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SC Court of Appeals

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.

FINAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court properly find that there is no genuine dispute of material fact precluding summary judgment?

II. Did the circuit court correctly hold that the only reasonable inference is that Appellant Roger Wayne Lynch's conduct was the predominant cause of the collision?

III. Did the circuit court properly conclude this is the rare case in which comparative fault should be decided as a matter of law?

IV. Did the circuit court rightfully determine that no reasonable jury could find by clear and convincing evidence that Respondent Angela West Einstein acted recklessly, willfully, or wantonly toward Lynch and that such conduct caused his injuries?

INTRODUCTION

At approximately 8:22 p.m. on December 16, 2021, Appellant Roger Wayne Lynch—an insulin-dependent diabetic who had skipped two consecutive doses of his prescribed medications, failed to monitor his glucose level for more than twenty-four hours, and consumed enough alcohol to elevate his blood alcohol concentration ("BAC") to at least .090—was found lying horizontally across a live travel lane in Greenville County, South Carolina. Lynch, a Black man dressed in dark clothing, was directly in the path of Respondent Angela West Einstein, who was not speeding or distracted and was instead looking straight ahead with both hands on the steering wheel. When Einstein first realized that a person was lying in the roadway, which was not well lit, Lynch was directly in front of her vehicle. Einstein immediately braked and swerved to mitigate any harm to Lynch, but she was unable to avoid him entirely.

This appeal arises from the circuit court's order granting summary judgment in favor of Einstein. Lynch attempts to manufacture a material dispute about the collision site conditions, Einstein's driving choices, and his own negligence. But the circuit court correctly rejected these attempts, as the evidence overwhelmingly reflects no reasonable jury could find in Lynch's favor. This Court should therefore affirm the circuit court's order.

STATEMENT OF THE CASE

On the evening of December 16, 2021, after making separate trips to drop her daughter and future son-in-law off at an office holiday party, Einstein drove down Wade Hampton Boulevard—a six-lane road with a turning lane in the middle—heading home. (R. p. 228, lines 10–18; R. p. 755, lines 13–17; R. p. 756, lines 2–6). As Einstein approached two restaurants, IHOP and Asada, she remained in the far-right lane with a curb to her right and a vehicle driven by Lemuel Gaines to her left. (R. p. 218, lines 6–20; R. p. 757, lines 2–12; R. p. 682, line 25 to p. 683, line 5).

The evidence demonstrates Einstein was neither impaired nor distracted at the time of the collision. Rather, she was listening to the radio and looking straight ahead, with both hands on the steering wheel. (R. p. 232, lines 2–25). She was not eating, drinking, using her cellphone, or otherwise preoccupied. (*See id.*; R. p. 681, lines 2–14).

About one-half mile before the collision, Einstein glanced at her speedometer and noticed she was traveling forty-seven miles per hour in a forty-five-mile-per-hour zone. (R. p. 689, lines 11–16). Einstein thus removed her foot from the accelerator and slowed to a pace of less than forty-seven miles per hour, estimating her speed to be forty-five or lower. (R. p. 689, lines 8–10; R. p. 697, lines 21–23).

At approximately 8:22 p.m., Einstein began to pass IHOP and then Asada, both of which were on her right. (*See* R. p. 797, lines 11–14). The roadway was not well lit, and the nearby streetlight was not operative. (R. p. 213, lines 11–17 (Officer Rachel Hamilton testifying the road was "very dark"); R. p. 229, lines 5–25 (Einstein testifying the collision site was "extremely dark"); R. p. 392 (still photograph from Officer Hamilton's body-worn camera showing the roadway next to the Asada parking lot); R. p. 678, lines 1–19 (Einstein testifying the streetlight "within feet" of

the collision site was not working)). Accordingly, Einstein could not see Lynch—a Black man dressed in dark clothing lying in the roadway—until it was too late to avoid him.[1]

When Einstein first realized a person was in the roadway, Lynch appeared to be less than five feet in front of her vehicle. (R. p. 664, line 8 to p. 665, line 10; p. 231, lines 17–21). Einstein immediately "tapped [the brakes] as hard as [she] could to stop [and] swerved all at the same time." (R. p. 761, lines 20–23). Thus, at the time of impact, Einstein was driving significantly below the posted speed limit. (*See id.*; R. p. 218, lines 20–23). Nevertheless, Einstein could not avoid rolling over Lynch's legs. (R. p. 761, lines 15–25).

According to Gaines, who was traveling at that very moment to the left of Einstein, the collision was unavoidable because Lynch's presence in the road was such that it was too late for Einstein to stop or adequately slow down. (R. p. 792; *see* R. p. 393 at 9:29 to 9:44 (Gaines stating to Einstein "I saw it . . . it was not your fault")). Additionally, Roberto Cortez, the owner of Asada, stated he saw a black car drop Lynch off in the Asada parking lot and witnessed Lynch prior to this incident "trying to jump into the cars." (R. p. 788).

At approximately 9:05 p.m., Lynch's BAC was .083. (R. p. 795, lines 4–8; *see* R. p. 205). Lynch's toxicology expert Dr. David H. Eagerton opined Lynch's BAC would have been at least .090 at the time of the collision. (R. p. 797, lines 1–19).

Lynch informed the investigating officer, Officer Rachel Hamilton, that he drank "a fifth of alcoholic beverage prior to the incident" but claimed he stopped drinking that morning. (R. p. 808, line 25 to p. 809, line 6). When Lynch was asked if he was drinking the night of the collision, he testified, "Yes." (R. p. 763, lines 13–14). Lynch later stated he drank "[a] fifth, like can" of

[1] When Officer Hamilton arrived on scene, an eyewitness told her that he almost hit Lynch because Lynch was stumbling in the road. (R. p. 393 at 5:00 to 5:36).

Budweiser at "like 8 o'clock in the morning" and did not have any alcohol thereafter. (R. p. 776, line 25 to p. 778, line 5). Lynch conceded, however, that a "fifth of alcohol" refers to liquor, not beer. (R. p. 781, lines 4–19).

Notwithstanding the above statements by Lynch, his retained expert Dr. Eagerton testified that, based on Lynch's BAC and the time of the blood draw, Lynch likely drank the equivalent of approximately three standard drinks[2] within one hour of the collision. (R. p. 798, line 4 to p. 799, line 11). Lynch even received medication at the hospital to help with alcohol withdrawal, a process he described as "horrible." (R. p. 204; R. p. 785, lines 12–17).

Shortly after the collision, at around 9:05 p.m., Lynch's blood glucose level was twenty-nine, which is far below the normal fasting range of sixty-five or seventy to 100. (R. p. 432; R. p. 803, lines 2–6). Although Lynch is prescribed insulin and Metformin to regulate his diabetes, he last took his medication the morning of December 15. (R. p. 115; R. p. 767, lines 3–7, 15–25). Lynch skipped his night dose on December 15 and morning dose on December 16, and he had not measured his glucose in over twenty-four hours prior to this incident. (*See* R. p. 767, lines 3–7, 15–25; R. p. 773, lines 10–12). Lynch stated he understood the importance of eating throughout the day to maintain his glucose level, but he could not recall what, if anything, or when he ate the day of the collision. (R. p. 775, lines 4–17).[3]

Lynch testified that, on the day of the incident, he had gotten off the city bus and was on the way to his mother's apartment to retrieve his medication. (R. p. 766, lines 5–24; R. p. 768,

[2] Dr. Eagerton explained a standard drink is defined to mean 1.5 ounces of 80-proof whiskey or spirits, 12 ounces of 5% alcohol-by-volume ("ABV") beer, or 5 ounces of 12% ABV wine. (R. p. 799, lines 12–22).

[3] Dr. Eagerton noted Lynch's blood glucose level was consistent with the level of a diabetic who had not eaten all day. (R. p. 804, lines 15–19).

lines 15–21). Lynch recognized his glucose level was low and he knew that when he skips his medication, his condition worsens, but instead of immediately going to the apartment to avoid a hypoglycemic crisis, Lynch went to "[h]ang[] out with the guys." (R. p. 769, lines 6–7; R. p. 773, lines 1–25; R. p. 779, lines 2–3).

Lynch filed this lawsuit on July 5, 2022, alleging negligence, negligence per se, and willful, wanton, and/or reckless conduct. (R. pp. 61–62). On January 8, 2026, Einstein filed her third motion for summary judgment.[4] (*See generally* R. pp. 302–03; R. pp. 736–53). After a hearing, the circuit court instructed defense counsel to prepare an order granting summary judgment in Einstein's favor. (R. pp. 70–112; R. pp. 24–29). The circuit court then filed its formal order, upon which Lynch filed a motion to reconsider. (R. pp. 30–54; R. pp. 24–29; R. pp. 602–12). The circuit court denied the motion, and this appeal followed. (R. pp. 55–57).

STANDARD OF REVIEW

"In reviewing the grant of summary judgment, this Court applies the same standard as the circuit court." *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 190, 886 S.E.2d 674, 684 (2023). Summary judgment is warranted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

[4] The circuit court granted Einstein's first summary judgment motion. (R. pp. 1–15). On reconsideration, the circuit court vacated the order because it was based upon materials that were not before the court at the time of the hearing. (R. pp. 16–18). The circuit court later denied Einstein's second motion for summary judgment based on Lynch's request for more time to complete discovery. (R. pp. 19–23). Although Lynch argued in opposition to Einstein's third motion for summary judgment that he was entitled to additional discovery, the circuit court found he was not so entitled. (R. pp. 49–53). Lynch does not challenge this finding on appeal.

Although "the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party[,]" *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997), "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine[,]" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

When a defendant moves for summary judgment, the plaintiff "may not rest upon the mere allegations or denials of his pleading" but instead "must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e), SCRCP. "Once [the] moving party carries its initial burden, [the] opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citation modified) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)). If the plaintiff fails to do so, "summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

ARGUMENT

I. The circuit court properly found that there is no genuine dispute of material fact precluding summary judgment.

As a preliminary matter, Lynch heavily relies upon an unsworn, unauthenticated file from Einstein's insurer, PURE Specialty Risk Management, LLC (the "PURE File"). The PURE File, however, is not a proper matter for consideration at the summary judgment stage.

Under South Carolina Rule of Civil Procedure 56(c), a moving party is entitled to summary judgment where "the ***pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits***, if any, show that there is no genuine issue as to any material fact and

that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP (emphasis added). In opposing summary judgment, the non-moving party, "***by affidavits or as otherwise provided in this rule***, must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e), SCRCP (emphasis added). The PURE File does not satisfy these requirements.

Lynch submitted the PURE File with his opposition without offering a sponsoring affidavit or otherwise authenticating it. *See* Rule 901, SCRE (explaining authentication is a condition precedent to the admissibility of evidence). Even assuming *arguendo* that the PURE File contains certain statements by Einstein (rather than paraphrased or summary notes written by an adjuster), and that such statements could qualify as an admission by a party opponent under Rule 801(d)(2), SCRE, the PURE File itself was never authenticated by a witness with knowledge, and the PURE adjuster's notes present an additional layer of inadmissible hearsay. *See* Rule 805, SCRE.

Lynch offers the PURE File for the truth of the matter asserted—that Einstein "sped up to about 50 mph" to try and get ahead of Gaines, she "dropped back down to 48 mph" when she realized Gaines was going too fast, she "did not slam on brakes[,]" and the collision occurred in a "fairly well-lighted area[.]" (R. pp. 394–98). *See* Appellant's Br. at 4, 8–9, 13–14, 21, 27. But because such assertions rest entirely on inadmissible evidence, they cannot preclude summary judgment. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). Regardless, the PURE File does not warrant reversal of summary judgment, as explained below.

A. The extent to which the roadway was illuminated is not a material fact.

First, the extent to which the roadway was illuminated at the time of the collision is not a material fact. On this issue, two particular cases are instructive.

In *Bloom v. Ravoira*, the Supreme Court considered a pedestrian-versus-motorist collision on a misty December evening on a street in downtown Charleston. 339 S.C. 417, 529 S.E.2d 710

(2000). The Court concluded the defendant motorist was entitled to summary judgment as a matter of law. The Court explained the plaintiff breached his statutory duty to yield the right-of-way to all vehicles when crossing the street outside of a crosswalk. *See* S.C. Code Ann. § 56-5-3150. The Court explained this breach was "compounded by the fact that it was dark and rainy out, and [the plaintiff]—who was dressed in dark clothing—quickly entered the street from between two parked vehicles." *Bloom*, 339 S.C. at 423, 529 S.E.2d at 713. Notably, the Court was unphased by the fact that the defendant's headlights illuminated the street.

Conversely, in *Abdelgheny v. Moody*, this Court reversed the circuit court's grant of summary judgment in favor of a defendant motorist. 432 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020). The defendant in *Abdelgheny* struck the plaintiff pedestrian as she crossed a moderately congested highway on a dark, rainy night. The defendant's headlights were on, but he did not see the plaintiff—who was "[w]earing a neon pink hooded sweatshirt and bright blue exercise pants"—passing from the median to the side of a four-lane highway until she was ten feet in front of his vehicle. *Id.* at 348, 852 S.E.2d at 226. The Court acknowledged the plaintiff was negligent in crossing the street outside of a crosswalk. But the Court could not "agree that the only inference a reasonable juror could make is [the plaintiff]'s own negligence accounted for more than fifty percent of the fault." *Id.* at 350, 852 S.E.2d at 227–28. Relative to lighting conditions, the Court explained a reasonable jury could "infer [the defendant]'s speed was too fast for the rainy and dark conditions if his range of vision was a mere ten feet." *Id.* at 351, 852 S.E.2d at 228. The Court also noted that, unlike the plaintiff in *Bloom*, the plaintiff in *Abdelgheny* "was wearing bright clothes, had managed to cross two lanes of traffic without incident, and paused in the median to look out before proceeding." *Id.*

Together, these cases confirm that lighting or visibility conditions may impact a claim of negligence, but they do not alone create a genuinely material dispute. Here, the uncontroverted evidence establishes the roadway itself was not well lit, and it was not raining at the time of the collision. (R. p. 213, lines 11–17 (Officer Hamilton testifying the road was "very dark"); R. p. 758, lines 9–13 (Einstein testifying the road conditions and weather were dry); *see* R. p. 229, lines 5–25 (Einstein testifying Asada is "extremely dark" and IHOP is "extremely bright" in comparison to Asada but nevertheless stating the specific area of the collision was "extremely dark")). It is also undisputed that Lynch is a Black man who was wearing dark clothing. (R. p. 792 (Gaines attesting Lynch "was in very dark clothes"); R. pp. 810–11, 816–17 (medical records listing Lynch's race as "Black or African American"); *see* R. pp. 600–01 (photographs of Lynch)).

Lynch suggests the headlights on Einstein's and Gaines's vehicles sufficiently illuminated the roadway. *See* Appellant's Br. at 2–3. But the presence or strength of headlights does not negate the surrounding darkness to the point of creating clear visibility, particularly where a supine pedestrian is dressed in dark clothing on a main thoroughfare. *See Bloom*, 339 S.C. at 424, 529 S.E.2d at 713. Indeed, a still photograph from Officer Hamilton's body-worn camera shows the road was not well lit at the precise point of impact and further demonstrates that the lights at Asada and IHOP illuminated only the sidewalk and parking spots immediately adjacent to the restaurants. (R. pp. 391–92). This visually confirms what the testimony makes abundantly clear: a commercial area can be "fairly well-lighted" in general while the precise location of the collision remains poorly illuminated.

Lynch cherry-picks one portion of Gaines's statement as suggesting Lynch was visible in the roadway as Einstein approached.[5] But Lynch ignores the remainder of Gaines's statement, which undercuts any insinuation of visibility:

> Driving towards downtown, I was riding beside (left) of white [R]ange [R]over. Suddenly after passing IHOP on [the] 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.***

(R. p. 792; *see* R. pp. 391–92 (photograph showing the road itself was not well lit despite exterior and interior lighting at Asada and IHOP)).

To be clear, Einstein's position has never been that Lynch could not be seen at all; rather, it has consistently been that Lynch became visible only when it was too late for her to avoid him. Lynch's assertion the scene was somewhat brighter than Einstein claims is unable to "elevate[ ] what is, at best, a metaphysical doubt into a genuine issue of material fact." *Grimsley v. S.C. L. Enf't Div.*, 415 S.C. 33, 42, 780 S.E.2d 897, 901 (2015).[6]

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[5] *See* Appellant's Br. 8 ("Einstein goes on to argue the supposedly poor lighting meant . . . Lynch could not be seen as she drove toward him. Einstein draws this conclusion from what she describes as 'an uncontradicted statement' of . . . Gaines, the driver of the vehicle traveling parallel to her when the collision occurred. Yet, that assertion does not accurately capture what . . . Gaines actually reported. In fact, his official statement to police was that 'I saw clearly as I approached it was a man' in the roadway." (citation modified)).

[6] *See, e.g.*, *Pottinger v. Price*, 289 So. 3d 1047, 1056–58 (La. Ct. App. 2019) (upholding the circuit court's grant of summary judgment for the defendant motorist where the conditions "were dry, clear, and dark"; there were no streetlights illuminating the collision site; and the plaintiff pedestrian "was wearing dark upper body clothing, light lower body clothing, and no reflective materials"); *Jones v. Gleim*, 468 N.E.2d 205, 208 (Ind. 1984) (affirming the circuit court's grant of judgment on the evidence where the plaintiff pedestrian's "conduct in crossing the street in the middle of the block on a rainy, foggy night when her vision was impaired and she did not continue to look for oncoming traffic was not that of a reasonable person and was in disregard of the obviously known and appreciated dangers").

B. The uncontroverted evidence establishes Einstein was neither distracted nor speeding, and she made reasonable efforts to avoid the collision.

Lynch briefly avers a genuine dispute exists as to Einstein's attentiveness. *See* Appellant's Br. at 11. But he fails to identify any evidence suggesting Einstein was distracted at the time of the collision. Nor could he do so, as the uncontradicted evidence demonstrates Einstein was listening to the radio and looking straight ahead with both hands on the steering wheel. (R. p. 232, lines 9–17 (Einstein testifying she does not consider the radio to be a distraction)). Einstein was not eating, drinking, using her cellphone, or otherwise distracted. (R. p. 232, lines 18–25).

The record likewise reflects Einstein was not speeding at the time of the collision. Einstein testified that, about one-half mile before the collision, she glanced at her speedometer and noticed she was going two miles over the posted speed limit of forty-five miles per hour. (R. p. 760, lines 11–16). Einstein therefore released the accelerator and reduced her speed to less than forty-seven miles per hour, estimating it to be forty-five or perhaps lower. (R. p. 760, lines 8–10; R. p. 697, lines 21–23). Then, when Einstein realized a person was lying in the roadway immediately in front of her, she braked, even further reducing her speed to significantly less than forty-five miles per hour. (R. p. 231, lines 15–21; R. p. 697, lines 10–16).

Quoting the PURE File, Lynch maintains "Einstein admitted she 'sped up to about 50 mph' shortly before the collision and, though she claims to have reduced speed before impact, even then she was still speeding." Appellant's Br. at 8; *see id.* at 13, 27. Even assuming *arguendo* that the PURE File is admissible, such a minimal speed differential was not the proximate cause of Einstein striking a supine pedestrian who became visible directly in front of her vehicle in a live travel lane that was not well lit. Indeed, Officer Hamilton testified there was no indication Einstein was speeding, and she was not at fault for the collision. (R. p. 218, lines 20–23; R. p. 220, lines 4–7).

In fact, Einstein made a conscious effort to avoid the collision by braking directly before impact, even further reducing her speed. (R. p. 231, lines 15–21).

Lynch also relies on the PURE File to assert Einstein "did not slam on brakes" because "she [was] worried . . . she would skid and pin [him] under the car[.]" Appellant's Br. at 9; *see id.* at 4, 13. Again, even if the PURE File was admissible, this statement does not establish that Einstein failed to brake, nor does it contradict Einstein's testimony that she attempted to take evasive action.

Einstein explained that, as soon as she saw Lynch, she "tapped [the brakes] as hard as [she] could to stop, swerved all at the same time . . . ." (R. p. 700, lines 15–23). Whether Einstein "slammed" or "tapped" her brakes is immaterial where the factual account is consistent that she immediately braked and swerved. Such linguistic differences cannot overcome the undisputed evidence: Einstein actively tried to control her vehicle in a manner that would mitigate the "unavoidable" collision with Lynch. (R. p. 792; *see* R. p. 234, lines 10–14 (Einstein testifying that, even if Gaines's vehicle had not been in the lane directly to her left, she still would not have been able to swerve entirely into that lane and avoid Lynch)).

C. The uncontroverted evidence demonstrates Lynch's conduct is the sole cause of the collision.

Lynch argues "the record evidence disputes Einstein's claim that [he] was 'reckless' and 'neglecting his diabetes.'" Appellant's Br. at 9. Quite the opposite is true.

Lynch testified he failed to take his insulin and Metformin the night of December 15 and the morning of December 16. (R. p. 767, lines 15–25). Therefore, at 8:22 p.m. on December 16, Lynch had been without his prescribed medication for roughly thirty-six hours. (*See* R. p. 767, lines 15–25). Not only this, but Lynch also had not measured his glucose level for more than twenty-four hours. (*See* R. p. 773, lines 10–12).

Lynch admitted that, when he skips his medication and his blood sugar drops, he "can't function[,]" is "just out, . . . really out[,]" and does not "know what [he is] doing." (R. p. 773, lines 5–9). Before the collision, Lynch knew his glucose was low because his mouth was dry and his vision was affected. (R. p. 773, lines 15–21). Yet, instead of immediately retrieving his medication when he arrived in the area at or around 7:22 p.m., Lynch "h[ung] out with the guys."[7] (R. p. 779, lines 2–10; *see* R. p. 766, lines 5–15; R. p. 768, lines 15–21; R. p. 778, line 20 to p. 779, line 1; *see also* R. p. 788 (Cortez's sworn statement that "[a] black car stopped on [Asada's] parking [lot] and dropped [Lynch]"); R. p. 782, lines 8–25 (Lynch testifying he was riding in a black car earlier in the day, and it would have been driven by Frank, whose last name he does not know but who did not take him "home")). This delay only exacerbated Lynch's symptoms. (*See* R. pp. 399–400 (Dr. Eagerton noting that confusion, light-headedness, incoordination, and impaired vision are all symptoms of hypoglycemia)).

Perhaps most alarming is that Lynch's medical records indicate this was, at best, his third instance of alcohol-related hypoglycemia in 2021 alone. In January, first responders found him on the side of a different road in a hypoglycemic, intoxicated, unconscious, and unresponsive state. (R. pp. 811–13). After receiving treatment, Lynch told the first responders that he is an insulin-

[7] Lynch wrongly contends "[t]here is no evidence refuting [his] testimony that he was walking to his mother's home to retrieve his recently-arrived mail-order diabetes medication when Einstein struck him." Appellant's Br. at 3. His own testimony refutes that claim. Lynch further states "his prescription was refilled on a monthly basis with each new month's shipment being mailed out on the 15th of the month to be received on a later date at his mother's residence." *Id.* at 10 n.1. It is true that Lynch testified his medications are delivered on the fifteenth of each month. (R. p. 785, lines 1–11). However, Lynch did not testify they were delivered to his mother's apartment; he said they were delivered to him. (*See id.*). Even if the medications were delivered to his mother's apartment, the record does not explain why he failed to retrieve them on the evening of December 15 or the morning of December 16. Moreover, the evidence reflects that, even when Lynch arrived in the area at or around 7:22 p.m., he was symptomatic (and intoxicated) but still opted to socialize with "the guys." (R. p. 779, lines 2–4).

dependent diabetic, and he had been out for a night of drinking and smoking crack. (R. p. 813). Then, in November—exactly three weeks before this collision—Lynch presented to the emergency department with altered mental status due to hypoglycemia and intoxication. (R. p. 210). Much like the January incident, Lynch informed his provider that he is an insulin-dependent diabetic, and he had been drinking and smoking crack all day. (*Id.*). Lynch further stated he had not taken his medicine in three days, and he did not eat at all the day before. (*Id.*).

Lynch is no stranger to hypoglycemic crises necessitating emergent medical care. Indeed, Lynch admitted he averages more than twelve hospital visits annually for dangerously high or low glucose levels. (R. p. 764, line 16 to p. 765, line 1). Accordingly, Lynch knew with certainty on the day of the collision that his risk of hypoglycemia exponentially increases when he skips his medications and concurrently consumes alcohol. (*See generally id.*). That is exactly what occurred here.

Lynch told Officer Hamilton he consumed "a fifth" of alcohol before the collision, and he acknowledged that "a fifth" refers to liquor, not beer. (R. p. 781, lines 4–19; R. p. 808, line 25 to p. 809, line 3). Based on Lynch's BAC as of 9:05 p.m. and assuming he did not consume any alcohol the hour before the collision, Dr. Eagerton opined Lynch's BAC would have been .110 around 7:22 p.m. and .090 around 8:22 p.m. (R. p. 797, line 1 to p. 798, line 3). The evidence reflects a BAC that high would have not only impaired Lynch's ability to think and reason but also affected his motor coordination. (*See* R. p. 796, lines 4–15). Further, despite Lynch's testimony he did not consume any alcohol after 8:00 a.m., Dr. Eagerton opined he likely drank around three standard drinks within an hour of the collision. (R. p. 798, line 4 to p. 799, line 11).

Therefore, even in the light most favorable to Lynch, the undisputed evidence shows: (1) he knowingly neglected to take two consecutive doses of his prescribed medication—upon which he

concedes he is dependent—before the collision; (2) he intentionally consumed alcohol even though he had a history of hypoglycemia and mental alterations when he drinks alcohol unmedicated; (3) he recognized but ignored familiar hypoglycemic symptoms for at least one hour preceding the collision; and (4) he failed to promptly abate an oncoming and obvious hypoglycemic emergency. This precise combination undeniably resulted in Lynch's placement in the roadway directly in front of Einstein's vehicle at 8:22 p.m. on December 16, 2021.

D. In granting Einstein's motion for summary judgment, the circuit court did not make impermissible credibility determinations, improperly weigh the evidence, or erroneously opine on the parties' relative fault.

In ruling on a motion for summary judgment, the circuit court's role is to determine whether a genuine issue of material fact exists such that a reasonable jury could rule in favor of the non-moving party. This role requires the circuit court to examine the record and not only identify which disputes are genuine and material but also set aside any disputes that are inauthentic or immaterial. The circuit court's finding there are no triable issues in this case does not constitute improper evidence weighing. Rather, it is the very determination Rule 56 demands. Every case involves evidentiary friction. Rule 56, however, asks whether such friction is genuine and material. Here, the circuit court correctly determined it is not.

First, Lynch maintains the circuit court "stepped directly into a factfinder role" when it "reviewed Officer Hamilton's post-collision bodycam video footage, took a view on the relative lighting level it portrayed, and concluded its own review settled the matter." Appellant's Br. at 12. Lynch concedes "it was not improper for the circuit court to review that footage," but he suggests the circuit court should have gone a step further to explain "why its interpretation of the contents should definitively decide the issue." *Id.* at 12–13. This is simply unrequired by Rule 56.

The circuit court does not judge a witness's believability when it looks at objective video footage (which was submitted by Lynch for consideration) and recognizes the depictions contained

therein. Assessing credibility requires the circuit court to choose whether to believe testimony, but there is no choice to be made in reviewing neutral video footage. The circuit court was therefore permitted to conclude the footage confirmed the undisputed issue of illumination at the point of impact.

The inadmissible PURE File does not alter the calculus. The PURE adjuster described the broader area as "fairly well-lighted," but this does not manufacture a genuine dispute about the lighting conditions at the specific spot Lynch was struck. This is especially true considering the adjuster further noted there was "no street light right there[.]" (R. pp. 395, 397). In any event, the circuit court was not required to treat an unauthenticated characterization of the general area as conflicting with objective footage of the precise collision location.

Second, Lynch argues "[t]he circuit court . . . misapplied the summary judgment rule when considering Einstein's driving." Appellant's Br. at 13; *see id.* at 18. More specifically, Lynch contends "[t]he circuit court developed [a] distorted view of Einstein's driving decisions because it ignored the PURE File entirely." *Id.* at 14. Even accepting as true Lynch's characterizations of Einstein's driving from the PURE File—that she briefly reached approximately fifty miles per hour, settled at forty-eight miles per hour, and did not "slam on brakes" but instead "braked"—these points do not bear on the dispositive issues the circuit court decided: the only reasonable inference is that Lynch was responsible for his injuries and, even if Einstein was negligent, her negligence was not a proximate cause of the collision. *See PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 179, 375 S.E.2d 331, 332 (Ct. App. 1988) (explaining a dispute is "material" only if its resolution would "affect the result of the action").

Third, Lynch avers it was "inconsistent with the summary judgment standard for the circuit court to note Dr. Eagerton's testimony on the possibility of impairment without also citing Dr.

Eagerton's assertions that . . . Lynch's [BAC] was at a 'relatively low level' and 'would not have resulted in his behavior as it was documented' on the collision date." Appellant's Br. at 14. The circuit court, however, accounted for this opinion by Dr. Eagerton. It explained: "Dr. Eagerton testified . . . ***an alcohol level of .09 alone likely would not have caused the plaintiff to behave in the manner described by witnesses and then fall down in the roadway***." (R. p. 35 (emphasis added)). Nevertheless, the circuit court concluded "the exact amount and timing of . . . Lynch's alcohol consumption does not need to be precisely resolved since it is undisputed that when he was lying in the roadway at night in dark clothes, he was legally intoxicated, and according to Dr. Eagerton mentally and physically impaired as a result." (R. p. 42). Further, the circuit court appropriately considered Lynch's overall physical condition and his knowing choices, not merely his BAC.

Fourth, Lynch maintains the circuit court improperly used Cortez's statement to conclude Lynch was "lying in the street" when Einstein struck him. Appellant's Br. at 15. Although the circuit court's order instructions characterized Cortez's statement as indicating Lynch "was lying in the street[,]" (R. p. 25–26 ¶ 5), the dispositive order granting summary judgment did not suggest Cortez's statement stood for this conclusion. This Court should thus reject this argument.

Fifth, Lynch contends the circuit court incorrectly concluded Cortez's statement Lynch was "trying to jump into the cars[,]" meant that he "had been jumping in and out of traffic." Appellant's Br. at 15. Lynch argues Cortez's "statement cannot be used to support the notion that . . . Lynch jumped into the path of Einstein's vehicle" given Gaines's statement that he fell in the road. *Id.* at 16. This distinction is immaterial, as both Cortez and Gaines place Lynch in the roadway before impact. The circuit court was permitted to treat the undisputed truth that Lynch

was in the roadway as established, without resolving the peripheral question of exactly how he got there.

Finally, Lynch challenges the circuit court's finding his "hypoglycemic episode . . . was caused by his willful neglect of his own health." (R. p. 35); *see* Appellant's Br. at 16. Lynch states it is "genuinely contested" whether he ate on the day of the collision. Appellant's Br. at 16. He also claims his "testimony shows he did not have a specific intent or bad purpose to become hypoglycemic." *Id.* The phrase "willful neglect" does not connote specific intent or bad purpose. *See Willful*, Black's Law Dictionary (12th ed. 2024) (defining "willful" as "[d]one wittingly or on purpose, as opposed to accidentally or casually; voluntary and intentional, but not necessarily malicious"); *Neglect*, Black's Law Dictionary (12th ed. 2024) (defining "neglect" as "[t]he failure to give proper attention to a person or thing, whether inadvertent, negligent, or willful; the act of treating someone or something heedlessly or inattentively"). Even still, the undisputed evidence shows Lynch is an insulin-dependent diabetic, he skipped two consecutive doses of insulin and Metformin, he did not measure his blood sugar for more than twenty-four hours, he drank enough alcohol to elevate his BAC to .090, he was aware of the risk involved when he consumes alcohol while unmedicated, he knew his blood sugar was low, and he nonetheless proceeded on foot around a main thoroughfare at night. Applying the law to these uncontroverted facts is proper. Whether the circuit court labeled Lynch's conduct "willful" or simply negligent does not alter the dispositive conclusion that he is more than fifty percent at fault for his injuries.

In sum, the circuit court did not make impermissible credibility determinations, improperly weigh the evidence, or erroneously opine on the parties' relative fault. For all these reasons, the circuit court properly found that there is no genuine dispute of material fact precluding summary judgment.

II. The circuit court correctly held the only reasonable inference is that Lynch's conduct was the predominant cause of the collision.

Lynch next avers "[t]he circuit court's distorted view of the evidence impaired its application of the governing law" of comparative negligence. Appellant's Br. at 17–25 (emphasis omitted). The Court should reject this argument, as the competent evidence demonstrates Einstein did not violate any traffic laws and Lynch did not suffer from sudden, unforeseeable incapacity.

A. The competent evidence demonstrates that Einstein did not violate any traffic laws.

First, there is no evidence upon which a reasonable jury could conclude Einstein violated any traffic laws. Lynch claims Einstein violated S.C. Code Ann. § 56-5-1520(A)[8] by speeding. As detailed above, however, the undisputed evidence reflects Einstein was not speeding at the time of the collision. (*See, e.g.*, R. p. 760, lines 8–16; R. p. 218, lines 20–23; R. p. 231, lines 15–21). The circuit court thus had no basis to conclude a genuine issue existed as to whether Einstein violated S.C. Code Ann. § 56-5-1520(A).

Lynch also avers "[a] reasonable jury could also conclude Einstein's actions to get around Gaines reduced her ability to observe and react to hazards in the roadway[,]" in violation of S.C. Code Ann. § 56-5-1850.[9] Appellant's Br. at 21. However, Gaines was directly to the left of Einstein, slightly edging forward ahead of her. (R. p. 233, line 24 to p. 234, line 4; *see* R. p. 757,

[8] This provision states: "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." S.C. Code Ann. § 56-5-1520(A).

[9] This provision states: "The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety." S.C. Code Ann. § 56-5-1850(b).

lines 6–9). Einstein certainly was not passing him, much less overtaking him. Plaintiff's position here rests on speculation, not a reasonable evidentiary inference.

The PURE File—which, again, is inadmissible—also does not indicate Einstein passed or overtook Gaines. Instead, it reflects that Einstein reduced her speed when she realized Gaines was traveling too fast for her to pass. (*See* R. p. 397). Accordingly, the circuit court also lacked any evidence upon which to find a genuine issue existed as to whether Einstein violated S.C. Code Ann. § 56-5-1850.

Lynch further suggests Einstein failed to exercise reasonable care for Lynch, in violation of S.C. Code Ann. § 56-5-3230.[10] This is unsupported by the record.

As soon as Einstein spotted Lynch in the roadway, she braked hard and swerved to mitigate the unavoidable harm. By this time, it was impossible for Einstein to stop or swerve to entirely avoid Lynch. (R. p. 234, lines 10–14; R. p. 236, line 23 to p. 293, line 6; *see* R. p. 218, lines 8–13; R. p. 792).

Lynch analogizes *Abdelgheny*, in which this Court held a motorist's admission that he saw the pedestrian ten feet in front of his vehicle supported a reasonable inference that he either failed to keep a proper lookout or was driving too fast for conditions. 432 S.C. at 351, 852 S.E.2d at 228; *see* Appellant's Br. 21, 23. But the pedestrian in *Abdelgheny* was brightly dressed and actively walking from the median to the other side of a four-lane road, giving the motorist something to perceive. *Id.* at 348–49, 852 S.E.2d at 226–27. Lynch, on the other hand, was darkly dressed and supine in the far-right lane of a live highway, presenting a fundamentally different visibility scenario. The fact that Gaines, who was driving immediately to the left of Einstein, likewise did

[10] This provision states: "[E]very driver of a vehicle . . . shall exercise proper precaution upon observing . . . any obviously confused, incapacitated or intoxicated person." S.C. Code Ann. § 56-5-3230.

not recognize Lynch as a person until he was nearly upon him confirms that the short perception distance resulted from the hazard itself, not from any failure of Einstein to exercise proper precaution.[11] Hence, the circuit court correctly determined "no competent evidence suggests . . . Einstein, or any reasonable motorist could have perceived and avoided a supine, dark-clad, impaired pedestrian under low-visibility nighttime conditions; any contrary supposition is speculative and cannot forestall summary judgment." (R. p. 47).

Moreover, Officer Hamilton did not issue Einstein a citation, further undercutting Lynch's arguments that she violated the traffic laws. (R. p. 214, lines 10–12). Confronted with a split-second decision, Einstein reasonably attempted to mitigate the harm to Lynch. There is zero evidence of negligence on her part.

B. The undisputed evidence demonstrates that Lynch did not suffer from sudden, unforeseeable incapacity.

There is also no evidence upon which a reasonable jury could find Lynch was suffering from sudden, unforeseeable incapacity. Instead, the evidence, as a matter of law, demonstrates that Lynch's poor choices leading up to the collision were the proximate cause of the collision.

"In *Boyleston v. Baxley*, 243 S.C. 281, 284–85, 133 S.E.2d 796, 797 (1963), the South Carolina Supreme Court held a vehicle operator is not ordinarily chargeable with negligence when he suddenly lo[]ses consciousness due to an unforeseen cause." *Collins v. Frasier*, 378 S.C. 249, 251, 662 S.E.2d 464, 465 (Ct. App. 2008). The burden of proving incapacity is upon the party asserting his negligence is excusable. *Boyleston*, 243 S.C. at 285, 133 S.E.2d at 797. To prevail, the party must establish "the incapacity was unforeseeable and occurred at or shortly before the

[11] Lynch challenges Gaines's sworn statement to the extent he states that the Lynch impact was "unavoidable." Appellant's Br. at 22. However, Lynch did not raise this issue before the circuit court, and both parties submitted Gaines's statement for the circuit court's consideration. (R. pp. 789–92; R. pp. 562–63).

accident[.]" *Fishburne v. Short*, 268 S.C. 546, 549, 235 S.E.2d 118, 119 (1977). The doctrine does not apply when the incapacity was foreseeable or when the asserting party failed to guard against it. *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 590–91, 344 S.E.2d 157, 159 (Ct. App. 1986); *Collins*, 378 S.C. at 252–53, 662 S.E.2d at 466.

In *Howle*, which arose from a motor vehicle accident, this Court affirmed the jury's verdict for the plaintiff where a diabetic defendant "had sufficient warning on the morning of the accident that a hypoglycemic episode was approaching and, though he had 'gotten woozy' and knew he had not eaten lunch, he neither ate the candy he had available to abate the episode nor stopped driving." 288 S.C. at 590–91, 344 S.E.2d at 159. Conversely, in *Collins*, the Court affirmed the jury's verdict for the defendant where the evidence demonstrated "he felt fine while driving until suddenly he felt all of his energy drain and saw fuzz[,]" he "had not exhibited signs of fainting prior to the accident[,]" he discovered after the accident that he had hypoglycemia, his medication could have masked hypoglycemic symptoms, and hypoglycemia could result in a person losing consciousness. 378 S.C. at 252, 662 S.E.2d at 466.

Although Lynch was a pedestrian rather than a motorist, these cases are instructive for determining when a diabetic can establish sudden, unforeseeable capacity.

Like the defendant in *Howle*, Lynch could recognize symptoms of hypoglycemia and feel when his blood sugar was too low. (R. p. 773, lines 5–9). This awareness was due at least in part to the episodes he experienced in January and November of 2021. Additionally, on average, Lynch had been treated more than twelve times annually as the result of his glucose being too high or too low. (R. p. 764, line 24 to p. 765, line 1).

The facts of this case are materially distinguishable from those present in *Collins*. Lynch was unquestionably aware of the consequences that could result from inadequate care of his

diabetes, but he did nothing to prevent himself from entering a physically and mentally dangerous state before the collision. Lynch had not taken his medication in approximately thirty-six hours, and he recognized breakthrough symptoms of hypoglycemia yet did not obtain his medication faster or otherwise increase his blood sugar. (R. p. 767, lines 11–19; R. p. 775, lines 4–12). Dr. Eagerton testified Lynch's glucose level of twenty-nine was consistent with him not eating all day. (R. p. 804, lines 15–19). Although Lynch could not definitively say whether he ate that day, his "self-serving testimony is insufficient by itself to create a question of fact as to the defense." *Collins*, 378 S.C. at 252, 662 S.E.2d at 466.

Whereas the hypoglycemic episode in *Howle* was largely the result of the defendant's lack of eating, Lynch's episode was the result of three conscious choices by him: (1) failing to take two consecutive doses of prescribed medication; (2) not eating or inadequately eating the day of the collision; and (3) concurrently consuming alcohol. It is undisputed that Lynch knew this combination of choices, as it did at least twice in 2021 alone, would result in him losing the ability to safely control his body.

Making matters worse, Lynch—like the defendant in *Howle*—experienced hypoglycemic symptoms but did nothing to abate the episode or remove himself from danger. Accordingly, the only reasonable inference is that Lynch's incapacity was neither sudden nor unforeseeable. Rather, it resulted from a known medical condition for which he failed to render appropriate care and that directly led to the collision.

For all these reasons, the only reasonable inference is that Lynch's negligence, rather than any alleged negligence on the part of Einstein, was the predominate cause of the collision.

III. The circuit court properly concluded this is the rare case in which comparative fault should be decided as a matter of law.

Although the issue of comparative negligence is ordinarily for the jury, "when the evidence admits only one reasonable inference, it becomes a matter of law for the determination of the court." *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 21, 419 S.E.2d 795, 800 (Ct. App. 1992); *see Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 32–33, 491 S.E.2d 571, 575 (1997). Indeed, summary judgment based on the comparative fault of the plaintiff is proper "if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." *Bloom*, 339 S.C. at 422, 529 S.E.2d at 713. That is the case here.

The record reflects a chain of undisputed negligence by Lynch that directly resulted in his injuries: he wore dark clothing at night near a poorly lit highway, he was voluntarily intoxicated such that his BAC was at least .090, he failed to promptly retrieve his medication despite knowing the serious consequences he would face without it, and he neglected to abate recognized symptoms of hypoglycemia, all of which led to his injuries. Simply put, "a verdict for [Lynch] is not reasonably possible under the facts of this case." *Id.* at 423, 529 S.E.2d at 713.

Controlling authority confirms this record permits only one inference. In *Bloom*, the Court determined as a matter of law that the plaintiff's negligence was greater than fifty percent where he entered the street in dark and rainy conditions while wearing dark clothing and was immediately struck by a vehicle. *Id.* The Court concluded summary judgment was proper even though the plaintiff "looked left, then right" before crossing the street, indicating he took at least some precaution and care for his safety and the safety of others. *Id.*

The record here is even more supportive of judgment as a matter of law because Lynch was wearing dark clothing, horizontal in a live travel lane on the edge of a six-lane road, freely intoxicated, and in an avoidable hypoglycemic state, all in contravention of his statutory duty to

exercise due care for his own safety and avoid creating a road hazard. *See* S.C. Code Ann. § 56-5-3150(a), (c). Lynch attempts to distinguish this case, arguing a nearby witness in *Bloom* could not see the pedestrian "at all," whereas Gaines "saw [Lynch] clearly." Appellant's Br. at 24 n.6. But Lynch reads too much into an isolated phrase from Gaines's statement. Gaines's full statement shows that he recognized Lynch was a person only as he approached—after first mistaking Lynch for an animal—yet he still concluded the collision was unavoidable based on Lynch's supine position in the roadway. (R. p. 792).

Lydia v. Horton, 355 S.C. 36, 583 S.E.2d 750 (2003), also supports resolving comparative fault as a matter of law. In *Lydia*, the Supreme Court held voluntary intoxication alone may be sufficient to conclude a plaintiff's negligence exceeds that of a defendant. The Court explained the "state's modified comparative negligence system . . . bars an intoxicated adult's recovery on a first party negligent entrustment cause of action[,]" as there is no set of facts under which "one could be more than fifty percent negligent in loaning his car to an intoxicated adult who subsequently injured himself." *Id.* at 40, 583 S.E.2d at 752–53. So too here. Lynch's intoxication alone, further compounded by his self-induced hypoglycemic state, places this case firmly within the purview of *Lydia*.

Lynch relies upon *Abdelgheny*, but that case is distinguishable for eight reasons.

First, the plaintiff in *Abdelgheny* was wearing bright clothing, namely a "neon pink hooded sweatshirt and bright blue exercise pants." 432 S.C. at 348, 852 S.E.2d at 226. But here, Lynch—a Black man—was wearing dark clothing.

Second, the plaintiff in *Abdelgheny* was able to safely "cross two lanes of traffic without incident" before being struck. *Id.* at 351, 852 S.E.2d at 228. This fact supported an inference that the plaintiff was exercising due care for her safety and appropriately looking out for oncoming

traffic. Here, however, it is undisputed that Lynch was supine in the far-right lane on the edge of a six-lane thoroughfare. There is no evidence that it was possible for him to enter the roadway and cross safely.

Third, after crossing two lanes, the plaintiff in *Abdelgheny* "paused in the median to look out before proceeding." *Id.* Thus, there was evidence that—even if the plaintiff was negligent in failing to cross at a crosswalk—she was exercising caution, keeping a proper lookout, and caring for her safety. Lynch, on the other hand, has no memory of the accident at all. There is no evidence he looked left or right before entering the roadway or did anything to care for his own safety. His overwhelming negligence is further evidenced by his violation of S.C. Code Ann. § 56-5-3130(b), which prohibits a pedestrian from "suddenly leav[ing] a curb or other place of safety and walk[ing] or run[ning] into the path of a vehicle which is so close as to constitute an immediate hazard[,]" as well as S.C. Code Ann. § 56-5-3150(a), which requires that a pedestrian "yield the right-of-way to all vehicles" when crossing the roadway outside of a crosswalk.

Fourth, the plaintiff in *Abdelgheny* was not intoxicated. In fact, there was no evidence she had been drinking at all. But that is not the case here. It is undisputed Lynch had a BAC of .090 at approximately 8:22 p.m., impairing his ability to think and react to danger.

Fifth, in *Abdelgheny*, nothing indicated the plaintiff knew she had a medical condition and failed to treat ongoing symptoms of the same. Here, by contrast, it is undisputed that Lynch was voluntarily non-compliant with the necessary care and treatment of his diabetes. He had skipped two consecutive doses of his prescribed medication, and his failure to take those medications—in conjunction with his alcohol consumption and insufficient eating—caused his supine placement in the roadway.

Sixth, the plaintiff in *Abdelgheny* was struck by the defendant's vehicle when she was upright. It is one thing to fault a motorist for colliding with a pedestrian who is upright and walking across the street in bright clothing. It is another thing entirely to fault a motorist for striking a pedestrian who is lying horizontally in the roadway in dark clothing at night. The former situation is materially distinct from the latter.

Seventh, the *Abdelgheny* Court noted "[a] reasonable juror could interpret [the defendant's] testimony that he first saw [the plaintiff] when he 'looked up' to find her walking ten feet in front of his truck as incompatible with a careful lookout." 432 S.C. at 351, 852 S.E.2d at 228 In other words, the fact that the motorist "looked up" to see the pedestrian implied he had at once been looking down rather than keeping a careful lookout. That is not the case here. There is no evidence Einstein was looking down before she collided with Lynch. Instead, the undisputed evidence shows she was looking straight ahead when she observed Lynch lying in the road with insufficient time to avoid him, despite braking and swerving.

Eighth, in *Abdelgheny*, the Court was essentially considering only the parties' testimony. The Court concluded it could not say as a matter of law, based on the competing testimony, that the plaintiff was precluded from recovering based on her own negligence. Here, in addition to Lynch and Einstein, there are two independent witnesses: Gaines and Cortez. Gaines[12] attested the accident was unavoidable because he initially believed that the object in the roadway was an animal, he recognized a man only as he approached, and Einstein had no time to stop or slow down

[12] The Court should reject Lynch's argument that Gaines's statement is an inadmissible lay opinion. Unlike the unauthenticated PURE File, Gaines's account was submitted as a sworn affidavit and is therefore competent Rule 56 evidence. Gaines's firsthand observations are not the sort of legal conclusion barred by Rule 701, SCRE, and they independently establish Lynch was not perceptible in time for Einstein to avoid him. Further, Lynch himself offered the statement as an exhibit in opposition to Einstein's motion for summary judgment. (*See* R. pp. 562–63).

to avoid hitting Lynch. Cortez further stated he observed Lynch "trying to jump into the cars." (R. p. 788). Thus, although there was disputed evidence in *Abdelgheny* to justify sending the case to the jury, such evidence is wholly absent in this case. The only reasonable inference here is that Lynch was more than fifty percent at fault. Thus, he is barred from recovering as a matter of law.

Much more aligned with the facts of this case are those at issue in *Bloom*. Like in *Bloom*, independent witness testimony (from Gaines, Cortez, and Officer Hamilton) supports Einstein's version of events. The plaintiff in *Bloom* and Lynch both wore dark clothing at night, and the collisions were both unavoidable given the location of the plaintiff in relation to the defendant—the plaintiff in *Bloom* entered the street from between two parked vehicles and was immediately struck, and Lynch was horizontal in dark clothing on a roadway that was not well lit. Finally, as in *Bloom*, any disputed issues of fact in this case are immaterial. *See Bloom*, 339 S.C. at 424, 529 S.E.2d at 714 ("Any factual issues which might exist as to [the defendant's] fault in this accident cannot alter the inescapable conclusion that, as a matter of law, [the plaintiff's] fault exceeded fifty percent."). Accordingly, under *Bloom*, Lynch cannot escape summary judgment by claiming there is some immaterial dispute as to Einstein's driving.

Summary judgment exists for a reason. Lynch's injuries are admittedly unfortunate. But any alleged fault on the part of Einstein (of which there was none) was significantly outweighed by Lynch's fault in putting himself in harm's way. Though it is "rare" that summary judgment is proper based on comparative fault, this is such a case. As the *Bloom* Court commanded, "[w]here evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury." *Id.* Thus, the circuit court did not err in determining Einstein is entitled to judgment as a matter of law.

IV. The circuit court rightfully determined no reasonable jury could find by clear and convincing evidence that Einstein acted recklessly, willfully, or wantonly toward Lynch and that such conduct caused his injuries.

"Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant's wil[l]ful, wanton, or reckless conduct." S.C. Code Ann. § 15-32-520(D). Clear and convincing evidence is the highest burden of proof in civil law, and the terms willful, wanton, and reckless "import a greater degree of culpability than mere negligence." *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 99, 727 S.E.2d 407, 412 (2012). The circuit court is permitted to determine as a matter of law whether a jury could reasonably find clear and convincing evidence of willful, wanton, or reckless conduct. *Gurwood v. GCA Servs. Grp., Inc.*, 445 S.C. 324, 334–35, 914 S.E.2d 149, 155 (2025). Mere negligence—even gross negligence—cannot support an award of punitive damages unless it is "so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness, or recklessness." *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 237, 763 S.E.2d 615, 619 (Ct. App. 2014) (quoting *Bell v. Atl. Coast Line R.R. Co.*, 202 S.C. 160, 24 S.E.2d 177, 182 (1943)).

Because Lynch's claims fail as a matter of law, his punitive damages claim also necessarily fails. *See McGee v. Bruce Hosp. Sys.*, 344 S.C. 466, 470, 545 S.E.2d 286, 288 (2001) ("[L]iability must be established before a plaintiff can seek punitive damages."). Nevertheless, Einstein is still entitled to judgment as a matter of law for the following independent reasons.

Einstein was not speeding, she never truly attempted to pass Gaines, and she exercised reasonable care as soon as she saw Lynch in the roadway. Lynch's entire theory of recklessness hinges on the unauthenticated PURE File, which is incompetent summary judgment evidence and cannot supply clear and convincing proof. This is especially true where the record demonstrates Einstein was not aware of the danger until seconds before the collision, and she took immediate

action (i.e., braking and swerving) to mitigate the unavoidable harm to Lynch. (R. p. 761, lines 20–23).

It is a basic principle of tort law that a plaintiff can only recover compensatory damages that are causally linked to the defendant's tortious conduct. *See, e.g.*, *Ravan v. Greenville Cnty.*, 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993). The requirement of a causal connection equally applies to punitive damages. *See, e.g.*, *Carraway v. Smith*, 321 S.C. 23, 26, 467 S.E.2d 120, 121 (Ct. App. 1995). Even if Einstein violated the traffic laws, which she did not, punitive damages are not automatic. Rather, there must be clear and convincing evidence that the violation caused Lynch's injuries. No such evidence exists.

Citing *Cooper ex rel. Cooper v. County of Florence*, 306 S.C. 408, 412, 412 S.E.2d 417, 419 (1991), Lynch states "[t]he Supreme Court has long held traffic statute violations are evidence from which a jury may infer the recklessness or willfulness necessary to support a punitive damages award." Appellant's Br. at 26. His reliance is misplaced. The *Cooper* Court explained only "[c]ausative violation of an applicable statute is evidence of recklessness, willfulness, and wantonness." 306 S.C. at 411, 412 S.E.2d at 418.

Here, there is no evidence that any statutory violation caused Lynch's injuries. Even if such evidence existed, a minor or non-causative statutory violation, standing alone, cannot satisfy the elevated clear-and-convincing burden of proof. *See Gurwood*, 445 S.C. at 334–35, 914 S.E.2d at 155 (explaining the clear and convincing standard applies to a directed verdict motion on punitive damages). The circumstances of the collision and Lynch's own conduct do not permit a reasonable jury to find by clear and convincing evidence that Einstein acted recklessly, willfully, or wantonly toward Lynch.

Consciousness of wrongdoing is vital for imposition of punitive damages. *See, e.g.*, *Cohen v. Allendale Coca-Cola Bottling Co.*, 291 S.C. 35, 40, 351 S.E.2d 897, 900 (Ct. App. 1986); *Carter v. R.L. Jordan Oil Co.*, 301 S.C. 84, 85–87, 390 S.E.2d 367, 368 (Ct. App. 1990); *see also, e.g.*, *Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 564–65, 619 S.E.2d 5, 11 (Ct. App. 2005); *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 360, 415 S.E.2d 393, 397 (1992). In this case, there is simply no evidence that Einstein consciously disregarded Lynch's rights. The circuit court therefore properly concluded she is entitled to judgment as a matter of law.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court affirm the circuit court's order granting her motion for summary judgment.

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