

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
J. Ernest Kinard, Jr., Circuit Court Judge

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MAY 27 2014

SC Court of Appeals

Case No. 2011CP0704713

Jonetha Singleton.....Appellant,

v.

Starshaka N. Cuthbert.....Respondent.

REPLY BRIEF OF APPELLANT

Bernard McIntyre, Esquire  
S.C. Bar No. 003843  
Law Office of Bernard McIntyre  
Post Office Box 248/1606 King Street  
Beaufort, South Carolina 29901-0248  
(843)524-9040  
Attorney for Appellant

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## ARGUMENTS

### I. THE TRIAL COURT'S INSTRUCTION ON PROXIMATE CAUSE DOES NOT RENDER HARMLESS ITS ERROR IN DIRECTING A VERDICT ON PLAINTIFF'S NEGLIGENCE

Plaintiff Appellant assigns as error the Trial Court directing a verdict against Appellant in violation of S.C. Code Sec. 56-5-2770(A) (1976, as amended) as a matter of law. Appellant asserts that she did not violate Sec. 56-5-2770(A) by turning left behind a stopped school bus because she was not overtaking or attempting to overtake the bus.<sup>1</sup> Additionally, even if the distance Appellant was behind the bus and other circumstances constitute attempting to overtake the bus, whether the attempt was negligence, Appellant further posits, was a question for the jury.

In reply Defendant Respondent contends that the Trial Court's error in directing a verdict may be excused because the Court correctly charged the jury on proximate cause. (Respondent's Brief, p. 6).

It is strikingly noteworthy that at the very outset of Respondent's argument on this point that Respondent argues tongue-in-cheek that "the trial judge fairly and correctly submitted the defendant's negligence, the comparative negligence of each party and causation to the jury." Id. What Respondent blatantly omits to say is that the trial judge did not fairly and correctly submit

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<sup>1</sup> In addition to the merits of Appellant's arguments set forth in her Initial Brief on S.C. Code Sec. 56-5-2770(A), it is also worthy to further emphasize clarity in the term "overtaking" in the substance of a similar statute, S.C. Code Sec. 56-5-1840(1)(1976, as amended). Sec. 56-5-2770(A) relates to passing school buses and Sec. 56-5-1840(1) relates to overtaking or passing vehicles proceeding in the same direction. Sec. 56-5-1840(1) states that's "[t]he driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left." In other words, passing is involved in the activity of overtaking a vehicle or attempting to overtake a vehicle. The two driving behaviors go hand in glove. When the motorist is passing, s/he is overtaking and when s/he is overtaking, s/he is passing or attempting to pass. See S.C. Code Sec. 56-5-1840(1); see e.g. S.C. Code Sec. 56-5-1840(2)(1976, as amended).

Plaintiff Appellant's negligence to the jury along with the other issues Respondent points out were properly submitted to the jury. That is because the Court erred in not submitting the issue of Appellant's negligence or lack of negligence to the jury and concluding Appellant was negligent as a matter of law.

Respondent proclaims that the Court's ruling may be error, but it was not dispositive. Yet Respondent cites no supporting legal authority whatsoever. The Court's ruling of a directed verdict certainly predisposed the jury to a mindset that Appellant was at fault, the Court having found Appellant was negligent. By its ruling, the Court was picking sides in a fact-finding matter and telling the jury that Plaintiff was negligent and denying it saw anything Defendant did that amounted to negligence as a matter of law. The Court having directed a verdict that Plaintiff was negligent as a matter of law in turning behind a stopped school bus with blinking red lights, then it would have had to instruct then jury that Defendant, who was approaching the bus, was also negligent in running a stopped bus with blinking red lights. The Court's verdict, directed as it were, gave the misimpression that Respondent had cart blanche in passing the stopped school bus with blinking red lights which Appellant was behind and by that same directed decree, improperly turned left behind as a matter of law. See Allen v. Hatchell, 242 S.C. 458, 131 S.E.2d 516 (1963); Eberhardt v. Forrester, 241 S.C. 399, 128 S.E.2d 687 (1962); Satterfield v. Bright, 289 S.C. 254, 345 S.E.2d 769 (S.C. App. 1986).

Allen v. Hatchell is not factually identical to the instant case but it does speak clearly to the prejudice of trial error in jury instruction. Plaintiff deceased was killed while riding with defendant appellant. Plaintiff claimed defendant appellant failed to stop at a stop sign and jointly caused the accident with the co-defendant with whom plaintiff had settled prior to trial. The jury

returned a verdict in favor of plaintiff. Defendant appealed, contending the trial court failed to instruct the jury on the first sentence of a stop sign crossing statute which gave the misimpression to the jury that the other driver had an absolute right to proceed through the intersection. Our State Supreme Court found the trial court committed error in failing to instruct the jury by not reading the first paragraph of the statute. The trial court did a fine job instructing the jury on proximate cause as no error was assigned. Respondent countered that any error by the trial judge was harmless since the jury had returned a verdict for actual and punitive damages finding that appellant recklessly entered the intersection without stopping or recklessly failed to yield the right of way. The Court conceded that respondent's contention may be correct, but the Court elucidated that "it does not follow that the jury would so have found had the jury been dutifully and correctly charged with respect to the duties of the other driver." 131 S.E.2d at 522.

Just as in Allen v. Hatchell, Respondent here argues the Court preserved the right of Appellant to argue the proximate cause of Respondent's alleged negligence. The jury returned a verdict for Defendant Respondent. However, it does not follow that the jury would have so found in the instant case had the Trial Court not erroneously directed a verdict against Appellant and instructed the jury Appellant was negligent as a matter of law.

Appellant, as Respondent declares, may have been handed the right to argue proximate cause of Respondent's alleged negligence, but the Court handcuffed Appellant by blurring the lens of impartiality into which the jury needed to look and weigh the evidence by directing a verdict. The jury could only see proximate cause through the blurred lens of the Court's directed verdict which severely disabled Appellant's case. The Court's error is not corrected because Appellant is given the unstable handrail of proximate cause to try to get back up on but never

being able to stand on the same field of impartiality as Respondent in arguing negligence. The Court's error in directing a verdict on Appellant's negligence was not cured or rendered harmless by its instruction on proximate cause.

**II. THERE IS NO ALTERNATE GROUND IN THE RECORD TO SUPPORT THE COURT'S RULING**

Respondent seeks to offer an alternate ground for the Court to affirm the jury verdict in spite of the prejudicial error of the Court's directed verdict against Appellant.

Respondent suggests that if Appellant may move her vehicle behind a stopped school bus, Appellant would be required to yield the right of way to oncoming traffic.

This is the kind of misdirected argument that sees everything in black and white for Respondent minimizes or simply omits mention of the harm from the erroneous ruling as if nothing happened and it had no effect. As stated above from Allen v. Hatchell, it does not so follow that the jury would have found Appellant failed to yield the right of way under S.C. Code Sec. 56-5-2320 (1976, as amended), had the Court not directed a verdict against Appellant.

There is a presumption that a motorist will operate his or her vehicle in a lawful manner upon the public highways. See Allen v. Hatchell. Appellant, being behind the stopped school bus, has a right to assume that Respondent would operate her vehicle in a proper manner in traveling on Seaside Road. If Appellant was allowed to move behind the stopped school bus with blinking red lights, as she contends, then she could rightly presume that Respondent, approaching the stopped school bus which Respondent admits had blinking yellow lights on and other testimony says blinking red lights, would stop as required<sup>2</sup> and but for that, the accident

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<sup>2</sup> In footnote number 1 on page 7 of Respondent's Brief, Respondent states that the "issue of whether Respondent/Defendant should have stopped for the bus is not preserved for appeal." Appellant disagrees. Whether

blinking red lights, as she contends, then she could rightly presume that Respondent, approaching the stopped school bus which Respondent admits had blinking yellow lights on and other testimony says blinking red lights, would stop as required<sup>2</sup> and but for that, the accident would have never occurred.

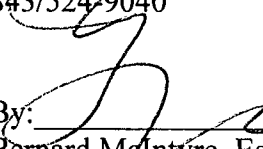
No alternate ground exists for the jury's verdict because the entire deliberation was encumbered by the error of the Court's directed verdict finding Appellant was negligent as a matter of law.

### CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the Order of the Trial Court denying Appellant's Motion for a New Trial should be reversed.

Respectfully Submitted,

LAW OFFICE OF BERNARD McINTYRE  
1606 King Street/P. O. Box 248  
Beaufort, South Carolina 29901  
843/524-9040

By:   
Bernard McIntyre, Esquire  
S.C. Bar No. 3843  
Attorney for Appellant

May 22, 2014

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Defendant Respondent should have stopped for the stopped school bus is preserved for discussion and argument on the facts. It remains a factual issue concomitant to the Court's fact-finding resulting in the directed verdict. What is not preserved for appeal, and is not necessary to the appeal, is whether the Trial Court erred in denying Appellant's motion for a directed verdict on Defendant Respondent's failure to stop for a stopped school bus. The Trial Court should have denied Respondent's motion for a directed verdict just as it did Appellant's motion. They both involved fact finding and thus, matters reserved only for the jury.