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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas
D. Craig Brown, Circuit Court Judge

Case No.: 2016-CP-21-1831
Appeal No.: 2018-001016

Isabelle
MacKenzie.....Appellant/Respondent,

v.

C&B Logging and Charles Brandon
Barr.....Respondents/Appellants.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Isabelle MacKenzie,)
)
Plaintiff,)
-vs-)
C&B Logging and Charles Brandon Barr,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-21-1831

VERDICT FORM

1. Was the defendant Charles Brandon Barr negligent?

☒ YES

☐ NO

Was the defendant C&B Logging, LLC negligent?

☒ YES

☐ NO

If no, please stop your deliberations, and sign and date the verdict form.
If yes, please continue to Question #2.

2. Was the plaintiff Isabelle MacKenzie negligent?

☐ YES

☒ NO

Please continue to Question #3.

FILED
2016 OCT 11 5:34

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Wanda H. O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. If you answered YES to Questions #1 and #2, please assign a percentage of fault to each.

60 % Defendant Charles Brandon Barr

40 % Defendant C&B Logging, LLC

0 % Plaintiff Isabelle MacKenzie

These percentages must total 100%.

4. If you determined that plaintiff was 50% or less at fault, state the total amount of actual damages plaintiff should be awarded.

\$ 179,678.49

5. If you determined that plaintiff was 50% or less at fault, did plaintiff prove by clear and convincing evidence that she is entitled to an award of punitive damages?

 YES

X NO

If YES, please continue to Question #6. If NO, please stop deliberations.

6. If you answered YES to Question #4, please state the total amount of punitive damages plaintiff should be awarded.

\$ as to Defendant Charles Brandon Barr

\$ as to Defendant C&B Logging, LLC

April 26, 2018
DATE

[Signature]
FOREMAN

WHEN YOU HAVE COMPLETED THESE QUESTIONS, PLEASE NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

ISABELLE MACKENZIE,

Plaintiff,

vs.

C&B LOGGING, LLC., and
CHARLES BRANDON BARR

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 20 16 CP 21 1831

SUMMONS

Jury Trial Demanded

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 2301 South Irby Street, Suite E, Florence, South Carolina 29505, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in said Complaint.



Linward C. Edwards II, Esq.
SC Bar No.: 100303
2301 South Irby Street, Suite E
Florence, SC 29505
Office phone (843) 410-9605
Facsimile (843) 536-0715

ATTORNEY FOR PLAINTIFF

August 2, 2016
Florence, South Carolina

CERTIFIED: A TRUE COPY
Heidi Giffon
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

ISABELLE MACKENZIE,

Plaintiff,

vs.

C & B LOGGING, LLC. AND
CHARLES BRANDON BARR
Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 20 16 CP 21 183

COMPLAINT

Jury Trial Demanded

NOW COMES the Plaintiff above-named, complaining of the Defendants, and would respectfully show this Honorable Court as follows:

1. Plaintiff, Isabelle Mackenzie [hereinafter "Mackenzie"], is a citizen and resident of the County of Florence, in the State of South Carolina.
2. Upon information and belief, Defendant Charles Brandon Barr [hereinafter "Barr"], is a citizen and resident of the County of Florence, in the State of South Carolina.
3. Upon information and belief, C&B Logging, LLC. [hereinafter "C&B"], is a corporation organized and existing under the laws of the State of South Carolina.
4. Upon information and belief, Defendant C&B, maintains a facility in the County of Florence, State of South Carolina.
5. Upon information and belief, the Defendant C&B transacts business in the State of South Carolina, County of Florence, and that it further derives substantial revenue therefrom.
6. The subject-matter of this action is an automobile collision which occurred in Florence County, South Carolina, caused by the negligence of Defendant Barr.
7. Upon information and belief, Defendant Barr was, at all times relevant to this Complaint, an employee of Defendant C&B.

CERTIFIED: A TRUE COPY
Donna Paula Offner
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

8. Upon information and belief, at the time and place of the incident which is the subject matter of this Complaint, Defendant Barr was acting in the course and scope of his employment with Defendant C&B.

GENERAL ALLEGATIONS

9. On April 23, 2016, Plaintiff Mackenzie was riding on a motor cycle, travelling down Highway 51/Pamplico Highway near Florence, South Carolina.

10. That on April 23, 2014, Plaintiff Mackenzie was in a vehicle operating in accordance with all applicable traffic rules and regulations.

11. That, upon information and belief, traffic conditions existing at the time of the complained of collision required that Defendant Barr should have been operating his vehicle at a greatly reduced rate of speed.

12. That immediately preceding the subject accident, Defendant Barr knew, or should have known, that the traffic conditions required him to operate his vehicle at a greatly reduced rate of speed.

13. That, upon information and belief, Defendant Barr failed to appreciate the traffic conditions then and there prevailing immediately prior to the subject accident.

14. Upon information and belief, at all times relevant to this complaint, Defendant Barr was an employee or agent of Defendant C&B.

15. Upon information and belief, at all times relevant to this complaint, Defendant Barr was acting in the course and scope of his employment with Defendant C&B.

16. At approximately 10:30 p.m. on April 23, 2016, the time of the complained of accident, weather conditions were dry.

17. At approximately 10:30 p.m. on April 23, 2016, the time of the complained of

accident, the condition of the road way was straight.

18. At approximately 10:30 p.m. on April 23, 2016, the time of the complained of accident, there were no defects in the roadway which contributed to the complained of accident.

19. At approximately 10:30 p.m. on April 23, 2016, the time of the complained of accident, Plaintiff Mackenzie was traveling within her own lane of traffic.

20. At approximately 10:30 p.m. on April 23, 2016, the time of the complained of accident, there were no visual obstructions which prevented Defendant Barr from seeing the roadway ahead of him.

21. At approximately 10:30 p.m. on April 23, 2016, the time of the complained of accident, there were no visual obstructions which prevented Defendant Barr from seeing the traffic conditions ahead of him.

22. That, upon information and belief, Defendant Barr was, at all times relevant to this complaint, in possession of a valid commercial driver's license.

23. That neither the actions nor any alleged failures to act of Plaintiff Mackenzie contributed in any way to the complained of accident.

24. That, at the time of the complained of accident, Plaintiff Mackenzie did not violate any statutory or common law rule of the road which contributed in any way to the accident.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE AS TO CONDUCT OF DEFENDANT BARR FOR
WHICH DEFENDANT C&B IS VICARIOUSLY LIABLE

25. That the Plaintiff hereby restates and realleges each and every preceding allegation as if set forth hereinafter verbatim.

26. Defendant Barr, acting in his capacity as an agent and employee of Defendant

C&B, was negligent, careless, grossly negligent, reckless, wilful and wanton in the following particulars:

- (a) In operating a commercial motor vehicle at a speed in excess of the posted speed limit;
- (b) In failing to keep a proper distance between the commercial motor vehicle and other vehicles traveling near him on the highway;
- (c) In failing to keep a proper look out with regard to vehicles traveling in front of him on the highway;
- (d) In driving at a speed that was too fast for the conditions then and there prevailing in direct violation of S.C. Code Ann. § 56-5-1520 (F);
- (e) In failing to drive at an appropriately reduced speed when conditions existed on the road with regard to other vehicles;
- (f) In failing to control his vehicle as necessary to avoid swerving into adjacent lanes of traffic occupied by other vehicles on the roadway;
- (g) In following too closely in violation of S.C. Code Ann. § 56-5-1930;
- (h) In failing to keep a proper lookout in violation of the common law;
- (i) In failing to properly or timely apply his foot brakes to properly slow or stop the tractor trailer he was operating at the time complained of;
- (j) In failing to pay attention to his driving;
- (k) In violating the standards of care set forth in the South Carolina Commercial Driver's Manual, particularly with regard to the following:
 - (i) Section 2.4-Seeing, especially with regard to seeing ahead, looking for traffic and looking for road conditions,

- (ii) Section 2.6-Controlling Speed, especially with regard to all subsections dealing with driver's perception distance, reaction distance, braking distance, total stopping distance, effect of speed on stopping distance, effect of vehicle weight on stopping distance, speed and distance ahead, and speed and traffic flow,
 - (iii) Section 2.7--Managing Space, especially with regard to the "space to the sides" considerations set forth therein,
 - (iv) Section 2.14--Seeing Hazards, especially with regard to the stated importance of seeing hazards, and
 - (v) Section 6.1-Driving Combination Vehicles Safely including the admonitions to steer gently and brake early;
- (l) In failing to use due care;
 - (m) In failing to act as a reasonable and prudent person would act under the same or similar circumstances, proximately causing the injuries and damages sustained by the Plaintiffs.

ALL of which were in violation of the statutes, common laws and regulations of these United States and the State of South Carolina, in such cases made and provided, and all of which were a direct and proximate cause of the injuries and damages sustained by the Plaintiff herein.

FOR A SECOND CAUSE OF ACTION
PARTICULARS OF NEGLIGENCE AS AGAINST
DEFENDANT C&B LOGGING, LLC.

27. That the Plaintiff hereby restates and realleges each and every preceding allegation as if set forth hereinafter verbatim.

28. Defendant C&B was negligent, careless, grossly negligent, reckless, wilful and wanton in the following particulars, to wit:

- (a) In negligently hiring, employing and/or retaining in employment Defendant Barr;
- (b) In failing to properly supervise its employees;
- (c) In negligently supervising Barr;
- (d) In failing to properly train Barr including, but not limited to, failure to provide adequate defensive driver training and/or training on evasive maneuvers;
- (e) In failing to properly train its drivers to drive at speeds within posted speed limits;
- (f) In failing to have measures in place to ensure that its drivers, including Defendant Barr, would operate vehicles within posted speed limits while transporting loads for Defendant C&B;
- (g) In failing to use due care; and,
- (h) In failing to act as a reasonable and prudent person would act under the same or similar circumstances.

ALL of which were in violation of the statutes, laws and regulations of the United States and the State of South Carolina, in such cases made and provided, and all of which were a direct and proximate cause of the injuries and damages sustained by the Plaintiff.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability / Respondent Superior)

29. That the Plaintiff hereby restates and realleges each and every preceding allegation as if set forth hereinafter verbatim.

30. At all times complained of, Defendant Barr was an employee, agent or servant of Defendant C&B, acting in the course and scope of his employment.

31. Defendant C&B is vicariously and jointly and severally liable for the actions of Defendant Barr under the legal doctrine of *respondent superior*.

DAMAGE ALLEGATIONS

32. That the Plaintiff hereby restates and realleges each and every preceding allegation as if set forth hereinafter verbatim.

33. As a direct and proximate result of the negligence of the Defendants, Plaintiff sustained serious and permanent personal injuries; all of which have and will in the future caused Plaintiff physical and mental pain and suffering, mental anguish, and psychological damage; all of which have and will in the future cause Plaintiff to incur expenses for medical evaluation, care and treatment; all of which have and will in the future, caused Plaintiff to lose money in the nature of wages and earnings; all of which have made and will in the future make Plaintiff's life less enjoyable, for which Plaintiff is entitled to recover from Defendants in an amount to be determined by the trier of fact.

34. That the Defendants' actions were reckless and represented a willful and conscious disregard for the Plaintiff's safety, and Plaintiff believes that he is entitled to recover punitive damages from Defendants in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiff prays for judgment, jointly and severally, against Defendant Charles Brandon Barr and C&B Logging Inc., as follows:

A. As to the First Cause of Action, for a judgment, jointly and severally, against Defendants Charles B. Barr and C&B Logging, Inc. in an amount of actual and punitive damages to be determined by the trier of fact;

B. As to the Second Cause of Action, for a judgment, jointly and severally, against

Defendants Charles B. Barr and C&B Logging, Inc. in an amount of actual and punitive damages to be determined by the trier of fact;

C. As to the Third Cause of Action, for a judgment, jointly and severally, against Defendants Charles B. Barr and C&B Logging, Inc. in an amount of actual and punitive damages to be determined by the trier of fact

D. For a trial by jury as to all claims;

E. For the costs and disbursements of this action; and,

F. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

LAW OFFICE OF LINWARD C. EDWARDS II, LLC



Linward C. Edwards II, Esq.

SC Bar No.: 100303

2301 South Irby Street

Florence, SC 29505

Office phone (843) 410-9605

Facsimile (843) 536-0715

ATTORNEY FOR PLAINTIFF

August 2, 2016
Florence, South Carolina

ISABELLE MACKENZIE

Plaintiff(s)

CIVIL ACTION COVERSHEET

2016 -CP- 21 - 1831

vs.

C&B LOGGING, LLC, and
CHARLES BRANDON BARR

Defendant(s)

Submitted By: Linward C. Edwards II
Address: 2301 South Irby Street, Suite E
Florence, South Carolina, 29505SC Bar #: 100303
Telephone #: (843) 410-9605
Fax #: (843) 536-0715
Other:
E-mail: Linward@ledwardsllaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
<u>20 -NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture -Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOJ (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: Linward C. Edwards IIDate: August 2, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Isabelle MacKenzie,)
)
Plaintiff,)
)
vs.)
)
C&B Logging and Charles Brandon Barr,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-21-1831

ANSWER

JURY TRIAL DEMANDED

The Defendants, answering the Complaint of the Plaintiff, would respectfully show unto the court as follows:

FOR A FIRST DEFENSE
(Rules 20 and 22 Joinder and/or Interpleader)

1. Each and every allegation not expressly admitted is denied.
2. Defendants hereby preserve, if necessary, the option per Rules 20 and 22 of the SCRCF of joining and/or interpleading this action with that previously filed by Arthur Lee Gregg, Civil Action No. 2016-CP-21-1543.

FOR A SECOND DEFENSE

3. Upon information and belief Defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of Plaintiff's Complaint, except that Defendants deny the accident was caused by any negligence of Defendant Barr.
4. Defendants admit the allegations contained in paragraphs 7 and 8 of Plaintiff's Complaint.

CERTIFIED: A TRUE COPY
Donna Paula Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

5. With regard to the allegations contained in paragraphs 9 and 10 (and recognizing a mere typo as to one of the dates) Defendants acknowledge, upon information and belief, that Plaintiff was riding a motor cycle at the time and place alleged.

6. With regard to the allegations contained in paragraphs 11, 12, and 13 of Plaintiff's Complaint, Defendant Barr denies any suggestion of negligence alleged therein. Defendant Barr was re-entering the roadway from the opposite side of the road, operating in an appropriate fashion at the time; unfortunately, such entry was done in close proximity to a curve and opposing vehicles, including Plaintiff, apparently failed to reduce their speed appropriately before he could fully enter into the opposite lane of travel.

7. Defendants admit the allegations contained in paragraphs 14, 15, and 16 of Plaintiff's Complaint

8. With regard to the allegations contained in paragraphs 17 of Plaintiff's Complaint Defendants assert that the condition of the roadway speaks for itself but that Plaintiff was rounding a curve at an inappropriate rate of speed leading to her accident; had the roadway been straight throughout as alleged, Plaintiff's actions were even more unreasonable.

9. With regard to the allegations contained in paragraph 18 of Plaintiff's Complaint Defendants assert that at the time complained of the roadway was actually a construction zone and was marked as such; that fact, in conjunction with the preceding curve, should have caused the Plaintiff to be operate at a much reduced and more appropriate speed, such that the Defendant vehicle could have been avoided and/or she could have come to a safe stop.

10. Upon information and belief Defendants admit the allegations contained in paragraph 19, 20, 21, and 22 of Plaintiff's Complaint; Defendant Barr's vision of the roadway and traffic conditions bore no role in this accident given that there were no vehicles approaching

from the opposite direction constituting an immediate hazard when he initiated and sought to complete his entry into the opposite lane of travel.

11. Defendants deny the allegations contained in paragraphs 23 and 24.

12. Paragraphs 25, 27, 29 and 32 are re-allegation paragraphs; to the extent any negligence is asserted such is denied.

13. Defendants deny the allegations contained in paragraphs 26 and 28 of Plaintiff's Complaint.

14. Defendants admit the allegations contained in paragraphs 30 and 31 of Plaintiff's Complaint but deny negligence alleged therein

15. Defendants deny the allegations contained in paragraphs 33 and 34 of Plaintiff's Complaint.

FOR A THIRD DEFENSE
(Comparative Negligence)

16. The preceding responses, not inconsistent herewith, are incorporated by reference as if fully restated herein.

17. The collision and injuries complained of by the Plaintiff may have been the direct and proximate result of Plaintiff's own negligent conduct in the following particulars:

- a. In failing to operate her vehicle at the appropriate speed when traveling through a construction area;
- b. In failing to properly reduce the speed of her vehicle when rounding a curve;
- c. In failing to properly reduce the speed of her vehicle given the darkness and/or conditions present therein;
- d. In failing to properly maintain and/or utilize braking on her vehicle;

- c. In failing to act as a reasonable and prudent person would have under the same or similar circumstances, and any other matter which may be discovered hereafter and/or through trial.

18. This defense of comparative negligence and her assumption of risk is pled as an offset and/or as a complete and total bar to the claims of the Plaintiff.

FOR A FOURTH DEFENSE
(Assumption of the Risk)

19. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

20. As previously detailed, Defendants allege that in failing to reduce her speed while in a construction zone and while going around a curve, given the conditions then and there present, in failing to properly maintain and/or utilize braking on her vehicle and in failing to act as a reasonable and prudent person would have under the same or similar circumstances, Plaintiff assumed the risk of accident and/or injury.

FOR A FIFTH DEFENSE
(Unavoidable accident)

21. Given the construction ongoing, the darkness in the area at that time of night, the positioning of the curve in relation to the exit from the mobile home park and the necessity of travel if entering into the opposite lane of travel, this may simply have been an unavoidable accident despite reasonable efforts by both or all parties.

FOR A SIXTH DEFENSE
(Last Clear Chance)

22. Defendant had the last clear chance to apply her brakes both before and after rounding the curve in the construction area to avoid her subsequent accident and/or injury.

FOR A SEVENTH DEFENSE
(Pain and Suffering)

23. The allegations of the preceding defenses are incorporated herein and made a part of this defense by reference.

24. Any award of damages for pain and suffering against the Defendants will violate the rights guaranteed to the Defendants by the Constitution of South Carolina for the following reasons:

- (a) Any award of damages for pain and suffering violates the prohibition against excessive fines found in Article I, § 15 of the Constitution of South Carolina because such awards do not bear a reasonable relationship to the compensatory damages.
- (b) Any award of damages for pain and suffering violates the guarantee of due process found in Article I, § 3 of the Constitution of South Carolina because of the lack of objective guidelines, rational factors and defined limits on which a jury might base its award, and further, that such guidelines, factors or limits as do exist are arbitrary and void for vagueness.

FOR AN EIGHTH DEFENSE
(Punitive Damages)

25. The allegations of the preceding defenses are incorporated herein and made a part of this defense by reference.

26. An award of punitive damages against Defendants will violate rights guaranteed to the Defendants by the Constitution of South Carolina for the following reasons:

- (a) Any award of punitive damages violates the prohibition against excessive fines found in Article I, Section 15 of the Constitution of South Carolina.

- (b) Any award of punitive damages violates the guarantee of due process found in Article I, Section 3 of the Constitution of South Carolina because of the lack of objective guidelines on which a jury might base its award and further that such guidelines as do exist are arbitrary and void for vagueness.

FOR A NINTH DEFENSE
(Mitigation of Damages)

27. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

28. Plaintiff has failed to mitigate her damages in a manner provided for by law. Such failure to mitigate damages is pled as a complete defense and bar to the claims of Plaintiff.

Defendants seeks dismissal of Plaintiff's prayer for damages in its entirety, or in the alternative, if it is deemed that Plaintiff is entitled to judgment against Defendants, that such judgment be reduced by an appropriate amount for the Plaintiff's failure to mitigate damages.

FOR A TENTH DEFENSE
(Intervening Acts of Third Parties)

29. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

30. Defendants are not liable to Plaintiff for the resulting damages of the Plaintiff, if any, due to intervening negligent, grossly negligent, reckless, willful and wanton acts of third parties, which negligent and reckless actions were not reasonably foreseeable and intervened and acted as a direct and proximate cause of the incident and the resulting damages, if any, sustained by the Plaintiff.

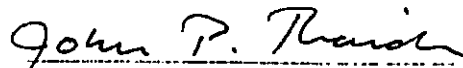
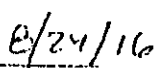
FOR AN ELEVENTH DEFENSE
(Allocation Pursuant to Section 15-38-15 S.C. Code)

31. The allegations of the preceding defenses are incorporated herein and made a part of this defense by reference.

32. Per §15-38-15, S.C. Code of Laws and the allegations of Plaintiff's complaint, Defendants hereby assert and/or preserve any and all right to assert that another potential tortfeasor (including Plaintiff driver) whether or not a party, caused and/or contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party. Defendants cannot be held liable for damages caused by another, whether a party or not, and specific finding as the allocation of liability is required and hereby demanded.

Moreover, Defendants assert and/or preserve any and all argument regarding the allocation of liability and/or damages as to other potential tortfeasors, whether or not a party to the action.

WHEREFORE, having fully answered, Defendants pray that the Complaint be dismissed and for the costs of this action.

 
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August 24, 2016

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

Isabelle MacKenzie,

C.A. No.: 2016-CP-21-1831

Plaintiff,

CERTIFICATE OF SERVICE

vs.

C&B Logging and Charles Brandon Barr,

Defendants.

FILED
2016 AUG 25 PM 2:48
CLERK OF COURT
FLORENCE COUNTY, SC

I hereby certify that a copy of the **Answer** was served upon counsel of record this 24th day of August, 2016, by placing the same in the United States Postal Service with proper, first-class postage affixed and addressed as follows:

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Paula Hanna
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2016-CP-21-01831
	)	
Isabelle MacKenzie,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Transcript of Record
	)	(VOLUME I - Day 1 of 4)
	)	
C&B Logging and	)	
Charles Brandon Barr,	)	
	)	
Defendants.	)	
	)	

April 23-26, 2018
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge; and a jury
Also sitting: The Honorable Alex Kinlaw Jr.

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

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John Patrick Riordan, Esquire
Megan Early, Esquire
Attorneys for the Defendant

Krystal J. Smith
Circuit Court Reporter

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19	<u>COURT REPORTER LEGEND</u>			
20	dashes --	intentional or purposeful interruption		
21		or change in thought		
22	ellipses . . .	trailing off		
23	[ph]	phonetically written		
24	[sic]	written as said		
25				

1 of any authority --

2 THE COURT (BROWN): I'm not going to allow you to get
3 into that.

4 MR. WILLEY: Okay. I'm just not aware of any authority
5 on it. So --

6 MR. RIORDAN: I thought the -- I'm sorry I don't have it
7 with me at my fingertips, but I think there's a statute at
8 the start of it says none of these, you know, charges or
9 determination of the issuing of a citation is not admissible
10 in a civil case.

11 THE COURT (BROWN): Well, that just I think allows a
12 jury to speculate possibly on conclusions and that. I'm just
13 not -- I don't think it's admissible.

14 MR. RIORDAN: And, Your Honor, the only -- the only way
15 to make it even easier in this case, again, meticulous in
16 regard, this is actually a case with two accident reports.
17 So the ticket is in regard to the Gregg case. There is no
18 ticket and there's even no mention -- it's a single vehicle
19 accident involving the plaintiff for her incident.

20 THE COURT (BROWN): Okay.

21 MR. RIORDAN: So that's another basis for that to be --
22 to ensure that there's no charges.

23 I think the medical providers -- that's -- I think they
24 did -- if I understood them, they may only have one or two
25 doctors that come in and speak to all the various treatment

1 liability to go to the weight of the evidence. But the
2 question of whether or not the settlement itself is
3 admissible, it is.

4 Is there a defense to that admissibility to say, well,
5 we did it without admission on liability? Sure, but until
6 that's brought forward, we don't know that. They'd be
7 entitled to defend it on those grounds, but I haven't seen
8 that. It's not on the record. Obviously, if they have it,
9 they can bring it.

10 THE COURT (BROWN): All right.

11 MR. RIORDAN: Your Honor, we would ask --

12 THE COURT (BROWN): Go ahead.

13 MR. RIORDAN: You know, again, we are -- he's acting as
14 if it's the same incident. It clearly is two separate
15 instances. I think that's the easiest thing to do here. The
16 one case doesn't necessarily have anything to do with the
17 other.

18 THE COURT (BROWN): All right. Well, I'm going to think
19 about that. I'm not inclined to do so to allow it, Mr.
20 Willey, but I'm not going to rule on it totally right now.
21 Okay?

22 MR. WILLEY: Okay.

23 MR. RIORDAN: Your Honor, we agreed -- they agreed on
24 hearsay. I just wanted to make sure. There was a lot of
25 testimony from a lot of the family members that came on the

1 scene and heard all kinds of different things from the folks
2 that live nearby, and that was just the --

3 THE COURT (BROWN): Under Number 7?

4 MR. RIORDAN: Yeah. They've agreed to that.

5 THE COURT (BROWN): Okay.

6 MR. RIORDAN: The next one is significant. Driving
7 record and criminal history of Defendant Barr.

8 We would absolutely seek to keep that out of this case,
9 going back to relevancy. It does not -- it does not exist
10 that would show, you know, proximate causation of anything
11 that happens here.

12 This is a fellow who does have some issues with his
13 license and other accidents in a, you know, four-wheel motor
14 vehicle, but no accidents prior to this in a commercial motor
15 vehicle. I mean there's a distinction there.

16 The same with criminal history. I don't know anything
17 about his criminal history that's -- that's something that
18 should be talked about in this case. I don't think any of it
19 is relevant otherwise.

20 THE COURT (BROWN): Mr. --

21 MR. WILLEY: May I mark Court's Exhibit 2, which I think
22 we sent prior, but this is just our memo in support of that
23 evidence, but it is a critical point in the case. And that
24 has all the charges on the front.

25 But in this case, aside from the car wreck, we've also

1 sued for negligent hiring and supervision and retention on
2 behalf of the company and, of course, one of the elements is
3 foreseeability, what was known or should have been known
4 about the individual driver's record.

5 And what we have here is a litany of criminal citations
6 and convictions, 2009, 2010, 2011, 2012, 2013, 2014, 2015,
7 all the way into 2016, which is when this wreck occurred,
8 leading up to it.

9 It's not a one isolated incident from way off. Even if
10 it was, it would be relevant to comment on in negligent
11 hiring, retention, and supervision claims.

12 But we have several instances: driving at speeds greater
13 than reasonable; possession with intent to distribute
14 cocaine; conspiracy; wheel and axle load violation, which is
15 on an 18-wheeler; speeding; possession of Schedule IV
16 controlled substance; leaving the scene of an accident.

17 And, Your Honor, one of the critical pieces in this case
18 is why Mr. Barr was stopped. So his reasoning is that he had
19 a tire going flat. About 25 minutes back, he noticed it, and
20 he decided to pull over at this one particular spot where he
21 had met a guy the night before that he hadn't seen since high
22 school because he thought this guy in the trailer park might
23 have an air compressor.

24 Now, the guy wasn't home. You know, there's a lot of
25 things he could've done to get air, and all of the

1 implication is this is a known drug area and that he had been
2 pulled there before, in fact that morning, with -- with the
3 guy.

4 So in terms of the hiring, retention, and supervision,
5 the trucking company has the ability to track where the rig
6 is going, whether it's going to the actual work site and then
7 to the mill and back to the shop. This is an instance where
8 we know it wasn't.

9 Mr. Barr's own testimony is that he had gone to that
10 trailer park before. He gives an alternative reasoning for
11 it, but his record, in compilation with the witness testimony
12 in the case, goes directly to the hiring, supervision, and
13 retention claims in the case. If he had not been illegally
14 pulled over in the roadway, the wreck never would've
15 occurred. And if a reasonable motor carrier had looked at
16 all of these previous driving violations, he should not have
17 been hired.

18 And in fact, the deposition testimony in that regard is
19 essentially -- and, you know, not hitting on his dad for
20 this, but is essentially it was my son, he needed a job, I
21 created a job for him, which is fine if you're selling
22 lemonade or pastry cakes. It's another thing when you're
23 driving, you know, an 18-wheeler loaded down with logs on a
24 public roadway when you have a history like this. And in
25 this case, unfortunately, people were catastrophically

1 injured because of it.

2 So that's where it goes. There's been additional
3 violations following the collision which, you know, don't go
4 to what he knew or should have known, but we just put those
5 in there to show the pattern of activity.

6 In addition to that, this is a gentleman -- he failed
7 his CDL test three times. He admits in his deposition that
8 he didn't pass it on the merits the fourth time, but that he
9 gamed the test. He just figured it out and, in fact, he
10 actually says that.

11 We -- I think we put that in there for you. He says,
12 you know, I gamed the test is why -- why I eventually passed.

13 Have you looked at it since?

14 No.

15 Did anybody give you any written policies or procedures?

16 No.

17 Did you have an interview?

18 No.

19 Did you just ask him for a job and he gave you a job?

20 Yeah.

21 And so all of these things contribute to those causes of
22 action. They are clearly relevant under the elements of
23 those causes of action and so we contend that they should
24 come in for those reasons.

25 The -- on page 4, we've got some of the case law there,

1 which I'm sure Your Honor is aware of, but if not, it's there
2 for you. And it all goes to endangering the public. You
3 know, when you hire somebody to drive one of these rigs and
4 you hire somebody with this kind of a record, you put the
5 public in unnecessary danger, and that's what happened here
6 and that's why those things are relevant. That's what the
7 civil justice system is meant to stop.

8 THE COURT (BROWN): Mr. Riordan?

9 MR. RIORDAN: Regarding convictions, I haven't -- I
10 don't know of any of those, but I'll have to see what they've
11 pulled up. I mean my rap sheet doesn't show convictions for
12 any of those, but I mean Camden did say something the other
13 day. I was wanting to get that. This is the first I've seen
14 of this as well that was just handed to me.

15 MR. HODGE: Those -- those were produced.

16 MR. RIORDAN: What was?

17 MR. HODGE: I sent y'all supplemental production,
18 emailed it, along with the --

19 MR. WILLEY: Yeah. We've got the certified convictions
20 on there.

21 MR. RIORDAN: Okay.

22 MR. WILLEY: Conspiracy, possession with intent to
23 distribute, possession with intent.

24 MR. RIORDAN: It's even an indictment. I don't see --
25 again, I don't see the back where it says this is the

1 disposition.

2 MR. WILLEY: Well, it's not just convictions. I mean in
3 a hiring claim -- even charges are relevant in a hiring
4 claim. We're not getting them in to go to the injury claim,
5 but we're going to get them in as to the hiring.

6 THE COURT (BROWN): All right. Y'all look at that.

7 Mr. Riordan, I'll give you some more time to look at
8 that since it was just handed to you and handed to me as
9 well. I'll let you look at that some more.

10 Let's move on to the next one, Number -- Number 9.

11 MR. RIORDAN: Yeah, same thing with regards to taking
12 the CDL exam.

13 THE COURT (BROWN): That's -- yeah.

14 MR. RIORDAN: And again, he mentioned it already, but I
15 didn't get to see that and I would ask --

16 THE COURT (BROWN): Well, that's --

17 MR. RIORDAN: All of these, again, if nothing else,
18 under 403 prejudicial in this case, but that one especially,
19 the CDL exam. In fact, any of the things in the warrant
20 should not be utilized in a manner they're attempting to
21 utilize it.

22 And again, he didn't -- he didn't say I gamed the
23 system. Camden asked him that and he responded, yeah. He
24 says, well, what are y'all talking about and I said, well,
25 that was your answer when you said it. He's not the one that

1 raised up and said, yeah, I took it four times and then I
2 figured out how to take the test and gamed the system. That
3 was not his testimony.

4 THE COURT (BROWN): All right. All right. I'll look at
5 those. Y'all look at the criminal and driving record more
6 over the evening, and we'll talk about that in the morning.

7 MR. RIORDAN: Okay.

8 THE COURT (BROWN): Number 10.

9 MR. RIORDAN: And again, I don't know where they're
10 going to go. They did ask some of these and started to set
11 that up with these safety questions.

12 Isn't it -- you know, don't you want to be the safest?

13 Do you want to follow everything in the CDL manual?

14 I would, again, suggest that all those -- and it's an
15 effective tactic when you can do it. I agree. However, it
16 changes the law. It seeks -- it seeks to substitute this new
17 safety issue for the law Your Honor will charge in regard to,
18 you know, the actual statutes that may or may not exist in
19 this case.

20 And I'd ask that they not be allowed to do that in this
21 case, to speak to -- don't you want to be the safest out
22 there? You know, is this the safest way to do things, et
23 cetera? I mean I don't know where they're going or if that's
24 where they're going, but some of those questions were asked
25 earlier and I'd ask that those be at this point ruled

1 jury is entitled to know all the facts to the extent they
2 know any of the facts. And so we can't mislead the jury to
3 think Mr. Barr is going to have to personally pay anything,
4 which I think we've got an agreement on, but we just have to
5 see where it goes.

6 THE COURT (BROWN): All right. Mr. Riordan?

7 MR. RIORDAN: The only thing I'd say here is is we
8 initially touched upon briefly at some point, you know, that
9 it would be a verdict against them, but they'll try to come
10 back at some point, whether they still try to do something
11 with the insurance company or otherwise, but this is actually
12 a unique situation where, you know, this verdict could be,
13 you know, something borne upon them. So I mean that's --
14 that is somewhat a distinction here, but I don't -- I hope we
15 don't get into that and I don't expect to, but that would be
16 a somewhat different scenario in this case as opposed to most
17 others.

18 THE COURT (BROWN): Right. All right.

19 MR. RIORDAN: And -- and just forget 12. There were
20 some other things -- well, I guess part of it is that he
21 referenced the fact of stopping here and it sounds like they
22 still want to get this allegation of he's there for drug-
23 seeking activity. The only person that the witnesses told me
24 had filled out their mind with that is a fellow I got in to
25 depose and he said he didn't -- he didn't say that.

1 So I mean, again, I don't know what else to do with that
2 other than saying, you know, it shouldn't -- that shouldn't
3 be part of what comes in.

4 But in reality, Judge, I mean part of that -- it's
5 almost, hey, because of that, the trooper is going to say,
6 hey, because of all this, I went and checked out myself at
7 the house and he didn't have anything. So I'm not that
8 opposed to it, but it was just something that was raised. I
9 think this was a carryover from last time. It was a bit of a
10 concern that they want to make that -- that allegation. Now,
11 it's a bigger concern when they want to bring in, you know,
12 arrests and/or convictions for former instances.

13 THE COURT (BROWN): Anything, Mr. Willey?

14 MR. WILLEY: I'm not sure what he's arguing.

15 THE COURT (BROWN): About the fact that he stopped at
16 the trailer park looking for drugs.

17 Isn't that what you argued, Mr. Riordan?

18 MR. RIORDAN: Yes. Instead -- instead of looking for
19 the tire, it sounds like they still want to make that
20 allegation.

21 MR. WILLEY: Yeah. But again, I think it goes to his
22 credibility. I mean the fact that he had been to the trailer
23 park before, the guy wasn't there, he says he's coming back
24 for an air compressor. Clearly, he's not going there for an
25 air compressor based on --

1 THE COURT (BROWN): Now, hold on. Now, how do you know
2 that?

3 MR. WILLEY: Well, the facts will show that. I'm not
4 going to tell my trial strategy, but the facts -- and that
5 will come before, I think importantly, but it's -- it's
6 pretty clear from the evidence that there was not a need for
7 an air compressor at that point in time. And all the --

8 THE COURT (BROWN): I mean I -- unless there's -- I mean
9 -- I'm sorry. Go ahead. Go ahead.

10 MR. WILLEY: Well, you know, too, I cannot -- I cannot
11 get up and say, obviously, in opening or otherwise, he
12 stopped to get drugs. Okay?

13 THE COURT (BROWN): All right.

14 MR. WILLEY: But when he tells a story and says I
15 stopped because I needed air in the tire and we go through
16 all of that and it becomes evident that he didn't stop to get
17 air in the tire, I'm entitled, I believe, to explore other
18 reasons that he may have stopped because those reasons are
19 why he put other people's lives in danger.

20 This was not a long stop. If it had been a long stop --
21 and, in fact, in his deposition, he said I was only going to
22 be there for about 10 minutes. That's why I didn't put the
23 triangles out. He would have had triangles out around the
24 curve to let people know. This was a quick stop and go.
25 Okay?

1 If you're -- and I'm not going to get into the whole
2 thing, but if you're going to put air in a tire, you're going
3 to be there more than 10 minutes, particularly when you've
4 got to walk up into the trailer park, talk to the guy, haul
5 an air compressor down, and fill up an 18-wheeler tire.
6 Okay? It's not a compact tire.

7 So the idea that this air compressor was why we're there
8 is just not accurate, and it goes to credibility. And the
9 whole case is about credibility. It's a contested liability
10 case. It's a he said/she said. What happened? And so I
11 think it's relevant.

12 THE COURT (BROWN): Anything in response, Mr. Riordan?
13 I mean I'll listen to it and we'll kind of -- I'm not going
14 to allow you to insinuate or speculate without more. Does
15 that make sense? I don't -- I don't think that's proper.

16 MR. WILLEY: Okay.

17 THE COURT (BROWN): You may -- you may -- if you don't
18 have any good grounds for it, I don't think it comes in.
19 Okay?

20 MR. WILLEY: I've got more than what I've just told you.

21 THE COURT (BROWN): Well, I guess I'll be the judge of
22 that at the appropriate time.

23 MR. WILLEY: That's right.

24 THE COURT (BROWN): All right. Anything else?

25 MR. RIORDAN: No, Your Honor.

1 APRIL 24, 2018

2 (WHEREUPON, the proceedings resumed at 9:14 a.m.)

3 THE COURT (BROWN): All right. Anything further from
4 plaintiff's counsel as it relates to, I guess, defendant's
5 criminal and traffic citations?

6 MR. WILLEY: Unless Your Honor has any questions of me
7 based on the memo, I don't -- I don't have any additional
8 argument at this time.

9 THE COURT (BROWN): All right. Mr. --

10 MR. RIORDAN: May it please the Court.

11 Your Honor, we do have issue with just about all of it.
12 With the memo, the only thing that I got in regard to
13 certified convictions were the three indictments that I have.

14 THE COURT (BROWN): Three indictments for what? I'm
15 sorry.

16 MR. RIORDAN: The indictment for -- and I thought Your
17 Honor may have the same thing.

18 THE COURT (BROWN): No, sir. Well --

19 MR. RIORDAN: There's an indictment for possession with
20 intent to distribute cocaine base. It is represented in this
21 memo as if that was a conviction. In fact, that case was
22 dismissed and, as you can see by the way that the indictments
23 are written, that what was done was it was changed to a plea
24 of generic conspiracy. He got a five-year YOA, suspended on
25 one years' probation. And so the only conviction really out

1 of that incident, even though there's two indictments here,
2 is a conspiracy.

3 There's a note -- I'm looking at page 4, and it's hard
4 to correspond those with what I have received in the packet.
5 There's a listing of possession of cocaine, not more than ten
6 years in jail.

7 THE COURT (BROWN): Mr. Riordan, pull -- I'm sorry to
8 interrupt you. Pull that microphone over to you or either --

9 MR. RIORDAN: I apologize.

10 THE COURT (BROWN): Or either hold your paper up like --
11 like this here.

12 MR. RIORDAN: And possession of cocaine that's listed on
13 here, again, the only -- there's no indictment that comes
14 with it in the packet. I look at his rap sheet and that case
15 was dismissed.

16 THE COURT (BROWN): Okay.

17 MR. RIORDAN: And so again, of the -- of the three
18 listed in the middle of page 4 as violations of 16-1, there's
19 only one and it's a generic conspiracy. And so, again, I
20 would -- I would argue prejudicial -- the prejudice of that
21 outweighs any probative value.

22 Dropping beneath that, they have one for -- they note it
23 as 55-12-10, leaving the scene of an accident, and they say
24 not less than one year. Well, I mean, again, we don't have
25 the conviction. You look on the rap sheet, that charge is

1 noted, but it's for when there's a personal injury involved,
2 and it does read that way.

3 He's actually charged with 12-20, which is just property
4 damage, and it reads just the opposite. Well, not the
5 opposite, but just one day less. It is no more than one
6 year.

7 And so, again, that in and of itself we think is -- is a
8 charge that should not be here. And at least to the extent
9 as they come in later to say these should be impeachable in
10 and of themselves via the statute, that's not the case. The
11 statute says it must be a charge in excess of one year. So
12 that one does not count either.

13 So those are the -- those are the criminal charges that
14 they note in response to him, but also they noted, again for
15 those two, the argument says these are admissible because --
16 now, again, only one of these is an actual conviction, but
17 they say it's because they constitute crimes of moral
18 turpitude. We changed the statute to get rid of moral
19 turpitude --

20 THE COURT (BROWN): Yeah.

21 MR. RIORDAN: -- for that very reason.

22 And so again, all of these -- the only one that is a
23 conviction -- and -- well, I take that back. The only other
24 -- and this may have been the other thing that I thought may
25 have been done because they write possession of cocaine.

1 There actually is -- they did include an indictment, but
2 the sentencing sheet is clear. It's done kind of funny and,
3 you know, the solicitors have a lot of discretion in what
4 they do, and at least my client, of course, says, hey, this
5 was handled. I was told this was all handled.

6 The sentencing sheet -- maybe they were confused because
7 it has 370 -- 44-53-370(b)(2) at the top, but then it clearly
8 changes it at the bottom that the sentence -- that the charge
9 is actually going to be for 370(d)(2). And they write in
10 there, I guess for sentencing purposes of the judge, to let
11 him know, hey, this is not -- this is possession of more than
12 one ounce of marijuana, 30-370(d)(2). If this is a first
13 offense, which we think it is and they don't have any
14 representation that it's other than that, it's only a six-
15 month offense.

16 And so again, not impeachable in and of itself, not a
17 crime of moral turpitude. And even if it was a second
18 offense, it would only be up to one year.

19 So all of those that they speak to we maintain should
20 not be admissible. That the prejudicial -- that the
21 prejudice of them outweighs any probative value.

22 We go back to the initial page, Your Honor, which lists
23 -- let's see -- well, criminal citations and convictions, and
24 I think some of these that we've just discussed are listed
25 within there.

1 You know, they've got two that are seatbelt violations.
2 These are not even moving violations in the commercial
3 driving world. Same thing. They've got two wheel and axle
4 load violations. And again, these are not -- we're not being
5 presented with certified convictions from the magistrate
6 court for all these traffic citations. They're basically
7 pulling them off the website and saying, hey, this is on
8 here, this is on here, and this is the first we've seen of
9 this.

10 And again, wheel and axle load violations -- those are
11 things that are not necessarily the responsibility of a
12 driver. He might be charged with as a driver, but those are
13 things with the loading that usually exists and will just
14 appear on here.

15 So what I thought we were going to argue are the things
16 that were talked about in the depositions. They did have a
17 copy that we provided back in September of his ten-year
18 driving history at that time. It does list a number of
19 accidents, but all of them -- there's five accidents. All of
20 them are in four-wheelers. None of them are commercial
21 loaded vehicles, and his dad knows there's some accidents,
22 knows some speeding tickets, but you know as far as
23 commercial loaded vehicles, he's driven with other companies,
24 safe driver. His CDL was -- was valid at the time of the
25 hire.

1 And that's where we're left, Your Honor. I would come
2 back to, again, this whole cause of action that they're
3 trying to raise here is going to be improper. I mean we've
4 got -- in this instance, there's no -- there's no expert
5 that's been named that will speak to any standard of care in
6 the trucking industry or the logging trucking industry,
7 however near you want to be, but there's none that's here.
8 They're not going to be able to establish that standard of
9 care.

10 And in this case -- and so we refer back to if they want
11 to do it by statutes, the only statute that's going to be of
12 import is the FMCSA 391.11, and it just speaks to general
13 qualifications of drivers, and he meets all of those. He's
14 got his CDL. It was valid at the time. He speaks English.
15 All these things are there.

16 And so with regard to this, again, I'd ask that these
17 not be allowed. I think there's a real question regarding
18 that entire cause of action, and I'd ask that we not go
19 forward with it. And again, unless there's some expert, who
20 has not been named, and even if there is now, you know,
21 again, we'd be prejudiced by that as well.

22 So that's kind of where we are with this at this point,
23 Your Honor, and I'd ask that they not be allowed to pursue
24 that cause of action and certainly not get into these things
25 in regard to hiring. I mean, again, they want to do it to

1 paint a bad picture and have that in their minds, whether the
2 cause of action survives or not.

3 And so if we get to the end of their case and they don't
4 have an expert and they can't establish a standard of care
5 for the industry, then that goes away. Well, you know, some
6 of the damage has already been done by the father
7 acknowledging, well, I knew of some of these things, but
8 again, the reliance is he was a qualified driver through
9 FMCSA at the time.

10 THE COURT (BROWN): Well, are these things that are
11 listed, Mr. Riordan, on his memo -- are they part of his ten-
12 year driving record?

13 MR. RIORDAN: A lot of them are not, Judge. Some of
14 them are. They've listed them differently. I had to go back
15 through and look at them. I mean they write it speeds --
16 again, I don't know what the website says. Driving at speeds
17 greater than reasonable. You know, these are some, you know,
18 traveling too fast for conditions, less than -- less than ten
19 miles per hour.

20 Again, I could go back. I know it's a commercial case,
21 but I mean these are -- these are to the extent, one, they
22 can't show that they have anything to do with commercial
23 motor vehicles, and I think there's a real distinction there.
24 That's what we'd ask, that the distinction be allowed,
25 because otherwise, you know, he's going to be allowed to

1 prejudice, you know, the decision dealing with the commercial
2 enterprise.

3 Speed has nothing to do with this case. I mean those --
4 that's the extent of the driving charges that they have are
5 some of these that -- again, seatbelt violations are not even
6 moving violations in the commercial world, but driving at
7 speeds -- this is not a speed case. It has nothing to do
8 with this case.

9 Obviously, I mean, in fact, the opposite is the case.
10 That's the whole point. He could have gone a little bit
11 faster and maybe cleared that scene in a few more seconds.

12 And so I think for all of those reasons, we'd ask they
13 not be allowed to pursue this -- this line of questioning
14 and/or attempted submission of these -- what they say are
15 citations and convictions based upon looking at a court
16 website.

17 THE COURT (BROWN): All right. Thank you.

18 Last word.

19 MR. WILLEY: Okay. Judge, the law is pretty clear and
20 it's in our memo, but the only things that we're required to
21 prove is that the employer knew or should have known that its
22 employment of a person created an undue risk of harm to the
23 public. A plaintiff may claim that the employer was
24 negligent in hiring, supervising or training the employer --
25 employee or that the employer acted negligently in entrusting

1 its employee with a tool that created an unreasonable risk of
2 harm to the public and, in this case, that's clearly what we
3 have.

4 THE COURT (BROWN): Well, let me ask you this. I mean
5 you've raised and Mr. Riordan has argued this here today.
6 You've got various charges on here that weren't convictions.
7 Do you have certified clocked copies of all of these
8 convictions?

9 MR. WILLEY: Your Honor, it's --

10 THE COURT (BROWN): Have you -- I'm sorry. Go ahead.

11 MR. WILLEY: Two separate issues. So on the drug
12 charges, he actually pled to them. So --

13 THE COURT (BROWN): I'm going to tell you right now I'm
14 not letting the drug charges in. I think it's clearly more
15 prejudicial than probative here; so I'm not letting the drug
16 charges in, but I certainly want you to -- whatever you want
17 to put on the record as it relates to that. It is not
18 probative, and I do think that those are more clearly
19 prejudicial than probative, and I'm not going to let the drug
20 charges stuff come in.

21 MR. WILLEY: And the only thing that I would ask Your
22 Honor is to reconsider that just based on the Green v. Hewitt
23 case, which is right on point. And in that case, it's an
24 adverse driver case who was convicted. In this case, we
25 actually have pleas, which are stronger than convictions, of

1 trafficking marijuana in 1983.

2 The trial court in that case ruled that it was
3 prejudicial to the subject collision, which occurred eight
4 years later in '91. The Supreme Court deemed the trial
5 court's error was reversible because the adverse driver's
6 prior crime was a breach of his duty to society as a whole.

7 And that's we have here. We don't have a man who is
8 using drugs on his own in his own home, not creating a harm
9 to anyone else. We have distribution. We have trafficking
10 of cocaine, which most people in their reasonable, you know,
11 common knowledge would argue is more dangerous than
12 marijuana.

13 THE COURT (BROWN): Well, in the Green case that you
14 cited -- and in fairness, I mean I haven't looked at the
15 case. I'm pulling it up right now, but was -- was drugs in
16 any way a proximate cause or in some way tied to the accident
17 that brought on this Green case?

18 Do you understand what I'm saying? What I'm getting at
19 is -- all right. If in the Green case -- and I see there are
20 some distinguishing -- a yellow flag here.

21 MR. WILLEY: Right.

22 THE COURT (BROWN): But in the Green case, was Hewitt or
23 whoever the defendant was -- you're going back to moral
24 turpitude again, which has been -- is done away with at this
25 point.

1 MR. WILLEY: Right.

2 THE COURT (BROWN): Okay. That's what Green talks
3 about.

4 MR. WILLEY: Well, moral -- moral turpitude as to an
5 individual defendant. What we're talking about here is
6 hiring, supervision, and retention.

7 THE COURT (BROWN): I gotcha. I understand that.

8 MR. WILLEY: And an individual's impact on society and
9 safety, particularly when you're entrusting them with a rig
10 such as this with logs hanging off the back of it, is
11 relevant. And in this case, it's our allegation that the
12 stop was a result of drug seeking. Now, whether or not that
13 evidence comes in is indifferent to the hiring charge.

14 THE COURT (BROWN): Well, let me ask this. And I'm --
15 say, for instance, the result of this accident was the
16 defendant was under the influence of drugs or alcohol. Okay?
17 And it's determined that that was the proximate cause or at
18 least some cause in fact of what brings us here today. And
19 on his record, he's got multiple DUI convictions. In that
20 situation, I think the defendant has got some problems there.
21 Do you understand what I'm saying?

22 MR. WILLEY: Yes, sir.

23 THE COURT (BROWN): So here, all of these violations of
24 what you've put in your memo -- listen, I understand they
25 raise some concerns. Okay? But the same point is -- I mean

1 in your argument is that no individual with a criminal record
2 should ever fall into the category of being able to be hired
3 and drive trucks.

4 Now, there's no prior accidents involving trucks.
5 There's no evidence of speed involved in this case. There's
6 just no same or similar type situations. And then I mean
7 even if it is, you get into some 404(b) stuff, but
8 regardless, do you understand? Do you understand what I'm
9 saying here? Which gives me some concern here.

10 MR. WILLEY: I do.

11 THE COURT (BROWN): Now, I'll look at the Green -- the
12 Green case again, but let me hear from you.

13 MR. WILLEY: The -- and the issue is when we're trying
14 to draw a distinction between the individual defendant and
15 the company, and all I'm focused on and talking about is the
16 hiring, retention, and supervision causes of action. Okay?
17 I'm not talking about -- if this were a case just against the
18 individual defendant, I don't think any of this necessarily
19 would come in. Okay?

20 But this case is dealing with hiring, supervision, and
21 retention, and when you have somebody who repeatedly -- this
22 isn't somebody who had, as in the Green case, one remote
23 incident eight years ago of trafficking marijuana. This is a
24 person who every single year has a traffic violation, a drug
25 violation that he's pleading guilty to, some sort of run-in

1 where he is endangering the safety of others.

2 And more importantly I think, when we have these wrecks
3 in four-wheel automobiles, that should raise the specter of
4 an employer even more because if you're unable to operate a
5 regular four-wheeled motor vehicle, is it reasonable then to
6 put you behind the wheel of an 18-wheeler loaded down with
7 logs traveling on the public roadway?

8 My argument would be that's less reasonable. In fact,
9 if one of these accidents or two of these accidents had to do
10 with an 18-wheeler, it might actually be less harmful than
11 these litany of violations, which were by the way produced by
12 Mr. Riordan. He produced the driver's record to us. Year
13 after year after year, driving greater than speeds
14 reasonable, conspiracy, driving while --

15 THE COURT (BROWN): Well, stop. And I -- and I say stop
16 because you mentioned speed. Is speed in any way involved in
17 this case? Is conspiracy in any way involved in this case?

18 MR. WILLEY: Conspiracy -- conspiracy and speed are not
19 directly involved in this case, but they are relevant as to
20 whether or not the individual should have been hired and
21 allowed to operate the mechanism of harm in this case in the
22 first instance, which is the 18-wheeler.

23 What we have is a history of bad decision-making by this
24 individual as it relates to operating motor vehicles, as it
25 relates to violating the law as related to drugs, and in this

1 case bad decision-making is what is at issue.

2 What he did was made a bad pullover, obstructing the
3 roadway, failed to put out cones, which are required, or
4 triangles or flares, something to warn the public. Went up
5 into a trailer park for a period of time without trailer
6 lights illuminated and, as a result, people were
7 catastrophically injured. This is a history of bad decision-
8 making.

9 Were all of the decisions exactly the same? No. But
10 the case law doesn't require that when you're dealing with
11 hiring, retention, and supervision that the individual have
12 committed exactly the same --

13 THE COURT (BROWN): I know.

14 MR. WILLEY: -- decision, act or failure.

15 THE COURT (BROWN): All right. Mr. Riordan, let me ask
16 you this. How can one maintain such a cause of action?

17 MR. RIORDAN: I think he's got to have an expert to come
18 in and establish these are the industry standards.
19 Otherwise, again, we're back at the statute. The statutory
20 violation, if it existed, would be back to FMCSA. That might
21 be a way to look at the standard and he -- and he -- and he
22 meets all those standards. He's a -- he's a valid CDL
23 driver.

24 And I just want to make sure. I mean he keeps talking
25 about drugs. Again, from all of these -- all that they've

1 put here and there, we're only talking about one drug
2 conviction. It's for a six-month offense at most and,
3 actually, the disposition is a \$200 fine for marijuana, which
4 is now legal in I don't know how many states. I mean that's
5 what we're talking about.

6 THE COURT (BROWN): All right. Well -- well, this is
7 what I'm going to do. I'm going to look at the Green case
8 that you've cited in your memo. I did not look at that last
9 night or this morning.

10 I'm not going to allow you to argue that in opening
11 statements until I make a ruling on it, and it will be
12 dependent upon my ruling as to whether or not I allow you to
13 get into it later in the trial.

14 MR. WILLEY: And if you -- if you would, Judge, during
15 that break also look at the James v. Kelly Trucking case.

16 THE COURT (BROWN): Okay.

17 MR. WILLEY: Because I think that's relevant to the
18 standard of care. I think it's pretty clear we're not
19 required to have an expert. So --

20 THE COURT (BROWN): All right. The other couple issues.
21 As far as the negative inference of not calling witnesses, I
22 think that's going to go to -- we'll just have to see how
23 that plays out, I think. Okay?

24 You know, certainly, if it's a doctor or somebody that
25 falls within the purview of this Davis v. Sparks case -- and

1 I tell them from the outset is not evidence in this case.

2 Okay?

3 So I mean it would be one thing if at the end of your
4 opening statement Mr. Riordan could get up and say, Judge, we
5 move for directed verdict on the negligent hiring issue
6 because they haven't put up any evidence on it. That would
7 be a problem. Okay? But it's not. He can't do that. So as
8 the evidence unfolds, you know, we'll see where we go from
9 there. All right?

10 All right. Anything else before I bring the jury out
11 from the plaintiff's counsel?

12 MR. WILLEY: No, sir.

13 THE COURT (BROWN): Defense counsel?

14 MR. RIORDAN: No, sir, not at this time.

15 (WHEREUPON, there was a pause in the proceedings, after
16 which the proceedings resumed as follows.)

17 THE COURT (BROWN): Let me ask you this, plaintiff's
18 counsel. In the Green v. Hewitt case that you cite here,
19 which is a 1991 case, was that case not in essence to some
20 extent overruled by State v. Bryant?

21 I mean in Green v. Hewitt, it said the trial court
22 committed reversible error because it was -- it says crimes
23 of moral turpitude, which are admissible to impeach
24 credibility of a witness, involve a -- involve acts of
25 baseness, vileness, or depravity, and private and social

1 just from the standpoint of -- I just think those, in and of
2 itself, does not necessarily under the law constitute what
3 you're asking here. Okay?

4 MR. WILLEY: And I'll -- I'm not sure in this particular
5 case what the insurance company required in order to insure
6 him.

7 THE COURT (BROWN): And I'm not either.

8 MR. WILLEY: And, you know, I don't know. What we do
9 know from the deposition testimony in the record of the case
10 is that this company did not put together or maintain any
11 kind of application or employee files.

12 So my guess is the insurance company didn't require a
13 whole heck of a lot in the term -- in terms of paperwork.
14 Sometimes in these trucking cases, we see they want to see
15 the driving record.

16 THE COURT (BROWN): Absolutely.

17 MR. WILLEY: They want to see everything.

18 THE COURT (BROWN): Absolutely.

19 MR. WILLEY: And I don't think -- this insurance company
20 is one I haven't dealt with before, candidly. It's a smaller
21 carrier. So I'm not really sure what -- what they require.

22 I do just want to make sure we're clear though that on
23 the intent to distribute marijuana and the conspiracy, those
24 are pleas, not indictments, and Mr. Barr pled guilty to
25 those. And I -- and I have those. Your Honor can take a

1 look.

2 And with respect to the accident and driving history, in
3 his deposition he admitted to those things. So these are not
4 things where --

5 THE COURT (BROWN): Well, I mean do they carry more than
6 a year?

7 MR. WILLEY: Well, again, I don't think it's required
8 that they carry more than a year when we're talking about
9 negligent hiring.

10 When we're talking about against the individual
11 defendants, it's a different situation, but in this case, the
12 negligent hiring can be twofold. One, he knew and didn't
13 care or, two, he failed to find out and failed to inquire.

14 And what we have in this case -- I think what the
15 evidence will show is that the driving defendant, Brandon
16 Barr, has a history of lying, not being forthcoming. I mean
17 he says in his deposition, I lie, that's just what I do.
18 That -- you know, that -- that's his statement.

19 His father, who obviously has a relationship with his
20 son, would know that. And so whether or not the father
21 inquired into his past history, he admits in his deposition I
22 knew about some of the driving. I knew about the accidents.

23 I think he said he didn't know about the -- about the
24 drugs, but the question is whether or not a reasonable
25 operator -- motor carrier operator would inquire into those

1 things, which are publicly available. I mean we pulled them
2 right off the public index. It's not a difficult thing to
3 find.

4 And so that's the real question. And they are pleas,
5 which are stronger than convictions because he admitted he
6 did it. He admitted he put the public in danger. And
7 they're closer in time. I mean we're talking about less than
8 two years, whereas in the Green case and other cases, we're
9 talking about 8 to 10 years.

10 THE COURT (BROWN): Eight years.

11 MR. WILLEY: Yeah.

12 THE COURT (BROWN): Well, my thing is -- and the reason
13 I'm ruling the way I'm ruling, if he had been under the
14 influence of drugs or alcohol, if he had prior convictions
15 for drug and alcohol -- I mean he's got -- he's clearly got
16 drug convictions on here. I don't know what it ended up
17 being.

18 MR. RIORDAN: Your Honor, again, it's just -- it's just
19 the one marijuana conviction.

20 THE COURT (BROWN): Okay.

21 MR. RIORDAN: A \$200 fine.

22 MR. WILLEY: And it's --

23 THE COURT (BROWN): But to say that someone's negligent
24 in hiring an individual and putting them behind the wheel of
25 an automobile with a marijuana conviction -- and I know

1 there's more. I know there's more. I don't think it's
2 proper.

3 So I'm not going to let you go into that right now. I'm
4 not saying -- you know, that could change. If somebody opens
5 the door or something, we'll cross that bridge, but I'm not
6 going to allow you to go into that in your opening right now.
7 Okay?

8 Anything else?

9 MR. RIORDAN: No, Your Honor.

10 THE COURT (BROWN): Bring me the jury, please, ma'am.

11 MR. RIORDAN: Can I see if Brandon is outside? He's not
12 here. I'm sorry.

13 THE COURT (BROWN): Who?

14 MR. RIORDAN: Our defendant.

15 MR. EARLY: Our defendant.

16 THE COURT (BROWN): Oh, okay. Yes, sir.

17 (WHEREUPON, the jury entered the courtroom at 9:55 a.m.)

18 THE COURT (BROWN): Good morning, ladies and gentlemen.
19 I hope you all had a nice evening yesterday and are ready to
20 proceed here this morning. Before we begin, I'm going to ask
21 my clerk to swear you all.

22 Madam Clerk, would you swear the jury, please, ma'am?

23 THE CLERK: Okay. Please stand and raise your right
24 hand.

25 (WHEREUPON, all jurors complied.)

ISABELLE MACKENZIE - DIRECT BY MR. HODGE

1 crotch rocket. I'm not laying down.

2 I sit really straight on Cher because that's how she is.
3 The floorboards are straight and like this; so I'm like this
4 on my bike and I went, trees sideways? And I did this, this
5 movement towards the trees sideways, and then I don't
6 remember. I don't remember the truck in front. I don't
7 remember. I don't remember anything else. I don't know what
8 the -- the mind plays tricks on me.

9 Q: So the last thing you remember is seeing trees sideways
10 and then trying to make some kind of defensive maneuver?

11 A: Yes.

12 Q: Okay. So you tried to avoid those trees that you saw
13 sideways?

14 A: I would assume. Absolutely. Who wants to hit -- you
15 don't want to hit anything on a motorcycle. That hurts.

16 Q: Now, what's the next thing you remember after ducking
17 yourself down?

18 A: I remember being -- laying down in the mud and thinking
19 why am I seeing nothing because by then it was just dark
20 overhead, just dark, and I'm thinking what is going on, why
21 am I here, what is happening. And someone took my hand, took
22 my gloves off, and held onto my hand and I said, okay, now
23 I'm thinking if I'm on my back, I'm not sitting on my bike.
24 Where's my bike? Where's my bike, I asked, and they said
25 it's right there by your feet and I said, good, turn her off.

ISABELLE MACKENZIE - DIRECT BY MR. HODGE

1 A: Well, my only family in South Carolina is my wonderful
2 husband and my darling daughter.

3 Q: And they came to see you?

4 A: They did come and see me. I think they were in the ER,
5 yeah.

6 Q: Okay.

7 A: Yeah. And they came to see me every day, yeah.

8 Q: What was it like the first time that you saw Butch in
9 the hospital?

10 A: Well, I was so distraught. My thought was what
11 happened, what happened, what happened. I don't know what
12 happened. I was on my bike and then I wasn't. What
13 happened?

14 Q: Did he do his best to comfort you?

15 A: Oh, absolutely.

16 Q: That's good. And the same thing with Mack as well when
17 you saw her?

18 A: Yeah.

19 Q: Did she try to comfort her mama?

20 A: She did. She did.

21 Q: The roles had reversed?

22 A: She's a -- yeah. She's a good -- she's -- she likes to
23 make jokes and make light of things so that she'll make me
24 laugh and as soon as she makes me laugh, well, that makes her
25 day.

ISABELLE MACKENZIE - CROSS BY MS. EARLY

- 1 A: Yes.
- 2 Q: How far away were you from home at that point?
- 3 A: A mile and a half, two miles.
- 4 Q: So you were familiar with that blind curve?
- 5 A: Yes.
- 6 Q: And you knew that there was an entrance and an exit to
- 7 the trailer park as you were coming around that curve?
- 8 A: Yeah.
- 9 Q: Okay. I recall your testimony where you couldn't
- 10 remember if you had accelerated, stayed the same speed or hit
- 11 your brakes?
- 12 A: I don't remember anything after gassing up.
- 13 Q: And where do you remember gassing up at?
- 14 A: Right in town. It's the little gas station before you
- 15 hit -- before -- before it becomes -- it goes from four lanes
- 16 back to two before Carolina Hospitals towards town.
- 17 Q: So about how far would you say that was from the curve,
- 18 that blind curve?
- 19 A: Five miles.
- 20 Q: You don't remember anything from gassing up --
- 21 A: Nope.
- 22 Q: -- to what point?
- 23 A: To trees sideways and making a movement like this and
- 24 then on the ground.
- 25 Q: So everything you know about the accident was told to

ISABELLE MACKENZIE - CROSS BY MS. EARLY

1 you?

2 A: Correct.

3 Q: How did you know there was a truck involved?

4 A: I was told.

5 Q: And who told you that information?

6 A: I don't remember. It was at the hospital.

7 Q: You were told that there was a truck involved when you
8 were at the hospital?

9 A: Yep.

10 Q: Immediately after the accident, you said that you were
11 telling everybody you were okay, you were fine?

12 A: No. I was telling my daughter, who had screamed
13 hysterically when she saw me, that I was okay. Not everybody
14 else.

15 Q: But it was heard by other people at the accident?

16 A: If they weren't deaf, sure.

17 Q: And you handed your phone to your daughter after the
18 accident?

19 A: Yes. So that she could text Elsie and Charlene and
20 everybody else who was at the party to tell them that, no, I
21 didn't make it home.

22 Q: And you also asked someone to make sure your motorcycle
23 was okay?

24 A: Yes.

25 Q: And at any point did you ever try to get up from after

1 1:45 -- 1:45 -- and we will resume the trial of this case as
2 promptly at that time as possible. You all have a nice
3 lunch. I'll see you back here shortly.

4 (WHEREUPON, the jury exited the courtroom at 12:25 p.m.)

5 THE COURT: All right. Anything from plaintiff's
6 counsel before we break?

7 MR. WILLEY: Have a good lunch.

8 THE COURT: Defense counsel?

9 MR. RIORDAN: No, Your Honor.

10 THE COURT: Thank you. You as well.

11 (WHEREUPON, there was a break in the proceedings from
12 12:26 p.m. until 1:56 p.m., after which the proceedings
13 resumed as follows.)

14 THE COURT (BROWN): All right. Is plaintiff's counsel
15 ready to proceed?

16 MR. WILLEY: Yes, sir.

17 THE COURT (BROWN): Defense counsel?

18 MR. RIORDAN: Your Honor, I think we need to revisit
19 some of the issues we talked about earlier if they're
20 planning on calling either one or both of my clients. I
21 don't know that, but they're flashing up -- flashing up depo
22 transcripts, it seems as if. Again, I don't know the
23 purposes, you know, on how they plan to do that. I mean my
24 understanding is you can ask a question and cross-examine. I
25 don't know about priming and putting up spots and screenshots

1 of a deposition transcript to the jury during the
2 questioning.

3 So I'd ask for some -- I guess some preview of what they
4 plan to do so I can stop it before it happens if it's
5 improper. It certainly seems improper if that's what the
6 plan is.

7 THE COURT: Plaintiff's counsel?

8 MR. WILLEY: I'll ask for a break at the appropriate
9 time once I lay the foundation for the issues that we
10 discussed earlier. When I get to that point in the
11 questioning, I'll let the Court know that we have a matter of
12 law we need to take up. Based on the questioning at that
13 point, I will be having additional argument.

14 I actually found another case, which reaffirms James v.
15 Kelly Trucking along the lines of what I was arguing earlier.
16 In the meantime, the Court of Appeals decision from 2017 that
17 we can get into --

18 THE COURT (BROWN): Do you want to give to me?

19 MR. WILLEY: Well, I don't have a printout of it. I
20 just found it when I -- I can give you the cite.

21 THE COURT (BROWN): Do that.

22 MR. WILLEY: It is an unpublished opinion, but it goes
23 through that same -- same reasoning in terms of the law, and
24 there it is.

25 And the portion specifically I'm dealing with is just

1 the part that talks about when an employer or trucker can be
2 held liable for negligent hiring. And that's -- that was in
3 the section that was highlighted. It just went up
4 highlighted, but it reasserts the law on the lines of what
5 was in the Green case.

6 And the Green case also dealt with issues of moral
7 turpitude, but it does reaffirm that standard. Just strict
8 negligence. Employer knew or should have known that
9 employing a specific person creates an undue risk of harm to
10 the public.

11 So any evidence that makes that more or less likely it's
12 our position would be admissible, and I think Your Honor will
13 see when we get to the first part of this questioning there
14 is going -- it's going to prove itself to be particularly
15 relevant when you see how little was done in this case.

16 THE COURT (BROWN): Well, I'll look at this case and get
17 my law clerk to print it.

18 MR. RIORDAN: With that, we're back to the initial
19 questioning of trying to utilize what they say are
20 convictions and pulling off of a computer screen. I've seen
21 no certified convictions other than the two we talked about
22 earlier, a conspiracy charge and a possession of marijuana
23 charge. I thought we had some talk about drugs, but again, I
24 didn't -- I didn't dare get up and object again in his
25 opening, but they've kind of set this up to still get back

1 into --

2 THE COURT: Well, I mean they can --

3 MR. RIORDAN: -- the drugs.

4 THE COURT: I'm sorry. Are you finished? I'm sorry. I
5 interrupted you.

6 They can prove a negligent hiring or at least the
7 elements of such other than what is on this memo. Now, you
8 brought up previously your belief or your argument was that,
9 Judge, they have not -- or they don't have an expert that's
10 going to come in here to testify to standard of care, which
11 is the statute. But you -- I don't remember the statute
12 section.

13 MR. RIORDAN: Referencing --

14 THE COURT (BROWN): But my point -- my question to you
15 is how is that different from any typical negligence cause of
16 action when it's alleged that a defendant has breached
17 failure to yield right-of-way, too fast for conditions, et
18 cetera? How is that any different?

19 MR. RIORDAN: Because I think, again, the point is we've
20 got it joined like this. That's the point. You get the
21 negligent hiring that becomes a factor if, in fact, you've
22 shown a breach of those statutes that you talk about because,
23 again, we'd always -- no matter what it is, it's always going
24 to be one recovery and they can -- they can -- they can link
25 those together, but again, having an expert, I think, is

1 record. Those -- these things were not talked about. And so
2 if you're talking about the driving record, again, if that's
3 the case, I'd ask that we restrict it to the violations that
4 existed in the year before employment, and there are none.

5 That's not what was asked in the deposition, and on a
6 lot of those -- on a lot of those, Brandon responded I don't
7 know or I don't remember. In fact, that was -- I think they
8 got frustrated when he said I don't remember, I don't
9 remember.

10 And that kind of gets back to the point of, in this
11 situation, I think it's incumbent upon them to show, if they
12 think it's going to be something to raise -- because once you
13 start raising it and asking about all these things in front
14 of a jury, they have these in their mind when we don't have
15 convictions that exist.

16 We don't have a certified conviction or other thing. I
17 mean I guess -- I told him if you don't remember, you don't
18 remember it. Ask them to show you the paperwork.

19 And again, as far as the driving record, that's why I
20 asked for purpose of FMCSA is a 12-month look back each year.
21 That's what you do. And here, in 2015, no violations existed
22 on the accident report.

23 (WHEREUPON, there was a pause in the proceedings, after
24 which the proceedings resumed as follows.)

25 THE COURT (BROWN): Mr. Riordan, have you read this

1 it -- is it --

2 THE COURT (BROWN): Well, let me ask you this. Say this

3 defendant takes the stand. You call him to the stand and you

4 question him about this and he denies every one of them. Do

5 the rules allow you by extrinsic evidence to get that

6 information in and do you have extrinsic information that's

7 -- that qualifies under our rules to even come in?

8 MR. WILLEY: Yes. I can impeach him.

9 THE COURT (BROWN): You've got certified clocked copies?

10 MR. WILLEY: Of the -- of the pleas, yes.

11 THE COURT (BROWN): Of everything that you're trying to

12 --

13 MR. WILLEY: Not of everything.

14 THE COURT (BROWN): -- get in here?

15 MR. WILLEY: I have them of the pleas and I have the

16 record that they produced that was actually part of his

17 application packet to this employer. So this is what they

18 considered. Even if they --

19 THE COURT (BROWN): What who considered?

20 MR. WILLEY: What the employer considered because it's

21 part --

22 THE COURT (BROWN): His --

23 MR. WILLEY: -- of what --

24 THE COURT (BROWN): His dad?

25 MR. WILLEY: Well, that's the employer. Yeah, it's his

1 dad, but it's the employer. I mean I understand the odd fact
2 that his dad may have overlooked it or not considered it, but
3 this is what was part of his application in order to be able
4 to drive a vehicle.

5 THE COURT (BROWN): Just because somebody produces a
6 document in discovery doesn't mean it's admissible.

7 MR. WILLEY: Right, but he's admitted it all in his
8 deposition. I mean he's admitted it. So if he now is going
9 to recant and say, no, I didn't do any of that, the jury is
10 entitled to consider his credibility on the issue, having
11 already admitted it.

12 MR. RIORDAN: Your Honor, that was my point. Again,
13 maybe -- maybe we need to compare notes on it.

14 MR. WILLEY: And if he perjures himself, that's another
15 issue.

16 THE COURT (BROWN): Do what, Mr. Riordan?

17 MR. RIORDAN: I mean I'm looking at, like, three pages
18 of deposition.

19 Do you remember this?

20 No.

21 Do you remember this?

22 No.

23 Do you remember this?

24 No.

25 I mean that's been my point throughout and, again, with

1 bringing up new things today that were not talked about then.

2 THE COURT (BROWN): Well --

3 MR. RIORDAN: And again, when we talk about the driving
4 record under 391(11), you're looking back for a 12-month
5 period. He's mentioning things that apparently exist on the
6 website. We don't have a -- we don't have a certified
7 conviction of those, just pulling them up.

8 The actual driving record for 2015, four accidents --
9 excuse me -- three accidents, contributed on two, did not
10 contribute on the other, and there's no violations written on
11 any of them. None of the violations appear on the driving
12 record.

13 THE COURT (BROWN): All right. Well, let's do this.
14 Let's go ahead and bring the jury out. When we get to the
15 point we need to take a break, we'll take a break and I'll
16 look at it some more. All right?

17 Anything before I bring the jury out?

18 MR. WILLEY: No, sir.

19 THE COURT (BROWN): Mr. Riordan, anything before I bring
20 the jury out?

21 MR. RIORDAN: Not from me, Your Honor.

22 THE COURT (BROWN): Bring me the jury, please.

23 THE BAILIFF: Yes, sir.

24 THE COURT (BROWN): While we're waiting, Mr. Willey,
25 have you looked at 56-5-6160?

1 MR. WILLEY: I'm aware of that dealing with convictions.
2 THE COURT (BROWN): Sir?
3 MR. WILLEY: I'm aware of that statute section dealing
4 with convictions.
5 THE COURT (BROWN): Evictions?
6 MR. WILLEY: Convictions --
7 THE COURT (BROWN): Okay.
8 MR. WILLEY: -- under this Code section shall not be
9 used for liability proving in a case, and that's not why
10 we're using them here. We're using them --
11 THE COURT (BROWN): It says no evidence of conviction of
12 any person for any violation of this -- hold on a minute.
13 Hold on just a minute.
14 THE BAILIFF: All right.
15 THE COURT (BROWN): It says no evidence of conviction of
16 any person for any violation of this chapter shall be
17 admissible in any court in any civil action.
18 MR. WILLEY: I think there's not -- I think when you go
19 look at that, what that is -- what that deals with is for
20 proving liability where a conviction was had. However, what
21 we do have is two things. One, the pleas can come in because
22 it's a statement of a party opponent. That's what we have
23 here is pleas. We don't have convictions. Mr. Riordan keeps
24 saying convictions. They're not convictions. They're pleas.
25 In every instance, he went before the Court and pled guilty.

1 I did it. So that's the distinction.

2 The other distinction is we are not bringing those in to
3 prove liability in the actual wreck in this case. We're
4 bringing them in to show proof of negligent hiring.

5 THE COURT (BROWN): Okay.

6 MR. WILLEY: Which is a different situation, but I am
7 aware of that.

8 THE COURT (BROWN): All right. Bring me the jury,
9 please.

10 THE BAILIFF: Yes, sir.

11 (WHEREUPON, the jury entered the courtroom at 2:30 p.m.)

12 THE COURT (BROWN): All right. Ladies and gentlemen, I
13 hope you all had a nice lunch. You'll see we've got two
14 judges up here now. All right? I needed some help; so they
15 sent him down here to help me out.

16 No. All joking aside, this is Judge Kinlaw. He is from
17 Greenville. Okay? He is a newly-elected Circuit Court judge
18 and when we as judges are elected to the bench, they send us
19 out to sit with other judges for a period of time. Okay?
20 Before they just cut us loose. You don't just -- one day
21 you're not a lawyer and the next day you get elected and they
22 say go judge. They don't do that. Okay?

23 So he's going to be sitting with me the rest of this
24 week and the rest of this trial. So if you're wondering why
25 he's here, that's why he's here. You may see he and I

CHARLES BRANDON BARR - DIRECT BY MR. WILLEY

1 talking about matters as they go on up here.

2 So I just wanted to give you a little info as to what
3 was going on and why he was here with me. In fact, I may
4 turn -- turn it over to him before it's all said and done.

5 But anyway, we're ready to proceed this afternoon. At
6 this time, I am going to recognize plaintiff's counsel. Call
7 your next witness, please.

8 MR. WILLEY: Yes, sir. The plaintiff calls Charles
9 Brandon Barr.

10 THE CLERK: Please place your left hand on the Bible and
11 raise your right hand. Do you swear or affirm the testimony
12 you give in this case will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE DEFENDANT: Yes, ma'am.

15 THE CLERK: Please be seated and state your name for the
16 record.

17 THE WITNESS: Charles Brandon Barr.

18 CHARLES BRANDON BARR, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WILLEY:

22 Q: Mr. Barr, do you go by Brandon?

23 A: Yes, sir.

24 Q: And you are the -- one of the defendants in this case;
25 correct?

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1 THE COURT (BROWN): -- what he's going to -- what you're
2 going to ask him and what he's going to say.

3 MR. WILLEY: I have a concern with that.

4 THE COURT (BROWN): Well, if you want me to rule on it,
5 I'm going to let you proffer it. And if I'm wrong, it'll be
6 in the record and we'll go from there. Proffer the testimony
7 and let me rule on it.

8 MR. WILLEY: All right.

9 PROFFERED DIRECT EXAMINATION

10 BY MR. WILLEY:

11 Q: Mr. Barr, if your dad had asked you about your criminal
12 record and driving history, you would've told him the truth?
13 You just told us that; correct?

14 A: Yes, sir.

15 Q: And you would agree with me that your driving record and
16 criminal record are fairly extensive?

17 A: I don't recall.

18 Q: What -- what don't you recall? That they're extensive
19 or you don't recall specific things --

20 A: My driving record.

21 Q: -- because --

22 THE COURT (BROWN): Hold on a minute. Hold on a minute.
23 Let him finish his question.

24 THE DEFENDANT: Yes, sir.

25 THE COURT (BROWN): And then you can --

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1 THE DEFENDANT: I'm sorry.

2 THE COURT (BROWN): Okay. That's all right. Go ahead.

3 BY MR. WILLEY:

4 Q: Do you not recall that the record is extensive or do you
5 not recall specific incidences within the record?

6 A: I don't recall specific incidents --

7 Q: Okay.

8 A: -- in the record.

9 Q: You don't recall any specific incidents?

10 A: No, sir.

11 Q: Or you don't recall certain specific incidents?

12 A: I'd -- I'd have to see. I'd have to see it on the
13 paper.

14 Q: Okay. Do you remember in your deposition in December of
15 2017 where I asked you -- where you were asked by Mr. Hodge
16 do you recall being arrested for a drug charge in March of
17 2012?

18 MR. RIORDAN: Do you --

19 A: What page is that on?

20 MR. RIORDAN: To some extent, do you need objections in
21 this part? This would be another part regarding relevancy.
22 He's talking about post-accident.

23 THE COURT (BROWN): Well, I'm --

24 MR. RIORDAN: That's -- and I was going to get to it.

25 That is the stuff that he does talk about. The other stuff

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1 is all --

2 THE COURT (BROWN): I'm -- right now, since the jury is
3 out of here, I'm viewing all of this as objectionable at this
4 point. Okay?

5 MR. RIORDAN: All right. Thank you, Your Honor.

6 THE COURT (BROWN): And whose -- is this your stuff that
7 keeps popping up on here, Melissa? HBO and --

8 THE CLERK: It's this --

9 MR. WILLEY: No. That's when -- that's when the thing
10 is turned off. It's only on yours. It's not on theirs.

11 THE CLERK: It's not on theirs.

12 THE COURT (BROWN): It's on hers too.

13 MR. WILLEY: Yeah. It's not --

14 THE CLERK: It's not on the jurors'.

15 THE COURT (BROWN): Can you cut that off? That's
16 through our software here?

17 THE CLERK: Uh-huh.

18 MR. WILLEY: Yeah. It's the setting where they have it
19 to cut off the jurors', but nobody else's to get to the --

20 THE COURT (BROWN): Good. I don't want the jury over
21 there looking and seeing Netflix and Peter Rabbit and --

22 THE CLERK: Yeah. I don't want that.

23 MR. WILLEY: Yeah. It doesn't show up on theirs.

24 THE COURT (BROWN): Anyway, go ahead. I'm sorry.

25 MR. WILLEY: All right.

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 BY MR. WILLEY:

2 Q: Mr. Barr, do you remember in your deposition where you
3 were asked do you recall being arrested for a drug charge in
4 March of 2012? What was your response?

5 A: What page was that on?

6 Q: You don't remember your response?

7 A: No, sir.

8 Q: Well, let me ask you now. Do you recall being arrested
9 for a drug charge in March of 2012?

10 A: No, sir.

11 Q: As you sit here today, you don't recall that?

12 A: No, sir.

13 Q: Okay. And is that because Mr. Riordan told you not to
14 recall any question I asked you about your criminal record?

15 A: No, sir.

16 Q: You're under oath.

17 A: That's fine. No, sir. I don't know.

18 Q: You don't recall?

19 A: No, sir.

20 Q: And he didn't tell you to answer you don't recall to any
21 of these questions?

22 A: I don't recall.

23 Q: You don't recall what he told you?

24 A: I don't recall any of it. I don't know what you're
25 talking about.

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1 Q: So you're sitting here and you're just a blank slate?

2 A: No, sir. I don't know anything about this.

3 Q: Okay. Well, go to page 39, please, sir, and I'll show
4 it to you. Are you there?

5 A: Yes, sir.

6 Q: Okay. Line 17. Do you recall being arrested for a drug
7 charge in March of 2012? What was your response?

8 A: What -- what number was it again, sir?

9 Q: Line 17 is the question, line 19 is your answer. Do you
10 recall being arrested for a drug charge in March of 2012?

11 A: I said yes.

12 Q: All right. And then you were asked on page 40 do you
13 recall being arrested for possession of cocaine in January of
14 2012, and what was your response?

15 A: No.

16 Q: All right. And then the question was do you dispute any
17 of these charges that we've talked about today actually
18 occurred, and what was your response on line 17?

19 A: No.

20 Q: Okay. And I said, no, you don't dispute -- or Mr. Hodge
21 said, no, you don't dispute it, and what was your response?

22 A: No.

23 Q: All right. And in fact, we have certified clocked
24 copies of -- do you recall in 2012 that you actually pled
25 guilty to conspiracy as a result of that drug charge?

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1 A: No.

2 Q: You don't recall pleading guilty to that?

3 A: No, sir.

4 Q: Okay.

5 A: Not to no drug charge, no.

6 Q: How about to a conspiracy charge?

7 A: I'd have to see it, man.

8 Q: Okay. Is that your name on that document?

9 A: Yes, sir.

10 Q: Your identifying information?

11 A: Where on here does it say anything about --

12 Q: Is it -- is this your identifying information? Your

13 date of birth is February 19, 1987?

14 A: Yes, sir.

15 Q: Okay. Is that your Social Security number?

16 A: Yep.

17 Q: All right. And on the front of this document, what was

18 the indictment for in the case? What does it say?

19 A: Conspiracy.

20 Q: Okay. And on the sentence sheet, which box is marked?

21 Convicted of or pleads?

22 A: Where at now? Right here?

23 Q: Right here.

24 A: Pleads.

25 Q: Does that refresh your memory at all?

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 A: No, sir.

2 Q: Do you remember paying a fine associated with that?

3 A: No, sir.

4 Q: What about in 2013, November, possession with intent to
5 distribute marijuana? Do you recall that charge?

6 A: No, sir.

7 Q: Do you recall that indictment?

8 A: No, sir.

9 Q: Okay. Do you recall showing up in court for that?

10 A: No, sir.

11 Q: All right. On page 2 of that, is that a photograph of
12 you in 2013?

13 A: Yes, sir.

14 Q: Okay. And in 2013, is that where you lived?

15 A: Yes, sir.

16 Q: All right. And is that your Social Security number?

17 A: Yes, sir.

18 Q: All right. And on that and the sentencing sheet, is the
19 box for convicted of or pleads marked?

20 A: Pleads.

21 Q: Okay. Now, having seen that, do you remember in 2012 or
22 2013 pleading to either of those?

23 A: No, sir.

24 Q: Okay. Do you -- do you dispute them after having seen
25 the proof?

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 A: No, sir.

2 Q: Let me ask you --

3 MR. RIORDAN: Which one was that on? I'm sorry.

4 MR. WILLEY: 2012 -- 2013.

5 THE COURT (BROWN): And what was the --

6 MR. WILLEY: The conspiracy and possession with intent
7 to distribute marijuana.

8 THE COURT (BROWN): All right. What was --

9 MR. RIORDAN: On a sentencing sheet or --

10 MR. WILLEY: The indictment and the sentencing sheet are
11 certified from the court.

12 THE COURT: All right. And he pled to the PWID
13 marijuana?

14 MR. WILLEY: To both. Yes, sir.

15 THE COURT (BROWN): And the conspiracy?

16 MR. WILLEY: Yes, sir.

17 THE COURT (BROWN): All right. Okay.

18 MR. RIORDAN: Conspiracy he pled to and possession of
19 marijuana, Your Honor.

20 MR. WILLEY: With intent to distribute.

21 MR. RIORDAN: To distribute?

22 MR. WILLEY: With intent to distribute.

23 THE COURT (BROWN): Can I see it?

24 MR. RIORDAN: I need to see that. I think I'm getting
25 different information. Possession of marijuana. It's a six-

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1 month and --

2 MR. WILLEY: No. It's more than an ounce.

3 MR. RIORDAN: -- it's a \$200 fine.

4 THE COURT (BROWN): Possession of marijuana is what he
5 pled to.

6 MR. WILLEY: Right. After being indicted for intent to
7 distribute, he pled it down. He can explain that.

8 THE COURT (BROWN): Well, you told me -- didn't you just
9 tell me he pled to PWID, possession with intent? That's what
10 you just said.

11 MR. WILLEY: That's what --

12 THE COURT (BROWN): It says possession of more than an
13 ounce.

14 MR. WILLEY: More than an ounce. Right.

15 MR. RIORDAN: Which is a six-month offense. It's not
16 PWID.

17 MR. WILLEY: Okay. Well, I mean here's the other one if
18 you want to take a look.

19 THE COURT (BROWN): And possession of a controlled
20 substance, Schedule I to V, first offense, is a six-month
21 offense.

22 MR. WILLEY: Okay.

23 MR. RIORDAN: And a \$200 fine.

24 MR. WILLEY: It's actually a little more.

25 THE COURT (BROWN): It was not correct when you were

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 telling me he pled to PWID.

2 MR. WILLEY: Okay. I apologize for that. Here's the
3 other one if you want to take a look at it, the third one.

4 THE COURT (BROWN): Criminal conspiracy, which that
5 carries up to five years.

6 MR. WILLEY: Yeah.

7 THE COURT (BROWN): And the charge of PWID cocaine base.

8 MR. WILLEY: Right.

9 MR. RIORDAN: Dismissed. That was -- that was the
10 charge that turned into the conspiracy.

11 THE COURT (BROWN): The conspiracy.

12 MR. WILLEY: Right.

13 THE COURT (BROWN): Okay.

14 MR. WILLEY: And that's --

15 MR. RIORDAN: A general conspiracy, not conspiracy to
16 distribute anything else.

17 MR. WILLEY: Which is the one he remembered about.

18 THE COURT (BROWN): Okay. Go ahead.

19 MR. WILLEY: Okay. All right.

20 BY MR. WILLEY:

21 Q: Mr. Barr, that conspiracy charge arose out of a dual
22 indictment. One was for possession with intent to distribute
23 cocaine base. Do you recall that?

24 A: No, sir.

25 Q: Do you ever recall having cocaine base on your person or

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 property?

2 A: No, sir.

3 Q: Okay. Do you recall that coming out as a result of a

4 traffic stop?

5 A: No, sir.

6 Q: Do you recall at that particular time being at

7 Stagecoach and John Paul Jones Roads near Effingham in

8 Florence County?

9 A: No, sir. I don't recall.

10 Q: You don't recall anything related to that charge at all?

11 A: No, sir.

12 Q: All right. But let me ask you is that your name on this

13 document?

14 A: Yes, sir.

15 Q: And is that your Social Security number?

16 A: Yes, sir.

17 Q: And having seen that, do you have -- do you dispute

18 that?

19 A: I don't recall. I don't -- I don't remember.

20 Q: Do you dispute it?

21 A: I don't -- I don't know. I don't know if I should

22 dispute it or not.

23 Q: Okay. I'm not asking if you should; I'm asking having

24 seen the document, do you believe the document itself is

25 incorrect or just that you don't recall?

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1 A: I don't recall.

2 Q: Okay. So you don't dispute that?

3 MR. RIORDAN: Which document is this? I'm sorry.

4 THE COURT (BROWN): Which document is that?

5 MR. WILLEY: This is --

6 THE COURT (BROWN): Why don't you mark every one -- mark
7 each one of those documents for identification. Mark each
8 one of them for identification so we know which document
9 you're talking about.

10 MR. WILLEY: All right.

11 THE COURT (BROWN): And so the record is abundantly
12 clear.

13 MR. WILLEY: Okay. 5 is marijuana, attempt to
14 distribute. 6 is conspiracy. 4 is going to be possession
15 with intent to distribute cocaine base.

16 (WHEREUPON, the indictment for possession with intent to
17 distribute cocaine base was marked for identification as
18 Plaintiff's Exhibit Number 4.)

19 (WHEREUPON, the indictment for attempt to distribute
20 marijuana was marked for identification as Plaintiff's
21 Exhibit Number 5.)

22 (WHEREUPON, the indictment for conspiracy was marked for
23 identification as Plaintiff's Exhibit Number 6.)

24 BY MR. WILLEY:

25 Q: So having seen Plaintiff's Exhibit 4, that doesn't help

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 refresh your recollection?

2 A: No, sir.

3 Q: Okay. But you don't dispute that document?

4 A: I really don't know what you mean by dispute a document.

5 Q: Do you dispute that you were arrested for possession
6 with intent --

7 A: I don't recall. I don't --

8 Q: You don't --

9 A: -- remember.

10 Q: -- don't recall? Okay. One way or the other. All
11 right.

12 THE COURT (BROWN): Mr. Willey, if you -- he indicated
13 he doesn't understand dispute. You might need to break that
14 down. I mean he's asked you that or he told you that. Okay.
15 As far as what you mean. I know what you mean and most of us
16 in the court know what you mean. So he understands what
17 you're asking.

18 BY MR. WILLEY:

19 Q: Do you deny that this document is from the Court of
20 General Sessions in Florence County?

21 A: I don't remember.

22 MR. RIORDAN: Which document?

23 THE COURT (BROWN): What exhibit? What exhibit?

24 MR. WILLEY: Exhibit -- Exhibit 4.

25 THE COURT (BROWN): Thank you.

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 BY MR. WILLEY:

2 Q: Exhibit 4. Do you deny it? Or do you agree that this
3 document is from the Court of General Sessions?

4 A: I don't know.

5 MR. WILLEY: And at this time, I would ask the Court to
6 take judicial notice of the fact that it's a filed and
7 clocked copy of documents from the Court of General Sessions
8 in Florence County.

9 THE COURT (BROWN): Okay.

10 MR. WILLEY: Which overviews the information that we've
11 just gone over and, at this time, I would move to admit
12 Plaintiff's Exhibits 4, 5, and 6 into evidence.

13 THE COURT (BROWN): I'm going to admit them for purposes
14 of identification for this hearing only right now. Are you
15 done with your proffer or do you have anymore?

16 MR. WILLEY: I've got more.

17 THE COURT (BROWN): Okay. Go ahead.

18 MR. WILLEY: Okay.

19 THE COURT (BROWN): I'm sorry.

20 BY MR. WILLEY:

21 Q: Mr. Barr, as part of this litigation process, your
22 lawyer for you produced certain documents to us. Are you
23 aware of that?

24 A: Say that one more time, sir?

25 Q: Through this -- the course of this litigation, this

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 lawsuit, your lawyer produced certain documents to us. Are
2 you aware of that?

3 A: Yes, sir.

4 Q: Okay. Are you aware that one of those documents is your
5 official ten-year driving record?

6 A: Yes, sir.

7 Q: Okay. And have you had the opportunity to review that
8 today?

9 A: No, sir.

10 Q: Okay. Did you have the opportunity to review it last
11 night or anytime in the last few days?

12 A: No, sir.

13 Q: Okay. Do you agree that if this driving record says
14 that you received a ticket or were involved in a particular
15 accident that it is accurate?

16 A: Yes. Yes, sir.

17 Q: Okay. And do -- if this driving record -- you are aware
18 that you have a pretty mixed driving record?

19 A: It's not the best one in the world.

20 Q: Okay. And when did you -- when did you start driving?
21 We're actually a month apart; so I guess you started driving
22 sometime around 2004?

23 A: Probably a little earlier.

24 Q: A little earlier? You might have been a little earlier
25 started than me. Okay. Your first violation on this record

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

- 1 is 2008. Are you aware of that?
- 2 A: No, sir.
- 3 Q: Do you recall getting a speeding ticket in 2008?
- 4 A: No.
- 5 Q: Okay. I wouldn't either, but if this driving record
- 6 says that you did get a speeding ticket and two points as a
- 7 result of that, you wouldn't dispute that, would you?
- 8 A: (No verbal response.)
- 9 Q: You've got to answer.
- 10 A: No, sir. No, sir.
- 11 Q: Okay. And each year since then, you have received at
- 12 least one driving violation. Would you agree with that?
- 13 A: Yes, sir.
- 14 Q: Okay. And in some years, you've received multiple
- 15 driving violations; right?
- 16 A: Must've been a bad year.
- 17 Q: Okay. Do you off the top of your head know how many
- 18 reportable motor vehicle accidents you have been a driver in
- 19 since 2009?
- 20 A: No, sir.
- 21 Q: Okay. If your driving record says since 2009 you've
- 22 been in 13 reportable accidents, would you dispute that?
- 23 A: Yes.
- 24 Q: You would?
- 25 A: (No verbal response.)

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 Q: Okay. You believe it's more than that or less than
2 that?

3 A: Less.

4 Q: Okay. And if I called out any of these specific
5 reportable accidents to you, would you be able to tell me
6 that you were or were not involved --

7 A: No, sir.

8 Q: -- in that specific one?

9 A: No, sir.

10 Q: Okay. Do you know how many times you have been charged
11 with driving under the influence?

12 A: No, sir.

13 Q: Okay. Do you believe that it's more than one?

14 A: No, sir.

15 Q: You don't believe that? So you believe that you have
16 been charged with driving under the influence only one time?

17 A: Yes, sir.

18 Q: Okay. Do you know how many times you -- your license
19 has been suspended for implied consent, in other words for
20 failing to take the breathalyzer test when you were pulled
21 over?

22 A: No, sir.

23 Q: Okay.

24 A: I don't.

25 Q: Do you recall being -- having your license suspended

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 beginning October of 2018 [sic] and being charged in that

2 same month for driving under suspension? Do you recall that?

3 A: Yes, sir.

4 Q: Okay. When did your employment with C&B Logging end?

5 A: The night of the accident.

6 Q: That was the last load you took?

7 A: Yep.

8 Q: Okay. Did you ever do any more work on that truck or
9 for your dad?

10 A: No. I sort of went my own way after the accident.

11 Q: Okay. And do you know how many driving under
12 suspensions you have?

13 A: No, sir.

14 Q: Okay. Do you recall having been ticketed as a result of
15 this wreck for driving in an improper lane?

16 A: Say that one more time?

17 Q: Okay. As a result of this wreck, do you recall having
18 received a ticket or multiple tickets?

19 A: This wreck here, just one ticket.

20 Q: Okay. And was that ticket for driving in an improper
21 lane?

22 A: Yeah. I think.

23 Q: Okay.

24 A: I haven't seen it in a while.

25 Q: And did you pay a fine for that?

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 A: Yes, sir.

2 Q: Okay. Do you recall going down to the magistrate's
3 court and pleading guilty and paying the fine?

4 A: No, sir.

5 Q: Okay. Did your dad pay the fine?

6 A: I don't -- I don't know. I don't remember.

7 Q: You don't remember who paid it?

8 A: I don't remember.

9 Q: Okay. But you remember --

10 A: I remember I got a ticket. I don't remember it was
11 resolved.

12 Q: Right. You remember that a fine was paid?

13 A: Right.

14 Q: Okay. But you don't know if you paid it or somebody
15 else paid it?

16 A: Right.

17 Q: Okay. Do you recall in 2015, February, being in a
18 reportable accident where you were found at fault, the year
19 before this wreck?

20 A: No, sir.

21 Q: De you remember in May of 2015 being in a reportable
22 accident where you were found at fault?

23 A: No.

24 Q: Okay. If your driving record says that you were
25 involved in those wrecks, would you have anything to dispute

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 those?

2 A: No.

3 Q: Okay. Do you recall in April of 2014 being involved and
4 receiving a citation for a hit-and-run?

5 A: No.

6 MR. RIORDAN: Which year is that? I'm sorry.

7 MR. WILLEY: 2014.

8 BY MR. WILLEY:

9 Q: You don't recall getting six points on your license as a
10 result of a hit and run in April of 2014?

11 A: No.

12 Q: If your driving record says that you did, in fact, have
13 that, would you have any reason to dispute that?

14 A: That was in 2014?

15 A: Yes, sir. April.

16 A: No, sir.

17 Q: Okay. In December of 2014, do you recall getting a
18 speeding ticket?

19 A: No.

20 Q: Do you recall getting two points as a result of that
21 speeding ticket?

22 A: No, sir.

23 Q: Okay. And if your -- again, if your driving record
24 indicates that in December of 2014 you did get a speeding
25 ticket and did get two points for that, would you have any

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 reason to dispute that?

2 A: No, sir.

3 Q: Okay. In May of 2014, do you recall being in a
4 reportable accident where you were found at fault by the
5 Highway Patrol?

6 A: Say that one more time?

7 Q: In May of 2014, do you recall being in a reportable
8 accident where you were found at fault by the Highway Patrol?

9 A: No, sir.

10 Q: Okay. But if your driving record indicates that, do you
11 -- would you have any reason to dispute that?

12 A: No, sir.

13 Q: Okay. In December -- excuse me. In January of 2013, do
14 you recall pleading or being convicted of careless or
15 negligent driving?

16 A: I don't recall.

17 Q: Okay. But again, if your driving record said that,
18 would you have any reason to dispute that?

19 A: No, sir.

20 Q: All right. In November of 2012, do you recall being
21 convicted or pleading and getting two points again for
22 speeding?

23 A: No, sir.

24 Q: Okay. But again, if your driver's record said that,
25 would you have any reason to dispute that?

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 A: No, sir.

2 Q: Okay. In May of 2012, do you recall having your license
3 suspended as a result of a failure to appear?

4 A: No, sir.

5 Q: Okay. But again, if your driver's record said that,
6 would you have any reason to dispute it?

7 A: Failure to appear?

8 Q: Failure to appear. Failure to pay a traffic ticket or
9 appear?

10 A: No, sir.

11 Q: Okay. And in 2012 in March, I reckon you were -- at
12 that time, you had your CDL; correct?

13 A: Yes, sir.

14 Q: And at that time, you were operating a commercial motor
15 vehicle; correct?

16 A: Yes, sir.

17 Q: Okay. Do you recall getting a ticket and pleading
18 guilty or being convicted of changing lanes improperly while
19 driving that commercial vehicle? That would've been in North
20 Carolina?

21 A: Yes, sir.

22 Q: You do recall that?

23 A: Yes, sir.

24 Q: Okay.

25 A: Changing lanes --

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 Q: Improperly.

2 A: -- in North Carolina?

3 Q: Right.

4 A: Yes, sir.

5 Q: And --

6 A: I didn't use my blinker.

7 Q: And after that, your license was suspended as a result

8 of failing to appear? Do you recall that?

9 A: Can I explain why or --

10 Q: Yeah. Just tell me if you recall and then you can

11 explain it.

12 A: The guy I was working for was paying it, but he never

13 paid it.

14 Q: Okay.

15 A: And I had to go to North Carolina to pay.

16 Q: Okay. But you do recall --

17 A: Yes, sir.

18 Q: -- paying it and pleading guilty to that? Okay. And

19 that was driving a commercial vehicle and changing lanes

20 improperly.

21 And do you remember in August of 2012 being in another

22 reportable accident?

23 A: No, sir.

24 Q: Okay. But if your driver's record said that, you

25 wouldn't have any reason to dispute it?

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 A: No, sir.

2 Q: And in March of 2012, do you remember being involved in
3 a reportable accident?

4 A: I don't recall.

5 Q: Okay. But if your driver's record said that you were,
6 you would have no reason to dispute that?

7 A: Who was involved?

8 Q: It doesn't -- doesn't say. It says you did not
9 contribute to that one, but you were involved.

10 A: I believe that's the one y'all helped me with.

11 Q: Okay. All right. In April of 2011, do you recall being
12 ticketed for operating with improper lights?

13 A: No, sir.

14 Q: Okay. Do you recall pleading or being convicted of that
15 in July of 2011 and receiving two points?

16 A: No, sir.

17 Q: But if your driver's record indicated that, in fact, you
18 did plead or were convicted of that, you would have no reason
19 to dispute it?

20 A: No, sir.

21 Q: Okay. And do you recall, again, in December of 2009,
22 July of 2010, December of 2009, April of 2009, and March of
23 2008 receiving tickets either for driving too fast for
24 conditions or speeding?

25 A: No, sir.

CHARLES BRANDON BARR - PROFFERED DIRECT BY MR. WILLEY

1 Q: Okay. And do you recall pleading or being convicted in
2 all of those incidents?

3 A: No, sir.

4 Q: Okay. But again, if your driver's record, in fact, said
5 that, you would have no reason to dispute it?

6 A: No, sir.

7 Q: And do you recall in December of 2009 being involved in
8 two separate reportable accidents where you were found to
9 have contributed?

10 A: I don't recall.

11 Q: Okay. But again, if your driver's record indicated
12 that, you would have no reason to dispute it?

13 A: No, sir.

14 Q: Mr. Barr, if you owned a trucking company, would you
15 hire yourself to drive a truck?

16 A: Yes, sir.

17 Q: Today?

18 A: Yeah. If it was my son, yeah, I would.

19 MR. WILLEY: I think that concludes my proffer, sir.

20 THE COURT: All right. Anything -- any questions from
21 defense counsel as it relates to the proffer?

22 MR. RIORDAN: Questioning of my client?

23 THE COURT: Yeah.

24 MR. RIORDAN: Sure.

25 PROFFERED CROSS-EXAMINATION

CHARLES BRANDON BARR - PROFFERED CROSS BY MR. RIORDAN

1 BY MR. RIORDAN:

2 Q: Brandon, when Mr. Willey was questioning you, again, you
3 say you have no recall of these -- or at least many of these
4 instances; correct?

5 A: Yes, sir.

6 Q: And when he talked about accidents, some of which you
7 did not contribute to, you have little recall of those as
8 well?

9 A: Yes, sir.

10 Q: When you said -- when you were asked can you dispute
11 them, do you understand what that means?

12 A: Not really.

13 Q: Would you need to see the ticket or have some
14 recollection of what the incident was before you --

15 MR. WILLEY: I'm going to object.

16 Q: -- acknowledge being involved with those?

17 A: Yeah.

18 THE COURT (BROWN): What's your objection?

19 MR. WILLEY: The objection is counsel is testifying.
20 He's entitled to ask a question.

21 THE COURT (BROWN): Objection overruled for purposes of
22 this hearing.

23 MR. WILLEY: Okay.

24 BY MR. RIORDAN:

25 Q: You acknowledge that the night of this accident we're

CHARLES BRANDON BARR - PROFFERED CROSS BY MR. RIORDAN

1 here on today was the last time you drove commercially;
2 correct?

3 A: Yes, sir.

4 Q: And before that, as I understand it, you were never
5 found to have contributed to a commercial motor vehicle
6 accident; is that true?

7 A: Correct.

8 Q: And since that time, for child support and other issues,
9 you have had suspensions; correct?

10 A: Yes, sir.

11 Q: And presently, what is the status of your suspension?
12 Do you know why you're suspended?

13 A: Child support.

14 Q: On the night of this incident, did you have a valid
15 commercial driver's license?

16 A: Yes, sir.

17 MR. RIORDAN: I've got nothing further at this time, but
18 I'll certainly have more for my own witness.

19 THE COURT (BROWN): All right. Let me hear from you,
20 Mr. Willey. Anything else you want to argue, Mr. Willey?

21 MR. WILLEY: I would just say, Your Honor, that once
22 again, under the Watkins v. Hall standard, which is
23 essentially a standard of ordinary care to show to the Court,
24 reaffirming the standard set out in James v. Kelly where
25 these specific things -- and in the Green case -- I can never

1 remember. I'm representing a lady named Green I've been
2 dealing with all week; so I keep saying Green. I don't know
3 if it's Green.

4 All right. Yeah. The Green v. Hewitt case. In that
5 case, Your Honor will recall the Court excluded testimony
6 that the adverse driver was convicted of trafficking
7 marijuana in 1983 as being prejudicial. The subject
8 collision, which occurred in 1991, that was eight years out.

9 But the Supreme Court in that case deemed the trial
10 court's error reversible because the adverse driver's prior
11 crime was a breach of his duty to fellow drivers and society
12 as a whole, and it was not too remote.

13 Now, in that case, we talked about a moral turpitude
14 standard as to the driver, but in James v. Kelly and taking
15 that in, when we look at the actual negligent hiring
16 standard, which was reaffirmed in just 2017, Watkins v. Hall
17 -- I recognize that it's an unpublished opinion, but I think
18 it demonstrates to the Court that it's still good law. It
19 talks about this standard of ordinary care, and what it
20 specifically says -- and I think that this sums it up.

21 An employer can be liable for negligent hiring and
22 supervision when the employer knew or should have known that
23 employing a specific person created an undue risk of harm to
24 the public.

25 And in this case, that's citing James v. Kelly, just

1 2017, we have under this proffer a scenario where two things
2 have happened. Mr. Barr said my father never asked, but if
3 he would have asked, I would've told him. It was a publicly
4 available record to the father. He could have gone and got
5 the driver's record himself if he wanted to, but the father
6 never asked.

7 And so it's important to know. For the jury, the
8 question is does this make any element or any fact more or
9 less plausible, and the answer is absolutely. All of these
10 previous violations, previous reportable accidents, one of
11 which -- you know, one of the things in there was actually on
12 a commercial rig.

13 THE COURT (BROWN): In North Carolina.

14 MR. WILLEY: Yeah, commercial vehicle in 2012 in North
15 Carolina, changing lanes improperly. That's exactly what's
16 at issue in this case is an improper lane. That's what he
17 was ticketed for, being in the improper lane in this case.

18 And so all of that is relevant to say -- and when I just
19 asked him the question, in fact, he actually answered
20 differently in his deposition, which I will get to. When I
21 asked him -- when he was asked in his deposition would you
22 hire somebody like you, the response was different. It was
23 not, yes, if it was my son. And I can get you the exact
24 response, but it was basically, I don't know, I don't know,
25 probably not. I can pull it up here for you.

1 And so I think all of that is relevant to that cause of
2 action. Again, in his deposition and just here during the
3 proffer, he says he doesn't dispute any of those things. We
4 have the record which was produced by the defendant.

5 Page 51 of the deposition, it says, now, if you were
6 running a trucking business or a hauling business, would you
7 hire yourself? It's hard to say. I don't know. Not now. I
8 don't have no license.

9 Well, he still doesn't have a license and now he's
10 saying he would hire himself. I mean so --

11 THE COURT (BROWN): Well, that's not what you asked him
12 though. You asked him if somebody with his record --

13 MR. WILLEY: Right.

14 THE COURT (BROWN): Would you hire him?

15 MR. WILLEY: Would be hired. Right.

16 THE COURT (BROWN): So the question then a little bit
17 different than your question was today.

18 MR. WILLEY: Right. That's --

19 THE COURT (BROWN): Okay. So you're arguing it -- your
20 argument to me on that issue is a little bit different.

21 MR. WILLEY: Yeah. But --

22 THE COURT (BROWN): Okay.

23 MR. WILLEY: It is a little bit different. I will agree
24 with that. But again, what it goes back to is whether or not
25 he presented harm to the public --

1 THE COURT (BROWN): Right.

2 MR. WILLEY: -- if the father knew or should have known
3 all these things.

4 And I think, clearly, under the case law, it makes --
5 you know, it comes in. I mean I know it's -- in a lot of
6 ways -- and this is where we get after James, which is why
7 the insurance defense bar, particularly the trucking bar,
8 hates that case is because in a negligent hiring case, you
9 get into all this stuff, whereas before they could just
10 submit vicarious liability and get around it.

11 THE COURT (BROWN): Right. All right. Anything else?

12 MR. WILLEY: No.

13 THE COURT (BROWN): Mr. Riordan, anything else?

14 MR. RIORDAN: Your Honor, per my earlier arguments, we
15 go back the year. He's got a valid driver's license at the
16 time. It's something that seems remote and, obviously
17 because of that, very prejudicial. If it goes through -- if
18 he's allowed to go through each of those, many of these are
19 not driving offenses. It's failure to appear and things of
20 this nature, which do affect his license, but, you know, are
21 not driving offenses. And so those are different. And
22 certainly, all of these things since the accident would be
23 improper.

24 THE COURT (BROWN): Can I see the driving record? I
25 still hadn't seen that. Is it different than what was in

1 your memo?

2 MR. WILLEY: No. It's overlapping. Let's go ahead and
3 just -- can we mark that one too? That way we've got it.

4 (WHEREUPON, the driving record was marked for
5 identification as Plaintiff's Exhibit Number 7.)

6 MR. WILLEY: There's actually more in the record than
7 what's in the memo, but there's some things in the memo not
8 on the record, if that makes sense. It's not -- it's not a
9 mirror image.

10 THE COURT (BROWN): So what's on the memo is what you're
11 asking to come in?

12 MR. WILLEY: I'm asking for it all because the memo is
13 --

14 THE COURT (BROWN): Then why didn't you put it all in
15 your memo?

16 MR. WILLEY: I didn't --

17 THE COURT (BROWN): I mean you listed --

18 MR. WILLEY: I mean, candidly, I didn't write it.

19 THE COURT (BROWN): -- 16 separate offenses of which you
20 wanted me to consider, but now you're asking for more? Is
21 that right?

22 MR. WILLEY: No. I -- no. So the way this all started
23 was he said this is going to come in. He filed a motion in
24 limine to keep it all out. I said it can all come in.
25 Here's some examples in the memo. And the proffer dealt just

1 with the driving record.

2 THE COURT (BROWN): You put here the relevant criminal
3 citations and convictions. You didn't say examples.

4 MR. WILLEY: Okay. Well, some of the relevant I meant
5 to say I mean.

6 THE COURT (BROWN): Okay.

7 MR. WILLEY: But I think the proffer is --

8 THE COURT: Well, I mean -- I'm sorry. Go ahead.

9 MR. WILLEY: I was going to say I think the proffer in
10 combination with the memo, you know, is -- is what it is.
11 Obviously, if I asked him a question where I don't have a
12 document and he says, no, that's not very helpful to me
13 because what am I going to do, you know?

14 THE COURT (BROWN): Right.

15 MR. WILLEY: So I'm not going to ask him those things.

16 THE COURT (BROWN): Anything else, Mr. Riordan? I'm
17 going to step down for just a minute.

18 MR. RIORDAN: No, Your Honor.

19 THE COURT (BROWN): You may step down. Do not discuss
20 your testimony. Okay? Don't discuss your testimony.

21 MR. RIORDAN: Are we having a break for a bit?

22 THE COURT (BROWN): Yes.

23 (WHEREUPON, there was a break in the proceedings from
24 3:23 p.m. until 3:50 p.m., after which the proceedings
25 resumed as follows.)

1 THE COURT (BROWN): Let me hold those criminal
2 convictions. Do you have the criminal convictions?
3 MR. WILLEY: Yes, sir.
4 THE COURT (BROWN): The indictments that were marked?
5 MR. WILLEY: Yes, sir.
6 THE COURT (BROWN: Where are they? Oh, I see them right
7 there. All right.
8 What's been marked as Plaintiff's Exhibit 4, 5, and 6 --
9 I'm going to make them a Court's exhibit or however you need
10 to do it, whether you need to allow them.
11 THE COURT REPORTER: ID only.
12 THE COURT (BROWN): Ma'am?
13 THE COURT REPORTER: ID only.
14 THE COURT (BROWN): Okay. We'll make those an exhibit.
15 I am not going allow you to go into the criminal --
16 these criminal convictions. I believe that the probative
17 value as a relates to those matters are outweighed by the
18 prejudicial effect. I've certainly taken into consideration
19 your argument pertaining to Green v. Hewitt under 305 S.C.
20 238.
21 In looking at Green v. Hewitt, the purpose of the
22 introduction of that particular offense was for impeachment
23 purposes to impeach the credibility of a witness. It's been
24 argued throughout that this is not for purposes of
25 impeachment. Okay?

1 But I do not believe that those criminal convictions are
2 admissible in this matter for drugs. I do not believe that
3 they are probative, and any probative value is certainly
4 outweighed by the potential prejudicial effect in this case.

5 Now, with regards to the other issues pertaining to
6 driving record, et cetera, in reviewing James v. Kelly
7 Trucking Company again, 377 S.C. 628, that case certainly
8 stood for the proposition or certainly set forth the fact
9 that there are -- that negligent hiring, supervision, and
10 training is a separate and distinct cause of action from
11 negligence in and of itself. All right?

12 Pursuant to James v. Kelly Trucking, our state Supreme
13 Court -- did I give you the cite on that case, Krystal?

14 THE COURT REPORTER: Yes, sir.

15 THE COURT (BROWN): Our state Supreme Court pointed out,
16 in that particular case, the insurer -- on page 632 of that
17 opinion, it says the insurer argues that public policy
18 justifies the preclusion of the pursuit of a negligent
19 hiring, training, supervision or entrustment claim against an
20 employer when the employer admits vicarious liability.

21 In this case, we don't have an admission of vicarious --
22 we don't have an admission of liability. I think it's
23 certainly a vicarious liability situation. They've not
24 specifically admitted liability.

25 But regardless, the Court goes on to say the argument

1 goes that the admission of evidence which must be offered to
2 prove the negligent hiring, training, supervision or
3 entrustment claim, such as evidence such as a prior driving
4 record, an arrest record or other records of past mishaps or
5 misbehavior by the employee, will be highly prejudicial if
6 combined with a stipulation by the employer that it will
7 ultimately be vicariously liable for the employee's negligent
8 acts.

9 The Court goes on to say although we do not take these
10 arguments lightly, we believe that they do not accurately
11 characterize the concerns at play. Primarily, we think the
12 argument that an independent cause of action against an
13 employer must be precluded to protect the jury from
14 considering prejudicial evidence presumes too much. Our
15 system relies on the trial court to determine when relevant
16 evidence is admissible because its probative value is
17 substantially outweighed by the danger of unfair prejudice,
18 confusion of the issues, or misleading the juries pursuant --
19 jury pursuant to Rule 403.

20 Upon reading James v. Kelly again and upon reviewing
21 this defendant's driving record, this is what I'm going to
22 allow to be examined in this case as it relates solely to the
23 negligent hiring, supervision, and training, and I will be
24 happy to -- at defense counsel's request to give a charge to
25 the jury specifically that says that that's the only purpose

1 prejudicial, I believe that they are certainly more probative
2 as it relates to the cause of action for negligent hiring,
3 supervision, and training. I understand it's prejudicial,
4 but it goes to the very causes of action that plaintiff has
5 filed against defendant in this case, and I think it's
6 appropriate that those be admitted pursuant to James v. Kelly
7 Trucking.

8 Y'all's objections are noted for the record. I've heard
9 all the argument I need to hear on it. Anything --

10 MR. WILLEY: I just have one question. It's in sync
11 though. So as to the negligent supervision, which is also in
12 the James v. Kelly, I think the ticket in this case, which
13 was for driving in an improper lane, would be appropriate.

14 THE COURT (BROWN): Was he convicted of it?

15 MR. WILLEY: Yes. It's right there on the driving
16 record. It's the very next one.

17 THE COURT: Well, I will reserve -- I want you to look
18 at -- what's the case? I will give you an opportunity to
19 look at --

20 It's a case cited under this statute, 56-5-6160. I
21 can't remember, but I have it. We can't get on the Internet
22 right now, but there's a case cited.

23 MR. RIORDAN: It's a civil case?

24 THE COURT (BROWN): Yes. It's a civil case cited under
25 56-5-6160 that dealt with an issue pertaining to a failure to

1 been on the wrong side of the roadway. The employer had the
2 ability to control that and knew or should've known under
3 James v. Kelly.

4 THE COURT (BROWN): Well --

5 MR. WILLEY: It's as relevant to those as the others as
6 to the hiring.

7 THE COURT (BROWN): I've made my ruling on it. We're
8 going to move on. Your objection is so noted.

9 If he opens the door, you can certainly go there, but
10 I've made my ruling on it. All right?

11 MR. WILLEY: And one final thing, Judge. During the
12 proffer, you had ruled in limine that he could not mention my
13 firm's prior representation of him, and he did do that. So I
14 would just ask that you instruct him not to do that. During
15 the proffer, he said, yeah, I think that's the one you all
16 represented me for.

17 THE COURT (BROWN): Oh, I didn't hear that. That flew
18 over me.

19 MR. RIORDAN: Your Honor, with that, I was going to ask
20 that we revisit that. I did not understand that you had made
21 a definitive ruling.

22 THE COURT (KINLAW): I heard it.

23 THE COURT (BROWN): Go ahead. I'm listening.

24 MR. RIORDAN: I understood you would kind of wait and
25 see how things played out. I think to the extent the

CHARLES BRANDON BARR - DIRECT BY MR. WILLEY

1 A: When I took -- when I took the test.

2 Q: That was the last time you looked at it?

3 A: Yes, sir.

4 Q: Okay. Now, tell us in your words about the day of this
5 wreck, what you remember from waking up to the moment of
6 impact. Take us through it.

7 A: I went to the woods that morning, me and my girlfriend.
8 We got loaded up. I loaded the trailer. I went to pull out.
9 We got the truck bogged down because we'd just had a lot of
10 rain. I got the skidder, and she was in the driver's seat.
11 I pushed her out through the woods to get the truck unstuck.

12 I got back in the truck. It was late that afternoon.
13 We'd been in the woods all day, was tired. I stopped in
14 Hemingway, got a bite to eat.

15 I noticed the tire was slack. I thought maybe I could
16 make it to the mill. Got going on Pamplico Highway, and it
17 got -- I looked out the mirror. It looked like it was
18 getting worse. So I decided to pull over and, when I pulled
19 over, it was near my buddy's house, where I could get some
20 air. So I pulled over to ask him did he have some air, but
21 he wasn't home.

22 So I got back in the truck and when I looked around the
23 curve and looked the other way, I had it. If I had five more
24 seconds to get -- my whole truck was out in my lane. All I
25 had left was the back wheels to cross over. As you can see

CHARLES BRANDON BARR - DIRECT BY MR. WILLEY

1 in the pictures, when the truck hit -- when the truck hit me,
2 I pulled my truck up out of the lane and that's when the -- I
3 guess the motorcycle come through.

4 Q: Okay. Now, let's -- let's walk through some of that.

5 When you went down to Hemingway to get a bite to eat, that's
6 when you first noticed that the tire was slack?

7 A: Right.

8 Q: And y'all went to the Burger King there in Hemingway?

9 A: Yes, sir.

10 Q: Okay. How far was the wreck from the shop -- from your
11 dad's shop?

12 A: Probably five miles -- ten miles.

13 Q: And how far would you estimate the Burger King in
14 Hemingway was from the point of impact? From your buddy's
15 trailer park where you were?

16 A: Maybe 25 miles.

17 Q: Okay. So you drove with a slack tire 25 miles before
18 you decided to stop?

19 A: It got a lot worse.

20 Q: You drove for 25 miles with a slack tire before you
21 decided to pull over just five miles from the shop; is that
22 correct?

23 A: We was actually headed to the mill, but the mill ended
24 up being closed because it was so -- they usually stay open
25 all night, but they must have shut down or shut down for the

CHARLES BRANDON BARR - DIRECT BY MR. WILLEY

1 moved the truck up and then, I guess, that's when the bike
2 come through.

3 Q: Right. My question is when you were traveling north on
4 Pamplico Highway, you didn't pull over to the right of the
5 northbound --

6 A: You couldn't.

7 Q: -- lane; correct.

8 A: You couldn't.

9 Q: Right. You pulled over onto the southbound lane facing
10 the oncoming traffic?

11 A: Yes, sir.

12 Q: Yes. And at the time of the wreck, you were attempting
13 to maneuver back across the approaching lane of travel to get
14 back in the correct lane to go north; right?

15 A: Yeah. Sort of like yield. It wasn't no turning or
16 nothing.

17 Q: Okay.

18 A: I just yielded.

19 Q: Right. And in this picture, the next day you're
20 actually also parked on the wrong side of the road up at the
21 store; correct?

22 MR. RIORDAN: Objection. Mischaracterization.

23 MR. WILLEY: Well, let me ask you is this truck --

24 THE COURT: Objection sustained. Now you may ask a
25 question.

CHARLES BRANDON BARR - CROSS BY MS. EARLY

1 MS. EARLY: This is -- for the record, this is
2 Defendant's Exhibit 1. At this point, I'd like to move to
3 have it entered into the record.

4 THE COURT (KINLAW): Any objection?

5 MR. WILLEY: No.

6 THE COURT (KINLAW): Without objection, it will be
7 Defendant's -- Defendant's 1?

8 MS. EARLY: Yes, Your Honor.

9 THE COURT (KINLAW): Defendant's Number 1 without
10 objection.

11 (WHEREUPON, Defendant's Exhibit Number 1, a photograph,
12 was admitted into evidence.)

13 BY MS. EARLY:

14 Q: So one more time, you said -- what was different about
15 this image?

16 A: There was a lot of orange barrels going down the --
17 yeah, that side of the road.

18 Q: This side of the road?

19 A: Yes, ma'am.

20 Q: And what about on this side of the road?

21 A: There was some, but not as many.

22 Q: So you're going to get some air. You thought about
23 where you're going. Where did you end up?

24 A: At -- at my buddy's house, parked on this side.

25 Q: And where was your buddy's house located?

CHARLES BRANDON BARR - CROSS BY MS. EARLY

1 A: At the -- at that trailer park.

2 Q: Once you got to your buddy's house, where did you put

3 your truck?

4 A: On the side of the road.

5 Q: Let's see here. Will you show me on this image where

6 you put your truck? Can you show me on here? This is

7 Defendant's Exhibit 1 again.

8 A: It was on the other side of this curve.

9 Q: On the other side of the curve?

10 A: Right back there.

11 Q: Back there?

12 A: Yes, ma'am.

13 Q: When you pulled over, did you turn any lights on?

14 A: My lights was already on, but yeah, I put my emergency

15 flashers on.

16 Q: Were you able to get any air?

17 A: No, ma'am.

18 Q: So after you determined you couldn't get any air, what

19 did you decide to do?

20 A: I got back in the truck and proceeded to pull off.

21 Q: And pulled off into where?

22 A: Back in the road to get where I could go to the shop.

23 Q: Once you were back in the road, what happened?

24 A: I was -- well, I looked, and it was clear. I didn't see

25 any cars coming. As I proceeded to changing gears and all

CHARLES BRANDON BARR - CROSS BY MS. EARLY

1 that stuff, two cars was coming around the curve.

2 Q: What two cars was -- were coming around the curve?

3 A: Mr. Gregg and the -- I didn't see the motorcycle, but I
4 know Mr. Gregg was coming around the curve.

5 Q: I'm going to show you -- this is marked Defendant's
6 Exhibit 9. Can you show me where Mr. -- what happened after
7 Mr. Gregg came around that curve?

8 A: Yes. He hit that -- he hit the front axle on the
9 driver's side, hit the front rim.

10 Q: That tire there?

11 A: Yes, ma'am.

12 MS. EARLY: I would move to make this exhibit
13 Defendant's Exhibit 9.

14 THE COURT (KINLAW): You've seen it, counsel?

15 MR. WILLEY: I have. He's seen it?

16 MS. EARLY: Yes.

17 MR. WILLEY: No objection.

18 THE COURT (KINLAW): All right.

19 (WHEREUPON, Defendant's Exhibit Number 9, a photograph,
20 was entered into evidence.)

21 THE COURT (KINLAW): Let me just ask a question. Just,
22 counsel, I noticed when you have the exhibits, jurors are
23 straining to see what you're making reference to. So I just
24 noticed that.

25 Typically, you want the jurors to see -- at least see

CHARLES BRANDON BARR - CROSS BY MS. EARLY

1 MS. EARLY: This is marked Defendant's Exhibit Number 2.

2 THE COURT (KINLAW): All right.

3 MS. EARLY: At this time, I'd move to make this an
4 exhibit on the record.

5 THE COURT (KINLAW): All right. Any --

6 MR. WILLEY: No objection.

7 THE COURT (KINLAW): Any objection to being in?

8 MR. WILLEY: No, sir.

9 THE COURT (KINLAW): Without objection.

10 (WHEREUPON, Defendant's Exhibit Number 2, a photograph,
11 was admitted into evidence.)

12 BY MS. EARLY:

13 Q: Now, when you were pulling back into the highway after
14 you couldn't get any air, tell me where -- how did you pull
15 back in?

16 A: Just like this.

17 Q: A little louder for me?

18 A: Just like this right here.

19 Q: And you were going back into the lane of travel?

20 A: Yes, ma'am.

21 Q: And which side of the highway were you trying to get to?

22 A: This side.

23 Q: And at the time that Mr. Gregg hit your back or your
24 tire, as you showed us, how far were you into this lane of
25 travel to the right-hand lane here?

CHARLES BRANDON BARR - CROSS BY MS. EARLY

1 A: The truck and over half the trailer. All I had left was
2 the back tires of the trailer.

3 Q: And that's when he struck you?

4 A: Yes, ma'am.

5 Q: You can go back and have a seat for me. Thank you.

6 (WHEREUPON, the defendant complied.)

7 Q: Now, I'm going to first show you some images and then
8 we'll show the jury these images, and I just want you to tell
9 me what you see in each one. And as you say it, make sure
10 you say what the exhibit number is there and hold it up for
11 me. We'll start with the first one there.

12 A: Number 14.

13 Q: And what do you see in that image?

14 A: The trees that was on the trailer and reflective tape on
15 the trailer.

16 Q: All right. Thank you. You can put that one down.

17 MS. EARLY: And I'd move to make that Defendant's
18 Exhibit Number 14 on the record.

19 THE COURT (KINLAW): All right. Any objection?

20 MR. WILLEY: No, sir.

21 THE COURT (KINLAW): Without objection, Number 14.

22 (WHEREUPON, Defendant's Exhibit Number 14, a photograph,
23 was admitted into evidence.)

24 BY MS. EARLY:

25 A: This is Number 20. This is showing you the lights on

CHARLES BRANDON BARR - REDIRECT BY MR. WILLEY

1 Q: Right. I understand what you're saying. But the point
2 is Mr. Gregg obviously hit your trailer; right?

3 A: Yeah, he did.

4 Q: Okay. Ms. MacKenzie did not hit your trailer?

5 A: No.

6 Q: Okay.

7 THE COURT (KINLAW): Counsel, could I -- could I see --
8 see you at sidebar for a second?

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury off the
11 record, after which the proceedings resumed as follows.)

12 THE COURT (KINLAW): All right. Mr. Willey?

13 BY MR. WILLEY:

14 Q: So, Mr. Barr, you agree that these -- that these wrecks
15 between Mr. Gregg and then Miss MacKenzie happened pretty
16 close in time?

17 A: Yes, sir.

18 Q: All right. And in Plaintiff's Exhibit Number 15 [sic]
19 or in any of these exhibits, do you see any mud flaps on this
20 truck?

21 A: They made a law where you don't have to have mud flaps.

22 Q: That's not what I asked you. Are there any mud flaps on
23 the truck?

24 A: I was just saying you don't have to have mud flaps on
25 trucks.

TROOPER BLAKE BENTON - DIRECT BY MR. WILLEY

1 A: Yes, sir.

2 Q: All right. And in this particular incident, there were
3 two collisions; correct?

4 A: Yes, sir.

5 Q: All right. And the first collision was between Mr.
6 Gregg in a pickup truck and Mr. Barr in a logging truck;
7 correct?

8 A: That's right.

9 Q: All right. And the second collision is your
10 understanding involved Ms. Isabelle MacKenzie?

11 A: Yes, sir.

12 Q: Okay. And on the evening of April 23rd of 2016, did you
13 have the opportunity to meet either Ms. MacKenzie or Mr.
14 Barr?

15 A: I remember speaking to Mr. Barr. I think Ms. MacKenzie
16 was being tended to by EMS. I spoke with her husband.

17 Q: All right. And when were you first notified about the
18 incident?

19 A: I don't remember the exact time. It would be on that
20 report.

21 Q: Okay. Do you have the reports?

22 A: I handed it back to you.

23 Q: Okay. There you go. What time were you notified about
24 the wreck?

25 A: Approximately 10:30 p.m.

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 A: Yes.

2 Q: In what way right off the bat?

3 A: They're widening the road. So --

4 Q: The road is wider. What about all the trees and the

5 bushes on the right side?

6 A: They've probably been removed.

7 Q: Okay. And the entryway in front of this trailer park as

8 we see on 10 and 21, is that where they now have the Jersey

9 barriers that block that whole entrance?

10 A: I have -- I don't -- I don't know.

11 Q: You don't recall that? Okay. All right. And even at

12 that time, do you remember any street lighting that was

13 through that area?

14 A: No, sir.

15 Q: Okay. The speed limit at that time was what?

16 A: 55.

17 Q: And what is it changed to now?

18 A: It's probably 45.

19 Q: All right. And as you said, that night Ms. MacKenzie

20 was still on the scene; correct?

21 A: Yes.

22 Q: And you recall we met earlier and you had some notes

23 with you; correct?

24 A: Yes.

25 Q: Okay. And at that time, did your notes reflect that you

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 actually spoke with Ms. MacKenzie about what had happened in
2 the accident?

3 A: I don't have them. I don't remember.

4 MR. RIORDAN: Your Honor, I'd mark this as a defendant's
5 exhibit.

6 (WHEREUPON, the deposition was marked as Defendant's
7 Exhibit Number 22 for identification purposes only.)

8 THE COURT (KINLAW): All right. Ladies and gentlemen of
9 the jury, I did not, but my colleague here, Judge Brown,
10 previously gave you a charge on the use of depositions, and
11 that charge remains the same. So I'll just ask you to
12 further that.

13 Go ahead.

14 BY MR. RIORDAN:

15 Q: Lance Corporal, you've handled thousands of cases in
16 your career already, haven't you?

17 A: Yes, sir.

18 Q: And so I know it's difficult to remember each case and
19 that's why you keep some notes; correct?

20 A: Yes.

21 Q: All right. And again, just to refresh your
22 recollection, does that appear to be a copy of the transcript
23 when we spoke with you on March 26th of this year?

24 A: Without reading it in its entirety, yes, it does.

25 Q: Okay. And if you'd turn to page 12, a question was

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 asked. Well, actually, just go to your testimony. Page 12,
2 line 4.

3 A: Yes, sir.

4 Q: I want you to just tell the jury what you told me back
5 on that occasion about your recollection.

6 A: She said she laid her motorcycle down to keep from
7 hitting the collision subject.

8 Q: Okay. And I asked you is that your recollection from
9 speaking with Mrs. MacKenzie, and what did you respond?

10 A: As far as I can remember, yes.

11 Q: And then what did you say?

12 A: I think I have it written down.

13 Q: All right. And you had your notepad with you; correct?

14 A: Yes.

15 Q: And you referred to your notes, didn't you?

16 A: Probably so.

17 Q: Yeah. Well, my note thereafter was from reading your
18 notes, that is your recollection that you got that
19 information from her in the back of the ambulance, and what
20 was your response?

21 A: Yes.

22 Q: Okay. And so again, that evening was clear. You had no
23 evidence that she touched any of the logs or the logging
24 truck that evening; correct?

25 A: No, sir.

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 Q: Okay. And again, as you -- you wrote the incident
2 report that way as well? We're talking about two collisions,
3 but there was no collision with the tractor-trailer in this
4 case per your investigation, was there?

5 A: Not with the motorcycle.

6 Q: Sure. And that's what you understood that evening from
7 her?

8 A: Yes.

9 Q: Okay. You had no evidence that night of a third
10 accident, did you?

11 A: No, sir.

12 Q: No evidence that when the logging truck pulled out, it
13 was involved in a collision with a white Mustang, was there?

14 A: Not that I can recall.

15 Q: You would have -- you would have had a report on that,
16 wouldn't you?

17 A: Yes, sir.

18 Q: All right. No evidence that because of some first
19 collision he was stopped, blocking all the lanes of traffic?
20 There was no evidence of that, was there?

21 A: No, sir.

22 Q: And you agree that the only evidence is that when the
23 logging truck pulled out, there was no approaching traffic
24 visible from either direction; isn't that true?

25 MR. WILLEY: I object.

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 was there some indication of what speed Ms. MacKenzie
2 reported she was traveling to you?

3 A: If I put the speed limit, she probably told me she was
4 going the speed limit.

5 Q: Which is what?

6 A: 55.

7 Q: With it being late on a Saturday night, did you take
8 particular attention in speaking with Mr. Barr?

9 A: I did speak to him.

10 Q: Did you satisfy yourself from your investigation there
11 was no evidence of alcohol or drug use involved here?

12 A: Yes.

13 Q: Okay. And you said the vehicles were stopped. You held
14 those vehicles stopped until your crew could paint the scene;
15 correct?

16 A: Yes.

17 Q: All right. We've got a picture of Defendant's Exhibit
18 12, and there's another one very similar to it. I represent
19 to you that's a photo taken by Ms. MacKenzie's daughter that
20 evening. Does that appear to be the logging truck tire that
21 was struck out on the scene?

22 A: Yes..

23 Q: Okay. Let me ask you this. You got there about a half
24 hour later; correct?

25 A: Yes.

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 overhanging logs into the southbound lane at that time, do
2 you?
3 A: I don't remember.
4 Q: I mean that's what you told me before; right? You had
5 no recall on that; correct?
6 A: Yes. I don't remember.
7 Q: Okay. And we looked at -- Exhibit Number 1 had the
8 yellow warning sign for the curve. Is that -- that existed
9 at the time as well; correct?
10 A: Yes.
11 Q: It still exists today, doesn't it?
12 A: I can't speak to that. I don't know.
13 Q: Okay. And finally, so you did your investigation, but
14 since it was a commercial-loaded vehicle, you also had the
15 state transport police come out; correct?
16 A: Yes.
17 Q: Is it DOT transport? Do you remember who was there?
18 Both of them?
19 A: I would imagine they're the same thing.
20 Q: Okay. And did those fellows conduct a full
21 investigation, to your knowledge?
22 A: Yes.
23 Q: And you don't -- as a reporting, investigating officer
24 in these cases, you don't have any knowledge of any issue
25 regarding the lighting on that logging truck that night, do

TROOPER BLAKE BENTON - CROSS BY MR. RIORDAN

1 you?

2 A: I -- I don't.

3 Q: You don't have any knowledge of any issue in regard to
4 the load being overextended on the back, do you?

5 A: I don't have any knowledge of any of that.

6 Q: You don't have any knowledge of any safety issue with
7 that trailer -- that truck and trailer that night, do you?

8 A: No, sir.

9 MR. RIORDAN: I have nothing further. Thank you, Mr.
10 Benton.

11 THE COURT (KINLAW): All right. Anything on redirect,
12 Mr. Willey?

13 MR. WILLEY: Very briefly.

14 REDIRECT EXAMINATION

15 BY MR. WILLEY:

16 Q: Trooper Benton, when you say you don't remember logs
17 hanging over that southbound lane when you got there, do you
18 mean you don't remember one way or the other?

19 A: Yes.

20 Q: Okay. So they could have been or they could not have
21 been. You just don't recall; right?

22 A: Yes.

23 Q: All right. And in the course of your investigation, you
24 were asked about evidence of approaching traffic. Were you
25 able to come to the conclusion in your investigating --

JOSHUA RYAN - DIRECT BY MR. HODGE

1 after the wreck.

2 Q: Okay.

3 A: I was riding behind her that night.

4 Q: Okay. And, Mr. Ryan, do you live here in Florence

5 County?

6 A: Yes, sir.

7 Q: Okay. And how long have you lived in Florence County.

8 A: Twenty years.

9 Q: Okay. Now, the collision site we'll talk about in a

10 moment. Have you had an opportunity to drive that collision

11 site?

12 A: Yes, sir. My mother still stays there to this day; so

13 it's a routine route, you know.

14 Q: And it's changed since April of 2016, hasn't it?

15 A: Yes, sir.

16 Q: Okay. Now, before April of 2016, you had had numerous

17 occasions to drive that route southbound down Pampllico; is

18 that correct?

19 A: Yes, sir.

20 Q: Okay. About how many times?

21 A: More -- more than I can count.

22 Q: Okay. Now, what speed do you normally travel around

23 that curve southbound on Pampllico Highway?

24 A: 50 -- 55.

25 Q: Okay. And that's what you've always done?

JOSHUA RYAN - DIRECT BY MR. HODGE

1 A: Yes, sir. The speed limit is about 50 -- 55; so you can
2 travel about 50 -- 55.

3 Q: Okay. You never felt unsafe traveling that speed?

4 A: No, sir. Where the accident was, it was a blind curve.

5 Q: Okay.

6 A: If you look in the pictures, on the ground you can see
7 where it does say going into a curve.

8 Q: Okay.

9 A: But the trailer park where, you know, the truck was
10 coming out of didn't have much traffic really ever.

11 Q: Okay. So you never had any trouble going around that
12 curve 50 -- 55?

13 A: No. No, sir. The only thing you would have to watch
14 for is deer at night, you know.

15 Q: Now, on the evening of April the 23rd, 2016, were you
16 traveling behind anyone when you were coming southbound that
17 evening?

18 A: Yes, sir. I was traveling behind Mr. Gregg and Ms.
19 Isabelle MacKenzie, who is in the courtroom.

20 Q: Okay. And that was on the way to the curve; is that
21 correct?

22 A: Yes, sir. Southbound on Highway 51.

23 Q: Okay. And about how far away were you from Mr. Gregg's
24 truck when y'all rounded that curve?

25 A: I was the third car. So I was a good distance. Between

JOSHUA RYAN - DIRECT BY MR. HODGE

1 Mr. Gregg was Ms. Isabelle, and I was -- you know, a
2 motorcycle, as you learn, give them a little space because
3 you never know. I can't say exactly how much -- how many
4 feet I was away from Mr. Gregg, but I was close enough where
5 I could see pretty much everything that happened.

6 Q: Okay. So there was a three-car line. There was Mr.
7 Gregg traveling south, Ms. MacKenzie, and then you; is that
8 correct?

9 A: Yes, sir.

10 Q: Okay. And as you rounded that curve, could you see both
11 Ms. MacKenzie on her motorcycle and Mr. Gregg in his truck?

12 A: Yes, sir. Ms. MacKenzie was directly in front of me,
13 and Mr. Gregg was directly in front of Ms. MacKenzie, but I
14 could see both of them because Ms. MacKenzie's headlights
15 were lighting up Mr. Gregg's back of his truck.

16 Q: Okay. And were all cars in that line driving between 50
17 and 55 miles per hour?

18 A: Yes, sir. Given the estimated safety speed, everybody
19 -- and the safety space everybody gives everyone, yes, sir.
20 50 to 55.

21 Q: Okay. Now, can you tell me what you saw in regards to
22 this collision?

23 A: Mr. Gregg -- it was Mr. Gregg and Ms. Isabelle MacKenzie
24 and I. Mr. Gregg hit the -- the 18-wheeler log truck. The
25 log truck was coming out of the side of the road. I spoke

JOSHUA RYAN - DIRECT BY MR. HODGE

1 with the man that drove the log truck that night and he said
2 that he parked on that side of the road because he thought he
3 had a flat tire.

4 Q: Okay.

5 A: And that's the reason he checked and stopped there. On
6 the opposite side, there was a ditch and I've known this, you
7 know, so he couldn't park on the right side. He couldn't
8 just pull over to the right and check his truck.

9 Mr. Gregg hit the log truck as it was coming across, the
10 back axle I believe. You can see in the pictures on the
11 floor. He hit the back axle as it was coming across the
12 road. The log truck was trying to get into the northbound
13 lane as we were traveling southbound. He struck it, his
14 truck veered to the right, but it somewhat came to a stop.
15 And Ms. Isabelle had to swerve between them, between the log
16 truck and the pickup truck.

17 Q: Okay. Now, that southbound lane when Mr. Gregg was
18 coming around it that you have full view of, how much of that
19 southbound lane was blocked by the trailer and the logs?

20 A: The trailer and the logs -- when Mr. Gregg hit the truck
21 on its back axle, the front back axle I believe -- like I
22 say, you can see in the pictures. That would mean it was
23 almost a direct hit, like it blocked the road. Ms. Isabelle
24 -- when she -- when she swerved to miss both of the trucks,
25 the logs that were hanging off of the truck were about 50 to

JOSHUA RYAN - DIRECT BY MR. HODGE

1 75 percent blocking the road.

2 Q: Okay. So we understand it, when Mr. Gregg came around,
3 almost that entire southbound lane blocked?

4 A: Yes, sir.

5 Q: When Isabelle comes around, at least 50 to 75 percent
6 blocked?

7 A: Yes, sir. Because she was almost directly behind him.

8 Q: Okay.

9 A: But she had enough space that, you know, it wasn't as if
10 she was on his bumper as -- if anything, she wasn't going to
11 pass him. I couldn't hear her revving up her motorcycle to,
12 you know, get some more speed or anything. Going into that
13 curve, it's a solid yellow line. You have a small window
14 right before the church and when you get up the hill you
15 might have a small window, but near that curve, it's a solid
16 yellow line.

17 Q: Okay. So nothing that indicated to you that Isabelle
18 was trying to --

19 A: No, sir.

20 Q: -- rev it, trying to pass Mr. Gregg?

21 A: No, sir.

22 Q: Okay. Now, after Mr. Gregg hits the log truck, now Ms.
23 Isabelle comes through?

24 A: Yes, sir.

25 Q: What did you see her do on her bike? Did she try to

JOSHUA RYAN - DIRECT BY MR. HODGE

1 avoid the collision?

2 A: She tried to avoid the collision as best she could.

3 Like I said, Mr. Gregg's truck struck the log truck on its

4 front rear axle of the trailer. His truck almost came to a

5 stop, but it also veered to the right a little bit. So his

6 truck kind of went to the side of the road at the right

7 shoulder, but it kind of rested in -- on -- next to the white

8 line but in the grass also.

9 So she tried to swerve and miss him, and then she had

10 the log truck, which if she would have went straight, she

11 would've directly hit the log truck or the logs. So she

12 swerved -- excuse me -- so she swerved to the right as if --

13 she swerved to the left of Mr. Gregg's truck and then swerved

14 back. And then when she swerved back, her motorcycle went

15 into the grass.

16 Q: Okay.

17 A: Yes, sir.

18 Q: So it sounds like she did try to employ basic maneuvers

19 to --

20 A: Yes, sir.

21 Q: -- avoid the collision?

22 A: Yes, sir. Defensive driving --

23 Q: Okay.

24 A: -- somewhat.

25 Q: Now, did Ms. Isabelle -- did she have any choices? I

JOSHUA RYAN - CROSS BY MS. EARLY

1 Q: I don't have a pen for you, but let's see if we can
2 point it out for the jury here.

3 A: Okay.

4 Q: You can kind of explain what you're seeing there.

5 A: The 18-wheeler log truck was pulling out of this area.
6 When he was pulling out, his cab was right here. This is
7 where the wreck happened near -- near the driveway. He was
8 blocking this way. So he was diagonal across the road. His
9 truck might've been pointing already across the road and then
10 when it happened, he pulled his cab, meaning his trailer was
11 following his cab to where it was going.

12 Q: Thank you. And I want to make sure --

13 A: If you look in the pictures with anything with the truck
14 and the 18-wheeler, the semi log truck, if you look at the
15 trailer, you really can't see any lights on the side of it.
16 So it's not really lit up.

17 And the curve -- it was a very dark curve. There's no
18 street lights. There wasn't much traffic that night; so it
19 wasn't lit up at all. The only lights were Mr. Gregg's
20 truck. Like I said, the trailer followed his truck.

21 MS. EARLY: Before we continue, I just want to make sure
22 this is entered in as an exhibit. This is Defendant's
23 Exhibit Number 21.

24 THE COURT (KINLAW): It is.

25 MR. HODGE: No objection from the plaintiff, Your Honor.

JOSHUA RYAN - CROSS BY MS. EARLY

1 THE COURT (BROWN): It's already admitted.

2 THE COURT (KINLAW): Already admitted.

3 BY MS. EARLY:

4 Q: Mr. Ryan --

5 A: Yes, ma'am.

6 Q: I want to go back. In previous testimony and statements
7 that have been given by you, you mentioned that it's possible
8 Ms. MacKenzie was overcorrecting; is that correct?

9 A: Yes, ma'am. In -- in both of my depositions, I stated
10 that Ms. MacKenzie -- when I meant she was overcorrecting,
11 she didn't overcorrect herself as in trying to swerve between
12 the log truck and the pickup. When she hit the grass, you
13 have to understand she might have tapped her brakes to slow
14 down a bit, but if you're going 40 miles an hour and you hit
15 the grass or mud or anything, your front tire on a motorcycle
16 is most likely going to slip from underneath you. And that's
17 what I meant by overcorrecting because she may have tried to
18 turn left to fix herself to get right. On the side of the
19 road, she might've slipped in the mud.

20 Q: I also want to go back and talk about some testimony you
21 just gave regarding the location of Mr. Gregg's truck, and
22 I've got two exhibits here, Exhibit 4 -- Defendant's Exhibit
23 4 and 5. Can you just tell the jury what you see here, the
24 location of the truck?

25 A: Yes, ma'am. Mr. Gregg's truck is actually directly

JOSHUA RYAN - CROSS BY MS. EARLY

1 probably right on the white line as if it was veering to the
2 right to stop.

3 Q: Okay. Thank you. You said you were traveling between
4 50 and 55 miles per hour at that time?

5 A: Yes, ma'am.

6 Q: Do you recall what the actual speed limit was on that
7 roadway at that time?

8 A: It was 50.

9 Q: And so --

10 A: It -- it does drop next to the churches and then, as you
11 get out of that curve, it drops down next to the church and
12 the retirement home. It's 45 now.

13 Q: But at the time of the accident, it was --

14 A: It was 50.

15 Q: It was 50?

16 A: Yes, ma'am.

17 Q: And you said you were possibly going 55 miles per hour?

18 A: Fifty to 55. You know, anywhere between 50 and 55. I
19 don't like to do more than 53 miles an hour, but going with
20 the flow of traffic.

21 Q: You were going with the flow of traffic?

22 A: At 50 to 55. I usually ride with cruise control, ma'am.

23 Q: And at any time did you slow your rate of speed when you
24 came into that curve?

25 A: I saw the caution sign. Yes, ma'am.

JOSHUA RYAN - CROSS BY MS. EARLY

1 Q: Did you slow down?

2 A: I might have tapped the brakes going into the curve
3 because I've known going into that curve it's a blind curve,
4 but it -- the trailer park never really had any traffic
5 coming out of it. The only thing you would have to look for
6 is deer most of the time.

7 Q: Did you notice any headlights on any of the other
8 vehicles in front of you, maybe facing on the road?

9 A: Like I stated, Ms. Isabella's motorcycle lit up Mr.
10 Gregg's truck?

11 Q: Did you see anything out in front of her?

12 A: Not directly, nothing ran in front of her, nothing was
13 in the road. Nothing in front of her directly except Mr.
14 Gregg's truck. Mr. Gregg had his lights on. I don't know if
15 he had his high beams on, but like I said, ma'am, I was the
16 third car and I wasn't close up on Ms. Isabella and I wasn't
17 close on Mr. Gregg. I gave Ms. Isabella room because it's a
18 motorcycle. I don't want to run the woman over.

19 Q: And were you able to come to a complete stop after
20 witnessing the other accidents?

21 A: I pretty much slammed on the brakes and threw my car in
22 park as I was slamming on brakes. I didn't skid, but I knew
23 my car. I didn't slide into the grass or anything.

24 MS. EARLY: Just one moment, Your Honor.

25 THE COURT (KINLAW): Yes, ma'am.

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 all love and peace.

2 MR. HODGE: Thank you for being here today, Mack.

3 I have no further questions of the witness.

4 THE COURT (KINLAW): Cross-examination, Mr. Riordan?

5 MR. RIORDAN: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. RIORDAN:

8 Q: Hello, MacKenzie. When we spoke -- I think back in
9 August of last year; correct?

10 A: I believe so.

11 Q: Okay. And you're the one that took all the photos on
12 the scene that night; correct?

13 A: I took a lot of photos, yes.

14 Q: So you got to the scene and you did see your mom, but
15 your mom assured you I'm okay, I'm okay, I'm fine, I'm fine,
16 didn't she?

17 A: Well, that's a mom thing to do, you know.

18 Q: Sure. And that's what she did here; correct?

19 A: Yes.

20 Q: All right. And your dad even spoke with Brandon, didn't
21 he?

22 A: I believe so.

23 Q: And he was telling him it's okay and things of that
24 nature? Your dad -- what did your dad do? What did your dad
25 do?

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 A: My dad used to be a trucker. He owned his own
2 companies. He had a couple, and he worked for some companies
3 as a crash investigator of types for pickup trucks and 18-
4 wheelers.

5 Q: As I understand, he is no longer working; is that
6 correct?

7 A: He's not. He's disabled.

8 Q: How was that?

9 A: He was in an accident. He was driving someone else's
10 18-wheeler and there was a red light and it was very snowy
11 and icy out and the brakes didn't work too well; so he ended
12 up driving off the road so he wouldn't hit the people in
13 front of him. So he broke his back. It was an accident.

14 Q: So it wasn't his truck and --

15 A: He rolled it, yeah.

16 Q: And that night, the two of you went out to the scene
17 together; correct?

18 A: Yes, sir.

19 Q: Again, your mother tells you she's okay and then she
20 eventually is in the ambulance; correct?

21 A: Yes, sir.

22 Q: And she spoke to the trooper about the incident?

23 A: I don't remember seeing them talk.

24 Q: Okay. And then your dad called another friend; is that
25 correct?

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 A: I did.

2 Q: You called the friend?

3 A: I called one of our neighbors.

4 Q: Mr. Stewart?

5 A: Yes.

6 Q: And they both came out on the scene as well; correct?

7 A: Yes, sir.

8 Q: All right. During the entire time you were on the

9 scene, that log truck was never moved, was it?

10 A: I wasn't watching it the whole time. I don't know.

11 Q: Okay. And because that area -- as I understand it, this

12 area is within a mile or two of your home; correct?

13 A: Yes, sir.

14 Q: Okay. And so you've been -- even at that time and now,

15 you go back and forth on Pamplico Highway all the time;

16 correct?

17 A: Yes, sir.

18 Q: All right. And you were well aware back at that time

19 what it looked like with all the trees and vegetation that

20 existed for that area; is that correct?

21 A: Yes, sir. It was very difficult to see around the

22 corner.

23 Q: Okay. As you say, it was a blind and dark curve, wasn't

24 it?

25 A: Yes, sir.

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 Q: All right. And beyond that, you knew that right when
2 you started going, one, you agree that little yellow arrow
3 has always been there; correct?

4 A: Yes, sir.

5 Q: And it's still there?

6 THE COURT (KINLAW): Will you reference what you're
7 looking at?

8 MR. RIORDAN: Yes. I'm sorry. I'm holding up -- and I
9 apologize. I've been holding up Defendant's Exhibit Number 1
10 a couple of times, and I apologize to the Court and the jury.

11 BY MR. RIORDAN:

12 Q: And that's what -- absent the barrels that were there
13 the night, this is what it looked like before they did all
14 the construction; correct?

15 A: Yes, sir.

16 Q: All right. And this is going southbound? That's the
17 area your mother was traveling?

18 A: Yes, sir.

19 Q: All right. And then if you go to Defendant's Exhibit
20 12, that's going further southbound. That little road on the
21 left is that Eaddy Circle Road; correct?

22 A: I actually don't read the road signs.

23 Q: Okay. But you know that is a road that goes off that
24 area to that -- to the -- to the right if you're coming from
25 your house towards town?

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 A: Yes, sir.

2 Q: And as you said, with knowing of the entrance to the
3 trailer park, your dad had always talked to you about making
4 sure you slow down when you go around that curve; right?

5 A: All three of us do that. Yes, sir.

6 Q: Your mom included?

7 A: Yes, sir.

8 Q: Because you know traffic can come in and out of there at
9 any time?

10 A: Yes, sir.

11 Q: All right. And again, after your mom told you I'm fine,
12 I'm fine, I'm okay, I'm okay, she also is handing you things,
13 wasn't she?

14 A: The paramedics were getting things off of her and she
15 was pointing to them and I was picking them up.

16 Q: And she took her brand-new case with the camera in it,
17 as I understood; is that correct?

18 A: It was on her belt. I was able to get it off.

19 Q: Okay. So you got -- she gave you that. She also gave
20 you her cell phone as well?

21 A: Yes, sir.

22 Q: Do you remember your dad making a comment to her on the
23 scene, kind of a funny comment in the realm of a court case?

24 A: I actually don't remember, but it sounds like my dad.
25 We're the type of family that we try and joke with

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 Q: And you -- you know that she told the trooper she laid
2 the bike down to avoid the collision scene?

3 A: When a biker says they laid the bike down, it could be
4 in a numerous amount of ways. It could be they crashed it.
5 It could be they just put it down. It could be they stopped
6 at a stop light, they lost their balance, and they just laid
7 it down. So it -- it could be a number of different things
8 when she says she laid it down.

9 Q: All right. But you -- you agree you don't have any
10 evidence that she actually struck any logs on the log truck,
11 do you?

12 A: Other than her injuries.

13 Q: Well, is there any evidence showing on the scene that
14 she had struck the logs to your knowledge?

15 A: I'm not sure.

16 Q: And again, I --

17 A: Two years ago. I don't quite remember it.

18 Q: And I understand. I mean so even today, as you came in
19 here, that was your -- that still is your understanding as to
20 how this happened?

21 A: Yes, sir.

22 Q: Did you ever look at any of the actual reports that the
23 trooper made in this case?

24 A: No, sir.

25 Q: You never saw -- you knew there were two separate

MACKENZIE PERRY - CROSS BY MR. RIORDAN

1 accident reports; right?

2 A: Yes, sir.

3 Q: You know your mom's is just a single vehicle accident;
4 correct?

5 A: I'm not sure.

6 Q: It's just her. It doesn't have anything else about any
7 other vehicle, does it? Just her motorcycle, laying the bike
8 down?

9 MR. HODGE: Your Honor, she's already testified --

10 THE COURT (KINLAW): I'll --

11 MR. HODGE: -- she hasn't seen the accident reports.

12 THE COURT (KINLAW): And I would agree. Counsel, let's
13 move this along. I think you -- she's already answered your
14 question.

15 MR. RIORDAN: All right. And I apologize.

16 BY MR. RIORDAN:

17 Q: Elsie Viola? You spoke with Elsie all about this
18 matter?

19 A: No.

20 Q: She's -- she -- as I understand it, she's the person who
21 was having the party that your mother was at that evening;
22 correct?

23 A: Yes, sir. It was a -- like, a -- two Motor Maids'
24 birthday party put into one.

25 Q: You were just too young a Motor Maid to be with them?

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2016-CP-21-1831

ISABELLE MACKENZIE,

Plaintiff,

v.

CHARLES BARR, Individually and as
Employee of C & B LOGGING, LLC; C &
B LOGGING, LLC,

Defendants.

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF ADMITTING DEFENDANT
BARR'S RELEVANT TRAFFIC &
CRIMINAL CHARGES & CONVICTIONS**

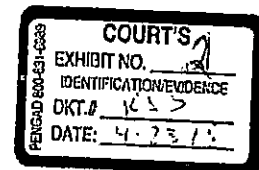
TO: THE HONORABLE JUDGE BROWN AND ALL COUNSEL OF RECORD:

Plaintiff Isabelle MacKenzie ("Plaintiff") submits this memorandum of law in support of her argument regarding the admission of Defendant Barr's prior traffic and criminal charges and convictions into evidence and in the alternative, allowing Plaintiff's Counsel to elicit testimony regarding the same on either direct or cross-examination. Plaintiff relies on the applicable statutes, rules of court, common law, and any argument that may be presented by Counsel at your Honor's discretion.

DEFENDANT'S RELEVANT CRIMINAL CITATIONS AND CONVICTIONS

Violations Prior to Employment at C&B Logging:

1. Driving at Speeds Greater than Reasonable (December 6, 2009) ~~REDACTED~~ *Deh*
2. Driving at Speeds Greater than Reasonable (December 9, 2009) ~~REDACTED~~
3. Possession with Intent to Distribute Cocaine (August 22, 2010)
4. Operating a Motor Vehicle without a License (March 12, 2011)
5. Conspiracy (January 11, 2012)
6. Wheel & Axle Load Violation (May 1, 2012)
7. Failure to Possess Registration Card (May 1, 2012)
8. Speeding 10MPH or less (November 2, 2012)
9. Possession of Schedule I-V Controlled Substances (August 19, 2013)
10. Leaving the Scene of an Accident (April 14, 2014)
11. Wheel & Axle Load Violation (December 15, 2014)
12. Unlawful Operation of Unsafe or Improperly Equipped Vehicle (January 22, 2015)
13. Driving a CMV without Proper License or Permit (February 17, 2015)



- 14. Seatbelt (April 6, 2015)
- 15. Operating a Motor Vehicle without a License (May 24, 2015)
- 16. Seatbelt (February 13, 2016)

Violations Resulting from Subject Collision:

- Failure to Conduct Safety Inspection (April 23, 2016)
- Driving on the Wrong Side of the Road (April 23, 2016)

Violations Following the Subject Collision:

- Speeding 10 MPH or less (February 21, 2017)
- Driving under Suspension (February 21, 2017)

STATEMENT OF FACTS

This wreck occurred on April 23, 2016. Defendant Barr began driving semi-trucks in 2009. Charles Brandon Barr Dep. 17:4-6. Defendant Barr only received commercial driver training from his uncle and father. Id. 48:5-7. He failed his CDL test three times. Id. 19:2-4. Even after earning his CDL in 2009, Defendant Barr's bad acts toward society continued. By his own admission, Defendant Barr states he only had one interview with one C&B corporate representative – his father. Id. 43:19-24.

19	Q	Did you have an interview?
20	A	No. It was my dad. I don't know. I
21		don't remember.
22	Q	Did you just ask him for a job and he gave
23		you the job?
24	A	Yeah.

Defendant Barr lied to his potential employer (and father) during his interview. Id. 45:20-24.

20	Q	Was your dad aware of your driving arrest
21		history when he hired you?
22	A	No, sir.
23	Q	Did he ask you?
24	A	He did but I lied.

However, Defendant Barr's father, the C&B Logging corporate representative, states that he was aware of Defendant Barr's previous convictions:

18	Q	Now, I know that you were here when we
19		were discussing Brandon's driving history and his
20		criminal history. Were you aware of that history
21		when you hired him?
22	A	I was aware of some of it, yes.
23	Q	Tell me which parts you were aware of.
24	A	I was aware of accidents and speeding
25		tickets.

Charles Cleveland Barr Dep. 16:18-25. Yet, despite his employee/son's intentional misrepresentations, and prior criminal/traffic history, Defendant Barr was hired because he was "a good driver."

6:	Q	Did you think Brandon was qualified to do
7:		the job?
8	A	Yes, sir, Brandon's a good driver.

Charles Cleveland Barr Dep. 17:6-8. Defendant Barr was hired in 2016. Charles Brandon Barr Dep. 42:19:-21. At the time Defendant Barr began employment with Defendant C&B Logging, he had accumulated sixteen traffic and criminal convictions in the previous seven years. See, supra.

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ARGUMENT

- I. **Defendant Barr's criminal convictions are relevant and admissible because Possession with Intent to Distribute, Possession of Cocaine, and Conspiracy constitutes crimes of Moral Turpitude that allow Defendant Barr's prior bad acts to be used to impeach him**

Courts have defined moral turpitude as "acts of baseness, vileness, or depravity in private and social duties which man owes to his fellow man or to society in general, contrary to the customary and accepted rule of right and duty between man and man."¹ In Green v. Hewitt, the court stated trafficking marijuana is contrary to our nations battle for the "war on drugs."² Here, Defendant Barr was charged with Possession of Cocaine, Possession with Intent to Distribute Cocaine, and Conspiracy, punishable thusly:

Statutory Violations Defendant Breached Carrying More than One Year Imprisonment

SC Code Ann. § 16-1 et. seq.

- Conspiracy- Not more than 5 years in jail
- Possession & Intent to Distribute Cocaine – Not more than 30 years in jail
- Possession of Cocaine- Not more than 10 years in jail

SC Code Ann. § 56-5-1210 et. seq.

- Leaving the scene of an accident (misdemeanor)- Not less than 1 year

In Green v. Hewitt, the court initially excluded testimony that the adverse driver was convicted of trafficking marijuana in 1983 as being prejudicial to the subject collision occurring in 1991. The South Carolina Supreme Court deemed the trial court's error reversible because the adverse driver's prior crime was a breach of his duty to fellow driver's and society as a whole. The appellate court decided the crime was "not too remote" and the driver had a responsibility to his

¹ State v. Ball, 292 S.C. 71, 354 S.E.2d 906 (1987).

² Green v. Hewitt, 305 S.C. 238, 240-41, 407 S.E.2d 651, 652 (1991)

fellow drivers of safety.³ Further because the crime carried a possible term of one-year imprisonment, the plaintiff was allowed to bring in the evidence.⁴

Plaintiff should be allowed to bring in prior bad acts of Defendant's cocaine possession, conspiracy, possession of a controlled substance, and possession with intent to distribute for the purposes of impeaching the witness. The prior bad acts are not remote and all occurred within 10 years of the subject collision. Finally, the prior bad acts carry a jail sentence of longer than one year. These crimes, like those in Green, have occurred while driving and endangering the welfare of the public and deprive the society in general.

II. Defendant Barr's prior bad acts are highly relevant and necessary for Plaintiff's negligent hiring and negligent retention claims against Defendant C&B Logging, and their probative value outweighs any prejudicial effect.

Courts define negligent hiring and retention as when an "employer knew or should have known that its employment of a specific person created an undue risk of harm to the public...a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public."⁵

In James v. Kelly Trucking, the Plaintiff sought to introduce the defendant's driving records into the case.⁶ Defense argued that *respondent superior* was already admitted, and the admission of defendant's records would be prejudicial. The court ruled that refusing to allow well-pled evidence showing negligent hiring into the trial of the case would undermine a jury's ability to comprehend the judge's limiting instruction.⁷ The court further noted that when evidence

³ Id.

⁴ Id. at 653.

⁵ Weddle v. Charleston Cty. Sheriff's Office, Civil Action No. 2:13-2177-RMG-BHH, 2014 U.S. Dist. LEXIS 71129, at *12 (D.S.C. May 2, 2014)

⁶ James v. Kelly Trucking Co., 377 S.C. 628, 630, 661 S.E.2d 329, 330 (2008).

⁷ Id. at 633.

supporting a cause of action exist it would be unspeakable to deny the plaintiff to introduce such evidence.⁸

Defendant Barr and Defendant C&B Logging (Defendant Barr's father) both acknowledge the existence of a business relationship. Both admit Defendant was driving and conveying a mutual benefit to the business at the time of the incident. The Court should allow Defendant Barr's prior traffic and criminal citations received prior to hiring into evidence. Defendant C&B Logging had actual constructive notice that Defendant Barr received citations and these were a matter of public record. Whether or not Defendant Barr lied about his driving history is wholly immaterial to the fact that C&B Logging had a duty to the public to ensure its vehicles were operated and maintained in a safe manner by *responsible and qualified* drivers. It is within this Court's discretion to admit Defendant's prior offenses for the purposes of her negligent hiring and retention claims. Moreover, should the Court feel such evidence may prejudice the Defendants, it is well within its authority to offer limiting instructions to the Jury, if necessary.

CONCLUSION

By 2016, Defendant Barr received sixteen criminal and traffic convictions, which C&B Logging knew about. Defendant Barr's reckless criminal behavior – and Defendant C&B's knowledge of the same, should have barred Defendant Barr as a suitable driver-employee. Unfortunately, Defendant C&B Logging overlooked all of these because "Brandon was a good driver." The jury is entitled to hear what Defendant C&B Logging considers a "good driver," and they also deserve to know who was entrusted with a massive vehicle and turned loose on South Carolina roads.

⁸ Id.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF

Dated at Charleston, SC

This 17 day of April, 2018.

WITNESSES

Anderson Beane

Florence County Sheriff

DOCKET NO. 2011-GS-21-0353

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH

TERM

2011

THE STATE

vs.

CHARLES BRANDON BARR

FITZLEE H MCEACHIN

ARREST WARRANT NUMBER

M272425

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/3/2011

VERDICT

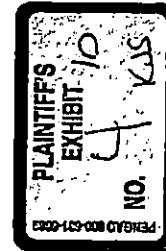
Foreperson of Petit Jury

Date:

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE

CERTIFIED A TRUE COPY
J. H. Beane
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.



2011 MAR -3 AM 11:19
CLERK OF COURT
FLORENCE COUNTY, S.C.

FILED

11/11/12
Vol Prosser
[Signature]

ARREST WARRANT

M-272425

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

THE STATE

against

Charles Brandon Barr

Address:

Scranton, SC 29591-5085

Phone: SSN:

Sex: M Race: W Height: 5 Weight: 145

DL #: Agency ORI #: SC0210000

Prosecuting Agency: Florence County Sheriff

Prosecuting Officer: Anderson Beane - 1110

Offense: Drugs / possession of cocaine w.i.t.d, 1st offense

Offense Code: 3011

Code/Ordinance Sec: 44-53-0370 (D)(3)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant CHARLES BRANDON BARRon 8/22/10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Court
M S C-E 180 North Irby Street
Florence, SC 295013456

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Personally appeared before me the affiant Anderson Beanebeing duly sworn deposes and says that defendant Charles Brandon Barrdid within this county and state on or about 08/21/2010State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / possession of cocaine w.i.t.d, 1st offenseI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON 8/21/2010, ONE CHARLES BARR DID HAVE IN HIS POSSESSION, WITH INTENT TO DISTRIBUTE, A QUANTITY OF COCAINE, A SCHEDULE II CONTROLLED SUBSTANCE. DEFENDANT WAS STOPPED FOR A TRAFFIC STOP. GAVE CONSENT TO SEARCH THE VEHICLE AND A CLEAR PLASTIC BAG CONTAINING WHITE POWDER SUBSTANCE LOCATED IN THE CONSOLE. THIS VIOLATION TOOK PLACE AT STAGE COACH AND JOHN PAUL JONES, LOCATED NEAR EFFINGHAM IN FLORENCE COUNTY, SOUTH CAROLINA. THIS BEING IN VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED. CASE# 10-08-630

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Affiant's Address 6719 Friendfield RoadEffingham, SC 29541-Affiant's Telephone (843)665-2121

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/21/2010 defendant Charles Brandon Barr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Florence) as set forth below.DESCRIPTION OF OFFENSE: Drugs / possession of cocaine w.i.t.d, 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 08/22/2010

Signature of Issuing Judge (L.S.)

Jacob Melvin Thompson II

Judge Code: 7197Judge's Address P. O Box 362Olanta, SC 29114Judge's Telephone (843)396-9056Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

CERTIFIED
FILED
CLERK OF COURT
FLORENCE COUNTY, S.C.

2010 AUG 30 PM 1:28
DONNIE REE-SHEARN
CLERK OF COURT
FLORENCE COUNTY, S.C.

WITNESSES

Andron Brown Florence Police Department

DOCKET NO. 2013-GS-21-01482

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2013

THE STATE

vs.

CHARLES BRANDON BARR

Matthew R Ozment

ARREST WARRANT NUMBER

2013A2120201386

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 11-25-13

VERDICT

Foreperson of Petit Jury

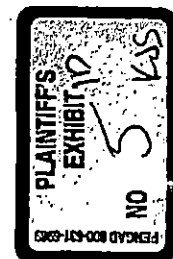
Date:

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA**

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2013 NOV 21 PM 12:53
COMM. STENO. 11
CLERK OF COURT



STATE OF SOUTH CAROLINA

COUNTY OF
STATE:Florence
VS.

Charles Brandon Barr

AKA:

Race: W Sex: M Age: 27

DOB:

SS#:

Address:

St

City, State, Zip: Florence, SC 29501

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

in violation of § 44-53-0370(d)(2)

of the S.C. Code of Laws, bearing CDR Code # 0179

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Ozment, Matthew R

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 200; provided that upon the service of days/months/years and/or payment

of \$ 200; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (200 days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 400.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 300.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ 50.00
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 705.00
TOTAL		\$ 705.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-21-01482

A/W#: 2013A2120201386

Date of Offense: 8/8/2013

S.C. Code § 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Fine \$100.00 for 1st offense Marijuana

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Ozment, Matthew R

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 200; provided that upon the service of days/months/years and/or payment

of \$ 200; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (200 days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 400.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 300.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ 50.00
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 705.00
TOTAL		\$ 705.00

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug Alcohol testing ☐Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ beginning 4/13/14

\$ paid to Public Defender Fund

Other: Thirty (30) days to

pay fine

☐ Appointed PD or appointed other counsel§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

ARREST WARRANT

2013A2120201386

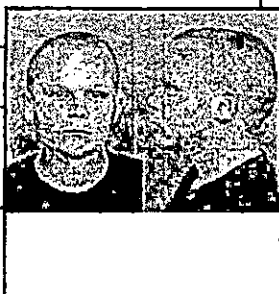
STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

THE STATE

against



CHARLES BRANDON BARR

Address: _____

FLORENCE SC 29501

Phone: _____ SSN: _____

Sex: ☒ M Race: W Height: 5-0 Weight: 135

DL: SC ID #: _____

DOB: _____ Agency ORI#: SC0210100

Prosecuting Agency: FLORENCE MUNICIPAL COURT

Prosecuting Officer: A. BROWN

Offense: DISTRIBUTION OF MARIJUANA

Offense Code: 0186

Code/Ordinance Sec 44-53-0370 (B) (2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant CHARLES BRANDON BARR

on 8-9-13
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

AFFIDAVIT

Personally appeared before me the affiant ANDRON BROWN

being duly sworn deposes and says that defendant CHARLES BRANDON BARR

did within this county and state on 08/08/2013

violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of FLORENCE)

in the following particulars:

DESCRIPTION OF OFFENSE: 44-53-0370 (B) (2) / DISTRIBUTION OF MARIJUANA

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON AUGUST 8, 2013 THE FLORENCE POLICE SPECIAL INVESTIGATIONS UNIT CONDUCTED AN UNDERCOVER PROSTITUTION OPERATION AT 2120 W LUCAS ST (COMFORT INN & SUITES) IN THE CITY OF FLORENCE. THE DEFENDANT DID MAKE A DEAL WITH AN INFORMANT TO EXCHANGE MARIJUANA AND \$40 FOR SEX. THE DEFENDANT DID COME TO THE LOCATION AND EXCHANGE \$40 AND APPROXIMATELY 2 GRAMS OF MARIJUANA. THE DEFENDANT ADMITTED UNDER MIRANDA THAT HE HAD MORE MARIJUANA IN HIS VEHICLE. THE DEFENDANTS VEHICLE WAS SEARCHED AND APPROXIMATELY 4 GRAMS OF MARIJUANA WAS FOUND IN A PRESCRIPTION BOTTLE. THIS INCIDENT WAS MONITORED BY THE AFFIANT AND RECORDED ON AN AUDIO AND VIDEO DEVICE.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

Affiant's Address FLORENCE POLICE DEPT., 4 W. EVANS

FLORENCE SC 29501

Affiant's Telephone 843-665-3191

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 08/08/2013

defendant CHARLES BRANDON BARR

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of FLORENCE) as set forth below:

DESCRIPTION OF OFFENSE: DRUGS / MANUF., POSS. OF OTHER SUB. IN SCH. I, II, III OR FLUNITRAZEPAM OR ANALOGUE, W.I.T.D. - 1ST OFFENSE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 08/09/2013

TAYLOR (L.S.)

JUDGE/GILES

Judge Code: 6920

Judge's Address CITY CENTER, 324 W. EVANS STREET

FLORENCE SC 29501

Judge's Telephone 843-665-3148

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2013-007220

ORIGINAL

WITNESSES

Anderson Beane

Florence County Sheriff

DOCKET NO. 2012-GS-21-00215

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2012

THE STATE

vs.

CHARLES BRANDON BARR

Matthew R Ozment

ARREST WARRANT NUMBER

2012GS2100215

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

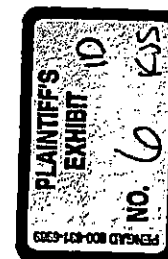
Foreperson of Petit Jury

Date:

Indictment for

CONSPIRACY

CERTIFIED: A TRUE COPY
 [Signature]
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEFlorence
VS.

Charles Brandon Barr

AKA:

Race: W Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip: Scranton, SC 29591-5085

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Conspiracy

INDICTMENT/CASE#: 2012-GS-21-00215

A/W#: 2012GS2100215

Date of Offense: 8/21/2010

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. Probab

ATTEST:

Ozment, Matthew R

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☒ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 1months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.00
TOTAL		\$ 108.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

. \$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas
D. Craig Brown, Circuit Court Judge

Case No.: 2016-CP-21-1831
Appeal No.: 2018-001016

RECEIVED

JUN 18 2019

SC Court of Appeals

Isabelle
MacKenzie.....Appellant/Respondent,

v.

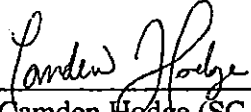
C&B Logging and Charles Brandon
Barr.....Respondents/Appellants.

CERTIFICATE OF COUNSEL

Counsel for Appellant/Respondent Isabelle MacKenzie certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

[Signature Block on Following Page]

ANASTOPOULO LAW FIRM, LLC



J. Camden Hedge (SC #10638)

Eric M. Poulin (SC #100209)

Roy T. Willey, IV (SC #101010)

32 Ann Street

Charleston, South Carolina 29403

Phone (843) 614-8888

Facsimile (843) 494-5536

**Attorneys for the Appellant/Respondent Isabelle
MacKenzie**

April 15, 2019