of Medicine.
- 2013 “BLS for Healthcare Providers” American Heart Association.
- 2013 “Theory and History of Comprehensive Multi-Dimensional Gas Chromatography (GC x GC)” LECO.
- 2013 Collaborative Institutional Training Initiative (CITI) Human Subject Protection Training Course – Update for Clemson University, Greenville Hospital Systems, and Palmetto Health Richland.
- 2014 School on Alcoholism and Other Drug Dependencies, University of Utah School of Medicine.
- 2015 APhA Institute on Alcoholism and Other Drug Dependencies, American Pharmacists Association.
- 2015 “Postmortem Toxicology: From Autopsy to Interpretation” presented by the Society of Forensic Toxicologists, Atlanta, Georgia.
- 2015 “Pharmacognosy for the Forensic Toxicologist” presented by the Society of Forensic Toxicologists, Atlanta, Georgia.
- 2016 “QuEChERS as a potential extraction tool for the analysis of THC and CBD in edibles and oils” presented by the Palmetto Association of Toxicologists, Columbia, South Carolina.
- 2016 “The Toxicology of Performance Enhancing Pharmaceuticals in the Athlete” presented by the American Academy of Clinical Toxicology, Webinar.
- 2016 “Navigating the National Library of Medicine’s TOXNET Toxicology Network” presented by the American Academy of Clinical Toxicology, Webinar.
- 2016 “Postmortem Interpretation of Toxic Pharmacodynamic Drug Interactions” presented by the Society of Forensic Toxicologists, Dallas, Texas.
- 2016 “Opioids in DUID Investigations” presented by the Society of Forensic Toxicologists, Dallas, Texas.
- 2016 “Postmortem Cannabinoids: Issues of Analysis and Interpretation” presented by the Society of Forensic Toxicologists, Dallas, Texas.

CONTINUING EDUCATION (continued)

- 2017 “Symbiosis of Core-Shell and Fully Porous Particles: Implementing Both for Better HPLC and UHPLC Results” presented by The Palmetto Association of Toxicologists, Columbia, South Carolina.
- 2017 “Definitive Drug and Metabolite Screening in Urine by UPLC-MS-MS Using a Novel Calibration Technique” by the Society of Forensic Toxicologists, Self-Study.
- 2017 “Development and Validation of a Novel LC-MS/MS Opioid Confirmation Assay” by the Society of Forensic Toxicologists, Self-Study.
- 2018 Opioid Epidemic Symposium by Campbell University College of Pharmacy and Health Sciences, Benson, North Carolina.
- 2018 “Can We Say That? – Drug Impaired Driving Testimony” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 “Effective Communication Skills for Successful Forensic Toxicology Practice” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 “How Do I Analyze for That?!?” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 “The Real C.S.I. Miami- A Collaborative Approach to Death Investigation with an Emphasis on Investigative Postmortem Toxicology” presented by the Society of Forensic Toxicologists, Minneapolis, Minnesota.
- 2018 AACT Section Webinar: Unexplained Death of A Healthcare Worker- Case Files from the Medical Examiner’s Office presented by the American Academy of Clinical Toxicology, Webinar.
- 2019 Forensic Science Education Webinar: Efficiency and Quality in LC/MS Urine Drug Testing presented by RTI International, Webinar.
- 2019 “Best Practices for Investigation of Overdose Deaths” presented by the Society of Forensic Toxicologists, San Antonio, Texas.
- 2019 “Cannabidiol and Hemp – Separating Fact from Fiction” presented by the Society of Forensic Toxicologists, San Antonio, Texas.
- 2019 “Recommended Specimens, Scope, Cutoffs, and Strategies for DUI-D Testing and the Impact of Stop-Limit Tests” presented by the Society of Forensic Toxicologists, San Antonio, Texas.

CONTINUING EDUCATION (continued)

- 2020 “Developing an Oral Fluid Drug Testing Program – Basic Considerations, Guidelines, and Implementation Strategies” presented by the Society of Forensic Toxicologists, SOFTember Workshop.
- 2021 “Toxicology in Capital Cases – Working with Clients and their Attorneys on a Death Penalty Case” presented by the American Association of Clinical Toxicologists, AACT June Section Webinar.
- 2021 “Instrumental Method Development” presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2021 “Novel Psychoactive Substances” presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2021 “Alternative Biological Specimens” presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2021 “Cannabis” presented by the International Alliance of Clinical and Forensic Toxicologists (IACFT) and the Center for Forensic Science Research and Education (CFSRE), June 2021 Current Trends in Forencis Toxicology Workshop.
- 2022 “2022 NLCP Inspector Training” presented by RTI International, June 2022, Raliegh, North Carolina.
- 2022 “Drugs and Behavior: The Role of Forensic Toxicology” presented by the Society of Forensic Toxicologists, Cleveland, Ohio.
- 2022 “There’s Something About Fentanyl” presented by the Society of Forensic Toxicologists, Cleveland, Ohio.
- 2022 “Method Optimization During Development and Validation – Tips and Tricks on How to Succeed” presented by the Society of Forensic Toxicologists, Cleveland, Ohio.

INSTRUMENTATION/EXPERIENCE

Analysis of biological samples for the presence of drugs or poisons
 Liquid Chromatography including both High Performance Liquid
 Chromatography and Fast Protein Liquid Chromatography
 Gas Chromatography/Mass Spectrometry (both Electron Impact and
 Chemical Ionization)
 High Performance Liquid Chromatography/Atmospheric Pressure
 Ionization-Electrospray Mass Spectrometry
 High Performance Liquid Chromatography/Tandem Mass Spectrometry
 Thin Layer Chromatography (Toxilab)
 Head-space Gas Chromatography
 Antigen-Antibody based detection and quantitation techniques including Enzyme-
 Linked Immunosorbent assay, Radio-Immunoassay, and Fluorescence
 Polarization Immunoassay
 Liquid/Liquid and Liquid/Solid extraction techniques
 Expert Testimony in South Carolina magistrate, general sessions, United States
 Federal, and United States military courts
 Certified Toxicologist
 Certified BAC Datamaster Operator
 Certified Law Enforcement Officer (Class 1)
 Human and bacterial protein purification monoclonal and polyclonal antibody
 development
 Mammalian and bacterial cell culture
 Biochemical analysis of intracellular folates
 Gel Electrophoresis including Western and Southern blots, Iso-
 Electric Focusing, and Two-Dimensional Gels
 Atomic Absorption spectroscopy
 Radionuclide-Linked Enzyme Assays
In vivo animal research
 UV/VIS Spectrophotometry
 Fourier-Transform Infrared Spectrophotometry (FTIR)
 Raman Spectroscopy
 Polymerase Chain Reaction (PCR) Assays
 Microbiological Assays
 Analysis of Air samples with Multi-gas meters, Photo Ionization Detectors (PID),
 and Chemical Agent Monitors (CAM)
 Radiological Survey and Detection Instruments
 Diplomate of the Forensic Toxicology Certification Board
 American Society of Crime Lab Directors/Laboratory Accreditation Board
 (ASCLD/LAB) Inspector
 WMD HAZMAT Technician (COBRA)
 HAZMAT Technician
 Member of SLED WMD Response Team
 CITI Training

PUBLICATIONS

Carter CA, Holland MA **Eagerton DH**, King DM, Johnson PR. Comparison of the Stability of Various Oral Liquid Levothyroxine Formulations. Pediatric Endocrine Society 2021 Virtual Annual Meeting, May 1, 2021

Meyer LM, Stephens K, Carter CA, Pickard W, Johnson PR, **Eagerton DH**. Stability and consistency of compounded oral liquid levothyroxine formulations. Journal of the American Pharmacists Association, Volume 60, Issue 6, Pages e168-e172, November – December 2020. DOI: <https://doi.org/10.1016/j.japh.2020.05.014>

Ghassemi E, Stockdale M, McLendon A, **Eagerton D**, and Woodis B. Summary of Performance in a first-year, integrated, doctor of pharmacy course using on-campus versus on-line instruction: A curricular comparison in response to COVID-19. Presented at the American College of Clinical Pharmacy, Annual Meeting, Virtual, October 26, 2020.

Bishop-Freeman SC, Skirnick O, Noble CN, **Eagerton DH**, and Winecker RE. Effects of Bariatric Surgery Observed in Postmortem Toxicology Casework. Journal of Analytical Toxicology, 2019; 43:651-659.

Carter CA, Pickard W, Johnson PR, and **Eagerton, DH**. Stability and Consistency of Compounded Oral Liquid Formulations of Levothyroxine. Proceedings of The American Thyroid Association, Chicago, IL, 2019.

Shealy KM, Ritter MS, Wyatt AS, and **Eagerton DH**. Trends in Potentially Abused Medications Returned During Medication Take-Back Days. Journal of the American Pharmacists Association, 2019-07-01, 54:575-578.

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Barnes C, **Eagerton D**, May B, and Moore M. Practice and Science: Change Creating Collaboration. Proceedings of The American Association of Colleges of Pharmacy, Boston, MA, 2018.

Sease, JM, Hampton, T., and **Eagerton, DH**. Evaluation of Student Performance of the Pharmacists' Patient Care Process Using Simulation IPPE. Proceedings of The American Association of Colleges of Pharmacy, Nashville, TN, 2017.

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Skrabal M.; Downs, G.; Carter, R.; **Eagerton, D.**; Franson, D.; Hritcko, P.; Jungnickel, P.; Kissack, J.; Ruble, J.; and Torrado, C. Marijuana Use Task Force (MUTF): Considerations for Schools Regarding Marijuana Use by Students, Faculty, and Preceptors. Proceedings of The American Association of Colleges of Pharmacy, Anaheim, California, 2016.

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Dias, JM., and **Eagerton, DH.**, Detection and Prevention of Drug Diversion in Operating Room Pharmacies, The South Carolina Association of Health System Pharmacists, Hilton Head Island, South Carolina, 2015.

Norton, M., Al-shatnawi, S., Nash, K., **Eagerton, D.**, McGuire, M., Beggs, A., Smith, T., Seaton, V., Light, K., Riesselaman, A., Student Pharmacists and Alcohol Drinking Behavior: Findings from a Collaborative Colleges of Pharmacy in the United States, Proceedings of the College of Psychiatric and Neurologic Pharmacists (CPNP) Annual Meeting, Orlando, Florida, 2015.

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Shealy, K., **Eagerton, D.**, and Threath, T., Engaging the Community: Presbyterian College School of Pharmacy's (PCSP) Approach, Proceedings of The American Association of Colleges of Pharmacy, Grapevine, Texas, 2014.

Huestess, A., Asbill, S., **Eagerton, D. H.**, and Arnold, J. *In Vitro* Skin Penetration and Skin Content of Progesterone from Various Topical Formulations. *International Journal of Pharmaceutical Compounding* 2014; 18 (6): 512-515.

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Eagerton, D. H., Goodbar, N. H., Dansby, M. C., Abel, S. N., Bell, W. C. Morphine Overdose in a 6 1/2 Week-Old Infant: A Case Report. *Austin J Pharmacol Ther* 2014; 2 (10) 4.

Shealy, K. M., O'Day, P., **Eagerton, D. H.** The Needs and Opportunities for Medication Disposal Programs. *Journal of Pharmacy Technology* 2014; 30 (5): 147-50.

Eagerton, D. H., Sease, J. M. Liver Cirrhosis and Complications. In S. Scott Sutton (Ed.), *McGraw-Hill's NAPLEX Review Guide*. 2014 New York, New York: McGraw Hill.

Eagerton, D., Shealy, K., and Reeder, G. Development and Implementation of a Medication Take-Back Event Led by a School of Pharmacy, Proceedings of Society of American Pharmacist's Association, Los Angeles, California, 2013.

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Eagerton, D.H., "Drug Testing in Urine" in Handling Traffic Cases in South Carolina 2nd edition, R.M. Cole, ed., South Carolina Bar Continuing Legal Education Division, Columbia SC, 1998.

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McKinnon, T.A., and **Eagerton, D.H.**, A Comprehensive Analysis for Benzodiazepines in Biological Matrices Utilizing LC-MS/MS Following a Class-Specific Solid Phase Extraction, Proceedings of Society of Forensic Toxicologists, Raleigh-Durham, North Carolina, 2007.

Bell, W.C., and **Eagerton, D.H.**, Pediatric Case of Fatal Codeine / Promethazine Overdose, Proceedings of Society of Forensic Toxicologists, Austin Texas, 2006

Grambow, T.W., Shacker, L.J., Smith, D.W., and **Eagerton, D.H.**, Thiopental Levels and Distribution from South Carolina Lethal Injection Cases, Proceedings of Society of Forensic Toxicologists, Austin Texas, 2006.

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Eagerton, D.H., and Shacker, L.J., Case Study: DUI with Multiple Prescription Drugs, Proceeding of the American Academy of Forensic Sciences, San Antonio, Texas, 2007.

Steven M. DuBose, David H. Eagerton, Alejandra G. Lewis, and Stephen L. Morgan, "Forensic analysis of benzodiazepines in body fluids by multigradient High performance liquid chromatography/mass spectrometry," paper 2520-3, PittCon 2003, Orlando, FL, 10 March 2003.

Alexander A. Nieuwland, Steven M. DuBose, **David H. Eagerton**, Alejandra G. Lewis, and Stephen L. Morgan, " Forensic analysis of benzodiazepines in blood and urine samples by fastgas Chromatography/mass spectrometry," paper 2520-4, PittCon 2003, Orlando, FL, 10 March 2003.

Assistant Editor of "Current Approaches in Forensic Toxicology" Presented by the Forensic Toxicology Certification Board, Inc., Society of Forensic Toxicologists and the International Association of Forensic Toxicologists Joint Congress, Tampa, Florida, 1994.

Eagerton, D.H., Berger, S.H., and Knapp, L.W., Proc. Amer. Assoc. Cancer Research. 32, 1448 (1991)

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PRESENTATIONS

"Rainbows, Totem Poles, and Bath Salts – An Update on Abused Drugs" presented at the South Carolina Osteopathic Medical Society (SCOMS) 2023 Winter CME Conference, February 19, 2023, Hilton Head, SC

"Challenges of Toxicology" Erskine College, Due West, SC, March 3, 2022.

"Drug Testing" MGC Break Time, Virtual, April 20, 2022.

PRESENTATIONS (continued)

“Confirming Their Future – Coordinating Knowledge and Technology to Close Gaps in Today’s Drug Testing World” National Association of Drug Court Professionals 2022 Annual Meeting, Nashville, TN, July 25, 2022.

“Drug Testing” A CLE for SC DSS Attorneys, Virtual, September 21, 2022.

“Drug Testing in Child Protection Cases” at Special Topics in Child Protection; A CLE for SC DSS Attorneys, Columbia, SC, June 2021.

“The Toxicology of Ethanol” Dram Shop Litigation CLE, November 2021.

“Pharmacology for Toxicologists Part 1” NC Forensic Laboratory, Raleigh, NC, March 6, 2020.

“Pharmacology for Toxicologists Part 2” NC Forensic Laboratory, Raleigh, NC, Virtual, April 17, 2020.

“Campbell University MSPS Program” Virtual Webinar, September 29, 2020.

“Pharmaceutical Sciences and Forensics” Campbell University Pre-Pharmacy Club, Buies Creek, NC, October 2020.

“Challenges in Forensic Toxicology” Campbell University Pre-Pharmacy Club, Buies Creek, NC, January 2020.

“Challenges in Forensic Toxicology” Campbell University Pre-Pharmacy Club, Buies Creek, NC, January 2019.

“Pharmaceutical Sciences and Forensics” Campbell University Pre-Pharmacy Club, Buies Creek, NC, February 2019.

“Drug Testing in Child Protection Cases” at Special Topics in Child Protection; A CLE for SC DSS Attorneys, Columbia, SC, April 2018.

“Shake and Bake – Amphetamines and Other Abused Stimulants” at Greenville Health System Psychiatric Grand Rounds, Greenville, SC, March 2018.

“Challenges in Forensic Toxicology” Campbell University Pre-Pharmacy Club, Buies Creek, NC, October 2017.

“The Toxicology of Ethanol” Dram Shop Litigation CLE, November 2016

PRESENTATIONS (continued)

“Interpreting Urine Drug Screens” at Self Regional Healthcare Noon Conference, July 2016.

“Generation Rx – Prescription Drug Abuse” Patewood Athletic Trainers, Greenville, SC, May 2016.

“Drugs of Abuse” at Self Regional Healthcare Noon Conference, March. 2016.

“Athletic Supplements” at Presbyterian College Athletic Department, February, and March, 2016.

“Forensic Toxicology in Civil Cases” ABOTA Masters in Trial CE, Columbia, SC, February 2016.

“Drug Screening in Abuse and Neglect Cases” CE for Attorneys and Guardians ad Litem, Sept. 2015.

“Prescription Drug Abuse for Athletes and College Students” at Presbyterian College Athletic Department, January, February, and March, 2015.

“Generation Rx - Prescription Drug Abuse” at FOCUS School, March 2015.

“Novel Techniques for the Detection of Drug Diversion in Hospital Surgical Settings” at Presbyterian College School of Pharmacy Research Symposium, January 2015.

“Forensic Toxicology in Civil Cases” at 2014 SC Trial Lawyers Association Annual Conference, December 2014.

“Generation Rx - Prescription Drug Abuse” at Presbyterian College, December 2014.

“Prescription for Disaster: Current Trends in Drug Abuse” at 2014 Annual Children’s Law Conference, October 2014.

“Drug Screening in Abuse and Neglect Cases” training for attorneys and Guardians ad Litem, September 2014.

“Forensic Toxicology 101” at Evidentiary Challenges in Child Abuse and Neglect Proceedings Workshop, September 2014.

“Prescription for Disaster: Current Trends in Drug Abuse” at 2014 Self Regional Healthcare Medical Staff Meeting, July 2014.

PRESENTATIONS (continued)

“Prescription for Disaster” at Presbyterian College School of Pharmacy-ASP-APhA Chapter Meeting, March 2014.

“ABCs of Drug Testing in Child Welfare Cases” at Children’s Law Center Office of Indigent Defense Workshop, February 2014.

“Prescription for Disaster” at Presbyterian College Counseling Service, November 2013.

“Drugs of Abuse” at Self Regional Healthcare Noon Conference, Sept. 2013.

“Alcohol and Social Events” at Presbyterian College School of Pharmacy LEAP Retreat, August 2013.

“Drug Testing” at American Association of Colleges of Pharmacy Annual Meeting, Substance Abuse SIG, July 2013.

“Alcohol and Other Drugs of Abuse – A Health Professional Student Perspective” at SC College of Pharmacy-MUSC Campus Workshop on Alcohol Awareness, February 2013.

“Alcohol” at Presbyterian College ADP Seminar on Alcohol Awareness, March 2013.

“ABCs of Drug Testing in Child Welfare Cases” at Children’s Law Center Workshop, December 2013.

“Drugs of Abuse” at Gateway Counseling Service, Workshop, November 2012.

“The Toxicology of Ethanol” at Presbyterian College Grand Chapter, March 2012.

“Toxicology” at Annual Public Defender Conference, September 2011.

“Grandpa’s Bottle, Wine or a Drug?” at Aging Research Symposium, February 2011.

“Challenges in Forensic Toxicology” at Presbyterian College Biology Seminar Series, March 2011.

“Toxicology” for Prosecuting The Impaired Driver, March 2011, May 2011, and June 2011.

“Toxicology and Drug Testing” at Annual Children’s Law Conference, November 2010.

“Toxicology” for The Impaired Driver: Nuts and Bolts of DUI Prosecution, February 2010, March 2010, May 2010, and June 2010.

PRESENTATIONS (continued)

"Challenges in Forensic Toxicology" at the Western Carolinas Section of the American Chemical Society, Newberry, South Carolina, October 2008

"Stimulants" at the Drugs and Driving Workshop sponsored by the Society of Forensic Toxicologists, West Palm Beach, Florida, May 2008.

"Alcohol and Other Drugs of Impairment" at the DUI Training Workshop sponsored by the South Carolina Commission on Prosecution Coordination, June 2008, July 2008, February 2009, June 2009, and August 2009.

"CSI - Toxicology" at Newberry College, Newberry, South Carolina, November 2007, and March 2010.

"Toxicology of Alcohol" at the ABCs of DUI Workshop sponsored by the South Carolina Commission on Prosecution Coordination, April, June July, and August, 2007.

"Case Study: DUI with Multiple Prescription Drugs" at the American Academy of Forensic Sciences, San Antonio, Texas, February 2007.

"GABA Receptors" at the Receptor Site Theory Workshop sponsored by the Society of Forensic Toxicologists, October 2005.

"Toxicology in The Drugged Driver" at Prosecuting the Drugged Driver Course sponsored by the National District Attorneys Association National Advocacy Center, November 2005.

"Biological Agents Used as Weapons of Mass Destruction" at the South Carolina Law Enforcement Division Forensic Services Seminar Series, October 2001.

"Central Nervous System Depressants" at the Forensic Toxicology Review workshop presented by the Society of Forensic Toxicologists and the American Association of Clinical Chemists, October 2001.

"The Role of the Forensic Laboratory in WMD Events" at Forensic Epidemiology for Health Care Workers and Law Enforcement, 2003 through 2005.

"Toxicology of Abused Drugs" advanced training for South Carolina Criminal Justice Academy, January 2003 and June 2003.

"Date Rape and Club Drugs" workshop presented at 22nd Annual School Nurse Conference, November, 2002.

"Medical Perspectives -Blood, Breath, and Urine" at the South Carolina Criminal Justice Academy Advanced DUI Training, October 2002.

PRESENTATIONS (continued)

"Toxicological Perspectives" at the Felony DUI and Accident Reconstruction Workshop sponsored by the South Carolina Commission on Prosecution Coordination, August 2001.

"Case Studies in Forensic Toxicology" at the South Carolina Law enforcement Division Forensic Services Seminar Series, October 2000.

"Medicolegal Perspective of DUI" at the DUI for the Prosecutor Workshops sponsored by the South Carolina Commission on Prosecution Coordination, August 2000, March 2001, and April 2001.

"The Role of SLED Toxicology in Alcohol and Drug Testing" at the BAC Workshop sponsored by the South Carolina Office of Highway Safety, May 2000.

"Challenges in Forensic Toxicology" presented to the University of South Carolina chapter of the American Chemical Society, March 2000, September 2000 and August 2001.

"Date Rape and Club Drugs" workshop presented at Sumter School District Health Fair, May 2000.

"Drug-Facilitated Rape" at the South Carolina Law enforcement Division Forensic Services Seminar Series, May 1999.

"Drug and Alcohol Analysis and DRE Evaluation" at the SC Bar Association Workshop on Handling Traffic Cases in South Carolina, August 1998.

"Toxicology of Abused Drugs" at the SC Coroner's Association meeting, October 1998.

"Forensic Toxicology of Abused Drugs" workshop presented at 1997 Fall Training Conference of the South Carolina Department of Social Services County Directors and Supervisors Association, October 1997.

"Rohypnol and Other Drugs Associated with 'Date Rape'" at the Rape Crisis Network training, October, 1997.

"Rohypnol and Other Drugs Associated with 'Date Rape'" at the August Meeting of the South Carolina Campus Law Enforcement Officers Association, 1997.

"Laboratory Testing of Flunitrazepam and Other Drugs Associated with 'Date Rape'" at the Rape Crisis Council of Pickens County Rohypnol Seminar, 1997.

"Applications of High Performance Liquid Chromatography / Atmospheric Pressure Ionization - Electrospray / Mass Spectrometry in Forensic Toxicology" at the Western Carolina Chromatography Discussion Group, 1996.

PRESENTATIONS (continued)

"Pharmacology of Abused Drugs" at South Carolina State University C.A.D.E.P.P. training, 1996, 1997, 2000, and 2001.

"Cocaine Agitated Delirium" at South Carolina Law Enforcement Division In-Service training, 1993-1994.

"Tolerance and Dependence" at South Carolina Law Enforcement Division Toxicology In-Service Training, 1993.

"Alcohol Analysis" at Law Enforcement training on alcohol sponsored by MADD, December, 1993.

"Biochemical Factors Influencing the Function of Thymidylate Synthase as a Target for Fluoropyrimidines" Seminar presented at the Duke University Department of Immunology, July, 1992.

"Preparation and Characterization of Monoclonal Antibodies to Human Thymidylate Synthase" at the annual meeting of the South Carolina Academy of Science, 1991.

HONORS

2010 – 2011 Teacher of the Year (Presbyterian College School of Pharmacy)

2014 Friend of APhA-ASP Award (Presbyterian College School of Pharmacy)

2013 Generation Rx Champion Award (SCAPhA/APhA-ASP)

2013 APhA-APPM Presentation Merit Award

2009 Federal Bureau of Investigation recognition of Exceptional Service in the Public Interest

1991 Sigma Xi Graduate Student Research Presentation
Award: First Place

Rho Chi Honor Society

Fellow- American Board of Forensic Toxicology (F-ABFT)

American Society of Crime Laboratory Directors - Laboratory Accreditation Board Inspector

HONORS (Continued)

American Society of Crime Laboratory Directors - Laboratory Accreditation Board
International Assessor

Expert Witness Faculty Member of the National District Attorneys Association National
Advocacy Center

"Prosecuting the Drugged Driver" 10/99, 3/01, 3/02, 1/04, 11/05, 11/08, 8/09, 3/10

"Lethal Weapon - DUI Homicide" 8/99, 8/00, 8/01, 8/02, 7/03, 7/04, 7/05

"Homicide Prosecution" 4/98 – 2001

Expert Witness Faculty Member of the National College of District Attorneys, Charleston,
SC, 6/08, 6/09.

Adjunct Instructor for South Carolina Criminal Justice Academy

Member of the South Carolina Bioterrorism Advisory Committee

Founding President of the Palmetto Association of Toxicologists

Member of the American Association of Forensic Scientists Standards Board (ASB) –
Toxicology Consensus Body

PROFESSIONAL AFFILIATIONS

Society of Forensic Toxicologists

Southern Association of Forensic Scientists

American Association of Clinical Chemists

American Association of Clinical Toxicologists

American Academy of Colleges of Pharmacy

Palmetto Association of Toxicologists

Association of Biochemistry Course Directors

Exhibit 11

Depo. Testimony of David H. Eagerton, Ph.D., F-ABFT

012 / 067

EAGERTON, DAVID 12/16/25 VOL 1

13 Q. Okay. And I may very well have that. I
14 just don't recall that off the top of my head. Can
15 you tell me briefly, Dr. Eagerton, what -- what is in
16 that June 27 of '24 report.

17 A. Yes, sir. My opinions about this case.

18 Q. Okay. And tell me: Are -- have your
19 opinions changed at all since the June 27 of '24
20 report?

21 A. No, sir.

062 / 067

EAGERTON, DAVID 12/16/25 VOL 1

07 Q. All right. Dr. Eagerton, I do have a few
08 questions for you. Regarding the June 28, 2024,
09 report containing certain opinions you're rendering
10 in this case, do those opinions remain the same today
11 that are contained within the report?

12 A. Yes, sir.

062 / 067

EAGERTON, DAVID 12/16/25 VOL 1

13 Q. Okay. And then talking about your -- well,
14 let me -- let me ask you this. With respect to
15 vertigo, based on your education and knowledge, can
16 vertigo adversely impact someone's ability to safely
17 drive?

18 A. Yes, sir.

19 Q. Okay. And with respect to a medical
20 condition, simply because there's not a prescription
21 for it doesn't mean that that person still doesn't
22 have that condition. Correct?

23 A. Yes, sir.

Exhibit 12
Prisma Health Lab Work Up of Plaintiff

PRISMA
 HEALTH..

 GMH ORTHOPEDIC
 SURGERY
 701 Grove Road
 Greenville SC 29605

 Lynch, Roger Wayne
 MRN: 980023159, DOB: [REDACTED] Sex: M
 Adm: 12/16/2021, D/C: 12/30/2021

12/16/2021 - ED to Hosp-Admission (Discharged) in Greenville Memorial Orthopedic Surgery (continued)
ED Provider Note (continued)
Work Up (Labs Imaging)
Labs:^[CN.1T]
Recent Labs

	12/17/21 0025
PHBG	7.44
PCO2	33*
PO2	180*
HCO3	22.0
BASEDE	-1.5*

Recent Labs

	12/16/21 2105	12/17/21 0028
WBC	6.4	7.8
HGB	10.4*	12.3*
HCT	32.8*	36.5*
PLT	237	163
INR	1.0	1.1
PTT	24	--

Recent Labs

	12/16/21 2105	12/16/21 2108	12/17/21 0025	12/17/21 0028
NA	138	142	142	140
K	3.2*	3.7	3.3*	3.4*
CL	106	107	108*	107
CO2	19*	--	--	20
BUN	15	--	--	16
CREATININE	0.70*	--	--	0.80
GLUCOSE	29*	45*	122*	124*
CALCIUM	8.0*	--	--	9.9
MG	--	--	--	1.8
PHOS	--	--	--	4.3
BILITOT	--	--	--	0.9 0.9
AST	--	--	--	62* 62*
ALT	--	--	--	27 27
ALKPHOS	--	--	--	56 56 ^[CN.2T]

Imaging:^[CN.1T]

XR Chest 1 Vw

Final Result

As above

Exhibit 13
Affidavit of David H. Eagerton, Ph.D., F-ABFT
dated May 29, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A NO. 2022-CP-23-03510
	)	
Roger Wayne Lynch,	)	
	)	
Plaintiff,	)	Affidavit of David H. Eagerton, Ph.D., F-
	)	ABFT
	)	
v.	)	
	)	
Angela West Einstein,	)	
	)	
Defendant.	)	

Personally appeared before me, David Eagerton, PhD, FABFT, 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 Kershaw County, State of South Carolina.
2. I have over 30 years of experience in Pharmacology and Toxicology. I earned my BS in Biology from the University of South Carolina and my Ph.D. in Pharmacology from the University of South Carolina College of Pharmacy. Currently, I am a Fellow of the American Board of Forensic Toxicology and an Associate Professor of Pharmacology and Associate Dean for Biomedical Affairs and Research at Edward Via College of Osteopathic Medicine. My past positions in Pharmacology and Toxicology include Executive Director of the Campbell University Pharmacy Educational Research Center and Chair, Associate Professor of Pharmaceutical Science at Campbell University College of Pharmacy & Health Sciences, and Chief Toxicologist for the South Carolina Law Enforcement Division.
3. In the subject lawsuit, I reviewed the redacted Primary Choice Medical records (3 pages) of Defendant Angela West Einstein dated October 4, 2021, received by counsel for Plaintiff from attorney J.D. Quattlebaum. The records note that Ms. Einstein was on numerous medications, including:
 - Ativan ("0.5 mg oral tablet, 1 tablet three times every day – prn");
 - Cymbalta ("30 mg oral delayed release capsule, 1 tablet every day"); and
 - Restoril ("15 mg oral capsule, 1 tablet every night").
4. I have not been provided with any other medical records from other medical providers or pharmacists of Defendant Angela West Einstein.
5. According to the South Carolina Traffic Collision Report, the subject incident occurred

at approximately ^{8:22 AM 5/25/25}~~10:22~~ p.m. on December 16, 2021.

6. Defendant's Responses to Plaintiff's Interrogatories provide that "Defendant attended a Christmas dinner at 7 p.m. on the evening prior to the subject incident. To Defendant's knowledge and recollection, she did not consume any alcohol after 9:30 p.m. on the evening of December 15, 2021."
7. In the fields of Pharmacology and Toxicology, it is known that Ativan® (lorazepam) depresses the central nervous system and its side effects include drowsiness, dizziness, loss of coordination, and blurred vision. When combined with alcohol, the risk of these side effects is higher and may be more severe, up to 48 hours after the consumption of alcohol.
8. In the fields of Pharmacology and Toxicology, it is known that the side of effects of Cymbalta® (duloxetine) include tiredness and drowsiness. When combined with alcohol, the risk of these side effects is higher and may be more severe, up to 48 hours after the consumption of alcohol.
9. In the fields of Pharmacology and Toxicology, it is known that Restoril® (temazepam) depresses the central nervous system and that its side effects include drowsiness, dizziness, lessened coordination, memory impairment, and short-term memory loss. When combined with alcohol, the risk of these side effects is higher and may be more severe, up to 48 hours after the consumption of alcohol.
10. In the fields of Pharmacology and Toxicology, it is known that using Ativan® and Restoril® together may increase side effects such as dizziness, drowsiness, blurred vision, confusion, loss of/reduced coordination, memory impairment, short-term memory loss. When combined with alcohol, the risk of these side effects is higher and may be more severe, up to 48 hours after the consumption of alcohol.
11. In order to further determine and assess the level of Defendant Einstein's impairment at the time of the subject incident, all medical and pharmacy records (in unredacted form) from all providers for Einstein is warranted.

FURTHER AFFIANT SAYETH NOT

BY:

David H. Egerton
David H. Egerton

SWORN TO BEFORE ME THIS

29 day of May, 2025

Sarah Blythe

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 07/28/2032



Exhibit 14
Defendant's Responses to Plaintiff's Interrogatories

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

IN THE COURT OF COMMON PLEAS
CASE NO.: 2022-CP-23-03510

Roger Wayne Lynch,

Plaintiff,

vs.

Angela West Einstein,

Defendant.

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S INTERROGATORIES**

Defendant, Angela West Einstein (hereinafter "Defendant"), by and through her undersigned counsel, subject to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, hereby answers Plaintiff's Interrogatories as follows:

OBJECTIONS

1. These responses, while based on diligent exploration by Defendant, reflects only the current state of Defendant's knowledge, understanding and belief with respect to the matters addressed. These responses are neither intended as, nor shall they in any way be deemed, admissions or representations that further information or documents do not exist. Without any way obligating himself to do so, Defendant reserves the right to modify or supplement these responses with such pertinent information as may be subsequently discovered. Furthermore, these responses are given without prejudice to Defendant's right to use or rely on at any time, including trial, subsequently discovered information or documents, or information or documents omitted from these responses as a result of, among other things, mistake, error, oversight or inadvertence.

2. Defendant objects to each and every discovery request to the extent the discovery request seeks to discover any attorney/client communication and information concerning analysis and evaluations of this case and related matters involving legal counsel. To the extent any discovery request may be construed as calling for disclosure of information protected by any such privilege or doctrine, a continuing objection to each and every discovery request is hereby interposed.

3. The information supplied in these responses is not based solely on the knowledge of Defendant, but includes knowledge of Defendant, her agents, representatives and attorneys, unless privileged.

4. The word usage and sentence structure may be that of the attorneys assisting in the preparation of the responses and does not purport to be the precise language of the executing party.

5. Defendant objects to the extent any discovery request is inconsistent with the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence or any other applicable law, rule, order, agreement, or regulation.

6. Defendant objects to the extent any discovery request seeks information and/or documents beyond Defendant's knowledge, custody and/or control.

7. Defendant objects to these discovery requests to the extent that they are vague, unduly burdensome, overly broad and/or not reasonably calculated to lead to the discovery of admissible evidence.

8. Defendant objects to these discovery requests as premature because discovery is ongoing. Defendant specifically reserves the right to amend or supplement any responses to these requests based on facts revealed during discovery or based on subsequent events.

9. Defendant objects to any requests for "all" documents or information and any requests for documents or information that do not logically or temporally relate to the events that are the subject matter of this lawsuit. Defendant has conducted a reasonable and diligent search for responsive documents and information and, subject to its objections, will produce only documents and information in its custody which are reasonably calculated to lead to the discovery of admissible evidence.

10. Defendant objects to any interrogatory or document request that seeks information or documents that are already in the requesting party's custody or control.

11. Defendant objects to definitions and instructions that are inconsistent with the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, or any other applicable law, rule, order, agreement, or regulation. Defendant specifically objects to the definitions and instructions because they create various parts and subparts that may render the interrogatories unreasonably compound in violation of South Carolina Rule of Civil Procedure and may result in a number of interrogatories greater than that allowed by the Rules.

The foregoing objections are hereby incorporated into each of the following responses and, without waiving any of these objections, Defendant responds as follows:

INTERROGATORIES

1. Identify the names, addresses, and telephone numbers of all persons, regardless of whether Defendant intends to have such persons testify at trial, known to Defendant or Defendant's counsel as having knowledge or information of the facts of the case, set forth a summary sufficient to inform Plaintiff of the important facts known to or observed by such persons, indicate whether written or recorded statements have been taken from the persons, and indicate who has possession of such statements.

ANSWER: Subject to and without waiving the general objections, Defendant identifies the following persons as having knowledge or information concerning the facts of this case:

Plaintiff has knowledge concerning the underlying incident and his alleged damages.

Defendant has knowledge concerning the underlying incident.

The Greenville Police Department has knowledge concerning the underlying incident and, upon information and belief, is in possession of written statements from the parties and several witnesses to the incident, copies of which are produced herewith.

First Responders who reported to the scene of the incident have knowledge concerning the incident.

Eye witnesses to the incident have knowledge concerning the incident.

Eye witnesses to Plaintiff's behavior preceding the incident have knowledge concerning the events leading up to the incident.

Daniel Fedorski with Allied Universal Compliance and Investigations has knowledge concerning the incident.

Medical providers that treated Plaintiff have knowledge of Plaintiff's alleged injuries and damages.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of Defendant that relate to the claim or the defense in the case.

ANSWER: In addition to the general objections, Defendant objects to this request to the extent that it seeks documents that are privileged, confidential, proprietary or otherwise not subject to disclosure.

Subject to and without waiving these and the general objections, see the documents produced herewith.

3. Set forth the names and addresses of all insurance companies which have insurance coverage, including those companies providing excess and/or umbrella coverages, relating to the subject claim and set forth the number or numbers of the policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: In addition to the general objections, Defendant objects to this request as overly broad and to the extent that it seeks information that is confidential, proprietary, and otherwise not subject to disclosure.

Subject to and without waiving these objections:

Pure Insurance
P.O. Box 480
Elmsford NY 10523

Policy #: PA217308202
\$500,000 per occurrence

Chubb
P.O. Box 1600
Whitehouse Station, New Jersey 08889-1600
Policy #: 7995-26-55
\$5,000,000 excess liability each occurrence.

4. List the names and addresses of any expert witnesses whom Defendant proposes to use as a witness at the trial of the case. With respect to each such witness, please provide the following:

- a. The name, address, and telephone numbers of each expert;
- b. Identify the subject matter upon which the expert is expected to testify;
- c. State the opinions to which the expert is expected to testify;
- d. Furnish a summary of the grounds for each opinion identified in Paragraph (c) and identify all supporting documents for said opinions;
- e. Identify all documents and materials of any type Defendant has provided to the expert and all documents and materials of any type the expert has provided to Defendant; and
- f. Identify all documents and materials of any type the expert has in any way utilized, consulted, or reviewed in the subject action, regardless of whether the documents and materials ultimately formed the basis of the expert's opinions.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory as premature as Defendant has not yet identified any expert witnesses.

Subject to and without waiving these and the general objections, Defendant will identify witnesses in accordance with applicable rules and/or court order governing this matter.

5. If Defendant contends that the actions or non-actions of Plaintiff caused or contributed to the subject incident and/or the injuries and damages being claimed by Plaintiff in this action, please provide the following:

- a. A summary of the facts and circumstances which support the contention, including, but not limited to, a description of each action or non-action on the part of Plaintiff that caused or contributed to the incident and/or the injuries and damages being claimed by Plaintiff;
- b. The names, addresses, and telephone numbers of each person who supports or has knowledge of the contention; and

- c. A list of all documents which support the contention.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory to the extent that it seeks the mental impressions and/or legal conclusions of Defendant's counsel. Further, discovery and investigation are ongoing.

Subject to and without waiving these and the general objections:

(a) Plaintiff intentionally and/or negligently placed himself on a public roadway in the way of traffic at night on the evening of the incident. For additional information responsive to this interrogatory, see the Answer and Defenses filed by Defendant in this lawsuit, the substance of which is incorporated herein by reference.

(b) Defendant can be contacted through the undersigned counsel. Further, the names and contact information for the eyewitnesses to the incident and events immediately preceding the incident can be found in the documents produced herewith.

(c) Defendant identifies the documents produced herewith including, without limitation: the Traffic Collision Report, Greenville City Police Department Incident Report, the Greenville City Police Department Supplemental Report, including witness statements, Greenville City Police Department body cam footage, Greenville County 9-1-1 records and audio recordings, and Greenville County EMS report.

6. If Defendant contends that the actions or non-actions of a person or entity not a party to the subject lawsuit caused or contributed to the subject incident and/or the injuries and damages being claimed by Plaintiff, please provide the following:

a. A summary of the facts and circumstances which support the contention, including, but not limited to, a description of each action or non-action on the part of the person or entity that caused or contributed to the incident and/or the injuries and damages being claimed by Plaintiff;

b. The names, addresses, and telephone numbers of each person who supports or has knowledge of the contention; and

- c. A list of all documents which support the contention.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory to the extent that it seeks the mental impressions and/or legal conclusions of Defendant's counsel. Further, discovery and investigation are ongoing.

Subject to and without waiving these and the general objections, none / unknown at this time.

7. If Defendant contends that some other person or legal entity is, in whole or in part, liable to Defendant or Plaintiff, please identify such person or entity and describe the basis of said liability.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory to the extent that it seeks the mental impressions and/or legal conclusions of Defendant's counsel. Further, discovery and investigation are ongoing.

Subject to and without waiving these and the general objections, none / unknown at this time.

8. If Defendant contends that there was a defect or failure with the vehicle Defendant was operating at the time of the subject incident, please provide the following:

- a. A summary of the facts and circumstances which support the contention, including but not limited to, a description of the defect or failure;
- b. The names, addresses, and telephone numbers of each person who supports or has knowledge of the contention; and
- c. A list of all documents that support the contention.

ANSWER: Subject to and without waiving the general objections, Defendant does not so contend at this time.

9. Identify all documents supporting or relating to Defendant's Answer to the Complaint and all defenses asserted by Defendant.

ANSWER: Subject to and without waiving the general objections, Defendant identifies the documents produced herewith including, without limitation, the Traffic Collision Report, Greenville City Police Department Incident Report, the Greenville City Police Department Supplemental Report, including witness statements, Greenville City Police Department body cam footage, Greenville County 9-1-1 records and audio recordings, and Greenville County EMS Report.

10. Identify all documents and tangible items of any nature and description which Defendant intends to introduce into evidence or to use for impeachment purposes or as any type of evidence, real or demonstrative, at the trial of this case.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory as premature as no determination regarding trial exhibits has been made. Further, discovery and investigation are ongoing.

Subject to and without waiving these and the general objections, see the documents produced herewith including, without limitation, the Traffic Collision Report, Greenville City Police Department Incident Report, the Greenville City Police Department Supplemental Report,

including witness statements, Greenville City Police Department body cam footage, Greenville County 9-1-1 records and audio recordings, and Greenville County EMS Report.

11. Identify the names, addresses, home telephone numbers, places of employment, job titles or capacities, and present whereabouts of all agents, servants, employees, representatives, private investigators, and others who investigated the subject incident.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory to the extent that it seeks the mental impressions and/or legal conclusions of Defendant's counsel and to the extent that it seeks information protected by the attorney-client privilege and/or work product doctrine. Defendant further objects to this interrogatory as vague, overly broad, and unduly burdensome to the extent that the requested information is as readily accessible to Plaintiff as it is to Defendant.

Subject to and without waiving these and the general objections, Defendant identifies:

First Responders;

The Greenville City Police Department;

Dan Fedorski
Senior Special Investigator
Allied Universal Compliance and Investigations
910 Paverstone Drive, Raleigh, North Carolina 27615
(919) 608-7507.

Defendant also identifies the individuals identified in the documents produced herewith including, without limitation, the Traffic Collision Report and Incident Report from the Greenville City Police Department, Greenville County 9-1-1 records and audio recordings, and Greenville County EMS Report.

12. Identify by date, subject matter, and author all investigative and other reports and documents prepared, compiled, submitted, or made in the regular course of business as a result of the subject incident.

ANSWER: In addition to the general objections, Defendant objects to this interrogatory to the extent that it seeks the mental impressions and/or legal conclusions of Defendant's counsel and to the extent that it seeks information protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving these and the general objections, Defendant identifies the documents produced herewith including, without limitation, the Traffic Collision Report and Incident Report from the Greenville City Police Department, Greenville County 9-1-1 records and audio recordings, as well as the Greenville County EMS Report.

13. For all alcohol consumed by Defendant within the 24-hour period of time preceding the subject incident, please provide the following:

- a. The type and amount of alcohol consumed;
- b. The address (and name of the establishment, if applicable) at which the alcohol was consumed; and
- c. The names and addresses of all persons present during the consumption of the alcohol.

ANSWER: Subject to and without waiving the general objections:

Defendant attended a Christmas dinner at 7 p.m. on the evening prior to the subject incident. To Defendant's knowledge and recollection, she did not consume any alcohol after 9:30 p.m. on the evening of December 15, 2021.

Defendant did not consume any alcohol whatsoever on Thursday, December 16, 2021.

14. For all drugs, both legal and illegal, consumed by Defendant within the 24-hour period of time preceding the subject incident, please provide the following:

- a. The amount and type drugs consumed;
- b. The address (and name of the establishment, if applicable) at which the drugs were consumed;
- c. The name of person who provided Defendant with the drugs; and
- d. The names and addresses of all persons present during the consumption of the drugs.

ANSWER: Subject to and without waiving the general objections:

- (a) Cymbalta 30 mg, Synthroid 125 mcg, Pravastatin 40 mg and Doxycycline 50 mg;
- (b) 515 McDaniel Avenue, Greenville, SC 29605;
- (c) Ronald Phillips, M.D.; and
- (d) Defendant.

15. Describe the relationship between Defendant and Marsh & McLennan Agency, LLC Rutherford Division on December 16, 2021.

ANSWER: In addition to the general objections, Reliable objects to this request as irrelevant and beyond the scope of discovery.

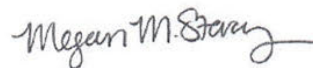
Subject to and without waiving these and the general objections, Defendant's spouse, Howard Einstein, works for Marsh & McLennan Agency, LLC Rutherford Division.

16. Was Defendant "on the clock" for employment purposes at the time of the subject incident? If so, please identify Defendant's employer at the time of the incident.

ANSWER: No.

This 22nd day of September, 2022.

HALL BOOTH SMITH, P.C.



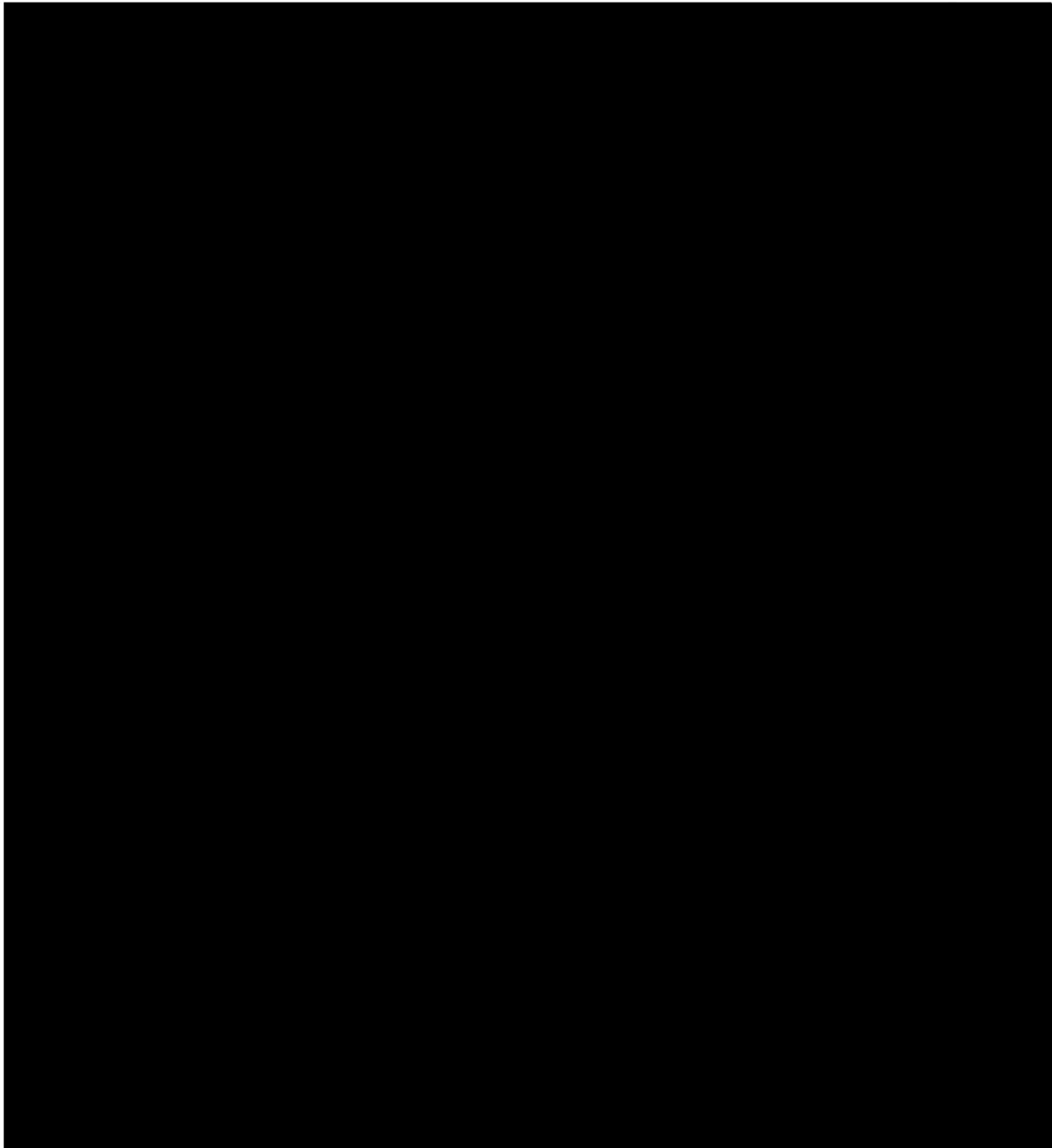
Megan McGee Stacy
11215 North Community House Road, Suite 750
Charlotte, NC 28277
Phone: (980) 859-0380
Fax: (678) 539-1601
E-mail: mstacy@hallboothsmith.com
SC Bar No.: 102120
Attorneys for Defendant Einstein

Exhibit 15
Defendant's Medical Records from Primary Choice
Medical dated 10/24/21

Primary Choice Medical
23 Buena Vista Way
Suite A
Greenville, SC 29615
Phone 864-312-3388 Fax 864-312-3389

EINSTEIN, ANGELA (DOB: 12/20/1965 ID: 1111)

Oct 04, 2021 Mon 04:30 PM



Printed By: Ronald Phillips, DO 8/8/2024 10:26:44 AM

Amazing Charts

Page 1 of 3

The information on this page is confidential.
Any release of this information requires the written authorization of the patient listed above.

ELECTRONICALLY FILED - 2026 Jan 12 12:18 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510

EINSTEIN, ANGELA (DOB: 12/20/1965 ID: 1111)

Oct 04, 2021 Mon 04:30 PM

Meds

- 1) Ativan 0.5 mg oral tablet, 1 TABLET THREE TIMES EVERY DAY--PRN
- 2) COQ10 400MG, 1 TABLET EVERY DAY---OTC
- 3) Cymbalta 30 mg oral delayed release capsule, 1 TABLET EVERY DAY
- 4) doxycycline hyclate 50 mg oral capsule, Take 1 tablet QD (Daily) X 3 Months (90d)
- 5) INTRINSI B12/FOLATE, 2 TABLETS EVERY DAY--METAGENICS
- 6) O3FA 2000MG, 2 TABLETS EVERY DAY--OTC
- 7) Ortho-Novum 1/35 oral tablet, 1 TABLET EVERY DAY
- 8) pravastatin 40 mg oral tablet, 1 TABLET EVERY DAY
- 9) ProAir HFA 90 mcg/inh inhalation aerosol, 1 PUFF EVERY FOUR HOURS PRN SOB
- 10) Restoril 15 mg oral capsule, 1 TABLET EVERY NIGHT
- 11) Synthroid 125 mcg (0.125 mg) oral tablet, Take 1 tablet by mouth once daily
- 12) Vitamin D3 5000 intl units oral tablet, 1 TABLET EVERY OTHER DAY

Printed By: Ronald Phillips, DO 8/8/2024 10:26:44 AM

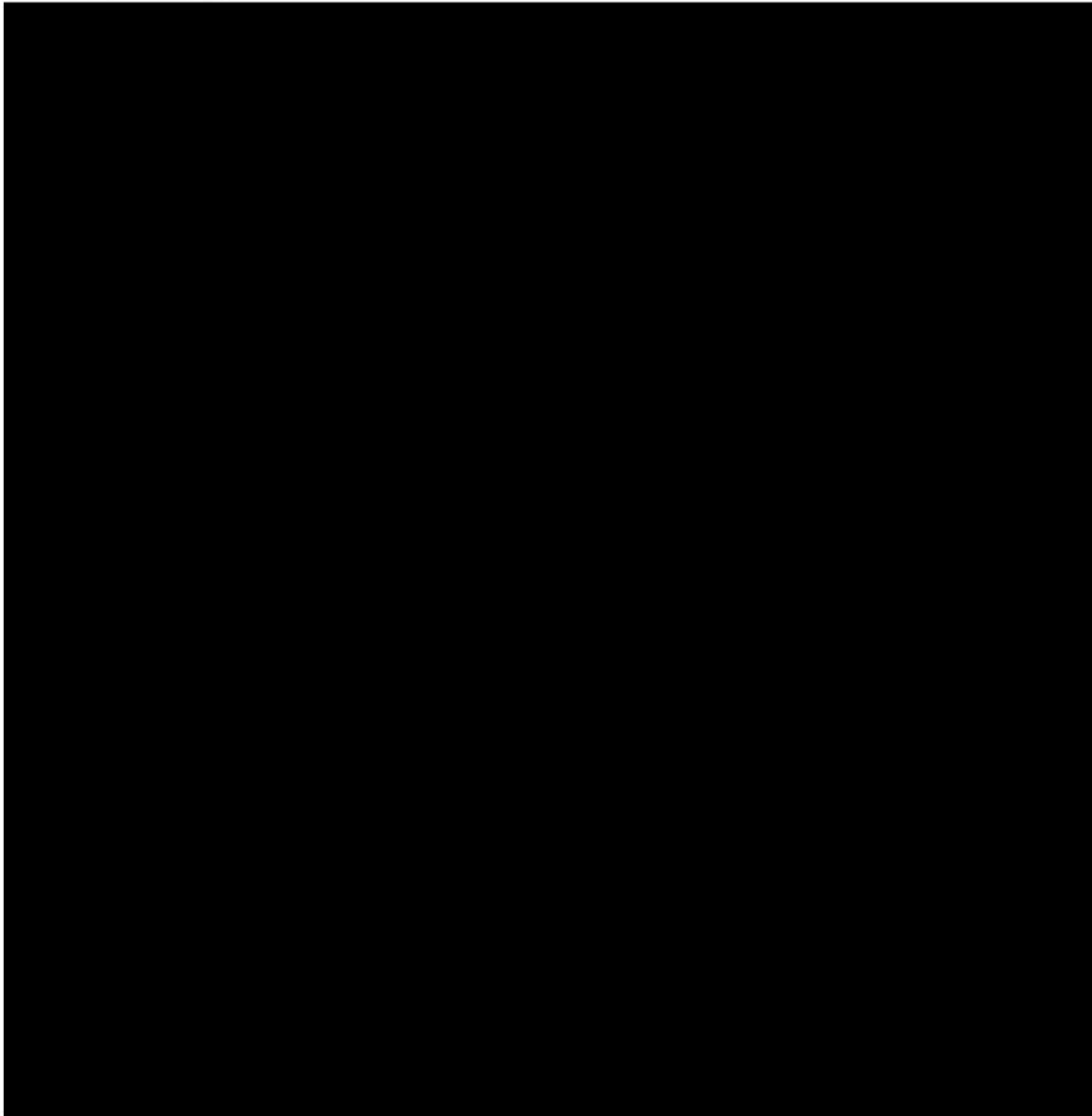
Amazing Charts

Page 2 of 3

The information on this page is confidential.
Any release of this information requires the written authorization of the patient listed above.

EINSTEIN, ANGELA (DOB: 12/20/1965 ID: 1111)

Oct 04, 2021 Mon 04:30 PM



Electronically Signed By: Ronald Phillips, DO

10/5/21 8:54 AM

Printed By: Ronald Phillips, DO 8/8/2024 10:26:44 AM

Amazing Charts

Page 3 of 3

The information on this page is confidential.
Any release of this information requires the written authorization of the patient listed above.

Exhibit 16
Defendant's Responses to Plaintiff's Second
Supplemental Interrogatories

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-03510

ROGER WAYNE LYNCH,

Plaintiff,

vs.

ANGELA WEST EINSTEIN,

Defendant.

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S SECOND
SUPPLEMENTAL
INTERROGATORIES**

NOW COMES Angela West Einstein (hereinafter "Defendant"), by and through her undersigned counsel, subject to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, and hereby answers Plaintiff's Requests for Production as follows:

INTERROGATORIES

3. Identify all persons present at the Christmas dinner on the evening of December 15, 2021.

ANSWER:

Defendant objects to this interrogatory in that it seeks the identities of persons outside the scope of SCRCP 26(b)(1). Specifically, this interrogatory seeks the identities of persons which are not relevant to any party's claim or defense, or which will not lead to additional discoverable matter, especially considering this dinner was more than 24 hours prior to the incident. Subject to and without waiving this objection, Defendant answers:

The December 15, 2021, Christmas dinner was a prayer group dinner. Defendant's prayer group has changed significantly throughout the years, with members regularly joining and leaving the group. To the best of Defendant's recollection, she can only affirmatively state that she and her husband were in attendance.

1. Regarding your discovery response above:

a. Identify all persons you recall being in your prayer group at various times.

RESPONSE: Defendant objects to this interrogatory in that it seeks the identities of people outside the scope of SCRCP 26(b)(1). Specifically, this

Exhibit 12

interrogatory seeks the identities of people which are not relevant to any party's claim or defense, or which will not lead to additional discoverable matter, especially considering this dinner was more than 24 hours prior to the Incident. Subject to and without waiving this objection, Defendant answers to the best of her recollection:

Mignon Canale [REDACTED]
Beth McMillan [REDACTED]
Suzanne Sanders [REDACTED]
Starr Marchand [REDACTED]
Jane Schipper [REDACTED]
Rhett Outten [REDACTED]
Cathy Zaden Lea [REDACTED]
Emily Davis [REDACTED]
Sarah Johnstone [REDACTED]
Courtney Millwood [REDACTED]
Gregorie Bylenga [REDACTED]

b. Set forth the time the Christmas dinner began and ended.

RESPONSE: Defendant does not recall the exact times the Christmas dinner began or ended. Defendant states these types of dinners typically begin around 6:30 or 7:00. Guests leave at various times throughout the evening depending on whether they have another event after dinner. Others would have remained for dessert and to exchange gifts for the remainder of the evening. Further states these dinners are usually concluded by 10pm.

c. Identify what type and amount of alcohol you and others were drinking during the prayer group dinner.

RESPONSE: Defendant does not believe she drank any alcohol during the dinner. Defendant typically has one glass of wine or champagne at the start of dinner. During dinner, Defendant typically drinks water, and she typically has a cup of decaf coffee after her meal. Defendant does not recall what alcohol anyone else may have had during dinner.

2. Identify your religion, if any, and church you attended, if any, in December of 2021.

RESPONSE: Defendant objects to this Interrogatory on the grounds that it seeks information that is not relevant to any party's claim or defense, or which will not lead to additional discoverable matter. Subject to and without waiving this objection, Defendant states that she is a Christian/Protestant and is a member of Westminster Presbyterian Church.

3. For all drugs and alcohol, both legal and illegal, consumed by Defendant within 48 hours preceding the subject incident, please provide the following:

a. The amount and type of drugs and/or alcohol consumed;

RESPONSE: Defendant objects to this Interrogatory on the grounds that it seeks information that is not relevant to any party's claim or defense and will not lead to additional discoverable matter. Subject to and without waiving these objections, Defendant states she did not consume any illegal drugs. She does take legally prescribed medication including Pravastatin, Synthroid, Doxycycline, Cymbalta. She took one per day on the mornings of Wednesday, December 15, and Thursday, December 16, 2021.

Defendant did not consume any alcohol on December 14, 2021. On Wednesday, December 15, had one sip of three featured cocktails (approximately $\frac{1}{4}$ - $\frac{1}{2}$ oz total) during an interview for her article featuring the Swordfish Cocktail Club between 5:00 and 5:30 pm on Wednesday, December 15, 2021. Defendant had the previously

mentioned glass of champagne/wine (approximately 6 oz) around 7:00pm on Wednesday, December 15, 2021. Defendant did not consume any other alcohol during this time period.

b. The address, and name of establishment if applicable, at which the drugs and/or alcohol were consumed;

RESPONSE: The prescription medications were taken at Defendant's home. The sample cocktails were consumed at the Swordfish Cocktail Club in Greenville, South Carolina. The glass of wine was consumed at the Poinsett Clubb, Greenville, South Carolina.

c. The name of the person(s) who provided Defendant with the drugs and/or alcohol; and

RESPONSE: The prescription medications were prescribed by Defendant's primary physician, Dr. Ron Phillips. The server at the Swordfish Cocktail Club was named Brad. Defendant does not know Brad's last name. Defendant does not recall the name of her server at the Poinsett Club.

d. The names and addresses and phone numbers of all persons present during the consumption of the drugs and/or alcohol.

RESPONSE: Defendant's husband may have been present when she took her prescription medication on December 15 and 16, 2021, but she does not specifically recall if he was there or not. Alex (Ryan) Burgamy [REDACTED] was present while Defendant consumed the small sample cocktails at Swordfish Cocktail Club. See response to Interrogatory 1 above regarding any other people that may have been at the dinner party.

4. Please explain why you or someone on your behalf interviewed witnesses Cynthia Waterman and Roberto Alfredo Cortez Melendez and why you did not list them as witnesses in your Answers to Interrogatories.

RESPONSE: Defendant was not previously aware that anyone interviewed the above-named witnesses. When she did become aware, she timely supplemented her discovery responses. She was not involved in the decision to interview the witnesses and can only speculate as to why they were interviewed. That decision was made by her counsel, whose reasoning is exempt from discovery pursuant to the work-product doctrine.

5. Please identify your iCloud login information and identify any items deleted from your iPhone or Cloud storage and the date it was deleted or altered, if any.

RESPONSE: Defendant objects to this Interrogatory on the grounds that it is extraordinarily overbroad and improper. This Defendant will not respond unless and until the requesting party obtains an order compelling disclosure

6. Please identify the manner in which Defendant knew Plaintiff or had ever interacted with him, if at all, prior to the subject incident.

RESPONSE: To best of Defendant's recollection, she had never met or interacted with Plaintiff prior to the subject incident.

This 28th day of October, 2024.

HALL BOOTH SMITH, P.C.

A handwritten signature in cursive script that reads "Adam Peoples". The signature is written in black ink and is positioned above a horizontal line.

By: _____

Adam F. Peoples – NC Bar No. 47339
301 College Street, Suite 200
Asheville, North Carolina 28801
Telephone: (828) 232-4481
Telecopier: (828) 641-9195
apeoples@hallboothsmith.com
Attorney for Defendant

Exhibit 17

Letter from R. Johnstone, III, M.D. to To Whom it
May Concern dated 11/19/25

ALLERGY PARTNERS[®] of the Upstate

Reid Johnstone, M.D.
Board Certified Allergy & Immunology
Andrea Lantz, M.D.
Board Certified Allergy & Immunology
Trip Johnstone, M.D.
Board Certified Allergy & Immunology
Jane V. Gwinn, M.D., FAAP
Board Certified Pediatric Pulmonologist

To whom it may concern:

11/19/2025

Angi Einstein is a patient of mine that I have treated for intermittent vertigo in the past.

In September 2021 she was having an episode of vertigo while traveling and I prescribed Meclizine 25 mg tablets (#30) to be used every 6-8 hours as needed and asked her to make an appointment if her symptoms continued or were not adequately controlled when she got back to home. Her vertigo resolved and we did not need to see her. If you should have any questions or concerns feel free to contact me

Sincerely,


Rudolph G. Johnstone III MD

864-979-5866

www.allergypartners.com/upstate

48 Creekview Court
Greenville, SC 29615
Phone: (864) 458-7431
Fax: (864) 458-7463

62 Bear Drive
Greenville, SC 29605
Phone: (864) 220-3377
Fax: (864) 458-7463

212 Frontage Road
Clemson, SC 29631
Phone: (864) 654-0066
Fax: (864) 458-7463

Leaders in Allergy & Asthma Care

Lynch-Einstein000331

Exhibit 18
“Drinkin’ on the Job” tagged articles
written by Defendant.



talkgreenville



257



4



talkgreenville Who is behind the words in our monthly TALK features? 🍷🍸 We sat down with the dynamic duo that always keeps us "Drinkin' on the Job."

[#LetsTALKgreenville](#)

January 4, 2022



Tagged

therarebelle

talkgreenville Who is behind the words in our monthly TALK features? 🍷🍷 We sat down with the dynamic duo that always keeps us "Drinkin' on the Job."
[#LetsTALKgreenville](#)

January 4, 2022



talkgreenville



76



1



talkgreenville This months Drinkin' on the Job feature with [@therarebelle](#) did not disappoint. 🍷🍷🍷

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.

[@southernside_brewing](#) in Greenville goes beyond brews with cocktails and kitchen treats. Link in bio!
[#LetsTALKgreenville](#)

December 21, 2021





talkgreenville



76



1



talkgreenville This months Drinkin' on the Job feature with [@therarebelle](#) did not disappoint. 🍸🍹🍷

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[@southernside_brewing](#) in Greenville goes beyond brews with cocktails and kitchen treats. Link in bio!
[#LetsTALKgreenville](#)

December 21, 2021



starmarchandart It's Friday, y'all! Cheers! Repost from [@therarebelle](#), doing a little celebratin' in front of "Transitions" abstract commission. [#artfulliving](#)... more



Tagged
therarebelle



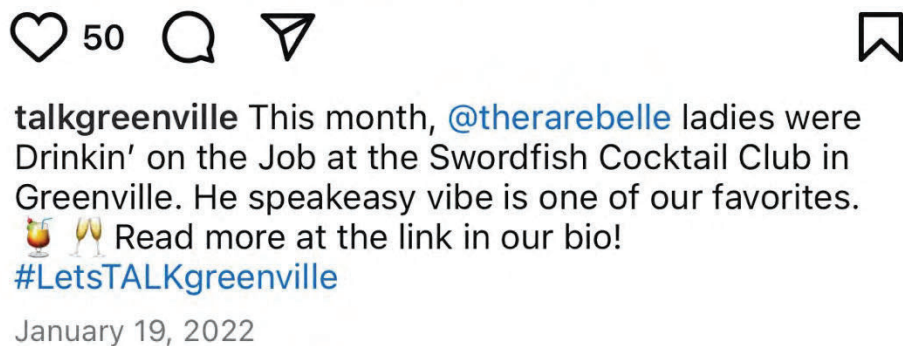
91 4



talkgreenville "Even though it's officially fall, we are attempting to savor every last memory of the lazy days of summer." -Alex & Angi (@therarebelle) 🍸

.
. .

For this month's cocktailin' experience, the girls thought it might be nice to share some of the season's most talked-about beverages to inspire a bit of summer savorin' on your part as well! Check out the link in our bio! #LetsTALKgreenville



Page 1 of 1, sorted by most relevant

angi einstein 2021

Drinkin' on the Job ... sipping and savoring at The Cheese Wheel

Alex and Angi stop by to sample the wide variety of wines, but end up with a new favorite cheesemonger

TALK GREENVILLE Alex Burgamy and Angi Einstein



Swordfish Cocktail Club in Greenville references the Marx Brothers with its speakeasy vibe

Beginning as a private "social club/speakeasy" in Greenville, Brad and Evan built their culture one Thursday night at a time, for four years.

TALK GREENVILLE Angi Einstein and Alex Ryan, therarebelle.com



Southernside Brewery in Greenville goes beyond brews with cocktails and kitchen treats

New year, new cocktailing experience. We sat down with Tim, general manager and all-around good guy, for a chat about what makes this place so special

TALK GREENVILLE Angi Einstein and Alex Ryan, www.therarebelle.com



Exile is a quiet, retro nook just off Main Street in Greenville to enjoy a cocktail or two

Exile in downtown Greenville offers a quiet and welcoming retreat to step away from it all during the hustle and bustle of the holidays.

TALK GREENVILLE Angi Einstein and Alex Ryan



Advertisement

UPSTATE RATE EXCLUSIVE!
LIMITED-TIME
MONEY MARKET SPECIAL

3.75% APY

Click for more details.
\$1,000 minimum deposit required. Available in Upstate branches only.

TRULIANT
Federal Credit Union

Get way from the "same old, same old" at Society Sandwich Bar & Social Club in Greenville

Society Sandwich Bar & Social Club in Greenville is a refreshing break from anything "same old, same old" and the seriousness of pandemic life.

TALK GREENVILLE Angi Einstein and Alex Ryan, www.therarebelle.com



Neat Bourbon Bar brings a taste of Kentucky to Main Street in downtown Greenville

We sat down with Sam and Tommy at Neat Bourbon Bar in Greenville and let them woo us with their whiskey-focused, triple-crown-worthy creations.

TALK GREENVILLE Angi Einstein and Alex Ryan, www.therarebelle.com



Celebrate a new year and a new start with bubbly Champagne from Foxcroft Wine Co.

As we enter the final month of this terribly topsy-turvy year, we are ready to pop some corks and let the bubbles flow.

LIFE Angi Einstein and Alex Ryan, www.therarebelle.com



Advertisement

An adventure with a view and cocktails to delight at Juniper in the new AC Hotel in Downtown Greenville

Just when we think our fair city has reached its pinnacle with new and interesting drinking establishments, another one comes along and knocks our socks off!

TALK GREENVILLE ANGI EINSTEIN AND ALEX RYAN
WWW.THERAREBELLE.COM



The Press Room at the AC Hotel offers a top secret experience

We got a little preview of things to come at The Press Room, a speakeasy located in the new AC Hotel – just a few floors below Juniper.

TALK GREENVILLE Angi Einstein and Alex Ryan



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Greenville News

TALK GREENVILLE

Drinkin' on the job ... welcoming a new 'neighbor'!

The Vista on Augusta Street at Faris Road, restaurateur Rick Erwin's latest venture, is named for the nearby Alta Vista neighborhood

Angie Einstein and Alex Burgamy For TALK Greenville

Published 12:31 p.m. ET Dec. 22, 2022

We are quite lucky here in Greenville to have a thriving dining (and drinkin') scene and super-“with-it” restaurateurs who keep things hopping in our beautiful downtown ... and beyond! The “beyond” this time happens to be right in our own backyard. Rick Erwin’s newest venture, **The Vista**, is at Augusta Street and Faris Road. While the name is a nod to the neighborhood, Alta Vista, the appeal spreads far and wide!

Settle in with friends ...

The vision with **The Vista** was to create a place where “everybody knows your name” – and Cole, Tom, and crew start pouring your favorite even before you take your seat!

And while Rick Erwin Dining Group spots are well-known for their quality food drinks and service, this one promises to meet those expectations in a more casual, laid-back way ... just like any good neighbor would do. It’s just a friendly spot to come as you are and enjoy great food and drinks with family and friends.

Speaking of drinks ... we tried a few...

The Alta Vista No. 1

A good neighborhood watering hole should always have a signature drink and this one doesn’t disappoint. Cole, bartender extraordinaire and recent transfer from Oxford, Mississippi (Hotty Toddy!) uses Cathead Honeysuckle Vodka (out of Jackson, Mississippi), triple sec, lemon, lime and agave to create a very easy-drinking delight.

It's already a house favorite and we aren't surprised by its universal appeal - just sayin'!

The South Seas Spritz

This cocktail is the “pearl” of the Vista! Champagne on tap comes in handy when combined with Cointreau, pomegranate liqueur, cinnamon and a spritz of Topo Chico.

This gem of a drink doesn't stop there as the visual allure of pomegranate seeds floating like pearls amongst the crystal ice cubes, cinnamon stick and lemon slice finish the masterpiece – engaging all of the senses.

Trader Vic's ain't got nothin' on this full-flavored gem ... a true jewel in the crown. Bubbles galore, give us some more!

The Mr H

The “Mr. H” is named after the Vista's two gentlemen bartenders, Cole and Tom – both with “H” last names. Their cocktail-creating experiences collide beautifully to produce an array of flavors to suit every taste.

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This particular beverage is an ode to their fearless leader, Rick Erwin, and his liquor of choice, Jack Daniels.

A complex combination of Jack, Hoodoo Chicory, Drambuie and espresso syrup turns into an explosion of spice, banana and smoky notes that develop on the palate from the first sip to the finish on the back.

The Rockefeller

This riff on a Manhattan (with some big apple notes – thus, the name) is actually a modern, elevated version of the original. Quality ingredients and the skill of the bartender are key elements here.

The winter version features Granny Smith-infused Rittenhouse Rye, Apple Brandy, Vermouth and an applewood-smoke finish.

It's strong, bracing and playful and will warm you up on a wintry night.

On the menu ...

While we are a bit more beverage-focused, we must give the kitchen a shout-out. Some of the amazing starters rolling out include deviled

eggs, fried green tomatoes and crispy calamari.

Entrée options include everything from (an incredibly moist, delicious) roasted chicken to seared tuna, pasta, fish and those famous “Company Crab Cakes.”

Cheers to the team for keeping things “reasonable” ... so a visit won’t break the bank!

The Vista is open for dinner Tuesday through Saturday and offers an amazing brunch on Sunday (with champagne on-tap, no less!)

Drop by and give the new neighbor a warm welcome!!

The Vista, 2017 Augusta Street Greenville 864.203.2277rickerwins.com/the-vista

Swordfish Cocktail Club in Greenville references the Marx Brothers with its speakeasy vibe

Angi Einstein and Alex Ryan, *therarebelle.com*



We've been at this drinking gig for a while now and have enjoyed every establishment, sip, creation, bartender/mixologist/beverage manager/owner-operator, etc... but this month's experience takes the cake on preparation, thoughtfulness, service and genuine LOVE of the perfectly crafted cocktail! We sat down with Brad at Swordfish Cocktail Club for an in-depth look at his and Evan's amazing little spot and to sample the wares. We were quite impressed.

Password – Swordfish

Brad challenged us to do some sleuthing into the Marx Brothers film, *Horse Feathers*, when we asked about the name...Swordfish. Turns out, "swordfish" was the password for the speakeasy in the (actually very funny) movie. Thus, these two selected the perfect name in our opinion. Beginning as a private "social club/speakeasy" in a discreet location, Brad and Evan built their culture one Thursday night at a time...for four years. Then, toward the end of 2019, they opened their doors in the current, über-cool building on Coffee Street...but they haven't lost that speakeasy vibe. Just check out the beautiful decanters of "members-only" liquors lining the top shelf (and ask about a "membership"). Our drink choices here came with a much-appreciated twist. Brad asked each of us to describe our perfect cocktail, and he used our preferences to guide the selections...

J Oliver Sour



The J. Oliver Sour was the match made in heaven for the perfectly petite belle in the mix. Whiskey and smoke were the requests and this enticing beverage certainly fit the bill. Old Forester, lime juice, simple syrup and bitters come together in perfect balance while a port float enters as the crowning glory. Persimmon in color and magic in taste, the port slithers and slides its way down, creating an artistic delight like no other, reminding the imbiber to relax, enjoy the moment and escape the minutiae.

Island Queen



The Island Queen was the choice for the long, tall belle...how fitting! Pusser's Navy rum, Amaro, lime juice, orange juice, house orgeat, angostura bitters and mint are combined and then layered with an Absinthe topper. This sophisticated Tiki is meant to be sipped through the straw to appreciate the well-rounded island flavor, allowing the absinthe to be the finishing note. A responsible good time is the theme on this number, so two's the limit.

The Negroni



This adult oasis is also the permanent residence of the The Exceptional Negroni. This rendition is as true to the formula as it gets - one part gin to one part vermouth to one part Campari – strong, sweet, and bitter in perfect balance. A bit assertive on the front, the hand-cut ice cube softens and rounds the prickly edges while the fresh orange peel creates the perfect finish. This one is a classic and nobody does it better than Swordfish.

The devil's in the details

From the stunning, raw copper bar to the hand-made tiki mugs, Evan and Brad built the cocktail world they envisioned, and the attention to detail didn't stop there. They hire "apprentices" to learn their craft with consistency and superior service the goal (they even run things with a daily checklist – décor, lighting, music, showtime.) They even thought of a way to make the inevitable delays (date running late, backup behind the bar) enjoyable. The "preface" menu features small, quick pours and readily available nibbles to distract you from the wait.

The perfect accompaniment...

While Brad tends to the front of the house, Evan manages the reigns in the kitchen, producing the perfect pairings for those carefully-crafted cocktails. The pork belly buns are steamy, savory goodness, but there is something to suit all tastes and appetites. And the goal is to – one day – save room for the "milk & cookies" (brown butter, bitters, & dark chocolate cookies with steamed brandy milk) Have a nibble or create a meal, whatever suits the mood. Swordfish is an oasis with no rush, no TVs, no judgement - like your own private club...even if your name isn't on a bottle! Reservations are rewarded. Wednesday – Saturday, 5pm-12am (text 864-434-9519)

SWORDFISH COCKTAIL CLUB

220 E Coffee Street, Greenville

swordfishcocktails.com

the RARE belle ~ a southern gal's guide to all things fabulous in food, fashion, finery and frippery

Drinkin' on the job...December 2024

12 - Thursday - DEC 2024

POSTED BY THE RARE BELLE IN DRINKIN' ON THE JOB

~ LEAVE A COMMENT

Tags

cocktails, greenvilleonline, New South Spirits, Talk Magazine, TALKGreenville

Our latest adventure – online and on stands in the December issue of TALKGreenville...

Drinkin' on the job

... CELEBRATING THE "NEW SOUTH"

WRITTEN BY ANGI EINSTEIN AND ALEX BURGAMY
WWW.THERAREBELLE.COM | PHOTOS BY WILL CROOKS



This month's cocktailin' adventure took us to a delightfully chaotic (by their own admission) spot in downtown Greenville

Masterfully engineered...

Just a few short years back, co-working engineers Lisa Messenger and

where creativity is at its height. **New South Spirits** was quite abuzz when we popped in to sample their wares, and we were quite impressed! Their house-distilled spirits are front and center, as they should be, in their custom cocktails ... but they are so incredibly smooth, some straight-up sippin' is a must!

Todd Harkin had this light-bulb moment when they realized that their shared love of artisanal liquors and their unique problem-solving skills could lead to something quite fantastic. Through trial and error, Todd came up with a proprietary distillation process to create incredibly smooth, additive-free, small-batch rums, agave spirits and creams ... rivaling the most acclaimed liquors on the market!

Our interest was piqued...

continued...

TALK | SIPPIN' SPIRITS



Taking flight... What better way to get acquainted with the various distilled delights than with some sampling? Sip on a variety of flavors and discover which creation suits your fancy. From aged or spiced and heavenly to vanilla or pineapple for the flavor lovers, there's a booze for you! Finish off with some silver agave for a clean, crisp finale.

Wake Up Call... This just might be the perfect cocktail to help build up that holiday shopping stamina! Silver rum, ghost cream, cold brew



*Check your list
& check it twice...*

Just in time for holiday gift-giving, New South has pre-made and build-your-own "goody bags" that will suit everyone (of age) on your list! Their

corree and chocolate bitters will give any espresso martini a run for its money. It's the perfect pick-me-up for when you're feeling zapped from all of that party-going and family-gathering.

Smokey Oaxacan... Delightfully savory and smoky, this is the perfect winter wonderland of a drink. Blue Weber agave, orange peel, whiskey, orange bitters and cinnamon are expertly combined, served over a large cube and garnished with a cinnamon stick. Handsome inside and out, you will feel the Christmas cheer rise and the winter doldrums fade away with each magical sip.



artificial spirits are the perfect, festive, locally made treat! It's the best kind of holiday shopping!

Pop in for a tasting or a tour, a cocktail or calzone, "embrace your inner chaos."

New South Spirits

1 Augusta Street #102
Greenville (864) 266-5513
www.newsouthspirits.com

08 - Monday - JUL 2024

POSTED BY THE RARE BELLE IN DRINKIN' ON THE JOB

≈ LEAVE A COMMENT

Tags

cocktails, Curean, drinkin' on the job, greenvilleonline, Talk Magazine, TALKGreenville



Our TALK Greenville cocktailin' adventure this month took us to a super-creative spot right on Main Street. Curean was conceived as a specialty charcuterie & wine establishment, but became much, much more! Their passion for handcrafted foods, wines and cocktails (yay!) is evident with every nibble & sip!

From nibble to nosh...

Vickie Zambrano, Curean Owner & Curator, uses her experience in the food industry and her family's love of Mediterranean-inspired cuisine (a mix of Greek,

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Italian, Spanish, French, Portuguese & Moroccan influences) to bring the widest range of culinary options to the table. From the raw bar (oysters & beef tartare) to the “large plates” (Spanish Rabbit, Greek Baked Chicken...) the creativity is in high gear!

And the creativity most definitely extends to the offerings from “senior bartender” Breana behind the bar...





Photo by Will Crooks for TALK

Dragoncello Reviver...

This magical elixir will jumpstart your tastebuds! Conniption Indigo Gin, sherry, Vicarious Dragoncello Liqueur, house-made thyme simple syrup, lemon, and butterfly pea come together to make the most mesmerizing summer sipper. Pretty in pink and dressed with fresh thyme and star anise, it's as pretty to look at as it is to taste. And there's a bonus, ladies! The James Beard Foundation is giving \$1 for every Conniption gin cocktail sold in women-owned establishments (like Curean) to the Women's Leadership Program to "close the gap" and tear down barriers to success! *Another great reason to imbibe!!*



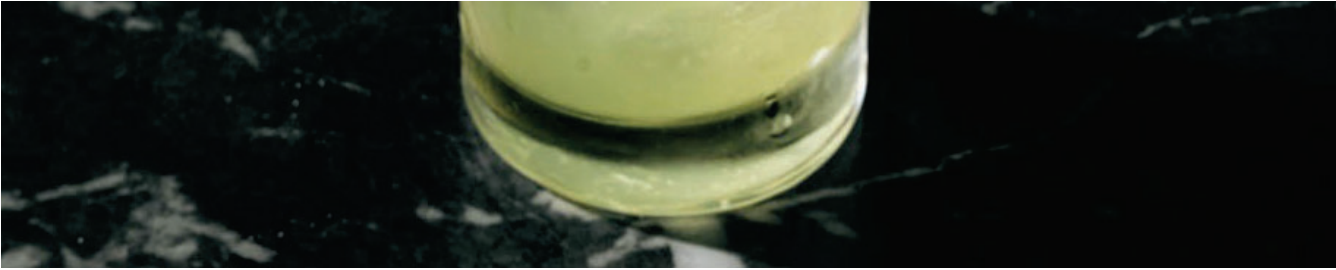


Photo by Will Crooks for TALK

Mediterranean Thyme...

It's always a great thyme for this refreshing beverage. Intriguing Gin Mare Mediterranean gin is the featured spirit here, and we are a bit obsessed! Distilled with olives, thyme, rosemary & basil, it is an aromatic masterpiece! The addition of a house-made black pepper & fennel simple syrup, cucumber, lemon and salt ensure the following ...

If you're lookin' for a good thyme, order this.

If you're craving a memorable thyme, sip this.

If you're needing a relaxing thyme, savor this.

We guarantee you'll order this thyme and thyme again!



ELECTRONICALLY FILED - 2026 JAN 12 12:18 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300510



Photo by Will Crooks for TALK

Simpler Days...

There is no mocking this virgin cocktail...a beverage that is seriously full of flavor and spirit, despite the lack of “spirits”. Blood orange, honey simple syrup, spiced orange shrub, apple cider vinegar and egg white combine to create a sophisticated, smooth and velvety beverage that will have you feeling festive without the hangover. Sometimes simpler is better...just sayin’!



Photo by Will Crooks for TALK

Engage your own creativity...

Staying true to that original charcuterie & wine idea, Curean offers a build-your-own charcuterie bar with ALL the fixins. From the board itself to every imaginable option for the most beautiful & delicious bespoke display, it's all there! Enjoy on-site or take it with you...they are happily at your service!

Open for lunch/brunch on weekends and for dinner each night (except Tuesday), Curean welcomes you like family, Mediterranean-style!

732 South Main Street . Greenville . (864)416-4610 . Cureangvl.com

Alex Burgamy & Angi Einstein . TheRareBelle.com

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Drinkin' on the job...through the looking glass

11 - Tuesday - JUN 2024

POSTED BY [THERAREBELLE](#) IN [DRINKIN' ON THE JOB](#)

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Tags

[cocktails](#), [drinkin' on the job](#), [greenvilleonline](#), [Talk Greenville](#), [Talk Magazine](#), [TALKGreenville](#), [The Rabbit Hole](#), [Will Crooks](#)



The Library at The Rabbit Hole – photo by Will Crooks for TALK

Here we are...delivering on last month's promise to bring you part II – the sequel – of our TALK Magazine experience down The Rabbit Hole!! We, once again, headed out to West Greenville to pay Travis and team a visit and to dig a bit deeper into their special wonderland. This time, we focused our attention on “the library”, where whimsy is in overdrive!

Escape reality...even if just for a night...

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If you're looking for a quiet, intimate space for a nibble and an enchanting beverage, look no further. "The Library" is the best-kept secret in the West Village! Tucked away down The Rabbit Hole's long side hall is the door to a delightful, playful, reservations-only escape. While the bites and snacks menu mirrors the main bar menu, the cocktails are next-level! We sampled a few that happened to have one thing in common...the presence of the highly potent, mysterious spirit, absinthe. We are suckers for the enigmatic!

We figured we would give you some options – from whisper-light to full-throttle – to experience the allure of "the green fairy"...





The Rabbit Hole Sazerac

Since we are in the realm of old-fashioned fables, why not age-old beverages? This potent concoction is a bit more Queen of Hearts, less Alice...blending cognac, Rabbit Hole Boxergrail Rye, bitters and an absinthe rinse to form a strong and swarthy Pulitzer Prize winner of a drink. You'll happily punch your library card for this one!!



Apollo's Chariot

This beauty ranks up there with the best of them in our book... the perfect cocktail to cool your jets! If you'd like to venture down the rabbit hole of absinthe, this

is your ticket to ride. Fennel and anise notes are prevalent yet the flavors are bright and intoxicating. This addictive cocktail might be the reason Absinthe was illegal for so long, just sayin'!



Arsenic & Old Lace

Here is where things get a bit more serious and ramped up! Don't let the soft lavender color fool you...this cocktail packs quite a punch with a full-on serving of absinthe! Juniper and herb-forward small-batch Sutters Gin is balanced with the citrus notes of orange bitters, while crème de violette keeps it brisk and bright. If we are picking our poison, we are picking this velvety, smooth concoction.





Drip, drop...the allure of absinthe...

Absinthe is, indeed, a highly potent beverage...but its reputation is a smidge over-exaggerated. Its allure stems from rumors that it possessed psychoactive properties (not always a bad thing, just sayin'), leading to bans in many countries in the early 20th century. Despite being legit today (legalized for sale in the US in 2007...you read that right...just 14 years ago!!), it still carries a bit of intrigue and mystery.

If you REALLY want to take a dive into this mysterious spirit (and we highly encourage it!), The Library has the most intriguing method. Ask for the "Absinthe Drip" and be amazed! As cold water drips into a glass of absinthe along with a sugar cube, the color magically changes to the most alluring green...the "green fairy" in the flesh!

Reserve now for your own experience down The Rabbit Hole!!

The Rabbit Hole . 1268 Pendleton Street . Greenville . TheRabbitHoleGvl.com

By Angi Einstein and Alex Burgamy

Photography by Will Crooks

Drinkin' on the job...down the Rabbit Hole

29 - Wednesday - MAY 2024

POSTED BY [THERAREBELLE](#) IN [DRINKIN' ON THE JOB](#)

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Alex Burgamy, Angi Einstein, cocktails, drinkin' on the job, greenvilleonline, Talk Magazine, TALKGreenville, The Rabbit Hole, Will Crooks
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The Rabbit Hole – image by Will Crooks for TALK

Our latest [TALK Greenville](#) cocktailin' adventure had us feeling like we were playing the part of Alice in her whimsical wonderland! Tucked into a magical little space in West Greenville, [The Rabbit Hole](#) is an eccentric, eclectic, enchanting delight inside and out (and behind that mysterious door...but more on that next month!!)

It's always "Tea Time"...

We all win when time stands still at 6! While it was always teatime for Alice and friends, [The Rabbit Hole](#) has a menu of small plates that will give any high tea a run for its money. Order a couple of items as appetizers or make a meal out of it. And we all know that 6 is a totally respectable time to imbibe! We did, of course...



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Image by Will Crooks for TALK

The Golden Toad...

Less frog, more Prince Charming, this is a fairy tale of a drink with a very happy ending. Beefeater gin is combined with ginger and lemon in a beautifully stemmed coupe glass resulting in a tangy, tart and delicate cocktail. The magic is in the house-made basil oil artistically placed to become floating chartreuse lily pads. The velvety finish will have you croaking for more- just sayin'!





Image by Will Crooks for TALK

In This Style...

Tea-totaling be damned...we are spilling the tea on this one, and it is scandalously good! Served in teacup to honor Alice's party skills; vodka, Amaro, seasonal fruit syrups, lime and ginger blend into a concoction that is worthy of any festivities big or small. This isn't just for tea time – it's worthy anytime! We would pay the hatter a queen's ransom for an enchanting elixir "in this style"!





Image by Will Crooks for TALK

Venus...

This wonderland of a cocktail is a tequila-based delight where grapefruit, Velvet Falernum and Giffard Orgeat dance together creating a tasty performance. The encore is a Luxardo cherry that is a sweet treat waiting for you at the bottom of this ballerina-pink creation. It's an en pointe drink that will smoothly slip on down and have you ordering another. The perfect finish!

The sequel...

There was too much enchantment to fit into one visit...so stay tuned for our "through the looking glass" adventure next month!!

Open for dinner Wednesday through Saturday and for Sunday brunch, Travis, Kollin, Kate and Ethan invite you to "release the worries of the real world and embark on a journey where each sip, taste, and moment is infused with the magic of Wonderland, if even just for a night".

The Rabbit Hole . 1268 Pendleton Street . Greenville . TheRabbitHoleGvl.com

By Alex Burgamy and Angi Einstein . TheRareBelle.com

Photography by Will Crooks

Drinkin' on the job...at the One5

06 - Saturday - APR 2024

POSTED BY THERAREBELLE IN [DRINKIN' ON THE JOB](#)

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Tags

[cocktails](#), [drinkin' on the job](#), [greenvilleonline](#), [Talk Magazine](#), [TALKGreenville](#)

Drinkin' on the job

...THE ONE 5 EXPERIENCE

WRITTEN BY ANGI EINSTEIN AND ALEX BURGAMY
WWW.THERAREBELLE.COM | PHOTOS BY WILL CROOKS



HAPPINESS AND CREATIVITY
ABOUND IN THIS CROWD-
PLEASING HOTSPOT, SO
MAKE A PLAN TO
PAY THEM A VISIT ASAP.
YOU'RE WELCOME!

We headed east, out to the Hartness property, to check out what's new in the neighborhood for this month's cocktailin' excursion. While we often gravitate toward the many awesome downtown haunts, this idyllic Eastside enclave in "The 29615" is creating quite the buzz. The One 5 restaurant, recently opened in the Hartness Village Center, is most definitely buzz-worthy!

Come one, come all...

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The One 5

2000 Society Street, Suite 100
Greenville
(864)686-7900
TheOne5Hartness.com

While Hartness community locals are drawn to the delicious dishes coming from Chef Nelson De Hoyos' kitchen, the bar team's creations also have word spreading far and wide about all that The One 5 has to offer! On any given day, Anna, Mills and Ryan behind the bar say they strike up conversations with patrons from all over ... a true indication that these folks are doing something right!

We did some sipping and nibbling ourselves...

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De Hoyos...Created by Anna and aptly named after Chef Nelson, this cocktail mimics his exuberance, zest, and creativity. Overflowing with flavors that marry Jamaican rum, fresh lime, Tajin, bitters, mango juice and fresh jalapeño, this drink bursts and pops with flavor in every sip! Chef's kiss! Or should we say chef's sip!

The Red Velvet...Creating combinations that are mysterious and intriguing are the bread and butter of this establishment. Deeply rich, while still maintaining a buoyancy of flavor is where the magic happens here. Cocktail curator Mills combines Lunazul tequila, house-made strawberry shrub, Peychaud's bitters, fresh basil and a black peppercorn vinegar that is ebullient, energetic and brimming with freshness to create this velvety concoction. This one is new for the spring menu -- the best



The Amarolux Stunner...One of our favorite new flavors, Amaro, is highlighted in this enticing beverage created by Ryan. This gin-based libation is intoxicating in more ways than one! In addition to Montenegro Amaro, honey-lemon syrup and bitters help to perfectly balance out the herby notes of Kakira Gin, providing a kaleidoscope of flavors and textures. With every sip you will find a masterpiece of flavors that continue to develop as you savor every moment.



TALK | SIPPIN' SPIRITS

sign since daffodils that spring has arrived!



Creativity abounds...

Chef De Hoyos pulled out all the stops in the kitchen to give us a sampling of his incredible talents. From tuna tartare, a deconstructed sushi masterpiece, to the pure perfection of the airline chicken, the dishes were true stunners. After several years honing his skills in a steakhouse, Nelson is especially loving the opportunity to get creative with seafood – and we are forever grateful because the oyster appetizer is out of this world! We think you're gonna need a bigger table!

TALK GREENVILLE 55

POSTED BY [THERAREBELLE](#) IN [DRINKIN' ON THE JOB](#)

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Tags

[cocktails](#), [drinkin' on the job](#), [greenvilleonline](#), [O-Ku](#), [OkuGreenville](#), [Talk Greenville](#), [Talk Magazine](#), [TALKGreenville](#)



Interior at O-Ku – photo by Will Crooks for TALK

We kicked off a new year of cocktailin' for our [TALK Greenville](#) adventures at one of our favorite, relatively new spots right in the heart of downtown. With its lively and energetic atmosphere, [O-Ku](#), the sushi-and-more restaurant at the corner of Main and Broad, is the perfect place to gather with friends or enjoy a

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romantic Valentines date night...and they really have it goin' on in the boozy beverage department! The "team" behind the bar keeps it fresh and exciting with a seasonal selection of unique and creative cocktails, and the current line-up is not to be missed!

Jaedan, Travis and crew filled us in on their philosophy behind each of their creations...simplistic complexity. In keeping with the emphasis of Japanese cuisine, simple, clean, house-made ingredients come together to create absolute perfection. We sampled a few that we highly recommend...





Kissed by a Rose – photo by Will Crooks for TALK

Kissed by a Rose...

This pretty little thing is the perfect bev to kick off a romantic evening! Rich, dark, rhubarb and plum are combined in a house-made concoction that is lightened up and mellowed out with a splash of Prosecco. The tartness of the earthy, herby rhubarb and the sweetness of the plum create a harmonious balance of flavors, while the Prosecco adds the perfect touch of effervescence. Everything will be comin' up roses after a couple of these beauties!





Lily in Bloom – photo by Will Crooks for TALK

Lily in Bloom...

A cocktail that is sure to impress is one made with Empress Gin and Creme de Violette! Known for its vibrant indigo color, Empress adds a visually stunning element to any cocktail. When combined with the floral and aromatic notes of Creme de Violette and St Germain, the result is a cocktail that is a fragrant and flavorful feast for the eyes. The herbal notes of the gin are perfectly enhanced by the delicate floral notes of the violette and elderflower, resulting in an extra-sensory creation that you will want to sip and savor. Let the flavors transport you to a world of sophistication and indulgence!





Bourbon & Toffee – photo by Will Crooks for TALK

Bourbon & Toffee...

This play on a whiskey sour is a real stunner! Visually fascinating and complex in taste, the Bourbon & Toffee is a rich combination of bourbon and house-made English toffee syrup with an unexpected port float. The sweetness of the toffee takes the edge off of the whiskey (no after-burn here!) while the port adds a touch of fruit-forward complexity. This dark, handsome, mysterious fella will get his arms wrapped around you and steal your heart in no time flat!

No matter the occasion (or weather) O-Ku has you covered! When the weather is nice, an outdoor table puts you right in the heart of the fun hustle and bustle of Main Street, but a cozy table for two (or more) inside is a great way to immerse yourself in O-Ku's "omotenashi" – a Japanese expression of hospitality and mindfulness.



Photo from O-Kusushi.com

Whether you're a sushi aficionado or simply looking for a great place to enjoy delicious cocktails, O-Ku is the perfect choice. With its buzzing atmosphere, exceptional sushi-and-much-more, and creative cocktails, it's no wonder why it has become a favorite among locals and visitors alike.

O-Ku . 30 W Broad Street . Greenville . O-Kusushi.com . (864)326-4812

By Alex Burgamy and Angi Einstein

drinkin' on the job...at a holiday miracle!

08 - Wednesday - NOV 2023

POSTED BY THERAREBELLE IN DRINKIN' ON THE JOB

≈ LEAVE A COMMENT

Tags

cocktail, drinkin' on the job, holidays, Miracle at Southernside, Southernside Brewing, Talk Greenville, Talk Magazine, TALKGreenville





Our cocktailin' adventure this month took us to an AMAZING winter wonderland smack in the middle of Greenville's Unity Park. **Southernside Brewing Co.** is a must-see, must-visit holiday headquarters with the festive return of "**Miracle at Southernside**", a Christmas-themed pop-up bar featuring over-the-top decorations, super-creative cocktails, and merriment galore!

Buddy the Elf would be right at home...

We could not help but get into the spirit of the season as we stepped into what felt like the happiest elf village on the planet! Much like Buddy's adventure through the "seven levels of the Candy Cane forest", life-sized Santas and reindeer, twinkling lights, and a great holiday soundtrack greet visitors young and young-at-heart, making Southernside THE place to be this holiday season!





Photo by Will Crooks for TALK

The Koala Cooler...

Who wouldn't want to cozy up to this winter wonderland of a drink? A delightful concoction comprised of Applejack, blanc vermouth, aquavit (watch out, the Norwegians are very serious about this stuff!), spiced apple, lime, house-made celery shrub and eucalyptus bitters will have you toasting all things merry and bright. The mint garnish and the kitschy koala will keep you feeling festive!





Photo by Will Crooks for TALK

Christmas Cricket...

This holiday cocktail grabbed our hearts and treated us to a new and distinct flavor that had us drooling for more. Pandan extract is a nutty, intoxicating, antioxidant-loaded ingredient that is like Christmas catnip for these two belles. We just couldn't get enough; and when combined with the chocolate, mint, and vanilla notes, this tequila-based bev became irresistible. By Jiminy you need to try this!





Photo by Will Crooks for TALK

Elfing Around #2...

Ski slopes, snowflakes and fireside chats are what come to mind with this cool mulled-wine sipper. The perfect beverage when you want to take a wee break from the magic of the Christmas chaos. A merry mixture of cognac, mulled wine reduction, champagne, absinthe and lemon is the remedy for keeping the holiday spirits high and the sugar plum fairies dancing.





Photo by Will Crooks for TALK

Rudolph's Replacement...

All of the other reindeer wouldn't trade ol' Rudolph at this critical time, so this is the perfect substitute while we are waiting for him and the big guy! Santa's helpers will want to belly up to the bar and order this t-Rex mug of liquid courage for holiday shopping and celebrating. Vodka, coffee liqueur, crème de cacao, chai and aromatic bitters give an extra jolt of deliciousness to this "Dino-mite" of a drink.

Giving is our favorite...

While a visit to this holiday fantasy land will turn even the grinchiest grinch into Santa's MVE (most-valuable Elf), the good stuff doesn't stop at the food, beverages and décor. At the end of the season, Miracle will secure its place on the "Nice List" by donating 10% of the proceeds from the sales of their Santa's Head, Santa Pants, and Christmas Carol Barrel mugs to their 2023 charity partner, Seva Foundation ...making them the perfect gift that keeps on giving!

Open for lunch every day and offering special extended hours on the weekends (open until midnight for even more celebrating) the merriment is at full throttle until December 31. Stay off the naughty list and witness the "Miracle" today!

Southernside Brewing Co . 25 Delano Drive . Greenville . (864)232-2053 . southernsidebrewing.com

By Alex Burgamy and Angi Einstein . TheRareBelle.com

drinkin' on the job...falling for Patterson

06 - Monday - Nov 2023

POSTED BY THERAREBELLE IN [DRINKIN' ON THE JOB](#)

≈ [LEAVE A COMMENT](#)

Tags

cocktails, drinkin' on the job, greenvilleonline, Hartness, Patterson Kitchen + Bar, Talk Magazine, TALKGreenville

ELECTRONICALLY FILED - 2026 Jan 12 12:18 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510



Patterson Kitchen + Bar – photo by Will Crooks for TALK

Our TALK Greenville drinkin' adventures are always a blast...but this one was made a bit more heavenly with beautiful fall weather, amazing fall-focused offerings and the most colorful (love the green velvet!) setting! We headed back out to the Hartness property to pay a visit to **Patterson Kitchen + Bar** and were

ELECTRONICALLY FILED - 2026 Jan 12 12:18 PM - COMMON PLEAS - CASE#2022CP2303510

greeted by the most welcoming of faces! Josh, director of all things eatable and drinkable, and Jenny, mixologist extraordinaire, went right to work giving us a samplin' of what they are serving up these days...

Farm fresh artistry...

There is a beautiful bond between bar and kitchen, indoor and outdoor, staff and atmosphere, with artistry at every level. While the interiors are pleasingly colorful, the menu features a rainbow of farm-fresh colors as well! Vegetables from Hartness Farm are used in each dish...even in the cocktails! Choosing just the right vessel to enhance each and every flavor, Jenny creates cocktails with a seasonal spin...infusing the flavors of fall at the moment into some old classics.





The Pumpkin Old Fashioned – photo by Will Crooks for TALK

Pumpkin Old Fashioned...

This autumn-forward beverage is an experience in itself! A symphony of flavors including Jefferson's Ocean bourbon, pumpkin purée, bitters and homemade cinnamon syrup are beautifully presented in a cut crystal double old-fashioned glass with a large ice cube gently tinkling against the sides...creating a feast for all of the senses!





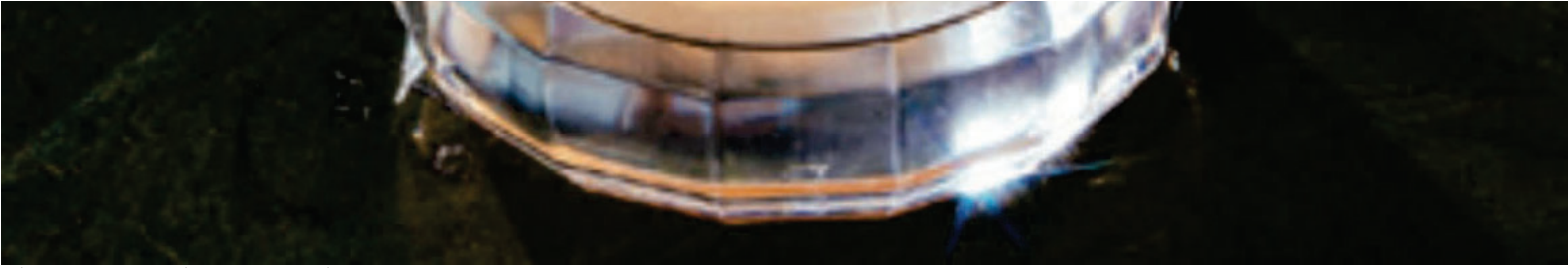
The Pomegranate Paloma – photo by Will Crooks for TALK

Pomegranate Paloma...

This is Patterson's take on a classic...with a seasonally satisfying twist. Served up in a beautiful Tom Collins glass, Casamigos blanco tequila, fresh pomegranate juice, and Fever-Tree pink grapefruit mixer are shaken to perfection and poured over petite cubes. Fresh raspberries en brochette presented on a rosemary branch add the most delightful finishing touch. Its simple elegance provides vibrant, refreshing sips that anyone would fall for.



ELECTRONICALLY FILED - 2026 Jan 12 12:18 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510



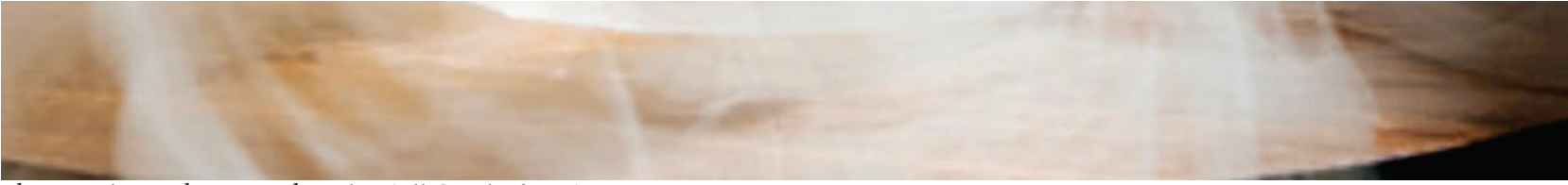
The Elysian Lychee Sour – photo by Will Crooks for TALK

Elysian Lychee Sour...

This Japanese gin-based cocktail is a pale pink cloud of delight. Slightly sweet, floral Lychee gently offsets the heavier juniper notes of the Roku gin while homemade grenadine and egg white (sourced from Hartness farm) are added to create nothing less than a frothy festival of subtle, enticing flavors, encouraging the palate to ask for more!



ELECTRONICALLY FILED - 2026 Jan 12 12:18 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303510



The Tequila Manhattan – photo by Will Crooks for TALK

Tequila Manhattan...

Herradura tequila, Amaro (cleverly replacing the vermouth), orange peel, maraschino cherry and a whiskey cube are smoked to perfection and served en glasse table side. Once again, this concoction delights the eye, enchants the nose, and pleases the palate with its smoky, salty, tangy, and sweet hints...a winning combination that will turn anyone into a Manhattan fan. Maybe even a fanatic – just sayin'!





Seasonal nibbles...

We had our tastebuds tantalized with some dishes that were beyond scrumptious as well. Hartness farm-fresh produce was incorporated beautifully on every plate. We sampled the scallops which were a fall harvest in every mouthful; the creamiest burrata, seasoned to perfection; and roasted vegetables which were a colorful, beyond-fresh, tasty parade of flavors. Presented on beautiful china and plated with an artist's eye, each dish was an elevated, elegant culinary creation...true mouthwatering marvels.

Open six days a week, with Sundays being their designated day of closure, Patterson is waiting to welcome one and all!

Patterson Kitchen + Bar . 110 Halston Avenue . Greenville . (864)509-6484 . [Facebook.com/pattersonhartness](https://www.facebook.com/pattersonhartness)

Written by Angi Einstein and Alex Burgamy . TheRareBelle.com

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drinkin' on the job...and then SUM

10 - Tuesday - OCT 2023

POSTED BY [THERAREBELLE](#) IN [DRINKIN' ON THE JOB](#)

≈ [LEAVE A COMMENT](#)

Tags

[cocktails](#), [drinkin' on the job](#), [Sum Bar Greenville](#), [Talk Magazine](#), [TALKGreenville](#)



Photo by Will Crooks

Tucked away in a sweet little spot downtown, a hidden gem has been quietly collecting fans and foodies for the past several months. We had been hearing (and adding to) the buzz about the delicacies coming out of the kitchen and figured it was time to shine some light on the boozy beverages at Sum Bar for our latest TALKGreenville drinkin' adventure!! Khailing Neoh, owner and brains behind this big hit, has the restaurant business in her blood and old family recipes in her head...so Sum Bar was an almost inevitable leap of faith that has worked out famously!!

Sam and Remington were whipping things up behind the bar and filled us in on (and let us sample) some of the house favorites...

ELECTRONICALLY FILED - 2026 Jan 12 12:18 PM - COMMON PLEAS - CASE#2022CP2303510





Photo by Will Crooks

The Basil River

This mildly sweet and sour cocktail is made with Ming River Baijiu, a new spirit for us! A bold, clear Chinese liquor distilled from fermented sorghum, this particular Baijiu offers notes of pineapple and anise with a lingering finish. Paired in this creation with lemon and basil, a delectable delight is delivered to patrons' parched palates. This one will make your tastebuds curious with its layered, striking flavor.



Photo by Will Crooks

The Soft Focus

Don't we all look better with a soft focus? Drumshanbo Gunpowder, an Irish gin with oriental notes, is combined with Bols Genever (another new one for us), Poire William brandy and a spritz of Cocchi Aperitivo Americano to create the smoothest, softest gin martini we've had to date! The aperitifs soften the edges of the two distinctive gins without masking their unique flavors. Savor this one while waiting for an order of Khailing's absolutely divine dumplings!





Photo by Will Crooks

Sake it to Me!

We admit that we are not Sake aficionados so we requested professional recommendations for a starter duo in this department.

Our tasting began with the *We Sake*, a premium Japanese sake in a cute little can! The taste here is that familiar, traditional “sake” without being overpowering. Rounded out with ginger, melon and sweet rice, this elixir was crisp, smooth, and delightfully easy to drink.

Our second sipper was the *Joto Yuzu*, a very easy-drinking sake. This one tastes like an elevated and sophisticated hard lemonade with hints of key lime, mandarin orange and lemon providing the ideal balance of acid and sweet. Suddenly, we LOVE sake!!

A big heart and open arms...

Ohio-native Khailing’s hospitality is epic...proving that life-long southerners don’t have the corner on that market! From offering “Tiny Bubbles” (a small “while you wait” pour of their house brut) on the menu to bringing in fellow food & bev entrepreneurs to share her space during off-hours, Khailing gives everyone the “warm & fuzzies”. We went back to check out **Coffee Coffee**, a much-touted local coffee purveyor operating in the **Sum Bar** space each morning (except Sundays) and found Khailing there enjoying a delicious morning brew. AND...she loves offering the space up for private parties (baby showers, birthdays...) on the off-hours as well!

Reserve now...you will thank us!!

Sum Bar . 307 E Washington Street . Greenville . (864)860-1004 . EatSumBar.com

By Alex Burgamy and Angi Einstein . TheRareBelle.com

Drinkin’ on the job...on “Bourbon Street”

14 . Monday . AUG 2023

POSTED BY THERAREBELLE IN [DRINKIN’ ON THE JOB](#)



Photo by Will Crooks for TALK

We are a bit obsessed with this month's TALK Greenville cocktailin' location! The latest venture for Dine Development Group, **Bourbon Street at Hampton Station** opened its doors in February and quickly developed quite the following – present company included! Not only does it offer a nod to The Big Easy (near and dear to both of our hearts), it features bourbons galore, craft cocktails of all persuasions, 26 taps (more on that later), games to keep things playful, and winner after winner coming from the kitchen. How they manage to keep all of those balls in the air and never drop a single one we might never know...but we are so glad they do!



All tapped out...in a good way!

The amazingly long, amazingly beautiful bar (repurposed from the former Liberty Tap Room) allows ample space for the 26 taps Josh, Jesse and team have flowing on the reg. With 5 taps dedicated to wines (sparkling included), several dedicated to the most-requested cocktails, and the balance dedicated to brews of all origins, a boozy thirst-quencher is ready when you are!

But even with all those taps, these guys are more than happy to introduce you to some bespoke delights. We couldn't have been happier with what they served up...





The Ancho-Pineapple Margarita...

Nothing says summer like a margarita and this one is the definition of the season! Ancho Reyes Chile liqueur, fresh orange, fresh pineapple and a touch of agave are balanced with the house-made rim of lime and chili salt. Sweet heat makes for a flavor burst that leaves the palate begging for more. Feel free to sip on this while you're practicing your skills on the whiskey wheel!





Photo by Will Crooks for TALK

The Blood Orange Tequila Sour...

If refreshing is what you're craving, this is the cocktail for you. A combination of Hornitos Black Barrel Tequila, blood orange purée, and fresh lemon & lime juice are finished off with a delightful foam and garnished with a dehydrated lime. This tangy, bright, bold and flavorful beverage is sure to quench any thirst. Taste-test approved. Satisfaction met. You'll love it!





Photo by Will Crooks for TALK

The Bourbon Butterscotch Martini...

Move over espresso martini, there's a new kid on the block. Created by bartender extraordinaire Josh (whose skills are unmatched in our not-so-humble opinion, we speak from experience – just sayin'), this libation is for those with a sweet tooth. Woodford bourbon, butterscotch schnapps, chocolate bitters, a smidge of cream and a fresh mint leaf come together to create a rich and creamy concoction. Warning: addiction is a real possibility with this one!

Burgers and po-boys and fries, oh my!

While Dine Development operates several "Bourbon Street Burger" locations, this one has all that and more! Added to the amazing burger assortment are po-boys to rival any on the NOLA scene and entrees to suit all appetites. Our suggestion du jour would be the mussel pot and tavern fries, but that's us...you do you!

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With plenty of indoor and outdoor seating and frequent live entertainment, Bourbon Street has it all!

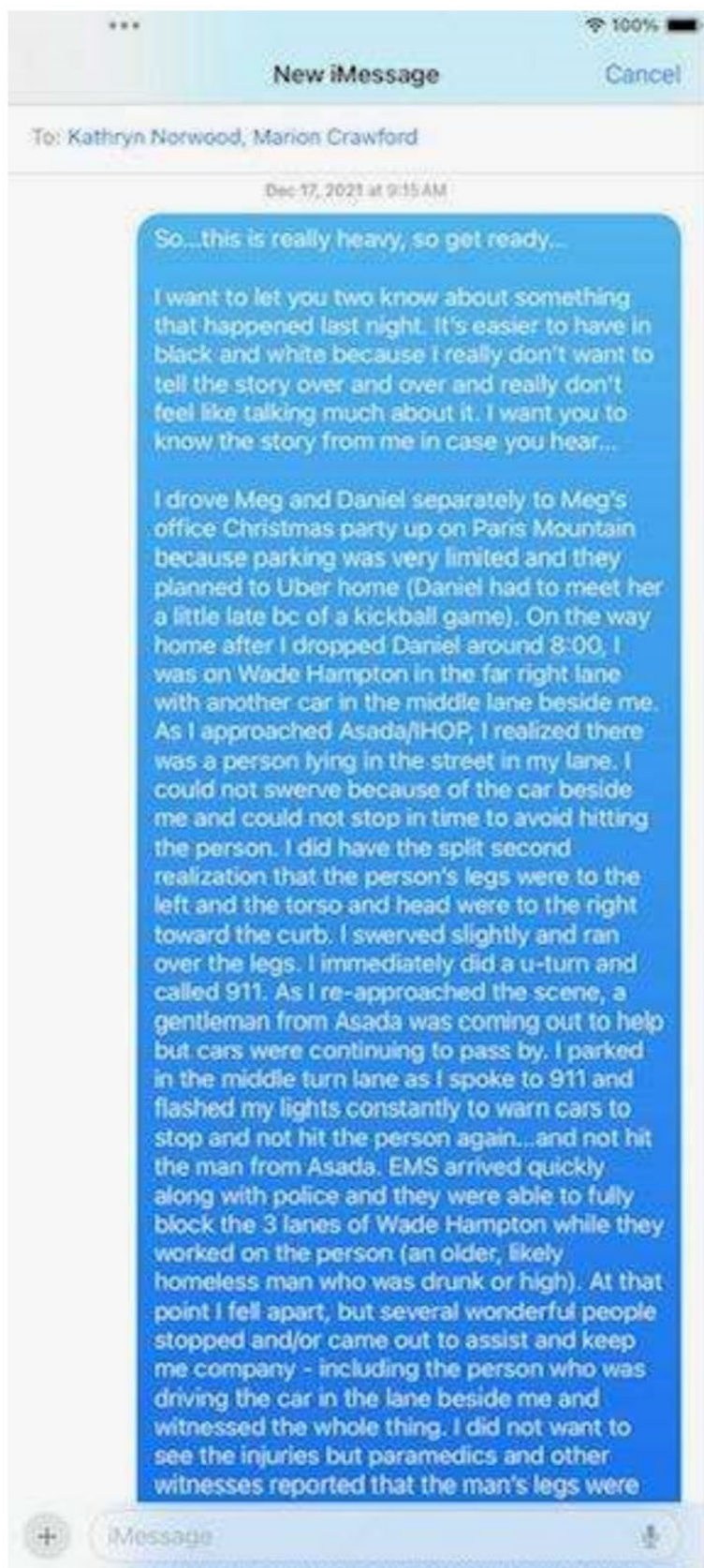
Bourbon Street @ Hampton Station . 1320 Hampton Avenue . (864)243-8083

Alex Burgamy and Angi Einstein . [@therarebelle](#)

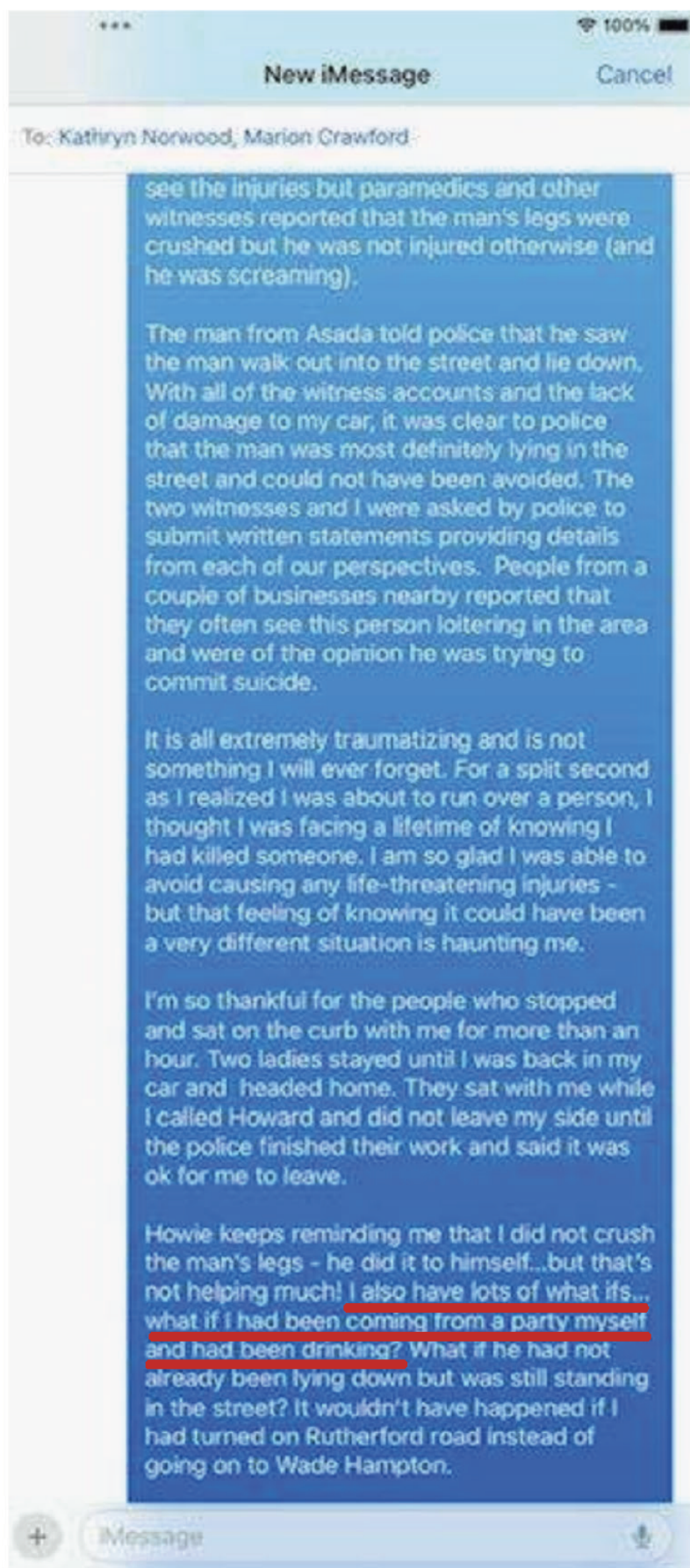
[Blog at WordPress.com.](#)

Exhibit 19
12/17/21 Text Message from Defendant

Page 1



Page 2



Page 3



Angi Einstein

Exhibit 20

911 Recordings

Exhibit 21
Written Statement of Lemuel Gaines

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 21-087347

DATE 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 10-1-82 years old and reside at _____ Greenville SC 29607

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: _____

2021/01/23/202209:09:05

Lynch-Einstein000026

Exhibit 22
March 4, 2024 Hearing Transcript

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

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

5 So to get into some of the detail, Your Honor, the
6 incident at issue occurred on December 16th, 2021, around
7 10 p.m. If Your Honor will turn to page 3 of tab 4, which
8 is the brief in support, the Court will find sort of a
9 bird's-eye view of the area where the incident took place.
10 To orient Your Honor, the defendant was traveling from
11 right to left in the lane nearest to the IHOP. And so she
12 was running against the curb. There was another person
13 traveling beside her, a Mr. Lemuel Gaines, and he was
14 riding in the middle lane.

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

20 There was an eyewitness, the owner of the Asada
21 restaurant who gave a witness statement to the law
22 enforcement officer who investigated, and he testified
23 that he saw the plaintiff trying to get in and out of
24 cars. There was also some testimony by another eyewitness
25 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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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Lynch v. Einstein

3 202-CP-23-03510

4 DATE OF HEARING: 3/4/24

5 COURT REPORTER/MONITOR: Webex In-Court Recording

6 *****

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10 transcribed to the best of my ability from the audio
11 recording and supporting information, and that I am
12 neither counsel for, related to, nor employed by any of
13 the parties to this case, and I have no interest,
14 financial or otherwise, in its outcome.

15
16 17 /s/ Bobbi Fisher

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 3/22/24

20
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Exhibit 23
Deposition Testimony of Plaintiff

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

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

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.

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Roger Wayne Lynch on 04/26/2023

Page 2

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

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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.**

Exhibit 24

Photographs of Plaintiff's Injuries



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 Reconsider, Alter, or
v.	)	Amend March 24, 2026 Order
	)	
Angela West Einstein	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, pursuant to Rules 52, 56, 59, and 60 SCRPC, and *Elam S.C. Dep't of Transp.*, 361 S.C. 9, 21-22, 602 S.E.2d 772 (778-79) (2004), hereby moves this Court for an order altering or amending the Court's Order filed on March 24, 2026 ("the Order"), granting Defendant summary judgment in the action. Plaintiff received electronic notice of the Order on March 24, 2026.

Plaintiff respectfully submits that, in granting summary judgment, the Court may have overlooked or misapprehended factual evidence and certain governing principles concerning summary judgment and proximate cause.

I. Proximate Cause is Ordinarily a Jury Question Unless the Evidence Supports Only One Inference.

The Order concludes "[t]here is no evidence that [Defendant] was negligent in a way that proximately caused" the subject incident. Order at 10. In reaching that conclusion, however, the Court weighed competing evidence and drew inferences against Plaintiff, thereby misapprehending the record and acting contrary to Rule 56, SCRPC. Proximate cause is ordinarily a question for the jury and may be decided as a matter of law only when the evidence supports but one reasonable inference. *See McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 387, 684 S.E.2d

566, 569 (Ct. App. 2009) (stating proximate cause is ordinarily a question for the jury); *see also*, *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 416, 717 S.E.2d 765, 771 (Ct. App. 2011); *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). Only in rare or exceptional cases may proximate cause be determined as a matter of law. *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986) (citing 65A C.J.S. *Negligence* § 264 at 917 (1966)).

The Order repeatedly characterizes critical facts as “undisputed,” including lighting conditions, Defendant’s operation of her vehicle, and the avoidability of the collision. Order at 2, 11, 12, 13. However, the record contains conflicting evidence on each of these points. By treating disputed facts as undisputed, the Court did not merely draw inferences—it removed competing evidence from consideration altogether, contrary to Rule 56.

The Order does not identify an absence of evidence; it adopts Defendant’s version of disputed facts and treats that version as dispositive.

Plaintiff presented substantial evidence and argument in opposition demonstrating the existence of competing inferences as to visibility, speed, statutory violations, and proximate cause. These arguments were squarely presented to the Court but are not addressed in the Order. Instead, the Order accepts Defendant’s characterization of the facts and treats them as undisputed.

Viewed in the light most favorable to Plaintiff, the record gives rise to multiple reasonable inferences as to whether Defendant failed to maintain a proper lookout and avoid the collision, including evidence regarding visibility, speed, and impairment. The evidence establishes that the incident occurred on a straight roadway with light traffic. Defendant Dep. 57:1-5; 60:14-16. The area was illuminated by: (1) the “extremely bright” interior and exterior lights from the IHOP adjacent to the point of impact (Defendant Dep. 61:22-25); (2) Defendant’s headlights (Defendant

Dep. 62:25-63:3); and (3) the headlights from Lemuel Gaines’s vehicle, which was immediately adjacent to Defendant (Defendant Dep. 56:2-9; 59:23-60:8; Hamilton Dep. 77:20-79:1-9). Defendant herself described the location as a “fairly well-lighted area.” PURE Claim File at 23/PURE_Einstein 0160. A witness at a nearby restaurant, ASADA, was able to observe Plaintiff from inside the building. Hamilton Dep. 82:1-4.¹ If a witness inside or at a nearby restaurant could observe Plaintiff without the benefit of vehicle headlights, a reasonable inference is that Defendant—equipped with two sets of headlights— should have perceived Plaintiff in time to avoid the collision.

At minimum, this evidence gives rise to competing reasonable inferences as to whether Defendant, exercising due care, should have perceived and avoided Plaintiff—precluding summary judgment. The Order’s contrary finding—that the roadway was “not well-lit”—reflects an impermissible weighing of the evidence. Order at 1.

The Court’s reliance on body camera footage further underscores this error. The footage reflects a post-incident, on-foot perspective and does not replicate the conditions faced by Defendant, including vehicle-mounted headlights and roadway vantage point. Treating such evidence as dispositive of lighting conditions improperly elevates limited perspective evidence over competing record evidence and resolves factual disputes reserved for the jury.

The Order further accepts as dispositive a witness characterization that the incident was “unavoidable.” Order at 3, 11, 17, 20. That conclusion, however, is itself an inference drawn from the facts—not an undisputed fact. Whether the collision was avoidable depends on disputed issues of visibility, speed, impairment, and perception, all of which are supported by competing evidence

¹ As noted by the Court in the Order Instructions filed March 6, 2026, Roberto Cortez informed the police that he was able to see Plaintiff. Mr. Cortez is the owner of ASADA.

in the record. Treating that characterization as conclusive improperly invades the province of the jury. Moreover, a witness's characterization of an event as "unavoidable" cannot substitute for the jury's determination of proximate cause.

Critically, a driver traveling immediately adjacent to Defendant was able to observe Plaintiff walking and falling in the roadway, creating a direct factual conflict as to visibility that cannot be resolved on summary judgment.

The record likewise presents direct evidence contradicting the Order's finding regarding Defendant's speed. While the Order states Defendant was traveling "significantly less than the posted speed limit of 45 MPH" (Order at 3), Defendant's own admissions establish otherwise. Just two months after the incident, Defendant reported that she "sped up to 50 mph to try and get ahead" of the vehicle to her left and then "dropped back down to 48 mph" when she realized the other vehicle was "going a bit too fast." PURE Claim File at 22/PURE_Einstein 0159. This contradiction creates a factual and credibility dispute that cannot be resolved on summary judgment and is properly reserved for the jury. It is not the Court's role at summary judgment to reconcile Defendant's conflicting statements or determine which account is more credible.

These issues necessarily turn on witness credibility and competing accounts of events—determinations reserved for the jury, not the Court on summary judgment.

Under section 56-5-3230 of the South Carolina Code of Laws, a motorist has a duty to exercise due care to avoid colliding with any person, including those who may be confused, incapacitated, or intoxicated. S.C. Code § 56-5-3230. At minimum, this evidence permits a reasonable inference that Defendant's speed and manner of operation contributed to the collision.

The Order further overlooks evidence that Defendant was operating her vehicle while impaired. Defendant admits that she took Cymbalta both the day before and the day of the incident.

See Defendant's Responses to Plaintiff's Second Supplemental Interrogatories, Response to Interrogatory No. 3(a). It is unrefuted in the record that Cymbalta (duloxetine) is known to cause tiredness and drowsiness. See Affidavit of David H. Eagerton, PhD., F-ABFT. See also Plaintiff's Memo filed January 22, 2026. Defendant also refilled 90 days' worth of Temazepam (Restoril) during the month prior to the subject incident. Prior to November of 2021, Defendant filled 90 days' worth in August of 2021. Those were increased from the 30-day prescriptions filled in December, February, and May of 2021. *Id.* It is also unrefuted in the record that Restoril is known to cause drowsiness, dizziness, lessened coordination, memory impairment, and short-term memory loss. *Id.* Despite being adamant she did not take Ativan or refill her Ativan, the record establishes Defendant did indeed possess Ativan in December of 2021. On December 17, 2021, the day after the incident, Defendant texted "I actually have some Ativan" to a friend who offered her Valium. See Plaintiff's March 11, 2026 filing, Ex. 1. These texts and many others were withheld from Plaintiff until after the Summary Judgment hearing, despite Defendant's counsel telling the Court the cell phone issue was done.² See Plaintiff's filings on March 2, 2026, March

² The text exchange regarding the Ativan is separate from the text messages where Defendant thought it was funny to refer to Plaintiff's body as a "bump in the road." ("[m]ay this just be a bump in your road"/"[t]oo soon?" and Defendant. Supp in camera review000053).

May this just be a bump in your road.
Priority: Normal

Participant	Delivered	Read	Played
[REDACTED] Angi Einstein	12/17/2021 8:11:02 AM(UTC-5)	12/17/2021 8:11:02 AM(UTC-5)	

From: [REDACTED] Adam West
To: [REDACTED] Angi Einstein (owner)
Too soon?
Priority: Normal

Participant	Delivered	Read	Played
+18647874024 Angi Einstein	12/17/2021 8:11:02 AM(UTC-5)	12/17/2021 8:11:02 AM(UTC-5)	

From: [REDACTED] (owner)
Laughed at "Too soon?"
Priority: Normal
Status: Sent
Platform:
12/17/2021

10, 2026, and March 11, 2026. All of this evidence creates a triable issue as to whether Defendant was impaired and whether such impairment contributed to the collision—issues squarely within the province of the jury and inappropriate for resolution on summary judgment.

Contrary to the Order’s conclusion that the record is devoid of evidence of negligence, the record contains multiple categories of evidence from which a jury could reasonably infer negligent conduct, including evidence regarding visibility, speed, and impairment.

Under South Carolina law, whether a motorist violated statutory duties and whether such violations proximately caused an accident are questions for the jury. *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 an auto versus pedestrian action, the jury as the trier of fact weighs the evidence presented by both sides to determine the existence and quantity of proximate cause attributable to the parties. *See Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910 (C. App. 2001) (affirming jury’s allocation of fault between driver and pedestrian in pedestrian’s negligence claim). Taken together, the evidence regarding visibility, speed, and impairment presents multiple, competing reasonable inferences as to proximate cause that cannot be resolved as a matter of law. The Court’s contrary conclusion reflects an impermissible weighing of the evidence and resolution of factual disputes. Summary judgment is therefore improper.

The Order does not grapple with these competing inferences, but instead resolves them in Defendant’s favor as a matter of law.

These are not isolated disputes; they are multiple, independent factual conflicts that go directly to perception, reaction, and causation. The existence of competing reasonable inferences ends the Rule 56 inquiry.

These disputed facts regarding Defendant's speed, impairment, and operation of her vehicle independently—and certainly collectively—preclude a finding that only one reasonable inference exists as to proximate cause. By resolving these factual disputes and crediting certain evidence over competing record evidence, the Court misapprehended both the summary judgment standard and the evidentiary record, warranting relief under Rule 59(e).

II. Whether Plaintiff was Responsible for the Incident and His Own Injuries is a Question for a Jury.

The Order concludes that Plaintiff was responsible for the accident and barred from recovery. Order at 12 (“[b]ased 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 recovery in this case.”) Order at 12. In doing so, the Court resolved issues of comparative negligence that are ordinarily reserved for the jury.

Even if the evidence strongly supports Defendant's theory of Plaintiff's fault, Rule 56 does not permit the Court to weigh that evidence against competing evidence of Defendant's negligence or to resolve comparative fault as a matter of law where multiple reasonable inferences exist. The presence of evidence supporting Plaintiff's negligence does not eliminate competing evidence of Defendant's negligence or permit the Court to allocate fault as a matter of law.

Plaintiff also presented evidence of violations of South Carolina motor vehicle statutes, which under controlling law present jury questions as to both breach and proximate cause.

The Order's reliance on *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 344 S.E.2d 157 (Ct. App. 1986) is misplaced. *Howle* arose from a jury verdict—not summary judgment—and thus reinforces, rather than undermines, Plaintiff's position. In *Howle*, the Court of Appeals reviewed the sufficiency of the evidence after a jury had weighed competing facts and allocated fault. The case illustrates that issues of proximate cause and comparative negligence—particularly in

pedestrian cases—are properly resolved by the factfinder. The use of *Howle* to support summary judgment improperly converts a case affirming a jury’s role into one authorizing the Court to usurp it. *Howle* thus reinforces the governing principle: where the record supports competing reasonable inferences as to proximate cause and comparative fault, summary judgment is improper.

The Order’s reliance on *Abdelgheny v. Moody*, 432 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020), likewise does not support summary judgment. To the contrary, *Abdelgheny* emphasizes that summary judgment is a “drastic remedy” to be “invoked cautiously,” particularly in comparative negligence cases, and reverses summary judgment where the record permits competing inferences as to fault allocation. *Id.* at 350.

This case presents the same circumstance. Even if Plaintiff was negligent, the record does not permit only one reasonable inference that Plaintiff’s negligence exceeded fifty percent. The Order reaches precisely the conclusion rejected in *Abdelgheny*—resolving comparative fault as a matter of law despite the presence of competing evidence.

To the extent the Order relies on other appellate decisions affirming summary judgment or directed verdicts, those cases are factually distinguishable and arise in materially different procedural postures. None authorize the resolution of disputed factual inferences under the circumstances presented here.

The Order further invokes *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000), *Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003), *Creech v. South Carolina Wildlife & Marine Resources Department*, 328 S.C. 24, 491 S.E.2d 571 (1997), and *Estate of Haley v. Brown*, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006), but those authorities do not support summary judgment on this record. *Bloom* and *Lydia* represent the narrow circumstance in which the evidentiary record permits only one reasonable inference as to fault—circumstances not present here, where the

record contains competing evidence regarding visibility, Defendant's speed, and her ability to perceive and avoid Plaintiff.

The Order's application of *Creech* likewise does not support summary judgment. While *Creech* recognizes that comparative fault may become a question of law when the evidence supports only one reasonable inference, that principle applies only when the evidence admits one reasonable inference. *See Creech*, 328 S.C. at 30, 491 S.E.2d at 574. Here, by contrast, the record presents multiple factual disputes bearing directly on proximate cause and fault allocation, precluding such a determination as a matter of law.

Finally, *Estate of Haley* arises from a directed verdict following the presentation of evidence at trial, where the court evaluates the sufficiency of a fully developed record—not at the summary judgment stage, where all reasonable inferences must be drawn in favor of the non-moving party. *See Estate of Haley*, 370 S.C. at 243–44, 634 S.E.2d at 64. The procedural posture alone renders it inapplicable to the Rule 56 analysis required here.

None of these decisions authorize a court at the summary judgment stage to resolve conflicting evidence, assess credibility, or draw inferences against the non-moving party. Yet that is precisely what occurred here. By concluding that the evidence admits of only one reasonable inference despite the existence of competing record evidence, the Order impermissibly transforms disputed facts into legal conclusions in contravention of Rule 56.

Conclusion

The Order resolves disputed facts, credits one version of the evidence over another, and rejects competing inferences—contrary to Rule 56. The summary judgment record presents multiple reasonable inferences as to proximate cause and comparative fault, each of which must be determined by a jury.

The Order's determination that only one reasonable conclusion can be drawn is itself the product of resolving disputed facts and competing inferences—an approach Rule 56 does not permit. This case presents classic jury questions that cannot be resolved as a matter of law. The question at summary judgment is not whether Defendant's evidence is persuasive, but whether a reasonable jury could find for Plaintiff—and on this record, it plainly could. The Order also reflects a misapprehension of controlling law governing summary judgment and comparative negligence, including the requirement that competing reasonable inferences be resolved by the jury.

This case has been presented to the Court multiple times on summary judgment, and Plaintiff has consistently identified material factual disputes that remain unresolved. Plaintiff respectfully request that the Court alter or amend its Order and restore this matter for trial.

Respectfully submitted,

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April 3, 2026
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Vernon F. Dunbar, Circuit Court Judge

Civil Action No. 2022-CP-23-03510

Roger Wayne Lynch,		Appellant,
	v.	
Angela West Einstein,		Respondent.

NOTICE OF APPEAL

Appellant Roger Wayne Lynch appeals from the summary judgment order entered by the Honorable Vernon F. Dunbar on March 24, 2026. Appellant filed a timely motion to reconsider, alter, or amend on April 3, 2026, which was denied in a Form 4 order on April 6, 2026. This notice covers both orders.

Respectfully submitted,

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