

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2022-UP-003 (S.C. Ct. App. Filed Jan. 5, 2022)

Kevin M. Granatino, ... Petitioner,

vs.

Calvin Williams, Clemson University, South Carolina
Department of Transportation, and Thrift Development Corporation, ... Defendants,

Of which South Carolina Department of Transportation and
Thrift Development Corporation are Respondents.

APPENDIX

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S.C. SUPREME COURT

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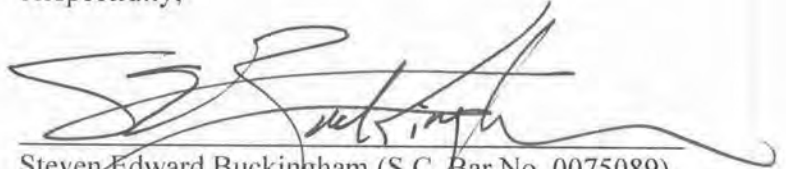
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CERTIFICATION OF PETITIONER'S COUNSEL

The undersigned counsel for Petitioner hereby certifies that this Appendix contains all material required by Rule 242(e) and not any other material.

I SO CERTIFY.

Respectfully,

A handwritten signature in black ink, appearing to read 'S.E. Buckingham', is written over a horizontal line.

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March 25, 2022

5

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2018-002166
Trial Court Case No. 2016-CP-39-01223

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SC Court of Appeals

Kevin M. Granatino, ... Appellant,

vs.

Calvin Williams, Clemson University, South Carolina
Department of Transportation, and Thrift Development Corporation, ... Defendants,

Of which South Carolina Department of Transportation and
Thrift Development Corporation are Respondents.

RECORD ON APPEAL

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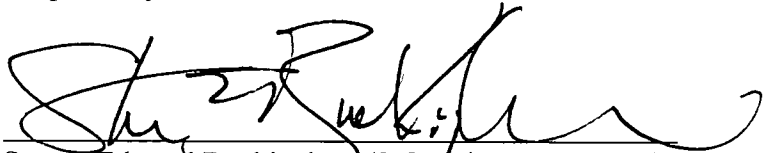
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CERTIFICATION OF APPELLANT'S COUNSEL

The undersigned counsel for Appellant hereby certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

I SO CERTIFY.

Respectfully,

A handwritten signature in black ink, appearing to read 'Steve Buckingham', written over a horizontal line.

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Greenville, South Carolina
December 6, 2019

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Kevin Granatino,

Plaintiff,

-vs-

Calvin Williams, Clemson University, South
Carolina Department of Transportation, and
Thrift Development Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

CONSENT SCHEDULING ORDER

Case No.: 2016-CP-39-1223

Pursuant to the South Carolina Rules of Civil Procedure, the following schedule is established for this case:

1. Plaintiff shall file and serve a document identifying by full name, address, and telephone number each person whom Plaintiff expects to call as an expert at trial by **January 1, 2018**;
2. Defendants shall file and serve a document identifying by full name, address, and telephone number each person whom Defendants expect to call as an expert at trial by **March 1, 2018**;
3. Mediation shall be complete by **April 15, 2018**, unless all parties agree to a modification;
4. Discovery shall be complete by **June 1, 2018**, unless all parties agree to a modification;

Kevin Granatino v. Calvin Williams, Clemson University, South Carolina Department of Transportation, and Thrift
Development Corporation
Consent Scheduling Order
Case No.: 2016-CP-39-01223

5. This case shall be set for a date certain trial no earlier than **July 1, 2018**.

IT IS SO ORDERED

[Judicial signature page to follow]

WE SO CONSENT:

/s/ Trevor B. White

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Pickens Common Pleas

Case Caption: Kevin M Granatino VS Calvin Williams , defendant, et al

Case Number: 2016CP3901223

Type: Order/Scheduling Order

\ So Ordered

s/ Robin B. Stilwell 2158

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Kevin Granatino,

Plaintiff,

-vs-

Calvin Williams, Clemson University, South
Carolina Department of Transportation, and
Thrift Development Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

ORDER

Case No.: 2016-CP-39-01223

It appears unto this Court that the Plaintiff, Kevin Granatino, has been represented by Trevor White and Druanne White of the White, Davis & White Law Firm in above action. Trevor White and Druanne White now seek to be relieved as Plaintiff's Counsel of Record. Plaintiff, Kevin Granatino, has received a copy of all pertinent records from his file. Plaintiff, Kevin Granatino, understands that this does not relieve him of any financial obligation or outstanding account balance due to Trevor White and Druanne White for legal services rendered.

Based upon the Motion to Withdraw of Trevor White and Druanne White filed on January 12, 2018, with the consent of the Plaintiff, Kevin Granatino, as evidenced by his signature affixed to the attached Release, and consent of the Attorneys for the Defendants, I find that it is reasonable and appropriate to relieve Trevor White and Druanne White from further representation of the Plaintiff, Kevin Granatino in this case.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED

1. That Trevor White and Druanne White are relieved as Attorney for the Plaintiff, Kevin Granatino in this matter, effective immediately.
2. That the Plaintiff shall secure substitute representation within twenty (20) days, or shall

have the option of representing himself in future hearings in this matter.

IT IS SO ORDERED.

[Judicial signature page to follow]

WE SO MOVE:

/s/Trevor B. White

Trevor B. White (S.C. Bar No. 100791)

Druanne White (S.C. Bar No. 5991)

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Pickens Common Pleas

Case Caption: Kevin M Granatino VS Calvin Williams , defendant, et al

Case Number: 2016CP3901223

Type: Order/Consent Order

So Ordered

s/ Robin B. Stilwell 2158

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2016-CP-39-01223
COUNTY OF PICKENS	)	
	)	
Kevin Granatino,	)	
	)	
Plaintiff,	)	ORDER FOR ADMISSION
	)	<i>PRO HAC VICE</i>
vs.	)	
	)	
Calvin Williams, Clemson University,	)	
South Carolina Department of	)	
Transportation, and Thrift Development	)	
Corporation,	)	
	)	
Defendants.	)	

It appears unto this Court that Trevor White and Druanne White were granted leave to withdraw their appearance for the Plaintiff by Order of this Court, dated January 25, 2018. The Plaintiff requests that George L. Marlette, a member in good standing of the Massachusetts Bar, appear in their stead. Mr. Marlette's Verified Application for Admission *Pro Hac Vice* has been received by the Supreme Court of South Carolina, together with the required fee of \$250.00 and notice thereof was given to this Court, in accordance with Rule 404. The Verified Application for Admission contains the consent of Stephen R.H. Lewis, as local counsel of record, to the association of applicant, George L. Marlette, in this cause, pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar. This Court finds that it is reasonable that George L. Marlette be permitted to appear as counsel for the Plaintiff, Kevin M. Granatino in this case.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. George L. Marlette is granted leave to file an appearance on behalf of the Plaintiff, Kevin Granatino in this case.

2. George L. Marlette shall file his written appearance as soon as is practicable upon receipt of this Court's order.

IT IS SO ORDERED.

Presiding Judge

WE SO MOVE:

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Pickens Common Pleas

Case Caption: Kevin M Granatino VS Calvin Williams , defendant, et al

Case Number: 2016CP3901223

Type: Order/Pro Hac Vice

So Ordered

s/ Robin B. Stilwell 2158

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
Kevin M. Granatino,	)	ORDER GRANTING DEFENDANTS'
	)	MOTIONS FOR SUMMARY JUDGMENT
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	C.A. NO.: 2016-CP-39-01223
Calvin Williams, Clemson University, South	)	
Carolina Department of Transportation and	)	
Thrift Development Corporation,	)	
	)	
Defendants.	)	

This matter is before the court on the Motions for Summary Judgment by the Defendants, Thrift Development Corporation ("Thrift"), South Carolina Department of Transportation ("DOT") and Clemson University ("Clemson"). The Defendants allege that the Plaintiff has failed to present any expert testimony that they deviated from any professional standard of care. Further, they allege that the Plaintiff was comparatively negligent and that such negligence exceeded 50%. Finally, Clemson argues that it owed no duty to the Plaintiff and/or that there is any evidence that it breached a duty of care to the Plaintiff.

Following a hearing on June 1, 2018, and a careful review of the various memoranda, pleadings, all other matters submitted and applicable case law, the Court hereby grants each of the Motions for Summary Judgment.

The Plaintiff, Kevin Granatino, was a student at Clemson University at the time of the accident on October 23, 2014. On that date, the Plaintiff was walking across the intersection of Highway 123/Tiger Boulevard and Highway 33/College Avenue when he was hit by a vehicle driven by the Defendant, Calvin Williams. The Plaintiff alleges that the Defendant, South Carolina

Department of Transportation (“DOT”) contracted with Thrift to complete construction in and around the intersection of Highway 123 and College Avenue. The Plaintiff alleges that he suffered permanent injuries as a result of being struck by Mr. Williams’ vehicle.

The Plaintiff alleges that Thrift provides construction services to the DOT. The Plaintiff further alleges that on the day of the accident, the intersection had a “defective, poorly maintained, and/or unsafe construction area.” (Complaint at paragraph 24). Plaintiff further alleges that Thrift and DOT owed a duty to create and/or maintain the intersection in a reasonably safe condition and to create and/or maintain the intersection according to the standards applicable to such creation and maintenance. The Plaintiff further alleges that Thrift and DOT owed a duty to exercise reasonable care and inspections of the intersection along with a duty to warn. The Plaintiff argues negligence in the failing to correct and/or repair any dangerous conditions, negligence in creating and/or constructing the intersection, failing to maintain the intersection, failing to repair/correct hazardous conditions and failing to warn of those hazardous conditions. In Paragraph 35 of the Complaint, the Plaintiff lists seven particulars of negligence against Thrift and the DOT.

I. Plaintiff was comparatively negligent in excess of 50% and therefore barred from recovery.

The Defendants submit that the Plaintiff was negligent in crossing the intersection and that his negligence exceeded 50%, therefore barring his recovery. They maintain that even if they were in some way negligent, no reasonable jury could find that their negligence equaled, or was greater than, the Plaintiff’s negligence.

Under South Carolina’s Doctrine of Comparative Negligence, a Plaintiff may only recover damages if its own negligence is not greater than that of the Defendant. Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E. 2d 783 (1991).

The Court acknowledges that ordinarily, comparison of the Plaintiff's negligence with that of the Defendant is a question of fact for the jury to decide. Bloom v. Ravoira, 339 S.C. 417, 429 S.E. 2d 710 (2000). The Ravoira court further stated as follows: "In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the Plaintiff's negligence exceeded 50%." Bloom, 529 S.E. 2d at 711.

In Bloom, the case involved a driver and a pedestrian. The pedestrian was crossing the street when he was struck by the Defendant's car. The trial court granted the Defendant's Motion for Summary Judgment, finding that even if the Defendant was "in some way negligent, no reasonable jury could find that [Defendant's] equaled, or was greater than, [Plaintiff's] negligence." Bloom, 529 S.E. 2d at 711.

In reaching this decision, the Bloom court stated that it must view the facts in the light most favorable to the non-moving party. However, it further said that a court cannot ignore facts "unfavorable to that party and it must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom, 527 S.E. 2d at 713. The court then cited the many facts which, even when viewed in the light most favorable to the Plaintiff, clearly showed that the Plaintiff was negligent.

In upholding the trial court's decision to grant summary judgment to the Defendant, the Bloom court stated as follows: "Here, the undisputed facts established that Bloom attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to Ravoira's fault in this accident cannot alter the inescapable conclusion that, as a matter of law, Bloom's fault exceeded 50%. Where evidence of the Plaintiff's greater negligence is

overwhelming, evidence of slight negligence on the part of the Defendant is simply not enough for a case to go to the jury.” Bloom, 529 S.E. 2d at 713–714.

The Bloom court concluded that its decision is no departure from the rule that summary judgment is a “drastic remedy” which should be “cautiously invoked”. Bloom, 529 S.E. 2d at 714.

Nevertheless, in the rare case where a verdict is not reasonably possible under the facts presented, summary judgment is proper. Accordingly, we find that the trial court correctly granted summary judgment...

Bloom, 529 S.E. 2d at 714.

As in Bloom, the Plaintiff in this case was clearly negligent in excess of 50%, and accordingly, summary judgment is the proper remedy. Even if Defendants were negligent, no reasonable jury could find that their negligence equaled, or was greater than, the Plaintiff’s negligence. The Plaintiff attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to Defendants’ fault cannot alter the “inescapable conclusion” that, as a matter of law, Plaintiff’s fault exceeded 50%.

While the Court understands that summary judgment in such circumstances is a “drastic remedy,” it is nevertheless warranted. For other cases in which the court reached similar results, see Hopson v. Clary, 321 S.C. 312, 468 S.E. 2d 305 (Ct. App. 1996); Estate of Haley v. Brown, 370 S.C. 240, 634 S.E. 2d 62 (Ct. App. 2006).

The Plaintiff’s own sworn testimony supports the conclusion that he was negligent, and that such negligence was more than 50%. The Plaintiff, 21 years old at the time, was racing into the busiest intersection¹ in Clemson on a Thursday night before a Clemson home game, after drinking alcohol to excess (.122 according to the medical records), carrying his friend piggy-back

¹ The Plaintiff identified the intersection shown in the photographs of Exhibit 6 to Officer Brooks’ deposition.

style. He testified repeatedly in his deposition that the traffic light turned yellow after he got into the middle of the intersection. (Granatino @ 121; See also, Granatino @ 141-142) At that point, he had already crossed several lanes of travel. The clear implication is that the light was green when he and his friend hurried into the busy street and were hit by the Williams' vehicle. (Granatino @ 21; See also, Granatino @ 40-41). The Plaintiff's own description of his action leading up to the incident establish that he violated South Carolina law and evidence of negligence per se.

Earlier that evening, the Plaintiff and several of his friends met up with 5 or 6 girls, including Lindsay Jones. As they walked from a local apartment, they had to cross through the intersection of Highway 123 and College Avenue before they entered the intersection at the time of the accident. The Plaintiff recalls stopping and looking for traffic at that intersection earlier that evening. Further, the Plaintiff was familiar with the intersection as he had been through the intersection both on foot and by car on previous occasions. The Plaintiff recalls they were either going to go downtown or to one of the bars. At some point before arriving at the intersection, the Plaintiff began carrying Ms. Jones on his back. (Granatino @ 12-20)

The Plaintiff further recalled that when he stepped into the roadway, he was carrying Ms. Jones on his back and continued to do so until they got to the middle of the road. He stopped in the middle of the road because "there was cars going the other way, so we just wanted to make sure we were safe to cross." (Granatino @ 121; See also, Granatino @ 141-142) At that point, the light turned yellow and they continued to crossing the intersection at which time they were struck by the Williams' vehicle. (Granatino @ 23-25; Granatino @ 32-33)

The accident report (Exhibit 2 to Brooks' deposition) includes a diagram and narrative of what happened that night. Several MAIT officers in the Clemson City Police Department

investigated the accident. They concluded that Plaintiff and his friend were “unlawfully in the roadway” and “failed to yield to the traffic.” As a result, Plaintiff was found to have contributed to the accident.

While the Plaintiff has submitted an affidavit directly contradicting his prior testimony, on several occasions during the deposition he admitted that the light turned yellow after they had gotten to the middle of the intersection. (Granatino @ 40-41; Granatino @ 21; Granatino @ 121; Granatino @ 141-142) To the extent the Plaintiff’s affidavit offered in opposition to the Motion for Summary Judgment materially and directly conflicts with his prior sworn testimony, the Court does not consider the affidavit. Our courts have consistently held that the trial court may disregard a subsequent affidavit as a “sham,” that is, does not create an issue of fact merely by contradicting that party’s own prior testimony. In distinguishing between a sham affidavit and a correcting or clarifying affidavit, the court must take into account a number of considerations including when the affidavit is offered in relation to the Summary Judgment motion. In this case, the Plaintiff’s affidavit was not offered until mere days before the motion hearing and he has not offered a credible explanation for the statements that contradict his prior sworn testimony. Accordingly, the court rejects the affidavit as a sham. Ins. Prods Mktg. v Conseco Life Ins. Co., 2012 U.S. Dist. LEXIS 113111 (2012); Cothran v. Brown, 357 S.C. 210, 592 S.E. 2d 629 (2004); Wells Fargo Bank, N.A. v. Prescott, 2017 S.C. App. Unpub. LEXIS 54 (2017)

The Court further notes Plaintiff had competent counsel at his deposition who had the opportunity to clarify his testimony at that time. Plaintiff also had the opportunity to read and sign his deposition.

While the Plaintiff admitted that he could have been intoxicated that night and simply did not remember, the medical records make it clear that he was in fact intoxicated. (Greenville

Memorial Hospital records 1100-GHS-83; 1100-GHS-394). Officer Brooks from MAIT testified that he has investigated numerous cases involving the issue of intoxication and impairment by alcohol. He has encountered drivers in the past who were impaired when they had a blood alcohol of .122 as the Plaintiff in this case. He confirmed that is above the legal limit as far as operating a vehicle on public highways. He further testified that if someone has alcohol in their system above the legal limit, then S.C. Code Ann §56-5-3270 would be applicable. That statute specifically provides that pedestrians who are under the influence of alcohol “which renders himself a hazard shall not walk on or be upon a roadway except a sidewalk” (Brooks @ 95-97). Officer Craig from MAIT also testified that it was unsafe for a pedestrian who was under the influence to walk into a roadway. (Craig @ 93-94) Officer Craig further testified that it was his experience with the Highway Patrol that individuals with .122 alcohol level are often impaired. Officer Craig agreed that the effects of such impairment could include their judgment. (Craig @ 94-95)

Officer Johnson with the Clemson City Police Department also testified that it has been his experience that when someone’s alcohol level is at .08 or greater, that they will show signs of impairment. That impairment includes being unsteady on their feet, impairment in their thinking and judgment, and the inability to judge distance and speed. (Johnson @ 112-115)

While Ms. Jones could not recall whether the Plaintiff consumed alcohol that night, she admitted that she drank liquor and was intoxicated. She further testified that they had crossed through the Highway 123/College Avenue intersection at least two times that night before the accident and that the girls who were with her had also been drinking. (Jones @ 26-28; 33-35; 39; 46-47)

In summary, the Plaintiff violated at least five different statutes governing pedestrians in or around the highway and intersections:

§56-5-3110 – Pedestrians shall obey the instructions of any official traffic control device.

§56-5-3130 – No pedestrian shall suddenly leave a curb or other place of safety to walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

§56-5-3150 – Pedestrians shall yield the right of way upon the roadway.

§56-5-3160 – Any pedestrian upon a roadway shall yield a right of way to all vehicles upon the roadway.

§56-5-3270 – A pedestrian who is under the influence of alcohol to a degree which renders himself a hazard shall not walk or be upon a highway except a sidewalk.

Based upon the Plaintiff's own testimony and testimony of other witnesses, the Plaintiff was clearly comparatively negligent in excess of 50%, and accordingly, his claims are barred.

II. The conduct of Thrift, DOT and Clemson was not the proximate cause of this accident.

Even if one assumes that the light for traffic on Highway 123 was red at the time of this accident, as Plaintiff now claims in his Affidavit, then Defendant Calvin Williams ("Williams") disregarded the red light and his conduct alone was the sole cause of this accident. Based upon the Plaintiff's own testimony, he knew **when** he could lawfully enter the intersection and **where** he could lawfully cross at the intersection and, therefore, under the Plaintiff's own new theory, there could be no liability on the part of the remaining Defendants. Such knowledge on the part of the Plaintiff completely absolves Thrift, DOT and Clemson of any liability in this case. Accordingly, the Plaintiff's claims against these remaining Defendants are barred as a matter of law.

III. The Defendants are entitled to judgment as a matter of law because the Plaintiff has not presented any expert testimony that they deviated from a professional standard of care.

The Plaintiff has alleged that Thrift and DOT were negligent in many different respects concerning the construction at the intersection of Highway 123 and College Avenue. Those

allegations include construction services and management, as well as coordination of the work of various sub-contractors. The allegations also refer to concerns compliance with industry standards, including the Manual On Uniform Traffic Control Devices. Such matters are not within the area of common knowledge and experience of the layman, and therefore, expert testimony is necessary to establish both the standard of care and Thrift's deviation from that standard. City of York Co. v Turner-Murphy Co., 317 S.C. 194, 452 S.E. 2d 615 (1994).

In the City of York case, the Plaintiff alleged that the project engineer was negligent in failing to adequately observe, inspect, and supervise the construction and failing to ensure conformance with the plans and specifications. In reaching this conclusion, the City of York court found that expert testimony was necessary to establish the standard of care. In reaching that conclusion, the court found as follows:

That capability requires professional knowledge of construction methods and procedures to determine whether any engineering company should have anticipated this problem based upon difficulties encountered during the construction process.

City of York, 452 S.E. 2d at 617.

Similarly, Thrift was the general contractor for this construction project and DOT was the "owner." An analysis of the performance of their duties requires something more than the common knowledge and experience of a layman. There must be testimony to establish that a reasonable and prudent construction management company would anticipate the particular problems, if any, regarding the placement of traffic control devices and management of the intersection generally.

As the City of York court stated:

In a professional negligence cause of action, the Plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the Plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law.

City of York, 452 S.E. 2d at 615.

An expert witness “must have acquired by reason of study or experience or both, such knowledge and skill in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” City of York, 477 S.E. 2d at 472.

In this particular case, the parties entered into a Consent Scheduling Order which required the Plaintiff to identify an expert by January 1, 2018. The Plaintiff has failed to identify any such experts, and correspondingly, has no competent evidence or testimony to establish a breach of a duty on the part of Thrift or DOT. This failure to offer expert testimony under the circumstances of this case is fatal and the Court hereby grants their Motions for Summary Judgment. Further, based upon the Plaintiff’s own factual evidence, no expert testimony was necessary.

IV. Clemson owed no duty to the Plaintiff, and accordingly, Plaintiff’s claim against it is barred.

South Carolina law does not recognize a “general duty to control the conduct of another or to warn a third person or potential victim of danger.” Doe ex rel. Doe, 393 S.C. at 246, 711 S.E.2d at 911 (quoting Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)). South Carolina Courts have recognized just “five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant.” Id. Here, after over a year of extensive discovery, Plaintiff cannot set forth facts sufficient to establish any of the five exceptions. Nothing contained in any deposition transcript, interrogatory answer, document produced, or sham affidavit states any facts sufficient to establish

a duty on behalf of Clemson to Granatino. Accordingly, the Court grants summary judgment to Clemson as a matter of law.

South Carolina courts have not recognized the existence of a special relationship between universities or colleges and their students. See e.g. Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003) (holding that Clemson University had no duty of care to prevent economic harm where university advisor failed to provide accurate recommendations for academic courses to maintain plaintiff's NCAA eligibility). In fact, the Court held that universities did not have a general duty or a fiduciary duty to students.

Here, Plaintiff did not even allege that a special relationship exists between Clemson and himself, nor has discovery established any facts that would support the existence of a special relationship with Clemson. Plaintiff merely alleges Clemson should have known that students of Clemson crossed the intersection in question in their regular travels to and from school and non-school locations. As such, Clemson, according to Plaintiff, should have created a safe route for people to get to and from campus and that the school was responsible for the safety of those students. Furthermore, Plaintiff asserts Clemson should have controlled the actions of other entities that controlled the intersection in question.

However, Plaintiff has provided no facts to support his allegations that Clemson had any duty to warn or protect Plaintiff from the alleged deficiencies in the Intersection. The Intersection is approximately six-tenths of a mile from Clemson's campus and is in the City of Clemson, not on the campus of Clemson, according to the responding officer for the City of Clemson Police Department. (Johnson @ 78) The Intersection is not on or immediately adjacent to Clemson's campus and all of the property surrounding the intersection is privately owned and used for commercial purposes. Additionally, while there are apartments and other residential properties on

or about College Avenue north of the Intersection, none of those apartments are Clemson housing or owned or controlled by Clemson. Finally, Clemson has no ownership, possession, or control over the Intersection and had no involvement with the construction project taking place at the time of the accident. The Clemson Police Department does not have jurisdiction at this intersection and responds only when requested by City of Clemson Police Department. (Johnson @ 78) Clemson Fire Department and EMS responded to the scene, but that was the result of a mutual aid agreement between the City of Clemson and Clemson and not because of any specific duty Clemson has for the Intersection or the people traveling through the Intersection. (Johnson @ 79 and 80)

Because Plaintiff has not established facts supporting the existence of a special relationship with Clemson and because no facts exist to support the existence of such a special relationship, this Court finds as a matter of law that Clemson did not have a duty to the Plaintiff under the special relationship to the victim exception.

Further, Plaintiff does not allege that a special relationship exists between Clemson and Williams, nor does he state any facts that would support the existence such a relationship. Further, there are no facts that indicate Clemson had any control over Williams, the at-fault driver in the Accident. Accordingly, even viewing the alleged facts in the light most favorable to the Plaintiff, Clemson did not have a duty to the Plaintiff under the special relationship to the injurer exception.

Plaintiff also did not allege that Clemson voluntarily undertook a duty to warn or protect him, nor does he state any facts that would support such a conclusion. Furthermore, discovery has not established the existence of any facts that would give rise to Clemson voluntarily undertaking a duty to warn or protect Plaintiff. Accordingly, even viewing the alleged facts in the light most favorable to the Plaintiff, Clemson did not have a duty to the Plaintiff under this exception.

Other than mere assertions that Clemson University negligently created, allowed, maintained, constructed, repaired, and/or corrected the Intersection, Plaintiff has offered absolutely no factual support or bases to support the allegation that Clemson University somehow created the risk with regard to the Intersection. Nothing contained in any deposition or discovery response suggest that Clemson created any risk to the Plaintiff.

The Intersection is approximately six-tenths of a mile from Clemson's campus and is not attached or adjacent to its campus. Furthermore, Clemson has no ownership, possession, or control over the intersection and had no involvement with the construction project taking place at the time of the accident. Accordingly, even viewing the alleged facts in the light most favorable to the Plaintiff, this Court finds as a matter of law that Clemson did not have a duty to the Plaintiff under this exception.

As for the statutory exception, Plaintiff merely alleges that Clemson failed to "obey the laws and regulations of the State of South Carolina, which were enacted for the safety and well-being of all persons traveling on public roadways." (Compl. ¶ 44.) Plaintiff does not allege any specific statute under which Clemson would owe him a duty regarding construction work on an intersection six-tenths of a mile from its campus over which it had no ownership, possession, or control.

In fact, the South Carolina Tort Claims Act specifically states that Clemson does not have a duty for defects with this intersection as it was not the governmental entity responsible for its maintenance. "[A] governmental entity is not liable for a loss resulting from: absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity

responsible for its maintenance within a reasonable time after actual or constructive notice.” S.C. Code Ann. § 15-78-60(15) (Supp. 2005).

Accordingly, even viewing the alleged facts in the light most favorable to the Plaintiff, this Court should find as a matter of law that Clemson did not have a duty to the Plaintiff under this exception.

The Plaintiff has failed to establish that there is any duty owed to him by Clemson. However, even if under some set of facts there is some argument that a duty might exist, he has failed to establish a breach of any duty.

The Plaintiff has also introduced no testimony or evidence into the case regarding any breach of a duty by Clemson. Only the Plaintiff himself has testified that Clemson has any liability for the Plaintiff’s injuries, but nothing in his testimony states what Clemson supposedly did or failed to do that would constitute a breach of a duty. Furthermore, the Plaintiff has not identified any expert witness that would offer any opinion regarding whether Clemson breached a duty to the Plaintiff.

While Plaintiff argues that it is premature to rule on Clemson’s Motion, the Court finds that the parties had ample opportunity for discovery prior to the hearing on these motions.

IT IS SO ORDERED.

Perry H. Gravely
Presiding Judge, Thirteenth Judicial Circuit

_____, 2018

Pickens, South Carolina



Pickens Common Pleas

Case Caption: Kevin M Granatino VS Calvin Williams , defendant, et al

Case Number: 2016CP3901223

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-07-19 08:25:12 page 15 of 15

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Kevin M. Granatino,)

Plaintiff)

v.)

Calvin Williams, Clemson University, South
Carolina Department of Transportation and
Thrift Development Corporation,)

Defendants.)

IN THE COURT OF COMMON PLEAS

**ORDER DENYING PLAINTIFF'S MOTION
TO ALTER OR AMEND**

C.A. NO.: 2016-CP-39-01223

This matter is before the Court on the Plaintiff's Motion to Alter or Amend the Court's granting of summary judgment in favor of Defendants, South Carolina Department of Transportation ("DOT") and Thrift Development Corporation ("Thrift")¹. The Plaintiff offers several arguments in support of his motion for reconsideration: first, that the Court erred in determining as a matter of law that the Plaintiff was greater than 50% liable for the injuries he sustained; second, that there are genuine issues of material fact which preclude the granting of summary judgment; and third, that extenuating circumstances, including the withdrawal of the Plaintiff's original counsel, constitute sufficient cause for the Plaintiff to be excused from identifying expert witnesses within the deadlines established by the Consent Scheduling Order submitted by the parties and signed by the Court. For the reasons discussed herein, the Court finds these arguments without merit, and therefore denies the Plaintiff's motion.

¹ In the same Order, the Court also granted summary judgment to Clemson University. The Plaintiff has not sought reconsideration of that finding, and therefore is not addressed within this Order.

BACKGROUND

Mr. Granatino was a 21-year old student at Clemson University who was struck by a vehicle being operated by Calvin Williams while attempting to cross Highway 123 on a Thursday night before a Clemson home football game while carrying a friend on his back. Mr. Granatino, who sustained significant injuries in the accident, was found to have a blood alcohol level of .122 while at the hospital following the incident.

Mr. Granatino commenced the within action on October 21, 2016, against not only Mr. Williams, the driver of the vehicle, but also Clemson University, the South Carolina Department of Transportation, and Thrift Development Corporation.

During the discovery phase of this matter, the parties entered into a consent scheduling order, which required the Plaintiff to identify expert witnesses on or before January 1, 2018. The Plaintiff did not identify any expert witnesses by the deadline, and has not sought amendment of the scheduling order. Several weeks later, the Plaintiff's then-attorneys sought to be relieved as counsel of record. That request was granted, and Plaintiff's current attorneys, which include his step-father who is an attorney licensed to practice law in Massachusetts and who is admitted *pro hac vice* for this matter, as well as local counsel, filed appearances thereafter.

Thrift and DOT filed motions for summary judgment in mid-January 2018, asserting that the Plaintiff was, as a matter of law, greater than 50% negligent in causing his own injuries; that the Plaintiff's theory of the case established that neither Thrift nor DOT performed acts or omissions that were a proximate cause of the Plaintiff's injuries; and that the Plaintiff failed to offer expert testimony to establish any breach of the standard of care owed by either Thrift or DOT. Following a review of the parties' submissions, a hearing on the motion, and consideration of

proposed orders submitted by the parties, the Court granted the Defendants' motions. The Plaintiff then filed this motion to alter or amend.

STANDARD OF REVIEW

Under South Carolina law, a Rule 59(e) motion to alter or amend is only appropriate when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue and when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Therefore, "a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *see Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017) (finding that issues were not preserved for appeal when first raised in a motion for reconsideration under Rule 59(e)). Accordingly, a party cannot use Rule 59(e) to present evidence absent from the record to the court for consideration. *Mozingo ex rel. Estate of Stewart v. Ford Motor Co.*, No. 2009-UP-282, 2009 S.C. App. Unpub. LEXIS 285 (Ct. App. June 4, 2009) (citing *Brailsford v. Brailsford*, 380 S.C. 443, 448, 669 S.E.2d 342, 345 (Ct. App. 2008)).

Stated another way, the purpose of a motion to alter or amend is "to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

In *Mozingo*, the Court of Appeals of South Carolina held that evidence mentioned during a summary judgment hearing but not entered into the record could not later be entered through a 59(e) motion for reconsideration. *See Morzingo* at *2. In that case, the court granted summary

judgment in favor of Defendant in a wrongful death action. *Id.* at *1. Subsequently, Plaintiff filed a Rule 59(e) motion for reconsideration and attached documentation that was mentioned but not presented to the trial court prior to the hearing. *Id.* The court held that, although the documents were attached as an exhibit as “new evidence,” a party may not use the Rule 59(e) motion as a vehicle to present the same to the court. *Id.* at *2. Therefore, Plaintiff’s motion for reconsideration was denied and the ruling of the lower court was affirmed. *Id.*

ANALYSIS

As an initial matter, the Court notes that in order to prevail on this motion, the Plaintiff must establish that the Court misconstrued or misapplied law related to each of the stated grounds for granting the Defendants’ motions for summary judgment. It is not sufficient merely to prevail on one of the grounds upon which the Court based its decision to grant summary judgment.

In claiming that there exists genuine issues of material facts, the Plaintiff contends that the Court mistakenly relied upon the testimony of the Plaintiff himself; that the Court improperly found the affidavit submitted by the Plaintiff to be a “sham” affidavit; that the Court misconstrued the evidence establishing the Plaintiff’s level of intoxication around the time of the incident; that the Court failed to consider the contradictory testimony of various eyewitnesses; and that the Court failed to consider whether inadequate lighting and/or inoperable pedestrian traffic signals caused or contributed to the accident. These arguments are unavailing.

The Plaintiff’s contention that his significant brain injury requires the Court to disregard his deposition testimony is without merit. First, the Plaintiff failed to make this argument at the summary judgment stage, and cannot make the argument for the first time in a Rule 59(e) motion. *See Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017) (finding that issues were not preserved for appeal when first raised in a motion for reconsideration under Rule 59(e)).

Moreover, the Plaintiff has not offered any evidence to support his contention that his testimony is unreliable. He has not offered an affidavit, report, or medical records from a qualified physician regarding his competency, or lack thereof, at the time his deposition was taken, and he has not submitted any other information upon which the Court may rely in support of this contention. Ironically, the Plaintiff's only evidence that his deposition testimony is not to be believed is by an affidavit dated May 28, 2018 ("Affidavit") submitted by the Plaintiff at the hearing on June 1, 2018. Moreover, if there was a concern about the Plaintiff's state of mind or ability to respond to deposition questions, his attorney at the time of his deposition had the opportunity to raise that issue on the record before, during or after the deposition, but did not do so. Furthermore, the Plaintiff had the opportunity to have a guardian appointed on his behalf to the extent he could not reliably provide information for his case. However, that was also not done. In effect, the Plaintiff is asking this Court to find that the Plaintiff's brain injury renders him an unreliable witness, but the only evidence submitted to the Court is the Plaintiff's own affidavit. This is clearly insufficient and wholly self-serving, and as a result, the Court rejects the Plaintiff's arguments.

In the affidavit presented to the Court by the Plaintiff's attorneys, the Plaintiff changed his deposition testimony concerning the color of the traffic light at the time he was hit in the cross walk from yellow to red. By presenting that Affidavit, the Plaintiff and his attorneys represented to this Court that the Plaintiff was competent, mentally and physically, to make the statements, under oath, that are made therein and that the Plaintiff was not impaired in any way by medication, alcohol, etc. at the time those statements were made. Accordingly, even if the Court were to assume that the affidavit was not a "sham" and found that the color of the light was indeed red at the time of crossing, the Plaintiff could still not prevail against these Defendants. As stated in this Court's Order of July 19, 2018, that would simply mean that the Defendant, Calvin Williams

(“Williams”) disregarded the red light and that his wrongful conduct alone was the sole cause of the accident. The Plaintiff still knew *when* he could lawfully enter the intersection (on a red light) and where he could lawfully cross at the intersection (at a crosswalk where he was crossing) thereby still completely absolving Thrift and DOT of any liability in this case.

Likewise, the Court also rejects the Plaintiff’s argument that it improperly considered the Plaintiff’s blood alcohol level in determining the Plaintiff was greater than 50% responsible for his injuries. Again, this was not raised at the summary judgment motion hearing, and therefore is improperly before the Court. However, the argument itself is not persuasive. The Plaintiff asserts that there must be some extrinsic evidence demonstrating the effect of alcohol consumption on the Plaintiff, such as unsteadiness on his feet, glassy eyes, or other indicia of impairment. The Plaintiff misapprehends the import of this evidence, which is not intended to establish a particular level of intoxication, but rather that he was intoxicated beyond the legal limit. Moreover, it is not merely the intoxication the court relies upon, but also that the Plaintiff was carrying someone on his back across a busy intersection, that he testified the light was yellow when he reached the median, and that he was in violation of at least five provisions of the South Carolina Code of Laws at the time of the incident. A violation of a statute is evidence of recklessness; therefore, there is more than ample support for the Court’s finding that the Plaintiff was greater than 50% responsible for the incident and is therefore barred from recovery.

In asserting that eyewitness testimony creates a question as to whether the Plaintiff crossed on a red, green, or yellow light, the Plaintiff ignores his own affidavit testimony that the Defendant, Calvin Williams, ran the red light. If Mr. Williams, as the Plaintiff has asserted, ran the red light, then Thrift and DOT cannot be liable to the Plaintiff. However, assuming Mr. Williams did not run the red light, then the Plaintiff must have been crossing against the light, another indication

that the Plaintiff is greater than 50% liable for his injuries. Finally, the question of whether the pedestrian light was operable is irrelevant to any issue in this case. First, the Plaintiff's initial contention was that Defendant Williams ran the red light, which if true, would mean that the pedestrian signal would have been instructing Mr. Granatino to walk. If Mr. Williams did not run the red light, then Mr. Granatino would not have had permission to walk on the pedestrian signal. Thus, the purported lack of an operating pedestrian signal is of no consequence to the question of liability. Ultimately, based on the set of facts presented to this Court, there are only two potential individuals who could be responsible for Mr. Granatino's injuries: Mr. Williams and Mr. Granatino. There is no combination of facts present in this case that would reduce Mr. Granatino's responsibility to 50% or below, and there is no combination of facts that would create of material fact as to the liability of Thrift or DOT.

Finally, the Plaintiff argues that the Court erred in holding that the Plaintiff failed to present expert testimony on any deviation from the standards of care, arguing that the Court failed to take into account the sequence of events. The Plaintiff argues that there are extenuating circumstances which make it inequitable for the Court to grant summary judgment based upon the failure of the Plaintiff to obtain expert testimony. However, Plaintiff's original counsel consented to a Scheduling Order which required the disclosure of Plaintiff's experts on or before January 1, 2018. Counsel never asked for consent to extend the deadline and never moved the Court for such relief. Even after new counsel appeared for the Plaintiff, no expert witnesses have been identified or proposed. The fact remains that the Plaintiff and his counsel had every opportunity to comply with the Scheduling Order or otherwise identify some witness(es) to testify regarding purported breaches of the standards of care owed by Thrift and DOT in the two years this matter has been pending, but have failed to do so. Indeed, both the Plaintiff's mother and step-father are practicing

attorneys in the State of Massachusetts whose presence is noted on multiple deposition transcripts.

As a result, the Court finds this argument to be unpersuasive.

For the reasons discussed herein, the Plaintiff's Motion to Alter or Amend the Order of July 19, 2018 is denied.

Perry H. Gravely
Presiding Judge
Electronic Signature on following Page

Pickens, South Carolina
November 20, 2018



Pickens Common Pleas

Case Caption: Kevin M Granatino VS Calvin Williams , defendant, et al

Case Number: 2016CP3901223

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-11-20 09:43:12 page 9 of 9

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Kevin Granatino,

Plaintiff,

-vs-

Calvin Williams, Clemson University, South
Carolina Department of Transportation, and
Thrift Development Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

AMENDED SUMMONS

Case No.: 2016-CP-39-01223

TO: THRIFT DEVELOPMENT CORPORATION

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 this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

White, Davis & White Law Firm

/s/Trevor B. White

Trevor B. White (S.C. Bar No. 100791)

Druanne White (S.C. Bar No. 5991)

ATTORNEYS FOR THE PLAINTIFF

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Anderson, SC 29621

(864)-231-8090

Anderson, South Carolina
February 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Kevin M. Granatino,

Plaintiff,

-vs-

Amended Complaint for Damages
(Jury Trial Demanded)

Case No.: 2016-CP-39-01223

Calvin Williams, Clemson University, South
Carolina Department of Transportation, and
Thrift Development Corporation,

Defendants.

The Plaintiff, by and through his undersigned counsel, for a Complaint against the Defendants, alleges as follows:

PARTIES

Plaintiff

1. The Plaintiff, Kevin Granatino, is a citizen and resident of Plymouth County, Massachusetts. Plaintiff is a student in his senior year at Clemson University. He temporarily resides in Pickens County, South Carolina.

Defendants

2. The Defendant, **Calvin Williams** (hereinafter "Defendant Williams"), is a citizen and resident of Pickens County, South Carolina. He is the at-fault driver in an automobile-pedestrian collision occurring on October 23, 2014.

3. Upon information and belief, Defendant **Clemson University** (hereinafter "Clemson"), is a political subdivision of the State of South Carolina within the meaning of the South Carolina Tort Claims Act codified at South Carolina Code Ann. § 15-78-30(h).

4. At the time of the incidents giving rise to Plaintiff's Complaint, Clemson acted by and through its agents, contractors, and employees for the purpose of carrying on its business as an institution of higher learning and therefore, it is liable for the negligent acts of its agents, contractors, and employees, under the theories of non-delegable duty and *respondeat superior*.

5. Upon information and belief, Defendant **South Carolina Department of Transportation** (hereinafter "SCDOT"), is a division of the State of the South Carolina within the meaning of the South Carolina Tort Claims Act codified at South Carolina Code Ann. § 15-78-30(e).

6. At the time of the incidents giving rise to Plaintiff's Complaint, SCDOT acted by and through its agents, contractors, and employees for the purpose of carrying on its business as the systematic planner of all construction, maintenance, and operation of the South Carolina highway system and therefore, it is liable for the negligent acts of its agents, contractors, and employees, under the theories of non-delegable duty and *respondeat superior*.

7. Upon information and belief, the Defendant **Thrift Development Corporation** (hereinafter "Thrift") is an incorporated company organized under the laws of the State of South Carolina, with its principal place of business located in the County of Oconee, State of South Carolina.

8. Upon information and belief, Thrift provides construction services to the State of South Carolina, specifically, to SCDOT, on the South Carolina highway system and therefore, it is liable for the negligent acts of its agents, contractors, and employees, under the theories of non-delegable duty and *respondeat superior*.

9. Plaintiff expressly pleads that the limitations of recovery set forth in the South Carolina Tort Claims Act are inapplicable as to Defendant Williams and Thrift, with respect to a finding

that Defendant Williams and Thrift acted in a reckless, willful, or grossly negligent manner in the acts or omissions giving rise to Plaintiff's Complaint.

JURISDICTION AND VENUE

10. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina, and the South Carolina Tort Claims Act codified at § 15-78-10 et seq.

11. Venue is appropriate in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30 and § 15-78-100(b).

FACTUAL ALLEGATIONS

12. Plaintiff realleges and incorporates herein all of the relevant and consistent allegations in the foregoing Paragraphs as fully as if repeated herein.

13. Plaintiff was enrolled as a full-time student at Clemson in the fall of 2014. Plaintiff was an exceedingly bright young man and an accomplished high school athlete in ice hockey and baseball.

14. Upon information and belief, Thrift was engaged in construction at the intersection of US 123 and College Avenue in Pickens County, South Carolina in or around October 2014.

15. Upon information and belief, SCDOT hired Thrift to complete construction at the intersection of US 123 and College Avenue (hereinafter "the intersection") in Pickens County, South Carolina in or around October 2014.

16. Defendants knew or should have known that Clemson students regularly crossed the intersection on foot, as the intersection connects several student apartment complexes to

downtown Clemson and to Clemson University's campus.

17. Upon information and belief, Thrift, SCDOT, and Clemson failed to adequately safeguard the crosswalk located at the intersection during the ongoing construction in or around October 2014. Specifically, the roads adjacent to the intersection were not properly fitted with lighting, pedestrian signs, and/or warning signs. The crosswalk, lights, and the intersection were under repair at the time of the incident.

18. On October 25, 2014, Plaintiff was attempting to cross the intersection when he was struck by a vehicle driven by Defendant Williams. Plaintiff was walking on College Avenue in the crosswalk toward downtown Clemson at the time he was struck by Defendant Williams' vehicle.

19. Defendant Williams was traveling east on US 123, when he accelerated in an attempt to make a yellow light, at which point he collided with Plaintiff. Due to the construction taking place at the intersection, there were no crosswalk signals, the lighting was poor, and the road was not properly marked for pedestrians.

20. As a result of the accident on October 23, 2014, Plaintiff suffered extensive temporary and permanent personal injuries. Plaintiff was unresponsive at the scene of the accident and subsequently airlifted to Greenville Memorial Hospital in critical condition. On or about November 13, 2014, Plaintiff was flown via Angel Med Flight to Massachusetts General Hospital. Plaintiff was treated by a team of over twenty doctors at Massachusetts General Hospital. Thereafter, Plaintiff was extubated and transferred to Spaulding Rehabilitation Hospital where he remained admitted inpatient until January 21, 2015. On or about January 21, 2015, Plaintiff was transferred to outpatient status at Spaulding Rehabilitation Hospital where he

participated in intensive occupational therapy, physical therapy, and speech therapy. Plaintiff was administered Lovenox, via injection, to avoid clots due to his limited mobility. Further, Plaintiff suffered a traumatic brain injury, broken bones, and temporary and permanent memory loss, among other emotional, cognitive, and physical injuries.

21. Plaintiff has been deemed disabled by the Social Security Administration and continues to suffer from severe memory loss and impairment of executive functioning. As a result of Plaintiff's injuries, he was unable to return to Clemson until January 2016. Plaintiff now takes two classes per semester and receives special accommodations at Clemson.

22. Defendant Williams' negligence, carelessness, recklessness, willfulness, and wantonness in failing to exercise the degree of reasonable care of persons or entities in similar circumstances, caused Plaintiff's injuries and suffering. Specifically, Defendant Williams' failed to act as a reasonably prudent person in similar circumstances in one or more of the following particulars, as follows:

- i. Failing to operate the vehicle in a safe manner;
- ii. Failing to keep a proper lookout while operating the vehicle;
- iii. Failing to yield his car to pedestrians, causing a collision with Plaintiff;
- iv. Failing to take action necessary to avoid the collision;
- v. Failing to maintain proper control of the vehicle;
- vi. Defendant Williams' was negligent per se; and,
- vii. In other such particulars that may be demonstrated at trial.

23. Defendant Williams' gross negligence in failing to exercise even the slightest degree of care as to the consequences of his actions, caused Plaintiff's injuries and suffering. Specifically,

Defendant Williams was so indifferent to the consequences of his conduct so as to not give the slightest care as to what he was doing in one or more of the following particulars, as follows:

- i. Failing to operate the vehicle in a safe manner;
- ii. Failing to keep a proper lookout while operating the vehicle;
- iii. Failing to yield his car to pedestrians, causing a collision with Plaintiff;
- iv. Failing to take action necessary to avoid the collision;
- v. Failing to maintain proper control of the vehicle;
- vi. Defendant was negligent per se; and,
- vii. In other such particulars that may be demonstrated at trial.

24. On or about October 23, 2014, there existed a defective, poorly maintained, dangerous, and/or unsafe area at the intersection, including, but not limited to a defective, poorly maintained, and/or unsafe construction area.

25. At all times material hereto, Clemson, SCDOT, and Thrift owed Plaintiff a duty to create and/or maintain the intersection in a reasonably safe condition.

26. At all times material hereto, Clemson, SCDOT, and Thrift owed Plaintiff a duty to create and/or maintain the intersection according to the standards applicable to said creation and maintenance.

27. At all times material hereto, Clemson, SCDOT, and Thrift owed Plaintiff a duty to refrain from actions and/or inactions which would injure Plaintiff.

28. At all times material hereto, Clemson, SCDOT, and Thrift owed Plaintiff a duty to exercise reasonable care and inspections of the intersection.

29. At all times material hereto, Clemson, SCDOT, and Thrift owed Plaintiff a duty to warn

Plaintiff of any and all dangerous conditions at the intersection.

30. At all times material hereto, Clemson, SCDOT, and Thrift owed Plaintiff a duty to correct and/or repair any and all dangerous conditions to which they were aware or in the exercise of reasonable care should have known about.

31. Clemson, SCDOT, and Thrift breached their duties owed to Plaintiff by negligently creating and/or constructing the intersection.

32. Clemson, SCDOT, and Thrift breached their duties owed to Plaintiff by negligently failing to maintain the intersection.

33. Clemson, SCDOT, and Thrift breached their duties owed to Plaintiff by negligently failing to repair/correct hazardous conditions at the intersection.

34. Clemson, SCDOT, and Thrift breached their duties owed to Plaintiff by negligently failing to warn Plaintiff of hazardous conditions at the intersection.

35. Further, Clemson, SCDOT, and Thrift breached their duties owed to Plaintiff by committing the following negligent acts and/or omissions:

- i. By negligently creating and/or constructing the intersection;
- ii. By negligently allowing a dangerous condition to exist at the intersection;
- iii. By failing to eliminate known dangerous conditions at the intersection;
- iv. By failing to properly and adequately maintain a construction zone at the intersection, whereby pedestrians could safely cross the intersection;
- v. By failing to warn Plaintiff of the existence of these dangerous conditions;
- vi. By otherwise negligently maintaining, inspecting, and/or repairing the intersection and/or the area surrounding the intersection during

construction; and,

vii. In other such particulars that may be demonstrated at trial.

36. Further, Clemson breached its duty owed to Plaintiff by committing the following negligent acts and/or omissions:

- i. Failing to warn students of the dangerous conditions at the intersection;
- ii. Failing to provide adequate alternative routes to students who are attempting to cross said roadway;
- iii. Failing to adequately monitor the conditions caused by the construction on said roadway;
- iv. Failing to provide safe conditions for students to cross said roadway; and,
- v. In other such particulars that may be demonstrated at trial.

FOR A FIRST CAUSE OF ACTION

**(Negligence as to Defendant Williams, Clemson, SCDOT, and Thrift)
(Collectively "Defendants")**

37. Plaintiff realleges and incorporates herein all of the relevant and consistent allegations in the foregoing Paragraphs as fully as if repeated herein.

38. As a direct and proximate result of Defendants' negligence, carelessness, gross negligence, recklessness, and departure from the reasonable standard of care of persons or entities in like or similar circumstances, Plaintiff suffered severe temporary and permanent injuries. As a result of Defendants' conduct, Plaintiff is entitled to recover a sum to compensate him for his physical injuries, conscious pain and suffering, mental anguish, loss of earning capacity, loss of enjoyment of life, and other damages. All damages should be in an amount

determined by a jury in this action.

39. As to Defendant Williams and Thrift, Plaintiff also is entitled to recover a sum of punitive damages to punish and deter Defendant Williams, Thrift, and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence as to Defendant Williams, Clemson, SCDOT, and Thrift)
(Collectively "Defendants")

40. Plaintiff realleges and incorporates herein all of the relevant and consistent allegations in the foregoing Paragraphs as fully as if repeated herein.

41. As a direct and proximate result of Defendants' gross negligence in failing to exercise even the slightest degree of care as to the consequences of their actions, Plaintiff suffered severe temporary and permanent injuries. As a result of Defendants' conduct, Plaintiff is entitled to recover a sum to compensate him for his physical injuries, conscious pain and suffering, mental anguish, loss of earning capacity, loss of enjoyment of life, and other damages. All damages should be in an amount determined by a jury in this action.

42. As to Defendant Williams and Thrift, Plaintiff also is entitled to recover a sum of punitive damages to punish and deter Defendant Williams, Thrift, and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se as to Defendant Williams, Clemson, SCDOT, and Thrift)
(Collectively "Defendants")

43. Plaintiff realleges and incorporates herein all of the relevant and consistent allegations in

the foregoing Paragraphs as fully as if repeated herein.

44. As a direct and proximate result of Defendants' negligence per se by failing to obey the laws and regulations of the State of South Carolina, which were enacted for the safety and well-being of all persons traveling on public roadways, Plaintiff has suffered severe temporary and permanent injuries. As a result of Defendants' conduct, Plaintiff is entitled to recover a sum to compensate him for his physical injuries, conscious pain and suffering, mental anguish, loss of earning capacity, loss of enjoyment of life, and other damages. All damages should be in an amount determined by a jury in this action.

45. As to Defendant Williams and Thrift, Plaintiff also is entitled to recover a sum of punitive damages to punish and deter Defendant Williams, Thrift, and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

DAMAGES

46. Plaintiff realleges and incorporates herein all of the relevant and consistent allegations in the foregoing Paragraphs as fully as if repeated herein.

47. As a direct and proximate result of Defendants' negligence, gross negligence, and negligence per se, Plaintiff has suffered temporary and permanent injuries.

48. Plaintiff has suffered the following damages:

- i. Temporary and permanent speech impediments;
- ii. Temporary and permanent physical disabilities;
- iii. Temporary and permanent impairment of executive functioning;
- iv. Temporary and permanent mobility issues;

- v. Temporary and permanent pain and suffering as a result of his physical injuries;
- vi. Temporary and permanent mental anguish as a result of his physical injuries;
- vii. Temporary and permanent loss of earning capacity as a result of his physical injuries;
- viii. Temporary and permanent loss of enjoyment of life as a result of his physical injuries;
- ix. Extensive medical bills for treatment of Plaintiff's physical injuries;
- x. Temporary and permanent scarring and disfigurement as a result of his physical injuries; and,
- xi. In other such particulars that may be demonstrated at trial.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by a jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this Court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina law.

WHITE, DAVIS & WHITE LAW FIRM

Anderson, South Carolina
February 14, 2017

/s/Trevor B. White
Trevor B. White (S.C. Bar No. 100791)
Druanne White (S.C. Bar No. 5991)
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
Kevin M. Granatino,	)	DEFENDANT THRIFT DEVELOPMENT
	)	CORPORATION'S ANSWER
Plaintiff,	)	TO AMENDED COMPLAINT
	)	
	)	
vs.	)	
	)	C.A. NO.: 2016-CP-39-01223
Calvin Williams, Clemson University, South	)	
Carolina Department of Transportation and	)	
Thrift Development Corporation,	)	
	)	
Defendant.	)	

The Defendant, Thrift Development Corporation, answering the Amended Complaint of the Plaintiff, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant admits upon information and belief the allegations contained in paragraph 1 of the Amended Complaint.
2. The Defendant admits upon information and belief the allegations contained in paragraph 2 of the Amended Complaint.
3. The Defendant admits upon information and belief the allegations contained in paragraph 3 of the Amended Complaint.
4. In response to the allegations contained in paragraph 4 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.
5. The Defendant admits upon information and belief the allegations contained in paragraph 5 of the Amended Complaint.
6. In response to the allegations contained in paragraph 6 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.

7. The Defendant admits the allegations contained in paragraph 7 of the Amended Complaint.

8. The Defendant admits so much of the allegations contained in paragraph 8 of the Amended Complaint as allege that it provides construction services in the State of South Carolina. The Defendant denies the remaining allegations of paragraph 8 of the Amended Complaint.

9. The allegations contained in paragraph 9 constitute a legal conclusion for which a response is not required. To the extent a response is required by the Defendant, the allegations are denied.

10. The Defendant admits upon information and belief the allegations contained in paragraph 10 of the Amended Complaint.

11. The Defendant admits the allegations contained in paragraph 11 of the Amended Complaint.

12. In response to the allegations contained in paragraph 12 of the Amended Complaint, the Defendant realleges and incorporates by reference its answers to paragraphs 1-11 of the Amended Complaint.

13. In response to the allegations contained in paragraph 13 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.

14. The Defendant admits so much of the allegations contained in paragraph 14 of the Amended Complaint as allege that at some point in time it provided construction services for portions of US 123 and College Avenue in Pickens County, South Carolina. The Defendant denies the remaining allegations of paragraph 14 of the Amended Complaint.

15. In response to the allegations contained in paragraph 15 of the Amended Complaint, the Defendant admits those allegations that it was involved in providing construction services for portions of US 123 and College Avenue in Pickens County, South Carolina at some point in time. The Defendant denies the remaining allegations contained in paragraph 15 of the Complaint.

16. The Defendant admits the allegations contained in paragraph 16 of the Amended Complaint.

17. The Defendant admits the allegations contained in paragraph 17 of the Amended Complaint.

18. In response to the allegations contained in paragraph 18 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.

19. In response to the allegations contained in paragraph 19 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.

20. In response to the allegations contained in paragraph 20 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.

21. In response to the allegations contained in paragraph 21 of the Amended Complaint, the Defendant lacks sufficient information to form a belief and therefore denies them.

22. The allegations contained in paragraph 22 of the Amended Complaint are not directed to the Defendant and therefore do not require a response. To the extent a response is required, the Defendant denies the allegations contained in paragraph 22 of Amended Complaint.

23. The allegations contained in paragraph 23 of the Amended Complaint are not directed to the Defendant and therefore do not require a response. To the extent a response is required, the Defendant denies the allegations contained in paragraph 23 of Amended Complaint.

24. The Defendant denies the allegations contained in paragraph 24 of the Amended Complaint.

25. The Defendant denies the allegations contained in paragraph 25 of the Amended Complaint.

26. The Defendant denies the allegations contained in paragraph 26 of the Amended Complaint.

27. The Defendant denies the allegations contained in paragraph 27 of the Amended Complaint.

28. The Defendant denies the allegations contained in paragraph 28 of the Amended Complaint.

29. The Defendant denies the allegations contained in paragraph 29 of the Amended Complaint.

30. The Defendant denies the allegations contained in paragraph 30 of the Amended Complaint.

31. The Defendant denies the allegations contained in paragraph 31 of the Amended Complaint.

32. The Defendant denies the allegations contained in paragraph 32 of the Amended Complaint.

33. The Defendant denies the allegations contained in paragraph 33 of the Amended Complaint.

34. The Defendant denies the allegations contained in paragraph 34 of the Amended Complaint.

35. The Defendant denies the allegations contained in paragraph 35 of the Amended Complaint.

36. The Defendant denies the allegations contained in paragraph 36 of the Amended Complaint.

37. In response to the allegations contained in paragraph 37 of the Amended Complaint, the Defendant realleges and incorporates by reference its answers to paragraphs 1-36 of the Amended Complaint

38. The Defendant denies the allegations contained in paragraph 38 of the Amended Complaint.

39. The Defendant denies the allegations contained in paragraph 39 of the Amended Complaint.

40. In response to the allegations contained in paragraph 40 of the Amended Complaint, the Defendant realleges and incorporates by reference its answers to paragraphs 1-39 of the Amended Complaint

41. The Defendant denies the allegations contained in paragraph 41 of the Amended Complaint.

42. The Defendant denies the allegations contained in paragraph 42 of the Amended Complaint.

43. In response to the allegations contained in paragraph 43 of the Amended Complaint, the Defendant realleges and incorporates by reference its answers to paragraphs 1-42 of the Amended Complaint

44. The Defendant denies the allegations contained in paragraph 44 of the Amended Complaint.

45. The Defendant denies the allegations contained in paragraph 45 of the Amended Complaint.

46. In response to the allegations contained in paragraph 46 of the Amended Complaint, the Defendant realleges and incorporates by reference its answers to paragraphs 1-45 of the Amended Complaint

47. The Defendant denies the allegations contained in paragraph 47 of the Amended Complaint.

48. The Defendant denies the allegations contained in paragraph 48 of the Amended Complaint.

49. The Defendant denies each and every allegations of the Complaint not hereinabove specifically admitted, modified or explained.

FOR A SECOND DEFENSE

50. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

51. The complaint fails to state facts sufficient to constitute a cause of action against the defendant, and therefore should be dismissed.

FOR A THIRD DEFENSE

52. Defendant incorporates the allegations of its previous defense that are consistent with this defense.

53. The Defendant alleges that this accident and the Plaintiff's resulting injuries and damages, if any, were caused solely by the negligent, grossly negligent, reckless, willful and wanton conduct on the part of the plaintiff in one or more of the following particulars, to wit:

1. In failing to keep a proper lookout;

2. In entering the roadway with knowledge of the conditions and there existing; and
3. In failing to exercise the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing.

All of which are contrary to the common and statutory laws of the State of South Carolina and the Rules and Regulations of the South Carolina Department of Transportation.

54. The Defendant alleges that this negligent, grossly negligent, reckless, willful and wanton conduct on the part of the Plaintiff in the particulars set forth above acted as the sole proximate cause of the accident and the Plaintiff's alleged injuries and damages. Accordingly, his complaint against the Defendant is barred.

FOR A FOURTH DEFENSE

55. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

56. Even assuming it was negligent, careless, grossly negligent, willful, wanton and reckless in any respect and that any such conduct operated as the proximate cause of the accident and the Plaintiff's resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, the Defendant alleges that the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct in the particulars set forth hereinabove contributed more than 50% to cause the accident and the Plaintiff's resulting injuries and damages, if any. Accordingly, his cause of action is barred.

57. Except as admitted in its first defense and in the preceding paragraph for the purpose of this defense and no other, the Defendant denies each and every allegation of the Amended Complaint.

FOR A FIFTH DEFENSE

58. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

59. The Defendant alleges that even if it was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a 50% or greater cause of the accident and the Plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, it is entitled to a determination as to the percentage which the Plaintiff's negligent, grossly negligent, reckless and willful conduct contributed to this accident and to a reduction of any amount awarded to him by an amount equal to the percentage of his own negligent, grossly negligent, reckless, willful and wanton conduct.

60. Except as admitted in its first defense and in the preceding paragraph for the purpose of this defense and no other, the Defendant denies each and every allegation of the Amended Complaint.

FOR A SIXTH DEFENSE

61. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

62. The Defendant alleges that the Plaintiff assumed the risk of any resulting injury by voluntarily acting with full knowledge of the conditions which existed at the time of the incident, and accordingly, his claim for damages is barred.

FOR A SEVENTH DEFENSE

63. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

64. The Defendant alleges that, even if he were negligent or reckless in any respect, which is expressly denied, and admitted solely for the purpose of this defense and no other, he is not liable to the plaintiff for the resulting damages, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of third parties, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the damages, if any, sustained by the plaintiff.

FOR AN EIGHTH DEFENSE

65. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

66. Defendant alleges that, even assuming they were negligent or reckless in any respect, which is expressly denied and admitted solely for the purpose of this defense and no other, co-defendants or third parties caused or contributed to the damages claimed by Plaintiff and accordingly, apportionment of percentages of fault and liability for damages should be in accordance with the procedures in SC Code Ann. §15-38-15, and further, Defendant is entitled to any set-off of any amounts paid or to be paid, in settlement as directed by SC Code Ann. §15-38-15 and any other relevant statutory authority.

67. Except as admitted in their First Defense and for the purpose of this defense and no other, Defendant denies each and every allegation of the Complaint.

FOR A NINTH DEFENSE

68. Defendant incorporates the allegations of its previous defenses that are consistent with this defense.

69. The Plaintiff is not entitled to an award of punitive damages against the Defendant to the extent that such an award is barred by the Constitution of the United States and the Constitution of the State of South Carolina. The Defendant further alleges that any award of punitive damages would violate the prohibition against excessive fines found in the Eighth Amendment of the Constitution of the United States as applied to the states by way of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. Further any award of punitive damages would violate the guaranty of due process found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines on which a jury might base its award and further that such guidelines to the extent that they exist are arbitrary and void for vagueness.

70. The Defendant further pleads relevant South Carolina statutory law as a limitation on punitive damages in South Carolina.

WHEREFORE, having fully answered the Complaint of the Plaintiff herein, Defendant prays that the same be dismissed with costs, and for such other and further relief as the Court deems just and proper.

s/C. Stuart Mauney

C. Stuart Mauney (S.C. Bar No. 9770)
Robert D. Corney (S.C. Bar No. 80167)
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Attorneys for Defendant

Greenville, SC
March 15, 2017

DEFENDANT DEMANDS A JURY TRIAL.

s/C. Stuart Mauney

C. Stuart Mauney (S.C. Bar No. 9770)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	CASE NO.: 2016-CP-39-01223
	)	
Kevin Granatino,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER OF DEFENDANT SOUTH
	)	CAROLINA DEPARTMENT OF
	)	TRANSPORTATION TO AMENDED
	)	COMPLAINT
Calvin Williams, Clemson University,	)	
South Carolina Department of	)	(Jury Trial Demanded)
Transportation and Thrift Development	)	
Corporation,	)	
	)	
<u>Defendants.</u>	)	

The Defendant, South Carolina Department of Transportation ("SCDOT"), answering the Amended Complaint of the Plaintiff herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. SCDOT would show that the Plaintiff's Amended Complaint fails to state facts sufficient to constitute causes of action against SCDOT and that the alleged causes of action so stated in said Amended Complaint fail to state claims on which relief can be granted and, therefore, said Amended Complaint should be dismissed as to SCDOT.

FOR A SECOND DEFENSE

2. The allegations contained in the first defense hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

3. SCDOT denies each and every allegation contained in the Plaintiff's Amended Complaint not hereinafter specifically admitted, modified or explained.

4. SCDOT admits, upon information and belief, the allegations contained in Paragraphs 1, 2 and 3 of the Plaintiff's Amended Complaint.

5. SCDOT denies, as pleaded, the allegations contained in Paragraph 4 of the Plaintiff's Amended Complaint based upon a lack of information and belief and demands strict proof thereof.

6. SCDOT admits the allegations contained in Paragraph 5 of the Plaintiff's Amended Complaint.

7. SCDOT denies, as pleaded, the allegations contained in Paragraphs 5 and 6 of the Plaintiff's Amended Complaint based upon a lack of information and belief and demands strict proof thereof.

8. SCDOT admits, upon information and belief, the allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint.

9. SCDOT denies, as pleaded, the allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint and demands strict proof thereof.

10. SCDOT would show that the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint do not pertain to SCDOT and, therefore, a response from it is not required. However, in the event it is determined that a response from SCDOT is required to the allegations contained in said Paragraph, SCDOT denies said allegations, based upon information and belief, and demand strict proof thereof.

11. SCDOT admits, upon information and belief, the allegations contained in Paragraphs 10 and 11 of the Plaintiff's Amended Complaint.

12. In response to the allegations contained in Paragraph 12 of the Plaintiff's Amended Complaint, SCDOT incorporates herein by reference thereto its responses to Paragraphs 1 through 11 of the Plaintiff's Amended Complaint set forth above.

13. SCDOT denies, based upon a lack of information and belief, the allegations contained in Paragraph 13 of the Plaintiff's Amended Complaint and demands strict proof thereof.

14. SCDOT denies, based upon a lack of information and belief, the allegations contained in Paragraphs 14 of the Plaintiff's Amended Complaint and demands strict proof thereof.

15. SCDOT denies the allegations contained in Paragraph 15 of the Plaintiff's Amended Complaint and demands strict proof thereof.

16. SCDOT denies so much of the allegations contained in Paragraphs 16, 17, 18, 19, 20 and 21 of the Plaintiff's Amended Complaint as pertain to it. SCDOT denies, based upon a lack of information and belief, the remaining allegations contained in said Paragraphs 16, 17, 18, 19, 20 and 21 of the Plaintiff's Amended Complaint and demands strict proof thereof.

17. SCDOT would show that the allegations contained in Paragraphs 22 and 23 of the Plaintiff's Amended Complaint do not pertain to this Defendant and, therefore, no response from SCDOT is required. In the event it is determined that a response from SCDOT is required, SCDOT denies said allegations contained in Paragraphs 22 and 23 of the Plaintiff's Amended Complaint and demands strict proof thereof.

18. SCDOT denies so much of the allegations contained in Paragraph 24 through Paragraph 36 of the Plaintiff's Amended Complaint as pertain to it and demands strict proof thereof. SCDOT denies, based upon a lack of information and belief, the remaining allegations contained in said Paragraphs and demands strict proof thereof.

19. In response to the allegations contained in Paragraph 37 of the Plaintiff's Amended Complaint, SCDPS incorporates herein by reference thereto its responses to Paragraphs 1 through 36 of the Plaintiff's Amended Complaint set forth above.

20. SCDOT denies so much of the allegations contained in Paragraphs 38 and 39 of the Plaintiff's Amended Complaint as pertain to it and demands strict proof thereof. SCDOT denies,

based upon a lack of information and belief, the remaining allegations contained in said Paragraphs and demands strict proof thereof.

21. In response to the allegations contained in Paragraph 40 of the Plaintiff's Amended Complaint, SCDPS incorporates herein by reference thereto its responses to Paragraphs 1 through 39 of the Plaintiff's Amended Complaint set forth above.

22. SCDOT denies so much of the allegations contained in Paragraphs 41 and 42 of the Plaintiff's Amended Complaint as pertain to it and demands strict proof thereof. SCDOT denies, based on a lack of information and belief, the remaining allegations contained in said Paragraphs and demands strict proof thereof.

23. In response to the allegations contained in Paragraph 43 of the Plaintiff's Amended Complaint, SCDPS incorporates herein by reference thereto its responses to Paragraphs 1 through 42 of the Plaintiff's Amended Complaint set forth above.

24. SCDOT denies so much of the allegations contained in Paragraphs 44 and 45 of the Plaintiff's Amended Complaint as pertain to it and demands strict proof thereof. SCDOT denies, based on a lack of information and belief, the remaining allegations contained in said Paragraphs and demands strict proof thereof.

25. In response to the allegations contained in Paragraph 46 of the Plaintiff's Amended Complaint, SCDPS incorporates herein by reference thereto its responses to Paragraphs 1 through 45 of the Plaintiff's Amended Complaint set forth above.

26. SCDOT denies so much of the of the allegations contained in Paragraphs 47 and 48 of the Plaintiff's Amended Complaint as pertain to it and demands strict proof thereof. SCDOT denies, based upon a lack of information and belief, the remaining allegations contained in said Paragraphs and demands strict proof thereof.

FOR A THIRD DEFENSE

27. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

28. That even if SCDOT was negligent, grossly negligent, reckless, willful and wanton, which is denied but admitted solely for the purpose of this defense, the Plaintiff was also negligent, grossly negligent, reckless, willful and wanton and said negligence, gross negligence, recklessness, willfulness and wantonness was more than 50% of the direct and proximate cause of the accident and injuries and damages complained of and, therefore, the Plaintiff is barred from any recovery from SCDOT.

29. Alternatively, SCDOT would show that in the event the Plaintiff's negligence, gross negligence, recklessness, willfulness or wantonness is determined to have been fifty percent (50%) or less of the direct and proximate cause of the accident and injuries and damages, if any, any recovery by the Plaintiff should be reduced by the percentage of the plaintiffs' negligence, gross negligence, recklessness, willfulness and wantonness.

FOR A FOURTH DEFENSE

30. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

31. Any damage sustained by the Plaintiff was a result of the Plaintiff's own actions in that, at the time and place in question, the Plaintiff knew, or should have known of the hazard and risk involved in her actions, that the Plaintiff voluntarily assumed the hazards and risks involved in spite of the obvious dangers inherent therein, and that by reason of the conduct of the Plaintiff, she voluntarily assumed the risks, hazards and dangers and the damages and injuries which flowed therefrom and is therefore barred from any recovery from SCDOT.

FOR A FIFTH DEFENSE

32. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

33. SCDOT would show that the accident and resulting injuries, if any, to the Plaintiff were caused and occasioned by the sole negligence, gross negligence, recklessness, willfulness and wantonness of the Plaintiff and/or others not within the control or employment of SCDOT, and, therefore, SCDOT is not liable to the Plaintiff in any amount.

FOR A SIXTH DEFENSE

34. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

35. SCDOT pleads the provisions of the South Carolina Tort Claims Act, South Carolina Code §15-78-10, *et seq.*, including all of the immunities, limitations, including, but not limited to, statute(s) of limitations, and defenses granted or preserved by the Act.

FOR A SIXTH DEFENSE

36. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

37. SCDOT would show that they are not liable to the Plaintiff if any amount based upon the limitations of liability as set forth in §15-78-10, *et seq.*, of the South Carolina Code of Laws, 1976, as amended, and plead sovereign immunity as a complete defense.

FOR A SEVENTH DEFENSE

38. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

39. SCDOT would show that punitive damages are not recoverable against them pursuant to §15-78-120(b) of the South Carolina Code of Laws, 1976, as amended.

FOR AN EIGHTH DEFENSE

40. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

41. The Plaintiff's alleged loss results from the exercise of discretion or judgment by SCDOT; consequently, Plaintiff's claim is barred by § 15-78-60(5) of the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

42. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

42 SCDOT places the Plaintiff on notice that it will subsequently move to amend this Answer should it appear through discovery or continued fact investigation that additional defenses and/or claims are available.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, SCDOT prays that it be dismissed as to it and for such other and further relief as this Court deems just and proper.

s/James W. Logan, Jr.

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Attorneys for South Carolina Department of
Transportation

Dated: February 20, 2017.

1 State of South Carolina

In the Court of Common Pleas

2 County of Pickens

3

4 Kevin M. Granatino,

5 Plaintiff,

2016-CP-39-1223

6 -vs-

June 1, 2018

7 Calvin Williams, Clemson
8 University, South Carolina
9 Department of Transportation,
And Thrift Development
Corporation,

10 Defendants.

Transcript of Record

11

12

13

B E F O R E:

14

The Honorable Perry H. Gravely, Judge

15

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

17 George Marlette, Esquire
Attorney for Plaintiff

18

19 Charles F. Turner, Jr., Esquire
Attorney for Defendant Clemson University

20 C. Stuart Mauney, Esquire
Attorney for Defendant Thrift Dev. Corp.

21

22 James W. Logan, Jr., Esquire
Attorney for SCDOT

23

24

Reported by;
Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:51 a.m.)

4 THE COURT: Granatino versus Williams.

5 It's my understanding we have two motions for
6 summary judgment.

7 MR. MAUNEY: We have three.

8 THE COURT: Is that Clemson University?

9 MR. MAUNEY: Yes.

10 THE COURT: Cheryl, that's not on the roster.

11 THE CLERK: I will add it.

12 THE COURT: I thought there was a question about
13 that one.

14 All right. Who filed theirs first? I'll let
15 whoever filed -- Mr. Mauney is standing up.

16 MR. MAUNEY: I think we said I was going to go
17 first, if that's okay with the Court.

18 I have a notebook that has my memo and exhibits in
19 it, if that will be helpful to you.

20 THE COURT: Since you made it, I will look at it,
21 but I did pull it up.

22 MR. MAUNEY: Okay. Just wanted to make sure.

23 Your Honor, it's my privilege to represent Thrift
24 Development Corporation, a Pickens County family
25 business that's been around for a long time.

1 In this particular case, Thrift was contracted
2 with the DOT, represented by Jim Logan, to participate
3 in a construction project at the intersection of
4 Highway 123 and College Avenue in Clemson.

5 Mr. Turner represents Clemson University, who's
6 also a defendant.

7 So what happened in this case is on the night of
8 October 23rd, 2014, the plaintiff, while carrying his
9 friend Lindsey Jones on his back, stepped into the road
10 to cross that busy intersection. Now, this is an
11 intersection that he had been through previously that
12 evening.

13 When they got there that night and the accident
14 happened, it was about 10:00 o'clock. But previously
15 he had been through it that night. He had also been at
16 Clemson for at least three years, over three years,
17 and, therefore, had been through that intersection
18 countless times in the past. He was familiar with it.
19 He had been through it on foot, had been through it in
20 a car and at night as well as in the daytime.

21 So what happens is, he says, his own testimony,
22 that he was walking across carrying Lindsey, and he got
23 to the middle of the road, and the light turned yellow.
24 Now, there is no median. There's been some reference
25 to him stopping at a median. There's no median, just

1 painted lines in this intersection.

2 He stopped, cars going through, and then the light
3 turned yellow. He never put Lindsey down. He was
4 carrying her the whole time, and then he was hit by the
5 Williams vehicle. Mr. Williams has settled with the
6 plaintiff already.

7 So that's what he said in his deposition. Four
8 different times he was asked what happened, and he
9 said, "The light turned yellow when I got to the middle
10 of the road." The implication of that is clear. It
11 means that the light was likely green when he entered
12 into the intersection, started walking across, which
13 obviously is unsafe.

14 Now, he submitted an affidavit in opposition to
15 our motion two days ago. And in that affidavit he
16 contradicts what he says in his deposition testimony.
17 He says now he thinks the light was red. And red the
18 whole time.

19 Now, what he says in his affidavit is that he was
20 presented with facts that he was to take as true, and
21 then he says, "I accepted as true what the attorneys
22 told me, which was the color of the light. I relied on
23 what others represented to me. I was confused and not
24 able to explain myself."

25 First of all, he had the right to read and sign

1 that deposition. It was sent. It was not returned.

2 In his deposition, I asked him an open-ended
3 question. I said, "So tell me what you remember as you
4 approached the intersection." I did not suggest an
5 answer. That was the first time that I asked him.
6 That was on page 21.

7 On page 40 I asked again, "What happened after you
8 got to the middle of the road? What's the first thing
9 you remember when you got to that point?" And the
10 second time he says the same thing, "A car stopped, and
11 the light turned yellow," both after he got to the
12 middle of the road.

13 The third time he was asked by other counsel, I
14 believe, "Did you stop again before the accident
15 happened?" and he said, "Yes, the light turned yellow."

16 Three different times he's been asked; three
17 different times he's said that it's yellow. Nobody
18 suggested or presented to him what the light was or
19 should be or did he agree with it.

20 The fourth time he was asked, he said, "Now, you
21 don't remember the color of the light up to the
22 median?" And he agreed with that. He said, "I don't
23 remember what color the light was before I got to the
24 median." Then he said again for the fourth time, when
25 he got to the median, the light turned yellow. So --

1 THE COURT: And now he submits an affidavit that
2 said it was red?

3 MR. MAUNEY: Exactly. And, Your Honor, I cited
4 cases. That affidavit under the law is a sham. I
5 mean, I'm not using that word lightly. That's what the
6 courts call it. It directly contradicts what he said
7 under oath, and it was only offered two days before
8 this hearing. And the timing of that, along with the
9 other factors the Court considers, suggests the Court
10 should not consider that affidavit at all.

11 Now, the plaintiff will argue as negligence
12 against the defendants, particularly Thrift and DOT,
13 that there was not a permanent, painted crosswalk in
14 that area that night. And I'm asking the Court to
15 assume that to be true.

16 He also argues the pedestrian signals were not
17 working, the electronic walk/don't walk. Assume that
18 to be true. I'm suggesting that, based on the
19 plaintiff's testimony alone, based upon what's in the
20 record from him and the other witnesses about what he
21 was doing that night, that he was negligent as a matter
22 of law, and that it was more than 50 percent.

23 Now, I understand that's, as the Court says, rare,
24 a drastic remedy, but if there's ever a case for this,
25 it's this one. The plaintiff had a duty himself to be

1 careful and to be in a safe place. When he got to the
2 middle of the road with the light yellow, that was not
3 a safe place. He violated that duty, and in doing so,
4 as I said in my brief, he violated five different
5 statutes. That's enough right there for the Court to
6 declare as a matter of law that he was negligent and
7 that that negligence exceeded 50 percent.

8 But that's not all. The Greenville Hospital
9 records show on two different places that he had a
10 blood alcohol level of .122, above the legal limit for
11 operating a vehicle and above the legal limit as it
12 relates to the statute which says that pedestrians
13 under the influence shall not walk upon the roadway.

14 Three different law enforcement officers have
15 testified under oath about the effects of alcohol at
16 that level, and that at that level that statute would
17 be applicable and that he violated that statute.

18 We recognize again that this is rare, but in this
19 case, it's the right result and the right remedy under
20 these facts, additional testimony in the record that I
21 referred to in my memo.

22 The second reason that the Court should grant our
23 motion for summary judgment, in addition to the
24 plaintiff's own negligence, is that the plaintiff has
25 not offered any expert testimony on the standard of

1 care for the construction services that my client was
2 to provide and how they breached that duty.

3 I have cited some cases that talk about that.
4 There are a number of issues in this case as to whether
5 alleged noncompliance with various standards including
6 the Manual on Uniform Traffic Control Devices. Those
7 are items that require an expert. It's more than a
8 layman would understand and appreciate.

9 We had a scheduling order in this case, Your
10 Honor, for a reason, to provide some structure to our
11 discovery. January 1, 2018, was the deadline for the
12 plaintiff to name experts. No experts were named.

13 Now, Trevor White and Druanne White represented
14 the plaintiff at that time. They filed a motion to
15 withdraw later that month, and we're here today now
16 with Mr. Marlette representing his stepson; local
17 counsel Stephen Lewis.

18 The fact of the matter is there's no issue before
19 the Court or no testimony offered by the plaintiff as
20 to the duty we owed or a breach of that duty, and we
21 think that's fatal to the plaintiff's case and would
22 ask the Court also to grant summary judgment on those
23 grounds. Thank you.

24 THE COURT: All right. How are we going to do
25 this? Y'all want to argue and then you argue in

1 response to all three? Because we're running behind,
2 that would be the most efficient way.

3 Yes, Mr. Logan.

4 MR. LOGAN: Good morning. Jim Logan with Logan,
5 Jolly & Smith for DOT.

6 I agree with everything that, obviously, that
7 Mr. Mauney has said. I would like you to assume a
8 couple of other facts. Or as fact.

9 I think, based upon the plaintiff's own memo and
10 the affidavit that he attached, that the defendants, in
11 particular my client, are entitled to summary judgment.

12 Mr. Mauney talked about the change in testimony
13 from yellow to red as far as the light was concerned.
14 For purposes of what I'm -- I'm going a little further
15 in asking you, for purposes of what I'm arguing, let's
16 assume that the light was red, as the plaintiff says.
17 I'm presenting to you now what I understand to be the
18 plaintiff's case per the affidavit.

19 The light was red, which gives him the right to
20 come into the intersection. When I say red, red for
21 the vehicle that he actually contacted driven by
22 Mr. Williams. The light was red.

23 Number two, that there was a crossing at Highway
24 123. When I say crossing, a crosswalk, per his
25 affidavit. He says it may have been just a chalk mark,

1 but it was a crossing. It was a designated place to
2 cross the highway, according to his affidavit.

3 I want you to assume also that the crossing lights
4 were not operating. That's the plaintiff's case.
5 Plaintiff's case is he had a right to cross Highway 123
6 because the light was red. He, obviously, came in
7 contact with the Williams vehicle. If the light was
8 red, was unlawfully in that intersection, and,
9 therefore, it is Mr. Williams' fault because
10 Mr. Williams was violating the law.

11 Number two, this young man was crossing Highway
12 123 within a crosswalk. Still, that makes it
13 Mr. Williams' fault. And the fact that there were no
14 warning signs -- they keep referring to it being a
15 construction zone -- based upon those facts, the fact
16 that there was no warning signs is irrelevant. They
17 weren't necessary because the plaintiff knew the light
18 was red, the plaintiff knew there was a crosswalk for
19 him to walk in, the plaintiff knew he was walking in
20 that crosswalk. So whether or not that crosswalk was
21 properly marked or whether or not there were crossing
22 lights to say he could cross is totally irrelevant
23 under his own case because of what he knew.

24 He knew there was a crosswalk, he knew where it
25 was, he knew he was in the crosswalk, and he knew that

1 the light was red. That's his case. And that
2 absolutely those facts, his case, absolutely absolve
3 DOT, Thrift Brothers, and even Clemson of any and all
4 obligation or liability in this case or responsibility
5 for his accident and injuries.

6 So neither the intersection, status of the
7 intersection, the work in the intersection, none of
8 that is relevant because it's not the proximate cause
9 of the accident. The proximate cause of the accident
10 under his own testimony is the light was red,
11 Mr. Williams ran through a red light, Mr. Granatino had
12 the right to be in the crosswalk, he knew he was in the
13 crosswalk at the time he got hit. That's his case.
14 That's his only case. And all this other stuff about a
15 construction zone or lights not working or anything of
16 that nature is totally irrelevant. That's assuming the
17 light was red, which is their best case scenario. If
18 the light was yellow, it's even worse for them.

19 Mr. Williams may have some fault. But if the
20 light was yellow, and he was in that intersection, then
21 he is certainly more than 50 percent responsible for
22 this accident. But even more than that, whether the
23 light was yellow or red does not make any at this table
24 responsible for that accident.

25 THE COURT: All right. Thank you.

1 Mr. Turner.

2 MR. TURNER: May it please the Court, Your Honor.
3 Quite frankly, I'm not sure why I'm here in this case.
4 I have been wondering this for two years.

5 Clemson University is sued in this case. Not the
6 City of Clemson. Not any other municipality or
7 governmental entity that has anything to do with this
8 intersection, this roadway, lights, construction,
9 adjoining businesses, or anything.

10 The plaintiff, Kevin Granatino, was a senior,
11 21 years old, not a minor, at the time of this
12 accident. He was a senior at Clemson, had been at
13 Clemson for over three years. He lived off campus at
14 Clemson. He did not live on campus.

15 On the night of this incident, he had been
16 downtown drinking, had walked through this intersection
17 with friends, had gone to an apartment complex beyond
18 the Sonic there, and was walking back toward downtown
19 Clemson when this accident occurred.

20 At the time of this accident -- obviously, the
21 intersection is within the city limits of Clemson, and
22 it's six, seven tenths of a mile from Clemson's campus.
23 There is no testimony, there is no evidence in this
24 case that Clemson owned the roadway, maintained the
25 roadway, controlled the roadway, had anything to do

1 with the construction project. The construction
2 documents have been produced in this case.

3 Construction documents are between the DOT,
4 Thrift, and the City of Clemson. There's no evidence
5 that Clemson owns any adjoining property. There's no
6 evidence -- I know there's been an allegation raised in
7 some materials filed by the plaintiff in response to
8 our motion that this intersection is an integral part
9 of this campus or that Clemson knew that students lived
10 near this area. Well, Clemson knows students live all
11 over the Upstate of South Carolina, but regardless of
12 that, Clemson owns or controls no property around here,
13 Judge.

14 Clemson had no involvement in this accident.
15 There wasn't a Clemson vehicle involved in this
16 accident. Clemson didn't investigate this accident.
17 Clemson University didn't respond to this accident
18 until they got a call from the City of Clemson
19 requesting an extra ambulance for the female companion
20 of Mr. Granatino. That's the only involvement Clemson
21 University had with this case.

22 So here I am left with an allegation of negligence
23 that somehow Clemson created a danger or should have
24 warned the plaintiff, an adult, about the danger and,
25 therefore, they're liable. There has been not one case

1 provided, not one statute provided, not one shred of
2 law that establishes a duty in this case that Clemson
3 or a college owes to its students to warn them about
4 hazards in a roadway or warning signs not up or dangers
5 that may exist on property or roadways not on their
6 campus.

7 Liability, if there is liability in this case,
8 which there's not, but if there's liability in this
9 case, it's keyed around three critical components --
10 maintenance of the road, ownership of the road, or
11 involvement in the construction project. No cases have
12 been cited.

13 There is no general duty in South Carolina for
14 anybody to protect somebody from dangers of a third
15 person or warn them of dangers absent five
16 circumstances: Special relationship with the victim or
17 the injured, special relationship with the injurer, a
18 statute establishing the duty, the defendant
19 negligently or intentionally creates the risk, or the
20 defendant undertakes the risk.

21 Now, in this case, it is well settled in South
22 Carolina there is no in loco parentis. Not that
23 Clemson would be in loco parentis to Mr. Granatino
24 anyway because he's an adult. But there is no
25 fiduciary duty, there's no heightened duty, there's no

1 special duty that attaches from a college to a student,
2 especially under these facts. We have no relationship
3 with Calvin Williams. There is no statute that imposes
4 liability on us. We had nothing to do with the
5 construction project, so we didn't create it. And we
6 didn't voluntarily undertake any duties in this case.

7 There's no expert to establish a duty. There's no
8 law cited to establish a duty, and there's no expert to
9 establish a breach of the duty. I'm not sure how
10 Clemson can be liable when there's not even an expert
11 to say that Thrift and the DOT did anything wrong
12 regarding signage or marking or management of a
13 construction zone or the accident area.

14 THE COURT: All right. I'll let him -- see what
15 he says and respond so you don't have to think of
16 everything possible or every possibility there.

17 Mr. Marlette.

18 MR. MARLETTE: Yes. May it please the Court.
19 George Marlette representing the plaintiff.

20 And, Your Honor, I did want to just point out,
21 Attorney Lewis is local counsel who sponsored my
22 verified application. He is tied up in another court
23 so could not be here today.

24 But I did want you to know that, should you grant
25 me the privilege of proceeding with this case, which is

1 certainly what I'm asking you to do, Attorney Lewis
2 will be an integral part of the team. He has already
3 been an extraordinary resource in terms of your custom,
4 practice, and the resources that are available to
5 practice here.

6 THE COURT: I believe there has been an order
7 issued allowing you to appear pro hac vice.

8 MR. MARLETTE: The order was entered. And, yes,
9 Your Honor, I'm very grateful.

10 It's very much an honor to appear in this court
11 because, naturally, the starting point, when I was
12 applying to appear here, is to learn a little bit about
13 the court. And the closest equivalent that we would
14 have in the Commonwealth of Massachusetts is what we
15 call a court of superior jurisdiction, our superior
16 court.

17 And what is particularly rewarding about practice
18 in this type of setting is the bar is high for
19 performance of the attorneys. But I think even more
20 important than that is that all of the decisions almost
21 universally are intended to effectuate substantial
22 justice.

23 The judges are given broad discretion, as you are
24 in this case, and your discretion, at least from the
25 cases that I've reviewed, are intertwined with

1 basically the equitable maxims that we learn in law
2 school.

3 So I looked at cases of summary judgment. And
4 interesting, I was looking at the cases where summary
5 judgment was allowed. And it's rare. And what I found
6 in all of those cases is that the ones where the
7 summary judgment was allowed --

8 THE COURT: I'm aware of the standard down here,
9 so get to the substance here of why summary judgment
10 shouldn't be granted.

11 MR. MARLETTE: Well, Your Honor, the two
12 defendants, SCDOT and Thrift, stand separate and apart.

13 I'd like to, if I could, start with Clemson
14 University.

15 Actually, the one thing that I actually need to
16 bring up, Your Honor, before that is that when Attorney
17 Mauney served his memo last evening -- I note you read
18 it. I saw the volley of e-mails -- something was
19 brought to my attention that I was not aware of, and
20 that was the prior scheduling order.

21 It was interesting. When I first met with
22 Attorney Lewis, we discussed the merits of having a
23 scheduling order, and I can tell you, I have followed
24 this case very closely. I attended the depositions. I
25 was not aware of a scheduling order, nor was Kevin

1 aware of a scheduling order. There is no way certainly
2 on my watch that any order of the Court would be
3 disregarded.

4 With regard to Clemson University, my position,
5 Your Honor, is that the summary judgment motion is
6 premature. And the reason that I say that it's
7 premature is the cases that I cited in my memo, one of
8 them stands for the proposition that there has to be a
9 full and fair opportunity for discovery.

10 Now, you might say, "Okay, you're this far down
11 the road. Why hasn't discovery been complete?" Well,
12 Your Honor, I believe you should understand, first of
13 all, we selected predecessor counsel based on his
14 involvement in a high profile case involving Clemson
15 University. You can infer from the fact that there's
16 been a change of directions here that there was at
17 least a breakdown in communications between client and
18 attorney.

19 I'm inheriting this case where it is. And where
20 it is, is very little discovery related to Clemson
21 University, discovery that wouldn't be exhaustive but
22 would include such things as retrieving a copy of an
23 agreement that Officer Wren Johnson testified about
24 where it's believed that -- I don't know this. I
25 haven't seen it -- but it's believed that Clemson

1 University undertook responsibility for an area within
2 a three-mile radius of Tillman Hall. This intersection
3 is approximately six tenths of a mile and would be
4 encompassed in that type of an agreement.

5 Now, Attorney Turner is spot on in terms of the
6 exceptions and what we need to establish to bring
7 Clemson into the fold. But we've had no discovery.
8 And not once, not twice, I believe I could count seven
9 times that requests were made, "Please, we need
10 discovery with Clemson University. We need discovery
11 with Clemson University." It didn't happen.

12 Now, in very short order I can deal with the
13 discovery issues. I've met Attorney Turner. My first
14 step is going to be to just pick up the phone. I
15 believe he has some discovery issues he would like to
16 take up, if he's still in the case after today. But it
17 is premature because of the fact that despite the
18 requests of the plaintiff, the discovery against
19 Clemson University has not been completed. But I have
20 the resolve to do so and to do so expeditiously, which
21 is why I didn't ask for a continuance when Attorney
22 Lewis couldn't be here today, because this case needs
23 to move on.

24 So the -- so as far as Clemson University, I was
25 looking around, how do I frame the duty? How do I

1 frame their -- it's too premature. Discovery is
2 needed. This Court has the discretion to, you know, to
3 hold it in abeyance while we do some minimal discovery.

4 THE COURT: I know you just inherited it, but this
5 is a 2016 case, Mr. Marlette. That's when it was
6 filed.

7 MR. MARLETTE: Your Honor, I understand. But
8 what -- you know, obviously, from my opening remarks,
9 I'm asking that you invoke kind of the equity side and
10 err on the side of a brain-injured student who was hurt
11 in this accident by allowing him his opportunity.

12 And I absolutely would not come into a court of
13 South Carolina, which I have been extremely impressed
14 with the courtesy and professionalism I have met coming
15 in here, and then cast disparagement against one of
16 your own. That is not my intent. Attorney White is a
17 gifted lawyer. He's got a good legal mind in his head,
18 but what I will tell you Your Honor is that the lack of
19 prosecution of the case didn't have anything to do with
20 Kevin, didn't have anything to do with us. We were
21 saying, "Come on. We have got to move it."

22 There are a couple ways you know, because I've
23 heard about your practice, so you would understand in
24 that you get into a case and you get into a groove, and
25 sometimes you have the litigation track; other times

1 you have the settlement track, and it wasn't until, you
2 know, the time that the breakdown of communication
3 occurred. It was like, "I don't understand where this
4 is going. You're not doing the underpinnings for a
5 trial."

6 He's like, "I'm not trying it."

7 "You're not trying it? What do you mean you're
8 not trying it?"

9 THE COURT: Let's get to the substance.

10 MR. MARLETTE: So in terms of the other two
11 defendants -- well, the tracking order is the fact
12 that, naturally, experts, I certainly can understand
13 that. I'm just asking that, because I am coming into
14 this, that the Court grant leave of the scheduling
15 order is the right thing. That was my instinct on it.
16 I didn't know that there was one there.

17 THE COURT: We have all our stuff online, and you
18 pull up this index. I just pulled it up while you're
19 talking. The scheduling order is clearly identified on
20 the index online that relates to this case assigned by
21 the chief administrative judge, just for future
22 reference.

23 MR. MARLETTE: Believe me, I understand that. And
24 now, thanks to your clerk's office, I have been able to
25 navigate my way around, and it's an impressive system

1 that you have.

2 As far as the other part of the claim, as you
3 know, the summary judgment standard is very clear, and
4 it's the same in Massachusetts and it is here, the
5 moving party has the obligation to show the absence of
6 a genuine issue of material fact, that they're entitled
7 to judgment as a matter of law.

8 Well, what we have here is, you know, you ask the
9 question: Was Mr. Williams the proximate cause? Well,
10 if there were legitimate painted cross lines, if the
11 lighting was the way it was supposed to be, you know,
12 if all was in order and this wasn't a construction
13 zone, would Mr. Williams have not gone right through
14 there?

15 And as far as Kevin is concerned, and this again
16 is why I'm saying despite the fact this case is a
17 little long in the tooth, I would like you to allow it
18 to continue, because I was personally there, for
19 example, when he offered his testimony at deposition.
20 And what was coming out was at variance with what I
21 knew to be at least his perception of reality. He
22 suffered a brain injury. So there was discussion right
23 at the spot, right at that moment about, "Well, you
24 know, how do you do this? How do you correct this? If
25 there's something wrong, how do you correct it? We

1 have what's called an errata sheet for a deposition.

2 Do you have the equivalent of that?"

3 He said, "Well, yeah, we have got that, but it's
4 rarely used. There will be another opportunity for
5 Kevin to correct the record."

6 Then all of a sudden I'm finding out I'm on the
7 wrong side of a summary judgement motion. So this is
8 not something that, you know, Kevin is fabricating. As
9 I stand before you, can I say with any degree of
10 comfort and certainty that I know the color of the
11 light? No, Your Honor, I can't, because that is
12 precisely the point. Kevin suffered a major traumatic
13 brain injury, and I would suspect the medical experts
14 to say that that's really not outcome-determinative
15 what his recollection is.

16 What we do know is we looked frame by frame by
17 frame at the only video we have, and what we cannot
18 tell and what the MAIT officer said he couldn't tell is
19 at the moment of impact, where was the car in relation
20 to the stop bar? So we really don't know what the
21 color of the light was from any other source, and the
22 recollections of percipient witnesses aren't always
23 that reliable, and they seem to be all across the
24 waterfront as far as what the color of the light was.

25 But we, given the time that if this Court would,

1 you know, typically the 51 percent. I mean, I
2 understand that's the biggest thrust, that Kevin was
3 more than 51 percent at fault in this accident. Well,
4 okay. You take it piece by piece. Blood alcohol
5 level. Well, if you look at the statute, it says
6 "under the influence," which, as you know, is a loaded
7 term in the sense that there has to be perceptible
8 effects from the consumption of alcohol. And that's
9 actually what the officer testified to is that at that
10 blood alcohol level, he might very well expect and in
11 many cases, in fact, would find that the person was
12 impaired, but that's not necessarily true.

13 So if you take each of the individual elements
14 that Mr. Mauney outlined for you, that Mr. Logan
15 outlined for you, it becomes, you know, a question of
16 fact that a jury could decide, draw an inference. And
17 as you know from the case law, if there is a fact that
18 is susceptible for more than one inference, the case
19 needs to go to a jury.

20 So in this case we have a question about the
21 lights. We have a question about the way that the
22 layout was. We certainly have some apportionment
23 issues. And so, Your Honor, I believe that on each of
24 these --

25 THE COURT: But they're saying whether it's yellow

1 or red doesn't matter.

2 MR. MARLETTE: Well, I mean, if you back into like
3 a lay way of describing it, the question is: If the
4 intersection was properly the way it was supposed to be
5 under the existing standards, would there be -- would
6 the accident have occurred?

7 Now, I think they're right. I mean, the problem
8 is that does get in the realm of experts. I have used
9 construction experts before, and they will look at it,
10 and there is a way to piece this together, but it
11 ultimately boils down to a factual determination. And
12 I don't think that it's as cut and dried as the light
13 was red, you still lose.

14 The fact is, is that the accident occurred, we
15 maintain, because these chalk lines, which are barely
16 perceptible in the photographs that we have, if those
17 lines were there, would that have made a difference.
18 There is a reason why they have the particular
19 dimensions for those lines.

20 And then also the question is: What would have
21 been the standard in terms of what you would do
22 typically when there is a construction project? That
23 evidence would also be important. Would it have been
24 appropriate, for example, to have barriers, to have
25 warning signs, to have cones?

1 If you drive through the campus of Clemson
2 University now, you're going to see them all over the
3 place. Now, certainly subsequent remedial measures I
4 know just here as in Massachusetts don't get in, but it
5 is inconsistent, again, with if you're saying there's
6 no exercise of dominion and control of the
7 intersection, which goes back to why I think a little
8 discovery with Clemson could resolve that issue in
9 short order.

10 And I'm sure you're aware there may be reasons why
11 Clemson University shouldn't be in the case that are
12 more practical reasons down the road. But I owe it to
13 the plaintiff to fully investigate, complete the
14 discovery to understand whether or not that duty
15 exists.

16 There is a difference between the six tenths of a
17 mile, and I think the last time I talked with Attorney
18 Turner, it was, "Well, what about the Walmart down in
19 Anderson? You know, would you be taking the position
20 that Clemson has a duty down there?" Well, it's very
21 different if you're talking six tenths of a mile,
22 student housing on the other side of it -- that's where
23 Kevin was coming from -- and an agreement that provides
24 that Clemson University has some type of control over
25 that, the nature of which we don't know because there's

1 been no discovery on that issue.

2 So, Your Honor, it does boil down to the
3 percentage of culpability in a practical sense, but on
4 the overriding equitable principle when you're talking
5 about not having a litigant suffer a harm without a
6 remedy, that remedy doesn't necessarily have to equate
7 to a payday at the end. What it is, is a full and fair
8 opportunity to be heard. And I am confident that had I
9 been in this from the get-go, we would be further along
10 down the road, but we are where we are, and I would
11 like the opportunity to fully pursue this, get the
12 experts, get a scheduling order to keep us on track
13 with it.

14 Whatever happened in the past, very difficult for
15 me to discern, but what I can tell you is I am truly
16 committed to prosecuting this case zealously and
17 competently with the assistance of Attorney Lewis, and
18 I believe that ultimately a jury should have the
19 opportunity to hear and weigh and assess these issues.

20 So I respectfully request, Your Honor, that you
21 err on the side of Kevin, that you allow him to have an
22 opportunity to be heard.

23 You know, the greatest thing I ever had is a judge
24 back in Massachusetts. I am talking about -- he's
25 retired now for 20 years. But what he said is, "You

1 come forth and you shall be heard." He did it at his
2 swearing in, and I'm just thinking about that because
3 that's how he lived it. He listened. And that's all
4 I'm asking, Your Honor. Let him come forth and be
5 heard.

6 All I know is he's a good kid who ended up with a
7 very, very serious, permanent brain injury, and he
8 lives with that every single day, and all he wants is
9 his opportunity to tell his story. So please, please
10 afford him that opportunity.

11 THE COURT: All right.

12 Any responses from anyone?

13 MR. TURNER: Two years we have been dealing with
14 this case. They want a full and fair opportunity to be
15 heard? They have had two years of full discovery. In
16 fact, their lawyer, Mr. White, did serve us with
17 written discovery. He served us -- he propounded
18 interrogatories and requests to produce asking for
19 specific documents, things that were in any way related
20 to Clemson to the construction project. Unfortunately,
21 there are none.

22 That's the whole point of it. There has been --
23 Mr. Marlette has been admitted for several weeks now,
24 maybe a month or more. I have gotten no discovery
25 requests from them. The deposition of Wren Johnson,

1 the city officer from Clemson who brought up the mutual
2 aid agreement, which, by the way, he said, "Clemson is
3 not going to come into the city until we call them to."
4 They have known about that for almost a year. Those
5 depositions occurred last summer.

6 We have been happy to provide any types of
7 agreement that exist. This is kicking the can down the
8 road, and it's highly prejudicial to my client to have
9 to go through more discovery, more costs. There have
10 been four or five depositions taken, Judge. There have
11 been scheduling orders entered and passed. Mr. White
12 didn't get out of this case until the expert scheduling
13 deadline had already passed. So now what we're asking
14 for is equity. And I know Your Honor has some
15 discretion in that regard, but what is discovery going
16 to do about establishing a legal duty? A duty under
17 South Carolina law is a legal question for the Court,
18 not a factual question. Discovery is not going to add
19 anything to the legal issue of whether a duty exists
20 from Clemson to a student.

21 Mr. Marlette wants to talk about student housing.
22 There is no student housing around this intersection,
23 near it, none, zero. There are apartments owned by
24 private companies and individuals where students may
25 live, but that's not Clemson property. That's not

1 Clemson housing. And to say that somehow Clemson is
2 somehow liable for warning students of hazards in
3 roadways, whether it's six tenths of a mile or
4 60 miles, what is it? What is that standard? It's not
5 in the law. It's to say that Clemson has any type of
6 duty, does it extend to the Walmart in Anderson? Does
7 it extend to Seneca? Does it extend to Atlanta when
8 students come up 85? Does it extend to Delta Airlines,
9 if students fly Delta Airlines to come to school?

10 THE COURT: We're getting far afield. Let's go.

11 MR. TURNER: That's all I've got.

12 THE COURT: All right.

13 Mr. Logan, briefly, in response.

14 MR. LOGAN: Yes, very briefly. The reason I asked
15 the Court to assume what was in the affidavit of the
16 plaintiff to be true is because of the exact argument
17 that Mr. Marlette has made, his right to be heard.

18 He was heard in his deposition. He was heard in
19 his affidavit. In his affidavit he presents the best
20 case that he's got, and that is the light was red, and
21 he admitted he was in the crosswalk. He admits he was
22 in the crosswalk. This isn't a case where somebody is
23 complaining because DOT didn't put a barrel up to
24 direct motorists to another location or put a sign up
25 that says you have to do this as you approach this

1 intersection. This intersection was being fully used.

2 The cause of this accident was, if there is a
3 cause other than the conduct of the plaintiff, was
4 Mr. Williams. Plaintiff says the light is red.
5 Plaintiff says he's in a crosswalk. That has nothing
6 to do -- there's nothing, there's no duty that was
7 breached by DOT or by Thrift that pertains to the key
8 issue in this case. It's between Mr. Williams, and
9 it's between Mr. Granatino. Thank you.

10 THE COURT: All right.

11 Mr. Mauney, do you have anything else?

12 MR. MAUNEY: Just briefly. In his deposition, and
13 none of us challenged the fact that Mr. Granatino
14 suffered his injuries and his brain injury. But in the
15 deposition, it was clear. You have got enough of his
16 testimony in my record to see he knows what he knows
17 and he knows what he doesn't know. He knows what he
18 remembers and he knows what he doesn't remember. And
19 he didn't show any confusion in response to direct
20 questions in that deposition.

21 Mr. White had an opportunity at the time to
22 clarify anything. Actually, I think Mr. White did ask
23 some questions in response. Why hasn't -- this notion
24 about discovery not being complete, we had to file a
25 motion to compel just to get the medical records. It's

1 taken some effort to get where we are, and now where we
2 are is the issues are out there, and it's time for the
3 Court to make a decision. And I think that's it.

4 THE COURT: All right. I'm going to look at
5 the -- I'm going to look at all the material provided,
6 obviously, and let you all know what my decision is.

7 MR. MARLETTE: Your Honor, could I respond just to
8 what was brought to your attention?

9 THE COURT: All right. One minute.

10 MR. MARLETTE: One minute is all I need, Your
11 Honor, and I thank you very much.

12 Mr. Mauney is absolutely right. It was like
13 pulling teeth to get discovery. We're ready, willing,
14 and able to get the discovery. Whatever happened, I
15 don't know, but it did happen.

16 What Attorney Turner is talking about in terms of
17 the -- in terms of Clemson not having any duty, I don't
18 dispute the part where he says it's a legal
19 determination that you would ultimately make, but the
20 discovery gives you the underpinnings for that.

21 There was some degree of control over this
22 intersection that can be distinguished, and it's very
23 easy to determine through minimal discovery what that
24 control and dominion over that was. And there are
25 other ways, too, to establish the duty. For example,

1 Attorney Turner brought up the alcohol --

2 THE COURT: Minute's up. Thanks.

3 MR. MARLETTE: Thank you.

4 THE COURT: I'll review your stuff. You have got
5 memos in there. I'm going to review them and let y'all
6 now.

7 MR. MARLETTE: Thank you very much.

8 (WHEREUPON, proceedings concluded at 11:34 a.m.)

9 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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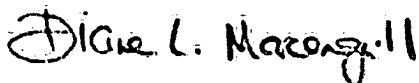
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of a
portion of the proceedings had and evidence introduced
in the trial of the captioned case, relative to appeal,
in the Circuit Court for Pickens County, South
Carolina, on the 1st day of June 2018.

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I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

February 12, 2019



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

) COURT OF COMMON PLEAS

) 2016-CP-39-01223

ORIGINAL

KEVIN M. GRANATINO)

) PLAINTIFF)

vs.)

) TRANSCRIPT OF RECORD

CALVIN WILLIAMS, ET AL)

) DEFENDANTS)

October 25, 2018
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, Judge.

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

STEPHEN R.H. LEWIS, ESQ.
Attorney for the Plaintiff

BILL YOUNG, ESQ.
Attorney for the Defendant Thrift Development
Corporation

JAMES W. LOGAN, JR., ESQ.
Attorney for the Defendant Department of
Transportation

APRIL HERRON
Official Court Reporter

1 There were no witnesses.

2 There were no exhibits.

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5 Certificate of Reporter 27

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1 THE COURT: All right, the next case is Kevin
2 Granatino vs. Calvin Williams.

3 Mr. Lewis.

4 MR. LEWIS: Yes, sir, thank you, Your Honor, may
5 it please the Court.

6 THE COURT: And I want to say too, I know this
7 is a very difficult case and I have really struggled
8 with this in the beginning. I mean, in all respect
9 for everybody because I know this is a very difficult
10 case. I just want to say that.

11 MR. LEWIS: Yes, sir, it is. And we're
12 obviously uninevitable position of telling you that
13 you are wrong, we think you are wrong.

14 THE COURT: That happens a lot.

15 MR. LEWIS: But we do that respectfully. And
16 ask that you reconsider. Your Honor, let me just
17 start off by first of all saying that I typically do
18 not start off arguments by saying what the other side
19 has said. But I want to make sure we set the kind of
20 threshold here for us being here and the
21 appropriateness of the Rule 59(e) motion because
22 Mr. Mauney in his memo has essentially said that the
23 arguments I'm about to make were not raised at the
24 hearing level. And we, first of all, disagree with
25 that. But secondly, not only disagree with it, but

1 we think that case that Mr. -- well the Defendant
2 cited that the Elam case doesn't stand for that
3 proposition. And, in fact, it -- I just want to make
4 sure, Your Honor, that we believe that the law is not
5 that nothing -- no word can be said in addition to
6 what was said at the hearing in order to raise an
7 issue for you to reconsider. Certainly, there are
8 cases where brand new theories were raised in a 59(e)
9 motion where other things occurred in 59(e) motion
10 that were clearly out of bounds and that motion
11 should not be allowed to raise completely new issues
12 to the Court. We do not believe that's the case
13 here.

14 Let me give you the first example, Your Honor.
15 In your order, when you granted summary judgment on
16 behalf of the Defendants, at least our reading of the
17 order that you said that Mr. Granatino was
18 comparatively negligent, more than 50 percent, and
19 therefore he was barred from recovery. And based on
20 the reading of your order, Your Honor, your reliance
21 on the evidence in the case was almost exclusively
22 only Mr. Granatino's testimony. In fact, in Pages 4
23 through 6 of your order you cite numerous instances
24 where -- of his deposition testimony. And I think
25 there's only one other example of other testimony,

1 maybe Officer Brooks. But most of it in your order,
2 you're relying on his testimony in your opinion and
3 your decision that he was greater than 50 percent
4 negligent as a matter of law.

5 We believe that's error, Your Honor. Because
6 there's no dispute in this case that Mr. Granatino
7 has that a significant and severe brain injury. And
8 we believe that your reliance on his testimony to
9 determine whether or not he was 50 percent negligent
10 or greater, is -- doesn't fully consider the
11 circumstances of his testimony. Now, I wasn't at his
12 deposition because I wasn't involved in the case at
13 that point. Mr. Marlette was, obviously, there but
14 he was not attorney of record there. But as I've
15 read his testimony, Mr. Granatino, basically --
16 whoever was asking questions and whatever they asked
17 him, he was with them. Or he was answering with
18 them. And it was clear to me, Your Honor, at least
19 from reading his testimony, that his brain injury has
20 significantly effected two areas.

21 Number one, his memory of the events. A number
22 two, there are some cognitive deficits there that
23 nobody in the case has gotten into yet because we
24 never got that far. And with physicians who will
25 testify as to what those cognitive deficits are and

1 why his testimony is potentially unreliable. And so,
2 we believe, Your Honor, if you're going to grant
3 summary judgment in the basis for that is the
4 testimony of a particular witness, and it didn't look
5 like you took into consideration, at least from the
6 language of the order, that you took into
7 consideration the fact that he has a significant
8 brain injury effects his memory and some of his
9 cognitive functions.

10 THE COURT: Well let me ask you this, do we have
11 anything in the record that says -- I mean, a brain
12 injury, but do we have anything in the record that
13 says that has created cognitive deficits?

14 MR. LEWIS: Yes, sir, his affidavit. In fact,
15 the affidavit was submitted in support of -- or in
16 opposition to the motion--

17 THE COURT: So, his deposition is the same one
18 you're telling me I shouldn't rely on. I mean, his
19 affidavit.

20 MR. LEWIS: That's exactly right, Your Honor.
21 And that's the whole point. His testimony, whether
22 it's in deposition or by affidavit, is essentially
23 not reliable because the brain injury. Now -- but
24 it's not disputed, Your Honor. In fact, the brain
25 injury in Page 2 of our opposition memo says that

1 suffered traumatic brain injury. In his affidavit he
2 does say that his brain injury has effected his
3 memory. But we never got that far, Your Honor, to
4 take testimony with regard to medical doctors who
5 will testify to that. And we just think you need the
6 benefit of that.

7 THE COURT: But couldn't you do it -- I mean, as
8 far as my reliance on that in motion for summary
9 judgment, couldn't there have been an affidavit from
10 a doctor saying, yeah, based on my review of this
11 individual, these depositions or affidavits should
12 not be relied upon in any way because of his -- I
13 mean, I can't just judicially take notice because of
14 a brain injury that I can't believe his deposition,
15 can I?

16 MR. LEWIS: Well, I don't know whether you can
17 or not, Your Honor, probably not. But our point is
18 we believe one of the things was a motion for summary
19 judgment was decided prematurely because if he has a
20 brain injury and if that brain injury is significant,
21 and I don't think the other side will dispute that.
22 Although, doctors depositions have not been taken,
23 then certainly you can -- I don't know if judicial
24 notice is the proper technique or proper mechanism
25 but certainly that should be taken into corroboration

1 if you're going to rule based on his testimony.

2 Now, the second part of our motion is similar to
3 that in that it appears that in your order, you ruled
4 that the intoxication of the Plaintiff makes him
5 greater than 50 percent negligent as well. Again,
6 Your Honor, your order was based on his testimony.
7 And our position is that clearly you can take
8 judicial notice that if he was as intoxicated as the
9 defense says he was, then that could have an effect
10 on his memory an his judgment and all those things as
11 well.

12 And so, reliance on his testimony, again, under
13 those two scenarios, both brain injury and the
14 allegations that he was intoxicated at the time that
15 the accident occurred, we believe that that would be
16 improper for grounds for granting summary judgment.
17 That as a matter of law, he was more than 50 percent
18 negligent. There are other facts and extenuating
19 circumstances in this case, Your Honor. And that's
20 my next point. Is that you didn't appear to take
21 into consideration in your order with regard to how
22 this accident may have happened. And how a jury may
23 apportion the fault.

24 We do not deny, Your Honor, that Mr. Granatino
25 is going to be found some at fault. But we don't

1 believe that at this stage in the game without
2 discovery of the witnesses who were there. Because
3 Your Honor, the thing that struck me is I read
4 through the deposition testimony and the statements
5 that were admitted when Mr. Marlette submitted his
6 memo in opposition to summary judgment, was the
7 witness statements are really all over the board as
8 to how this happened. That there are witnesses that
9 say the light was green, the light was red, the light
10 was yellow. There are witnesses that say that
11 Mr. Granatino and the young woman who he was carrying
12 piggyback were the only ones in the crosswalk.
13 There's other statements that say there was a group
14 of Clemson students that were in the crosswalk.

15 Then Mr. Williams himself has never been
16 deposed. He was the driver of the vehicle that hit
17 Mr. Granatino. And it's my understanding that
18 there's evidence, potentially there, that the
19 lighting was so dim at that crosswalk that he never
20 saw Mr. Granatino. So, we don't believe that you
21 took into consideration other material facts that
22 were testified to by Officer Brooks, I believe, who
23 said that when he got there that the pedestrian
24 crosswalk was not working. There's the at least a
25 reasonable inference that that means that the

1 pedestrian crosswalk sign was not working at the time
2 that Mr. Granatino crossed the road.

3 Now, does that completely excuse it? No. He
4 still has a duty to cross the road safely but it
5 certainly is an issue that we believe ought to be
6 taken into consideration. And we believe those
7 witnesses ought to be deposed and brought before you
8 to give you a full record to decide on. You may very
9 well grant summary judgment after those witnesses are
10 deposed to hear what they have to say. We just don't
11 think the time is ripe now to do that.

12 Thirdly Your Honor or fourthly, I guess, in your
13 order, you decided that the affidavit that was
14 submitted by Mr. Granatino was a sham affidavit
15 because it contradicted his earlier testimony in
16 deposition. And our point simply is that that sort
17 of proves our point, Your Honor. It's not
18 necessarily a sham, if the person who is giving the
19 affidavit has a significant brain injury which
20 effects his memory and his ability to remember
21 clearly what happened at the accident. So, we just
22 disagree, Your Honor, with your characterization of
23 the affidavit as a sham. But we understand that you
24 deemed it a sham and then that's why you did not take
25 it into consideration. And we just believe that that

1 was error to do that.

2 Fourthly, Your Honor, the -- you also ruled that
3 the legal intoxication is evidence that he was
4 greater than 50 percent negligent and therefore does
5 not recover as a matter of law. As I have read the
6 testimony, Your Honor, the testimony was from the
7 officer who was testifying just in general about how
8 illegal limit of alcohol effects people. He did not
9 have any specific testimony about Mr. Granatino.
10 There is no specific testimony about Mr. Granatino,
11 whether he had the classic symptoms blood shot eyes,
12 slurred speech, whether he was -- so in order for you
13 to rule that his intoxication created a more than
14 50 percent negligence scenario that bars him from
15 recovery, surely we need to have some evidence that
16 his intoxication impaired his ability, his ability,
17 not just in general, but his ability, to judge
18 whether or not it was safe to walk out into the road.
19 To judge whether or not the lack a pedestrian sign
20 potentially was something that he needed to look out
21 for. We just don't think there's any evidence has to
22 his impairment, other than the blood alcohol, and it
23 certainly was over the legal limit. But Your Honor
24 you've been trying cases a long time and I have been
25 trying cases, people are effected differently by

1 alcohol. There's just simply no evidence in the
2 record that he was impaired to a level that would
3 effect his judgment so that that alone would create a
4 greater than 50 percent comparative negligence
5 situation.

6 And then lastly, Your Honor, as for the -- you
7 did rule that there was no expert testimony with
8 regard to any duty that was owed by the defendants in
9 this case. Your Honor, that is absolutely correct.
10 There is no expert testimony. What we believe that
11 you failed to do was take into consideration the
12 circumstances. And I put a timeline in my -- in my
13 memo in which I've kind of broke down for you --
14 broke down for you how that occurred. And I will --
15 we will concede that there was a scheduling order
16 that was consented to by all the parties that
17 required than an expert be named by January 1st.
18 That was not done.

19 But, Your Honor, prior counsel we don't know why
20 he didn't do it, quite honestly. And he withdrew
21 from the case just a few days after that time limit
22 expired. And then Mr. Marlette was not admitted pro
23 hoc vice yet. He had not contacted me yet. Didn't
24 have a need to contact me at that point because
25 Mr. White had just withdrawn from the case. He went

1 before Judge Stilwell. Judge Stilwell gave him some
2 time to get additional counsel. He finally found me.
3 But yet the process of being admitted pro hoc vice
4 took an inordinate amount of time in this case. So,
5 there was no counsel there. And we agree, Your
6 Honor, it was after the deadline. And we can't argue
7 differently from that. But we think that the
8 equities in the case are that you can't punish
9 Mr. Granatino for what we believe to be a failure on
10 the part of his prior counsel, if it doesn't create
11 just significant negligence for the Defendants.

12 And what's interesting in this case is that soon
13 after Mr. White withdrew from the case, there was
14 email going back and forth where the Defendants were
15 gracious in saying okay, let's -- we'll hold all the
16 deadlines in the scheduling order until Mr. Marlette
17 is admitted pro hoc vice or until he finds an
18 attorney to associate here in South Carolina. Now,
19 they didn't agree to that January 1st deadline, I
20 want to make clear of that. I'm not saying they
21 agreed to the January 1st deadline was no longer in
22 effect. But you seem to be concerned at the other
23 hearing about a long delay between when that deadline
24 passed and then the summary judgment motion being
25 heard in June, I believe. And we just wanted to make

1 clear to you that the timeline was such that nobody
2 was dilatory in this case. And certainly there's
3 been no prejudice. We're ready, willing and able to
4 name an expert and move forward with that and bring
5 that testimony to you for you to then decide whether
6 or not there's no -- that there's a duty on the part
7 of the Defendants.

8 THE COURT: Well regardless of whether you have
9 a scheduling order in place, this is a 2016 case. I
10 mean, it seems like to me before, especially making
11 claims against the people that built the construction
12 company, Thrift and I don't know, the Department of
13 Transportation. I mean, it seems like that would
14 be -- that expert he would have got before he filed
15 the lawsuit.

16 MR. LEWIS: I can't disagree with that, Your
17 Honor.

18 THE COURT: That's why like -- just the
19 scheduling order had already passed and then, okay,
20 motion for summary judgment. To say, oh we just
21 hadn't gotten an expert, we want to get one that. I
22 mean, that's kind of more not just they missed a
23 deadline, like wow, this thing's being going on
24 for -- rocking along for over a year and you're going
25 to have to have an expert to establish any liability .

1 against these people.

2 MR. LEWIS: And again, Your Honor, I don't
3 disagree with that. With the exception that where's
4 the prejudice? And you said just as we started this
5 hearing, you really felt bad about this case, that
6 you took this case very seriously. That's all we're
7 asking, Your Honor. This is a brain injured young
8 man with hundreds of thousands of dollars in medical
9 bills. And we just believe that equity would dictate
10 that if your biggest concern is a delay, at least the
11 Defendants would have to show some prejudice other
12 than, well, we might not get our summary judgment
13 motion granted. And we just think this is too
14 important of a case for a young mans life for it to
15 be ruled on just based on a delay that wasn't his
16 fault.

17 And now, Mr. Marlette was not appointed pro hoc
18 vice. And I'm privy to some conversations that he
19 had with Mr. White between he and Mr. White. But I
20 can tell Your Honor there's a little bit more back
21 there than you know but I don't have any evidence of
22 that and we can't present you with any evidence. I
23 just -- we believe it's just not right, quite
24 frankly, Your Honor, for him not to have his day in
25 court simply because his prior lawyer didn't comply

1 with the scheduling order. And then there was no way
2 we could have complied with it once Mr. White left
3 the case.

4 THE COURT: All right.

5 MR. LEWIS: And, Your Honor, unless you want me
6 to go into detail about the cases, that Mr. Mauney
7 cited with regard to the appropriateness of a 59(e)
8 order, then that's my argument.

9 THE COURT: All right.

10 Yes, be glad to hear from y'all.

11 MR. YOUNG: Thank you, Your Honor, may it please
12 the Court. Bill Young here on behalf of Thrift
13 Development Corporation. Mr. Mauney sends his
14 regards. Your Honor, I think the first thing to note
15 is that in order to grant this motion for
16 reconsideration, the Plaintiffs have to -- or in
17 order to have you grant it, the Plaintiffs have to
18 establish that all of the grounds for summary
19 judgment, including the Court's order were
20 inappropriate.

21 As I read the order there were three separate
22 grounds. First that -- that Mr. Granatino's own
23 conduct was greater than 50 percent. His conduct
24 amounted to greater to 50 percent negligence. The
25 second is that the conduct of Thrift Development and

1 The DOT were not the approximate cause of this
2 incident. And thirdly, the failure to timely
3 identify an expert and establish any breach of
4 standard of care by Thrift Development or The
5 Department of Transportation.

6 So, I'll take those in order. And briefly touch
7 on them. As far as the first aspect goes with regard
8 to the 50 percent negligence, Your Honor, it's not,
9 as I read your order, it's not merely that there's
10 evidence that Mr. Granatino had a blood alcohol level
11 of .122 at the hospital when he was treated for his
12 injuries initially. It's not merely that he was
13 carrying a friend of his, piggyback across the
14 intersection. One of the busiest intersections in
15 Clemson on a Thursday night. And it's not merely
16 that he testified that he was going across it with at
17 least a yellow light. It's all of those things taken
18 together that create the greater than 50 percent
19 negligence on the part of Mr. Granatino.

20 And I believe The Court firmly and fairly
21 determined that no juror is going to find that he was
22 less than 50 percent liability. I also think it's
23 worth noting that, Your Honor, in your order,
24 identified five separate statutes that Mr. Granatino
25 violated. Now, on the defense side when a plaintiff

1 alleges that our clients have violated a statute,
2 whether it be running a red light or what have you,
3 what we always hear is, well, that's evidence of
4 recklessness. And, Your Honor, I would submit that
5 the same thing goes for the Plaintiff in this case.
6 He violated five separated statutes. That's five
7 different indications that he was not only negligent
8 in his behavior but reckless. I believe that that
9 goes, again, to the greater than 50 percent liability
10 that undoubtedly a jury will return against him.

11 As far as the conduct of Thrift Development not
12 being the approximate cause of the accident, really
13 we've got two options here as far as how this
14 accident happened. And the crosswalk, whether it's
15 operable or not is a really big red herring. Because
16 either the driver of the car, Mr. Williams, either he
17 ran a red light and hit Mr. Granatino. Which means
18 that he violated a statute, he's clearly responsible
19 for that. Or Mr. Granatino was crossing against
20 traffic when he shouldn't have been and he caused
21 Mr. Williams to hit him. Either way, nothing the
22 Thrift Development did or The DOT could have done
23 would have prevented that.

24 The crosswalk signal is a complete red herring
25 because if it's operable and it tells Mr. Granatino

1 not to walk because he -- that traffic has the light,
2 then he's jaywalking. Or if he's been given the
3 signal to walk and Mr. Williams runs the red light,
4 he's still getting hit. We're still in the same
5 place regardless of the crosswalk. So, that has
6 nothing to do with anything. And the fact of the
7 matter is either Mr. Granatino jaywalked or
8 Mr. Williams ran the red light. Under either
9 scenario, Thrift Development did not act to create
10 that incident.

11 Thirdly, Your Honor, as far as the expert
12 witness goes, this case was filed over two years ago.
13 Actually was filed 734 days ago. Four hundred,
14 thirty-seven days from the time it was filed until
15 the discovery -- until the expert deadline
16 designation date passed. As of this date, the
17 Plaintiffs have not designated any experts to testify
18 about the standard of care for what might have been
19 breached -- I think that's telling. We've got --
20 we've got no evidence of that. Of course, had the
21 Plaintiffs submitted some report after the summary
22 judgment motion, we certainly would have objected to
23 that. Because we believe it would have been
24 improper.

25 But I do believe that it's important to know

1 that even today, when they're asking the court to
2 give them more time and to provide an expert report,
3 they haven't presented one to anybody. And so, the
4 fact that Mr. White was counsel of record, then he
5 removed himself or was relieved as counsel, it
6 doesn't change the fact that the expert deadline had
7 expired. Mr. Marlette is not some joe-eyed teenager
8 coming in here, doesn't know nothing about court,
9 he's a lawyer up in Massachusetts. He should be well
10 versed in all the obligations that are associated
11 with representing someone in court. Irrespective of
12 it being a client that walks in his office door or
13 his stepson. So, we don't believe that that is a
14 sufficient basis to overturn the Court's prior
15 ruling.

16 Additionally, on the note of an expert witness,
17 the Plaintiffs raised in their arguments this notion
18 that Mr. Granatino has brain damage and therefore you
19 can't believe a word he says. They have not -- first
20 of all, they don't have an expert. They haven't
21 submitted any sort of affidavit to establish that.
22 They haven't had any sort of evidence presented to
23 The Court that would -- that would give rise or give
24 The Court any ability to evaluate that claim beyond
25 just the arguments of their own counsel.

1 And as I understand it, Mr. Granatino does
2 remember some things. He also knows what he doesn't
3 remember. But what there's no indication of is that
4 Mr. Granatino just out and out says whatever the heck
5 he wants to. And has no ability to agree or disagree
6 with someone. There's no expert that been offered
7 for that and there's no indication in the record that
8 that is the case. So, we think that the fact that he
9 may have some -- some cognitive brain issue, A, it
10 hasn't been established. B, it hasn't been
11 established that he doesn't have the ability to be
12 truthful.

13 And I think, therefore, with the -- with the
14 fact that we got this deposition testimony that says
15 one thing, and then right before the summary judgment
16 motion we have an affidavit that says something
17 completely opposite, I think The Court is exactly
18 correct in finding that that was a sham affidavit.
19 And he cannot consider the conflicting testimony
20 of -- from that to defeat a summary judgment motion.
21 And we believe -- we believe that Your Honor was
22 right on the money.

23 THE COURT: All right.

24 MR. LOGAN: Briefly, Your Honor, on behalf of
25 the DOT. First of all, we believe that your complete

1 order is a well recent and appropriate order under
2 all the circumstances in this case. The only thing
3 that I would like to comment on is the testimony
4 argument that counsel for Mr. Granatino has made
5 about his testimony. I disagree with his
6 characterization of the deposition testimony. But
7 beyond that, I'd like to point out to The Court that
8 the affidavit of Mr. Granatino was submitted by
9 counsel, immediately prior to the hearing before this
10 Court.

11 I understand your order deals with it as a sham
12 affidavit. But let's assume for purposes of argument
13 that it's not a sham affidavit. I presume that that
14 affidavit was prepared and was submitted with counsel
15 believing that Mr. Granatino had the requisite
16 capacity to make the statements that he made in that
17 affidavit. And that he was not intoxicated at the
18 time he made that affidavit. And in that affidavit,
19 he said that light was red. For the gentleman who
20 hit him. So, let's assume the light was red.

21 And this is addressed in your order when you
22 say, Based upon the Plaintiff's own testimony,
23 including his affidavit, he knew when he could
24 lawfully enter the intersection, so therefore, the
25 striping on the road and whether or not the walk

1 lights or don't walk lights were working, he knew
2 where he could lawfully enter the road, where he had
3 to to properly cross the intersection.

4 So even -- and therefore, under his testimony,
5 the driver of the truck that hit him, had the red
6 light and failed to stop. So, under either scenario,
7 under either his earlier testimony about it being
8 green or red -- yellow, excuse me, or his later
9 affidavit when he was, according to counsel who
10 submitted the affidavit, in the appropriate state of
11 mind to submit that affidavit, it shields Thrift and
12 it shields The DOT from any liability in this case.
13 In addition, to all of these other arguments that
14 have been made. It's just one of those rare cases
15 where summary judgment, at this stage, is
16 appropriate. Thank you, sir.

17 THE COURT: Mr. Lewis, anything else you want to
18 respond?

19 MR. LEWIS: Just very briefly, Your Honor.

20 THE COURT: Yes, sir.

21 MR. LEWIS: As far as the five separate statutes
22 that were violated, Your Honor, certainly that's
23 evidence of recklessness. But in most cases, when
24 people violate statutes, you simply just charge the
25 jury on that. You don't grant summary judgment

1 because you allow a jury to decide whether or not
2 that violation of the statute was approximate cause
3 of the wreck. So, we don't think that is -- should
4 be grounds for summary judgment either. Because,
5 again, you just cure that at trial and give them a
6 charge as to what the statutes were.

7 Secondly, Your Honor, defense counsel continues
8 to say that there are only two scenarios here.
9 Either the light was red and Mr. Williams is at fault
10 or there's another scenario there. The third
11 scenario, though, Your Honor, is the light was
12 yellow. That our client was not as impaired as a
13 person might be who is just stumbling drunk, that he
14 had that wherewithal to determine what he was doing
15 and to try to do it safely. The light was yellow and
16 Mr. Williams just was trying to beat the light. And
17 it was dim there. And the lighting at the
18 intersection and the pedestrians lights were not
19 functioning. So, there's a third scenario there,
20 Your Honor, where a jury certainly could apportion
21 fault amongst the parties and may very well not
22 apportion Mr. Granatino greater than 50 percent. And
23 so, we think that for Your Honor to say that there's
24 just no other outcome that the jury could come to,
25 other than he was greater than 50 percent, is error.

1 And to Mr. Logan's point, I will say, Your
2 Honor, the affidavit -- when Mr. Logan says that
3 counsel made the decision that Mr. Granatino was in
4 the appropriate state of mind to submit the
5 affidavit, that's our whole point, Your Honor. How
6 do you determine that a brain injured person is in an
7 appropriate state of mind after the brain injury? It
8 doesn't mean that it was an affidavit submitted in a
9 sham fashion. It doesn't mean that it was an
10 affidavit submitted to try to mislead the court. It
11 simply proves our point that it's not about whether
12 he's telling the truth or not, it's can he remember
13 what happened? And the fact that he testified one
14 way and submitted an affidavit to the other, is
15 simply evidence that his brain injury is such that he
16 can't remember clearly what happened. And that's why
17 this court needs to take into consideration all the
18 other circumstances that we're talking about before
19 we grant a summary judgment motion in a significant
20 case like this one. Thank you, Your Honor.

21 MR. YOUNG: If I may respond?

22 THE COURT: Very brief.

23 MR. LOGAN: If you have a question about at the
24 affidavit stage whether or not the client has the
25 ability and cognitive ability, in particular, to

1 testify under oath by affidavit, the answer is to
2 challenge his deposition testimony and establish that
3 when he gave a deposition by medical testimony or
4 otherwise, that he did not have the requisite
5 cognitive ability. It's not to present an affidavit
6 which the court so entitled to take and consider in
7 making its determination. Thank you, sir.

8 THE COURT: All right, I'm going to review the
9 matter again. I'm going to review the memorandum
10 submitted by Mr. Lewis and I'll let y'all know what
11 my decision is.

12 MR. LEWIS: Thank you, Your Honor.

13 MR. LOGAN: Thank you, Your Honor.

14 MR. YOUNG: Thank you, very much, Your Honor.

15 (WHEREUPON, the proceedings were concluded.)
16
17
18
19
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21
22
23
24
25

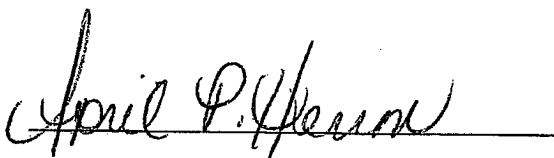
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Pickens County, South Carolina, on the
25th day of October, 2018.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 12, 2019



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Kevin Granatino,

Plaintiff,

-vs-

Calvin Williams, Clemson University, South
Carolina Department of Transportation, and
Thrift Development Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

MOTION TO WITHDRAW AS ATTORNEY

Case No.: 2016-CP-39-01223

The Plaintiff's attorneys, Trevor B. White and Druanne D. White, of the White, Davis & White Law Firm, allege as follows:

1. The undersigned filed this cause of action on behalf of the Plaintiff on October 21, 2016, in the Pickens County, South Carolina Court of Common Pleas.
2. The undersigned request that this Court order that they be permitted to withdraw as attorneys of record for the Plaintiff, Kevin Granatino.
3. The undersigned make this motion for the following reasons as provided for in The South Carolina Rules of Professional Conduct, Rule 1.16:
 - i. the Plaintiff and the undersigned have a fundamental disagreement as to the proper course of action in this matter;

WHEREFORE, the undersigned respectfully pray that this Court order that they be permitted to withdraw as attorneys of record for the Plaintiff.

[Signature Page to Follow]

WHITE, DAVIS & WHITE LAW FIRM

/s/Trevor B. White

Trevor B. White (S.C. Bar No. 100791)

Druanne White (S.C. Bar No. 5991)

ATTORNEYS FOR THE PLAINTIFF

209 East Calhoun Street

Post Office Box 1346

Anderson, SC 29622

Telephone: (864) 231-8090

Facsimile: (864) 231-8006

Anderson, South Carolina
June 12, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	CASE NO.: 2016-CP-39-01223
	)	
Kevin Granatino,	)	
	)	
Plaintiff,	)	
	)	SOUTH CAROLINA DEPARTMENT
v.	)	OF TRANSPORTATION'S MOTION
	)	FOR SUMMARY JUDGMENT
Calvin Williams, Clemson University,	)	
South Carolina Department of	)	
Transportation and ABC Corporation,	)	
	)	
<u>Defendants.</u>	)	

YOU WILL PLEASE TAKE NOTICE that the Defendant, South Carolina Department of Transportation, by and through its undersigned counsel, hereby moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Summary Judgment in favor of this Defendant. This motion is based upon the grounds that the pleadings, depositions, Answers to Interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact as to the plaintiff's claims, and that, therefore, this Defendant is entitled to judgment as a matter of law.

This Motion is further based upon such authority as will be set forth in the Memorandum that will be filed in support of the Motion

s/James W. Logan, Jr.
James W. Logan, Jr. (SC Bar #3385)
Logan, Jolly & Smith, LLP
Post Office Box 259
Anderson, South Carolina, 29622
logan@loganjollysmith.com
Attorneys for South Carolina Department of
Transportation

Dated: January 19, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
Kevin M. Granatino,	)	DEFENDANT THRIFT DEVELOPMENT
	)	CORPORATION'S MOTION FOR
	)	SUMMARY JUDGMENT
Plaintiff,	)	
	)	
vs.	)	
	)	C.A. NO.: 2016-CP-39-01223
Calvin Williams, Clemson University, South	)	
Carolina Department of Transportation and	)	
Thrift Development Corporation,	)	
	)	
Defendants.	)	

TO: KEVIN GRANATINO, PLAINTIFF, AND HIS ATTORNEY

Please take notice that the Defendant, Thrift Development Corp., by and through its undersigned attorney, hereby moves pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting Summary Judgment in its favor, on the grounds that there are no genuine issues as to any material facts and the Defendant is entitled to judgment as a matter of law in its favor.

This Motion is based upon the fact that the Defendant is not negligent as alleged in the Complaint. This Motion is further based upon the fact that the Plaintiff was more than 50% at fault in causing the accident and is therefore barred from recovering. The Defendant incorporates by reference its Answer as further grounds for this Motion.

This Motion is based upon the pleadings, written discovery responses from each party, deposition of the Plaintiff, and depositions of other witnesses, affidavits filed or to be filed, and the applicable and statutory law for the State of South Carolina.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/C. Stuart Mauney

C. Stuart Mauney (S.C. Bar No. 9770)
Robert D. Corney (S.C. Bar No. 80167)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P. O. Box 10589
Greenville, South Carolina 29603
Tel: (864) 271-9580
Fax: (864) 271-7502
Attorneys for Defendant, Thrift Development
Corporation

Greenville, SC
January 19, 2018

Release of Attorney

I, Kevin Granatino, having read the Order relieving Trevor White and Druanne White, of the White, Davis & White Law Firm, do hereby give my consent to the release of Trevor White and Druanne White from further representation of me in case number 2016-CP-39-1223. I further understand that this does not relieve me of any financial obligation or outstanding account balance due to Trevor White and Druanne White for legal services rendered. Specifically, I agree that Trevor White and Druanne White will retain any monies received by way of settlement as of the date of this release in their trust account pending final dissolution of this action and final settlement of all liens/subrogation interests against me. I understand that the previous settlement monies received by Trevor White and Druanne White are subject to the provisions of my contract with Trevor White and Druanne White, as it pertains to attorney fees and costs and disbursement to lien holders. Further, I understand that Trevor White and Druanne White will not represent me for the settlement of liens against me, should I recover further monies in this action.

I understand that the Order relieving Trevor White and Druanne White, of the White, Davis & White Law Firm from further representation of me, requires that I secure substitute representation within twenty (20) days, or I will have the option of representing myself in future hearings in this matter.

I have been given a complete copy of all pertinent records from my file by Trevor White and Druanne White. I am requesting that Trevor White and Druanne White, of the White, Davis & White Law Firm, be relieved from further representation of me in case number 2016-CP-39-1223.

Initials KMG

1 ML

Dated: January 23, 2018

SWORN to before me this
23 day of January, 2018.
Kathy Martin
Notary Public for South Carolina
My Commission Expires: 01/10/2023

Kevin Granatino
Kevin Granatino

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

<u>Kevin Granatino</u> Plaintiff	<u>2016-CP-39-1223</u> Case No.	<u>County of Pickens, Court of Common Pleas</u> Tribunal
vs.		
Mailing Address of Tribunal:		<u>214 E. Main Street #A100</u>
<u>Calvin Williams, Clemson University, South Carolina Department of Transportation and ABC Corporation</u> Defendant		<u>Pickens, SC 29671</u>

Comes now George L. Marlette, Esquire, applicant herein, and respectfully represents the following:

1. Applicant resides at:
31 Rustic Drive
Street Address
Cohasset Norfolk MA 02025
City County State Zip Code
781-383-6809
Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of)
Law Office of George Lane Marlette, P.C., with offices at
80 Washington Street, Ste. J-39
Street Address
Norwell Plymouth MA 02061
City County State Zip Code
781-871-1861 508-789-9855 781-871-8342 gmarlette@marlattelaw.com
Primary Telephone Cell Phone Fax Number Email Address

3. Applicant has been retained personally or as a member of the above-named law firm by
Kevin Granatino, Plaintiff to provide legal representation in
connection with the above case now pending before the above-named tribunal of the State of South Carolina.

4. Since 12/14 of 1988, applicant has been, and presently is, a
member in good standing of the bar of the highest court of the District of Columbia or the State of
Massachusetts where applicant regularly practices law. Attached is a certificate of good
standing dated within the last 90 days from the bar of the highest court of the District of Columbia or the State
where applicant regularly practices law.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts
applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of
Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

ELECTRONICALLY FILED - 2018 May 08 4:02 PM - PICKENS - COMMON PLEAS - CASE#2016CP3901223

Court:	Date Admitted:
Commonwealth of Massachusetts	12/14/1988
United States District Court, District of Massachusetts	10/27/1989

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below: (List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court date):

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

8. Applicant never has had any certificate or privilege to appear and practice before any court or administrative body suspended or revoked, except as provided below (give particulars, e.g., date, court, administrative body, date of suspension and reinstatement):

9. Local counsel of record associated with applicant in this case is Stephen R.H. Lewis
of the Covington, Patrick, Hagens, Stern and Lewis, LLC law firm, which has offices at:

211 Pettigrew St.

Street Address

Greenville

City

864-240-5518

Primary Telephone

012947

South Carolina Bar Number

Greenville

County

864-423-1025

Cell Phone

SC

State

864-233-9777

Fax Number

29601

Zip Code

SLEWIS@COVPATLAW.COM

Email Address

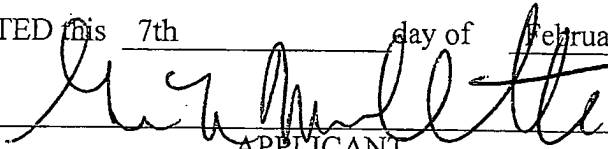
10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional

Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

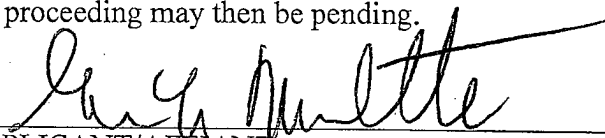
12. Applicant respectfully requests to be admitted to practice in the above-named tribunal for this case only.

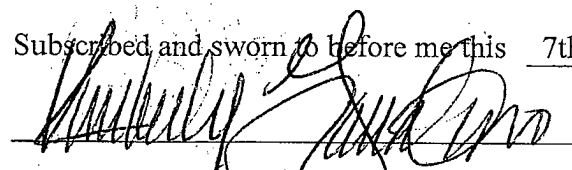
DATED this 7th day of February 20 18


APPLICANT

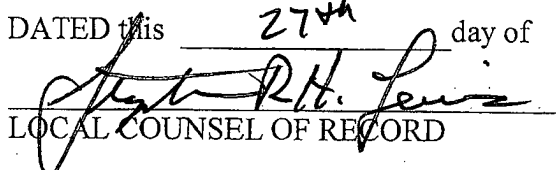
VERIFICATIONSTATE OF Massachusetts)COUNTY OF Plymouth)

I, George L. Marlette, Esquire, do hereby swear or affirm under penalty of perjury that I am the applicant in the above-styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I understand that I am under a continuing duty to promptly update the information provided in the application until the tribunal has ruled on the motion for admission pro hac vice. Further, if the motion is granted, I understand that I am under a continuing duty to promptly update the information provided in the application as long as I continue to appear pro hac vice in the action or proceeding. Any updated information shall be provided to both the tribunal that granted the motion and to the tribunal in which the action or proceeding may then be pending.

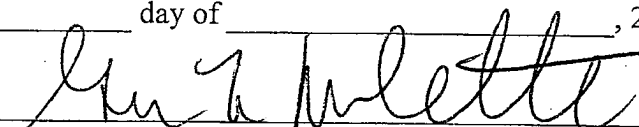

 APPLICANT/AFFIANT

 Subscribed and sworn to before me this 7th day of February, 20 18

 Notary Public for the State of Massachusetts
My Commission Expires: 7/19/20**LOCAL COUNSEL CONSENT**

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

 DATED this 27th day of February, 20 18

 LOCAL COUNSEL OF RECORD
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this

 day of _____, 20 18

 APPLICANT/AFFIANT

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-39-01223

Kevin Granatino,

Plaintiff,

vs.

Calvin Williams, Clemson University,
South Carolina Department of
Transportation and Thrift Development
Corporation,

Defendants.

**AFFIDAVIT FOR ADMISSION
PRO HAC VICE PURSUANT TO
RULE 404(f)**

I, George L. Marlette, III, being duly sworn, deposes and states:

I am over the age of eighteen, competent to testify, and the facts set for below are those personally known to me.

I am a partner in the Law Offices of George L. Marlette, 80 Washington Street, J-39, Norwell, Massachusetts 02061. I have been a member of good standing in the bar of the State of Massachusetts since December 14, 2008, Bar #553523. I make this affidavit in support of Plaintiff's motion to be admitted *Pro Hac Vice* to serve as co-counsel in the representation of the Plaintiff in the above-captioned matter.

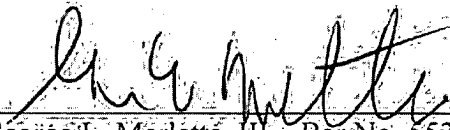
I am familiar with the facts and circumstances of this case and further attest as follows:

1. The undersigned is not a South Carolina resident;
2. The undersigned is not regularly employed in the State of South Carolina; and,
3. The undersigned is not regularly engaged in the practice of law or professional activity in the State of South Carolina.

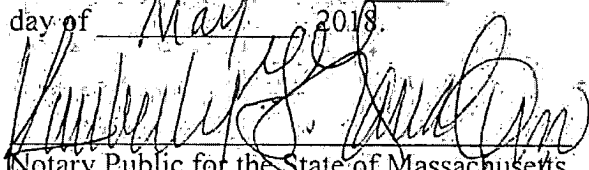
I respectfully request that the motion be granted, and I be admitted *Pro Hac Vice* to participate in this action.

FURTHER DEPONENT SAITH NOT.

Respectfully submitted,


George L. Marlette, III - Bar No. 553523
Law Offices of George L. Marlette
80 Washington Street, J-39
Norwell, MA 02061
(781) 871-1861 Phone
(781) 871-8342 Fax

SWORN TO before me this 8th
day of May, 2018.


Notary Public for the State of Massachusetts

My Commission Expires: 7/19/20

George Marlette

From: George Marlette
Sent: Monday, February 05, 2018 1:00 PM
To: rstilwellj@sccourts.org
Cc: Kim Granatino; George Marlette
Subject: FW: Email/Letter to J. Stilwell 2.4.18
Attachments: doc20180205130140.pdf

Importance: High

By Email
February 5, 2018

Attn: Judge Stilwell- County of Pickens, Court of Common Pleas

Re: Kevin Granatino v. Calvin Williams, et als.; Case Number 2016-CP-39-01223

Dear Judge Stilwell:

Please find this time 'sensitive writing' to you at the suggestion of Pickens County Deputy Clerk, Cheryl Watson, with whom I met this morning.

The matter I discussed with her was my request for admission, pro hac vice to represent the Plaintiff in the above action. The matter is currently scheduled for hearing on February 16, 2018 on a Motion for Summary Judgment, brought by three of the named party defendants.

A review of the docket will reveal that predecessor counsel for the Plaintiff was granted leave to Withdraw Appearance. The Plaintiff was given 20 days to locate successor counsel. He wishes for me to appear as his counsel. ~~I am an Attorney in Massachusetts.~~

However, my understanding, from Ms. Watson is that my appearance, which needs approval in Columbia, would necessitate a continuance of the hearing on Summary Judgment as the approval of my request for admission could take up to 5 weeks, according to her understanding and experience.

The ethical and logistical quandary I find myself in is that, although I am capable of preparing an Opposition to the Motion, to do so would constitute the unauthorized practice of law. Similarly, a Motion to Continue before your court, for which I would request the assent of all counsel would be improper as I currently lack standing to file a Motion, pre admission and cannot purport to represent Plaintiff in seeking the assent of counsel. The Plaintiff is incapable of proceeding pro se as a consequence of brain and physical injuries he suffered as a pedestrian accident being hit by a vehicle.

Please be advised that I am a member, in good standing, of the Massachusetts Bar with nearly 30 years of experience. With regard to the matter in Pickens County, I am intimately familiar with the matter, have

attended, in person, the depositions of the Plaintiff, as well as the first responder and two (2) MAIT team officers. Additionally, I have reviewed all pleadings, motions and documents on file with your Court.

But for the need for time to secure my admission, pro hac vice, I am otherwise prepared to proceed expeditiously in prosecuting the Plaintiff's matter in accordance with your scheduling orders. In fact, my trip to South Carolina today was for the purpose of reviewing the file, meeting with court personnel to learn the status of the matter and to attempt to locate a sponsor for my admission.

Finally, in the interest of full disclosure, you should know that the Plaintiff is my step-son and that his mother is also a member in good standing of the Massachusetts bar. Kevin is a wonderful young man who has suffered significant brain damage as a result of the incident memorialized in the pleadings. All he wants is a full and fair opportunity to present his evidence to you or to a jury for such disposition as is justified after consideration of admissible evidence.

To that end I am seeking your assistance, which I in good faith believe to be in the interest of full and fair justice for Kevin. I ask that you consider a Sua Sponte Order rescheduling the matter for hearing on a later date so that I may complete the process of securing my admission in the matter.

Kindly know that I will make myself available to appear before you on Tuesday morning should you require my in person appearance. I will be departing for the airport at approximately 2:00 p.m. tomorrow to return to my law office in Massachusetts. Thank you for your courtesy and attention to this important matter.

Respectfully,

George L. Marlette, Esq.

George Marlette

From: Stilwell, Robin B. <rstilwell@sccourts.org>
Sent: Monday, February 05, 2018 1:14 PM
To: George Marlette
Cc: Kim Granatino
Subject: Re: FW: Email/Letter to J. Stilwell 2.4.18

Thank you for your correspondence. Is the opposing party/counsel copied on this correspondence? As you know, I can do nothing ex parte.

RBS.

On Feb 5, 2018 12:59 PM, George Marlette <gmarlette@marlette-law.com> wrote:

By Email

February 5, 2018

Attn: Judge Stilwell- County of Pickens, Court of Common Pleas.

Re: Kevin Granatino v. Calvin Williams, et als., Case Number 2016-CP-39-01223

Dear Judge Stilwell:

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Please be advised that I am a member, in good standing, of the Massachusetts Bar with nearly 30 years of experience. With regard to the matter in Pickens County, I am intimately familiar with the matter, have attended, in person, the

depositions of the Plaintiff, as well as the first responder and two (2) MAIT team officers. Additionally, I have reviewed all pleadings, motions and documents on file with your Court.

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Respectfully,

George L. Marlette, Esq.

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George Marlette

From: Stilwell, Robin B. <rstilwellj@sccourts.org>
Sent: Thursday, February 08, 2018 1:07 PM
To: George Marlette
Cc: Logan@loganjollysmith.com; Smauney@gwblawfirm.com; Cfturner@wjlaw.net
Subject: RE: Letter to Judge Stilwell/Certificate of Service via Email

Thank you. I'll wait to hear the position of opposing counsel before deciding. I expect their respective positions are forthcoming.

Robin B. Stilwell
Circuit Judge, State of South Carolina
305 East North Street, Suite 315
Greenville, SC 29601
(864)467-8408

From: George Marlette [mailto:gmarlette@marlattelaw.com]
Sent: Thursday, February 8, 2018 11:22 AM
To: Stilwell, Robin B. <rstilwellj@sccourts.org>
Cc: Logan@loganjollysmith.com; Smauney@gwblawfirm.com; Cfturner@wjlaw.net
Subject: RE: Letter to Judge Stilwell/Certificate of Service via Email

Dear Judge Stilwell:

I am writing to certify that on February 5, 2018, I served a true copy of the below letter upon counsel for the Defendants. Kindly note that all are also copied on this email.

As Plaintiff currently has no counsel and motions for summary judgment are scheduled for hearing on February 16, I am reaching out to you as I understand you are the Chief Administrative Judge with sole discretion whether to reschedule the matter. I am hopeful that the motions can be rescheduled to a date that will afford sufficient time for me to secure my admission for the case.

I am optimistic that counsel will not oppose a rescheduling under the circumstances identified in my letter and considering the obvious ethical and logistical quandary that has necessitated my request for relief. The courtesy will be appreciated and all may rest assured that similar courtesy will be extended by the Plaintiff, should the need arise in the future.

Very truly yours,

George L. Marlette, Esq.
Attorney at Law
Law Offices of George Lane Marlette, P.C.
80 Washington Street, Ste. J-39
Norwell, MA 02061
(781) 871-1861 office
(781) 871-8342 fax
gmarlette@marlattelaw.com

George Marlette

From: Stilwell, Robin B. <rstilwellj@sccourts.org>
Sent: Friday, February 09, 2018 1:43 PM
To: Geoff W. Gibbon; Stilwell, Robin B. Law Clerk (Maressa M. Cuenca)
Cc: George Marlette; 'Jim Logan'; Charles F. Turner, Jr. (CFTurner@wjlaw.net); 'Stuart Mauney'; Watson, Cheryl
Subject: RE: Granatino v. Williams, et al. (2016-CP-39-1223)

Thanks for weighing in. The motion, by consent, is continued. It shall be reset at the next scheduled CPNJ term.

Robin B. Stilwell
Circuit Judge, State of South Carolina
305 East North Street, Suite 315
Greenville, SC 29601
(864)467-8408

From: Geoff W. Gibbon [mailto:ggibbon@mgclaw.com]
Sent: Friday, February 9, 2018 11:55 AM
To: Stilwell, Robin B. <rstilwellj@sccourts.org>; Stilwell, Robin B. Law Clerk (Maressa M. Cuenca) <rstilwellc@sccourts.org>
Cc: 'gmarlette@marlettela.com' <gmarlette@marlettela.com>; 'Jim Logan' <logan@loganjollysmith.com>; Charles F. Turner, Jr. (CFTurner@wjlaw.net) <CFTurner@wjlaw.net>; 'Stuart Mauney' <Smauney@gwblawfirm.com>
Subject: Granatino v. Williams, et al. (2016-CP-39-1223)

Judge Stilwell,

I represent Calvin Williams in the above-captioned matter. I've received a request from Mr. Marlette to continue motions for summary judgment filed by other Defendants in this matter while Mr. Marlette moves to be admitted pro hac vice in this case. I understand the other defense counsel have already consented to Mr. Marlette's request. I think I was inadvertently left off the original correspondence so I wanted to let the Court know that I too consent to Mr. Marlette's request. Please let me know if you need anything else from me.

Geoff



Geoff W. Gibbon, Attorney
ggibbon@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-2088 | Fax: 864-242-3199
VCARD | BIO

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## George Marlette

---

**From:** Stuart Mauney <Smauney@gwblawfirm.com>  
**Sent:** Thursday, March 01, 2018 10:25 AM  
**To:** George Marlette; rstilwellj@sccourts.org  
**Cc:** Logan@loganjollysmith.com; Cfturner@wjlaw.net  
**Subject:** RE: Letter to Judge Stilwell/Certificate of Service via Email [GWB-IMANMAIN.FID299120]

Mr. Marlette,

We look forward to hearing from you on status of new counsel for plaintiff. We have now passed the date pursuant to which new counsel was to be obtained.

We have a scheduling order, but this is to confirm with you and the court, that any deadlines under that order after Mr White's withdrawal are suspended pending your obtaining counsel.

We do anticipate filing additional documents in support of our motion for summary judgment but will hold off serving that until we hear from you.

Thanks

Stuart



GALLIVAN WHITE BOYD

*Complex experience for complex matters*

**C. Stuart Mauney**  
Partner  
smauney@GWBlawfirm.com

**Gallivan, White & Boyd P.A.**  
**Office** 55 Beattie Place | Suite 1200 | Greenville SC 29601  
864 271 5356 Direct | 864 271 9580 Main | 864 271 7502 Fax

**Mailing** Post Office Box 10589 | Greenville SC 29603

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---

**From:** George Marlette [mailto:gmarlette@marlettelaw.com]  
**Sent:** Thursday, February 08, 2018 11:22 AM  
**To:** rstilwellj@sccourts.org  
**Cc:** Logan@loganjollysmith.com; Stuart Mauney; Cfturner@wjlaw.net  
**Subject:** RE: Letter to Judge Stilwell/Certificate of Service via Email

Dear Judge Stilwell:

I am writing to certify that on February 5, 2018, I served a true copy of the below letter upon counsel for the Defendants. Kindly note that all are also copied on this email.

George Marlette

---

From: Stuart Mauney <Smauney@gwbllawfirm.com>  
Sent: Monday, March 05, 2018 12:09 PM  
To: George Marlette  
Cc: Logan@loganjollysmith.com; Cfturner@wjlaw.net  
Subject: RE: Letter to Judge Stilwell/Certificate of Service via Email [GWB-IMANMAIN.FID299120]

Thank you for the update.

Stuart



GALLIVAN WHITE BOYD

*Complex experience for complex matters*

C. Stuart Mauney,  
Partner  
smauney@GWBllawfirm.com

Gallivan, White & Boyd P.A.  
Office 55 Beattie Place | Suite 1200 | Greenville SC 29601  
864.271.5356 Direct | 864.271.9580 Main | 864.271.7502 Fax  
Mailing Post Office Box 10589 | Greenville SC 29603  
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---

From: George Marlette [mailto:gmarlette@marlattelaw.com]  
Sent: Monday, March 05, 2018 9:16 AM  
To: Stuart Mauney; rstilwell@sccourts.org  
Cc: Logan@loganjollysmith.com; Cfturner@wjlaw.net  
Subject: RE: Letter to Judge Stilwell/Certificate of Service via Email [GWB-IMANMAIN.FID299120]

---

Dear Attorney Mauney:

I hope you are well and now fully healed. Please be advised that my Verified Application for Admission Pro Hac Vice has been filed with the South Carolina Supreme Court, together with my Certificate of Good Standing and the filing fee. It is my understanding that when approved, I will be authorized to file a motion with the court to request that I be permitted to file my appearance as counsel for the Plaintiff, Kevin Granatino. I am hopeful all will assent to the allowance of that motion.

Attorney Stephen R.H. Lewis has agreed to associate with me in the case and has completed and signed the Local Counsel Consent portion of my Verified Application. Attorney Lewis clearly shares my respect for all counsel of record and for the Court. I am confident he will prove a valuable resource and a welcome addition to the case.

I share your understanding that any deadlines under the scheduling order, after Attorney White's withdrawal, are suspended pending the approval of my request for admission pro hac vice. I appreciate your courtesy in delaying additional filings until I am approved.

I look forward to working with you in the case and to the privilege of appearing in the Pickens County Court.

All the best!

George

George L. Marlette, Esq.  
Attorney at Law  
Law Offices of George Lane Marlette, P.C.  
80 Washington Street, Ste. J-39  
Norwell, MA 02061  
(781) 871-1861 office  
(781) 871-8342 fax  
[gmarlette@marlettelaw.com](mailto:gmarlette@marlettelaw.com)

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If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this electronic transmission is prohibited. If you have received this message in error, please notify us by return telephone call at (781) 871-1861 or facsimile copier at (781) 871-8342 or email transmission immediately so that we can arrange for the retrieval of the documents and the re-direction of the message and its accompanying documents to the intended party.

From: Stuart Mauney [<mailto:Smauney@gwblawfirm.com>]  
Sent: Thursday, March 01, 2018 10:25 AM  
To: George Marlette <[gmarlette@marlettelaw.com](mailto:gmarlette@marlettelaw.com)>; [rstilwellj@sccourts.org](mailto:rstilwellj@sccourts.org)  
Cc: [Logan@loganiollysmith.com](mailto:Logan@loganiollysmith.com); [Cfturner@wjlaw.net](mailto:Cfturner@wjlaw.net)  
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Mr. Marlette,

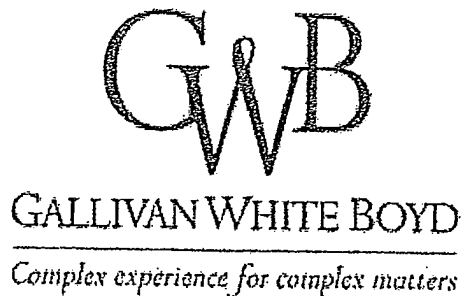
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We do anticipate filing additional documents in support of our motion for summary judgment but will hold off serving that until we hear from you.

Thanks

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C. Stuart Mauney  
Partner  
smauney@GWBlawfirm.com

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**Sent:** Thursday, February 08, 2018 11:22 AM  
**To:** [rstilwellj@sccourts.org](mailto:rstilwellj@sccourts.org)  
**Cc:** [Logan@loganjollysmith.com](mailto:Logan@loganjollysmith.com); Stuart Mauney; [Cfturner@wjlaw.net](mailto:Cfturner@wjlaw.net)  
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George L. Marlette, Esq.  
Attorney at Law  
Law Offices of George Lane Marlette, P.C.  
80 Washington Street, Ste. J-39  
Norwell, MA 02061  
(781) 871-1861 office  
(781) 871-8342 fax  
[gmarlette@marlattelaw.com](mailto:gmarlette@marlattelaw.com)

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## Certificate of Electronic Notification

### Recipients

**Charles Mauney** - Notification transmitted on 04-25-2018 04:26:10 PM.

**James Logan** - Notification transmitted on 04-25-2018 04:26:10 PM.

**Geoffrey Gibbon** - Notification transmitted on 04-25-2018 04:26:10 PM.

**Charles Turner** - Notification transmitted on 04-25-2018 04:26:10 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

-

**A filing has been submitted to the court RE:** 2016CP3901223

**Official File Stamp:** 04-25-2018 04:25:43 PM

**Court:** CIRCUIT COURT

Common Pleas

Pickens

**Case Caption:** Kevin M Granatino VS Calvin Williams ,  
defendant, et al

**Event(s):**

Notice/Notice of Appearance

**Filed by or on behalf of:**

Stephen R.H. Lewis

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Charles Franklin Turner, Jr. for Clemson  
University

James W. Logan, Jr. for Transportation South  
Carolina Department Of

Charles Stuart Mauney for Thrift Development  
Corporation

Geoffrey William Gibbon for Calvin Williams

**The following people have not been served electronically by the Court. Therefore, they must  
be served by traditional means:**

George L Marlette

Kevin M Granatino



STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Kevin M. Granatino,

Plaintiff,

vs.

Calvin Williams, Clemson University,  
South Carolina Department of  
Transportation, and Thrift Development  
Corporation,

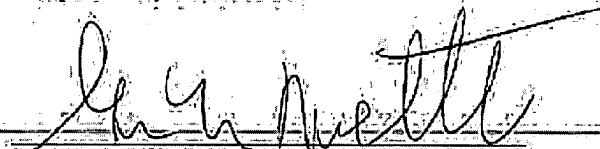
Defendants,

IN THE COURT OF COMMON PLEAS  
C.A. No: 2016-CP-39-01223

NOTICE OF APPEARANCE FOR  
PLAINTIFF KEVIN M. GRANATINO

NOW COMES George L. Marlette, Esq., and hereby enters his Notice of  
Appearance as co-counsel for the Plaintiff, Kevin M. Granatino, in the above captioned matter.

Respectfully submitted,



George L. Marlette, III - Bar No. 553523  
Law Offices of George L. Marlette, P.C.  
80 Washington Street, J-39  
Norwell, MA 02061  
Tel: (781) 871-1861 / Fax: (781) 871-8342  
gmarlette@marlattelaw.com

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS  
C.A. No. 2016-CP-39-01223

Kevin Granatino

Plaintiff,

vs.

Calvin Williams, Clemson University,  
South Carolina Department of  
Transportation, and Thrift Development  
Corporation,

Defendants.

**PLAINTIFF'S OPPOSITION TO  
SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION'S MOTION  
FOR SUMMARY JUDGMENT**

This is a negligence action alleging substantial personal and permanent emotional and physical injury or damages caused by the defendant's negligence, neglect, and/or carelessness in derogation of its duty owed to the plaintiff which breach or failure was the actual or proximate cause of the plaintiff's injuries.

The facts, supported by the pleadings, answers to interrogatories and admissions of record establish that on or about October 23, 2014 the plaintiff Kevin M Granatino, a 21-year-old senior at Clemson University, was crossing the intersection, under construction, at US 123 and College Boulevard in Clemson, Pickens County, South Carolina at which time a car operated by defendant Williams struck the plaintiff as he was crossing the intersection. At all times material to this cause of action the defendant SCDOT acted by and through its agent's contractors and employees, including, but not limited to Thrift Development Corporation, to carry on its business as the systematic planner of all construction maintenance and operation of the South Carolina highway system and was therefore liable for the negligent acts of its agent's contractors and employees under the theories of non-delegable duty and *respondeat superior*. SCDOT hired the Defendant, Thrift Development Corp. to perform construction in the intersection of Route US 123 and College Avenue and on October 23, 2014, said construction was incomplete at the time

that the Plaintiff was struck and permanently injured, suffering many injuries, including, but not limited to a traumatic brain injury.

It is undisputed that at the time of the accident the roads at and or adjacent to the intersection were not properly fitted with lighting, working pedestrian signs and/or warning signs and the crosswalk lights in the intersection were under repair. There were no warning signs, no cones, no saw horses, no jersey barriers or other visible signs to warn that the intersection was not in repair consistent with other similarly congested intersections on or immediately adjacent to the campus of Clemson University. There were no police officers or persons charged to assist persons crossing that large, dangerous and under construction intersection. At the time of the accident the plaintiff was walking on College Avenue in the crosswalk toward downtown Clemson. The defendant Williams was driving east on US 123.

At least three percipient witnesses were interviewed by Lt. Gooch, of the Clemson City Police, testified that when the Plaintiff crossed the street, the motorist traffic lights were red and one testified that the pedestrian lights were not operational. (See Deposition of Corporal T.J. Brooks, dated June 29, 2017, Exhibit 1, pages 00113, 00114 and 00117) Corporal Brooks, officer in charge of the MAIT team testified that the pedestrian electronic cross lights were inoperative when he arrived at the scene. (Corporal Brooks deposition, Page 22)

Summary judgment is only appropriate upon a judicial finding that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56, SCRPC. It is the responsibility of the party seeking summary judgment to meet the burden of clearly establishing the absence of a genuine issue of material fact. Baughman V. American Tel and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In ruling on a motion for summary judgment the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Evening Post Pub Co. v. Berkeley Cnty Sch Dist., 392 S.C. 76, 81-81, 708 S.E.2d 745, 748 (2011), Knight v. Austin, 396 S.C. 518, 722 S.E.2d 802 (2012). The court in viewing the evidence in this manner may and must consider, as applicable, the pleadings, depositions, answers to interrogatories, admissions on file and affidavits, if any. Rule 56,

SCRPC, Higgins v. Medical University of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (1997). Summary Judgment is a drastic remedy which must be invoked and considered cautiously to avoid the injustice of improperly depriving a litigant of fair and deliberate consideration of his evidence at trial as to disputed factual issues. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (2008); Murphy V. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009). In fact, careful consideration of those cases in which summary judgment was granted leads to the inescapable conclusion that summary disposition is only proper when a verdict for the non-moving party is not reasonably proper under the facts presented, as when there is an absence of an essential element for the cause of action. Bloom v. Raviara, 339 S.C. 417, 529 S.E.2d 710 (2000). Summary Judgment is inappropriate when further inquiry into the facts of the case is necessary or desirable to clarify the proper application of the law to the essential and operative facts. Englert v. LeafGuasrd USA, Inc., 377 S.C. 128, 659 S.E.2d 497 (2007). It is equally clear and settled that as summary judgment is a drastic remedy to be sparingly considered, it must not be granted until the non-moving party has had a full and fair opportunity to complete discovery. Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (2013). Summary Judgment is premature when the nonmoving party can make a showing that further discovery might uncover additional relevant evidence and create a genuine issue of material fact and that there is a good reason why time was insufficient under the facts of the case, or the totality of the circumstances, to have completed discovery. Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (2009).

SCDOT, like its co-Defendant, Thrift seem to essentially adopt the view that the plaintiff was more than 51% at fault, thus barring recovery. They claim that a combination of factors including but not limited to the allegations that the plaintiff had a female student on his back, may have crossed in to the roadway prior to the light cycling to red and may have consumed alcohol all constitute sufficient facts upon which this court may summarily determine that the plaintiff was more than 51% at fault. The plaintiff respectfully disagrees.

First the plaintiff disputes the claim that he crossed the lane in which he was struck on a yellow light. It is the plaintiff's best recollection that the light was red at the time that he crossed into the lane. He testified in his affidavit, dated May 28, 2018, a copy of which is filed in support of the

opposition, that it is his unvarying practice to look both ways before crossing the roadway. He did so on October 23, 2014. He recalled seeing another car traveling in the same direction as defendant Williams come to a complete stop. This observation is at variance with the defendant's claim that the light was other than red and constitutes a material fact that is susceptible to more than one inference. Three percipient witnesses offered statements to the first responder indicating that the defendant Williams passed through a red light. Did he? The MAIT team officers testified that they were not able to tell where Defendant Williams' car was in relation to the stop bar when the light cycled to red. Therefore, the color of the light at the time of Plaintiff's crossing remains a genuine issue of material fact. (Corporal Brooks Deposition Transcript, page 20)

Worthy of note is that Corporal Brooks testified that upon his arrival at the scene the pedestrian crossing lights were inoperative. This is consistent with the recollection of Plaintiff as well as other eyewitnesses interviewed. (Corporal Brooks Deposition Transcript, Page 22)

Corporal Brooks produced photographs that show barely discernable chalk lines, rather than painted lines marking the pedestrian crosswalk. It is undisputed that the intersection was still under construction at the time of the accident and that there was no warning sign of any kind or description in place. (Corporal Brooks Deposition, Exhibit #5) Cpl. Brooke testified that the MAIT team did not assign fault. His testimony was that it is the job of the MAIT team to attempt to marshal facts for local enforcement to interpret. (Corporal Brooks Deposition Transcript, page 19) The Corporal characterized the plaintiff's behavior that night as nothing more than horseplay and declined to be baited into assigning fault to the plaintiff. (Corporal Brooks Deposition, page 136)

Although the defendant asserts that the plaintiff was intoxicated at the time of the accident, there is a complete lack of probative evidence to suggest that the plaintiff was in any way perceptively affected by his consumption of alcohol. Not one witness testified that the plaintiff's speech was thick and slurred, that his eyes were glassy, that he was unsteady on his feet or that there was a strong odor of alcohol emanating from his breath. In fact, the other victim in the case Lindsey Jones testified that at no time during that evening did she observe the plaintiff to consume alcohol. (Deposition of Lindsey Jones, dated November 13, 2017, pages 39 and 42)

Although there was some suggestion of a blood alcohol reading, such a reading might have probative value in the context of a motorist's "operation" on a SC highway, it is hardly outcome determinative as to Plaintiff's level of functioning on October 23, 2014.

Whether the plaintiff was negligent as well as the percentage of his potential contributory culpability are questions that are reserved for jury. It is settled law in South Carolina that when an operative fact is susceptible of more than one interpretation the factual question must be submitted to a jury. Murphy v. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009)

It is undisputed from the pleadings that SCDOT had control of the highway and that they hired Thrift to perform the construction services. It is equally settled that the construction was not complete on October 23, 2014 at the time of the accident. Apportionment of fault and the establishment of culpability must be resolved by a jury not by way of summary judgment. Furthermore, in reviewing a summary judgment motion all such facts must be viewed in a manner most favorable to the nonmoving party. Hamiter v. Retirement Div. of South Carolina Budget and Control Board, 326 S.C. 93, 484 S.E.2d 586 (1997).

WHEREFORE, based upon the foregoing, the Plaintiff prays that the Defendant's Motion for Summary Judgment be DENIED.

Kevin M. Granatino,  
By his Attorney.



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VOLUNTARY STATEMENT  
(NOT UNDER ARREST)2014-44516  
PL-163-14

PAGE NO. 1 OF 1 PAGES

JOHN NICHOLS MCCARTER III am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to LT. GOOCH  
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information  
of my own free will, for whatever purpose it may serve.

(803) 261-5636

I am 20 years of age, D.O.B. 2/28/94 and I live at 206 SUNSET AVE  
CLEMSON, SC 29631

I was at the 4-way intersection of College Ave + Tiger Blvd. We were in the turning lane to go left and I heard the brakes squeal. When I heard I saw the SUV right in front of Starbucks and there were two kids crossing the road. There was a male and a female who appeared to be on his back. The white SUV - collided with the two kids leaving the male face down at the intersection with blood pouring from his head. The female moved out of the road and was OK, but was screaming from shock. I walked back to the male, who was surrounded by 4 or 5 other people and we talked to him but he was unresponsive. At that time they were going to turn him over but 2 cop cars came from the station and an ambulance and a firetruck came. I stayed with the african-american male who hit the person. I tried to tell him to calm down but all he was saying was "Oh Lord why did you have to run out in the street." After police personnel came to the actual scene I walked to my ride and we were motioned to turn left. END OF STATEMENT

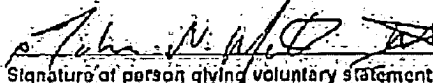
I have read each page of this statement consisting of 1 page(s), each page of which bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

at CLEMSON POLICE DEPT

this 23<sup>RD</sup> day of OCTOBER 2014

WITNESS:

WITNESS:

  
Signature of person giving voluntary statement

Granatino 00113

R\_0160

VOLUNTARY STATEMENT  
(NOT UNDER ARREST)C4437  
PL-163-14

PAGE NO. 1 OF 1 PAGES

RACHEL ELIZABETH McCOMAS

am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to LT. GOUGH

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 20 years of age, D.O.B. 1/30/93 and I live at 103 CANTOWN ST #14 CLEMSON, SC 29631 Ph. 695-8515

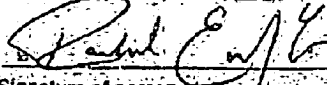
The accident occurred @ the intersection of 123 Highway and downtown (highway) rd. I was in my car on the side towards cantown street w/ some on my right. A group of students were walking ~~west~~ towards downtown and waiting at the light. The traffic was ~~flowing~~ flowing east on highway 123 and the light changed from green to yellow as the group of students started jogging into the road. One girl was on the green back as they reached the middle of the road the light changed to red as they continued to cross when a jeep style, navy car sped through the light hitting both the guy and the girl. One of the others in the group picked up the girl and carried her to the side by starbucks screaming "she's dead". The driver stopped in the middle of the intersection yelling "why would you run in the street". The walk sign turned to the green ~~about~~ not long after the driver got out of the car. The guy was in the street ~~standing~~ laying on the ground. The left turn signal came on as the student held the girl. Police arrived on scene w/ traffic still @ a standstill w/ ambulances arriving after.

END OF STATEMENT

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.at CLEMSON POLICE DEPT this 23<sup>rd</sup> day of OCTOBER 2014

WITNESS:

WITNESS:

  
 Signature of person giving voluntary statement

Clematis 00114

R\_0161



VOLUNTARY STATEMENT  
(NOT UNDER ARREST)2014 77216  
PL-163,14  
PAGE NO. 1 OF 1 PAGES

SAVANNAH REED KACURA

am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to

LT. GOOD

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 19 years of age, D.O.B. 4/8/95, and I live at 46 CLETON PLACE CR. Ph. (843) 437-1121  
CLEMSON SC 29831

We were the second car in the left hand turning lane on College Ave. about to cross 123. We heard yelling from across the street and saw five people on the corner waiting to cross 123. The light had just turned red and all four lights were red. The group of people started crossing the street but the walk sign on the crosswalk wasn't on. There was a girl on a guys back who were crossing the street ahead of everybody else. When they reached the middle of the intersection a blue jeep Cherokee going very faster faster than the normal speed limit, hit the guy with the girl on his back. He slammed on the breaks and there was smoke from his tires. The girl and guy both went flying in the air the guy landing on his stomach and the girl landing on her back. The guy wasn't moving and the driver of the car got out and started screaming. A guy out of the five crossing the street carried the girl out of the road and onto the grass in front of Starbucks. We ran out of our car to the girl first and she was fine but bleeding on the back of her head and hand. She seemed fine but was hysterical and didn't remember getting hit. The guy wasn't moving in the middle of the street but was breathing. Then the EMTs came. / END OF STATEMENT

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

at CLEMSON POLICE DEPT

this 23<sup>rd</sup> day of OCTOBER 2014

WITNESS:

WITNESS:

*S. Smith*  
Signature of person giving voluntary statement

Granatino 00117

R\_0162

Page 22

1 but not what you thought would be the final  
2 outline.  
3 A. Right. They were just lines drawn where I guess  
4 they were going to put the lines on top of these  
5 lines, but.  
6 Q. And you say that the pedestrian signals were not  
7 lit when you got there, is that correct?  
8 A. That's correct.  
9 Q. Okay. Were there witnesses who testified that  
10 those signals were, in fact, operating and that Mr.  
11 Granatino entered the intersection against one of  
12 those lights?  
13 A. I don't recall any of witnesses saying that. I  
14 know for me, physically, there was no power on the  
15 lights.  
16 Q. Okay. Did you investigate that in any way to  
17 determine why that was the case?  
18 A. No, sir.  
19 Q. Do you know why that was the case?  
20 A. No, sir.  
21 Q. Had there been a loss of power in that area that  
22 evening that you know about?  
23 A. No, sir, not that I know of.  
24 Q. Okay. Did you determine as part of your  
25 investigation that the lack of any kind of

Page 23

1 operational pedestrian signal contributed to the  
2 accident in any way?  
3 A. No, sir.  
4 Q. And how long after the accident did you arrive?  
5 A. I got there at 2330. I'm not sure what --  
6 Q. Which is -- help me.  
7 A. 11:30 at night.  
8 Q. And the accident happened about 10:00 p.m.?  
9 A. At 9:56 according to the wreck report.  
10 Q. So an hour-and-a-half or so after is when you first  
11 got there.  
12 A. Right.  
13 Q. Did you have any conversation with the Clemson City  
14 Police about the pedestrian signals and whether  
15 they had been working earlier?  
16 A. No, sir.  
17 Q. Could you determine the point of impact?  
18 A. We determined an area of impact. Typically with a  
19 point, it's just too hard to find. There was  
20 actually a scuff on the pavement from the shoe that  
21 the victim had on. That typically is right there  
22 where the, you know, the body starts loading up  
23 from impact with whatever hits the pedestrian. So  
24 as far as a point itself, we've got an area, but an  
25 exact point we don't have.

Page 24

1 Q. And that shoe scuff, was there actually a boot that  
2 was found at the scene?  
3 A. Yes, sir. We say shoe, but it's just transfer of  
4 rubber from the sole of some portion of footwear.  
5 BY MR. MAUNEY: (Resuming)  
6 Q. And the footwear that was found at the scene, was  
7 the condition of that consistent with the scuff  
8 that you saw?  
9 A. Yes, sir.  
10 Q. Okay. And so you determined that that scuff on the  
11 road was most probably made by that shoe.  
12 A. Yes, sir.  
13 Q. And that that shoe was worn by Mr. Granatino.  
14 A. Yes, sir.  
15 Q. The area of impact that you described, is that  
16 where you would expect someone to be if crossing  
17 from one side or the other in that intersection?  
18 MR. WHITE: Object to form.  
19 A. Let me pull up a CAD here that I have, which is the  
20 drawing. Yes, sir. It looks on the CAD drawing  
21 that is probably where -- and let me pull up my  
22 photographs actually, if I can get my mouse to  
23 work. There we go.  
24 BY MR. MAUNEY: (Resuming)  
25 Q. And while you're looking, I'm going to ask you to

Page 25

1 take a look at Exhibit 1 to your deposition, which  
2 for Counsel is a copy of the M.A.I.T. report  
3 produced by Mr. Granatino's lawyer, and is Bates as  
4 Granatino 36 through 168. And so from Exhibit 1,  
5 I'm looking at page 135, the photograph on the  
6 bottom.  
7 A. Okay.  
8 Q. Does that show the area of impact?  
9 A. Yes, sir.  
10 Q. And based upon the white line that you see, was  
11 that area of impact within what you would expect to  
12 be the crosswalk?  
13 A. Yes, sir.  
14 Q. And is that consistent with what you were telling  
15 me? You were looking for a photograph. Is there  
16 one that shows that differently, or?  
17 A. Yes, sir. I have that photograph up.  
18 MR. LOGAN: Can you show me in that group  
19 which photo you're looking at?  
20 MR. MAUNEY: I don't know that it's -- I think  
21 it's this one.  
22 BY MR. MAUNEY: (Resuming)  
23 Q. Did you ever talk to anyone at the DOT about this  
24 accident?  
25 A. No, sir.

7 (Pages 22 - 25)

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| <p style="text-align: right;">Page 18</p> <p>1 one moment.</p> <p>2 Q. Sure.</p> <p>3 A. No, sir.</p> <p>4 Q. Let me show you, Corporal Brooks, what has been</p> <p>5 marked as Exhibit 2 to your deposition. And for</p> <p>6 Counsel, this is the final accident report. It is</p> <p>7 from the Williams productions, pages 1 and 2. You</p> <p>8 testified earlier that your investigation is done</p> <p>9 and then you turn over the results of that to the</p> <p>10 original law enforcement agency which was the</p> <p>11 Clemson City Police; correct?</p> <p>12 A. Yes, sir. That's correct.</p> <p>13 Q. And they prepare the final accident report;</p> <p>14 correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. That particular accident report, what does</p> <p>17 it say about who contributed to the accident?</p> <p>18 A. On this report it says that Williams, which was the</p> <p>19 driver of the Jeep, did not contribute, and that</p> <p>20 Granatino, which was the pedestrian, did</p> <p>21 contribute, as well as Lindsey Jones as a</p> <p>22 contributor.</p> <p>23 Q. At some point did the M.A.I.T. team reach a</p> <p>24 decision consistent with that report that the</p> <p>25 Plaintiff contributed to the accident?</p>                                                                                                                                                                                                             | <p style="text-align: right;">Page 20</p> <p>1 of a video from a clock tower somewhere down the</p> <p>2 street. It's kind of grainy but you can see the</p> <p>3 intersection. They provided that. But other than</p> <p>4 that --</p> <p>5 Q. Did you look at that video?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What were you able to tell from that video?</p> <p>8 A. Well, it sometimes depends on the distance and the</p> <p>9 angle of the camera. It makes it difficult</p> <p>10 sometimes to see where things happen. You can</p> <p>11 actually see the Jeep come through and come to a</p> <p>12 stop in the intersection. You can see the color of</p> <p>13 the lights as they change. The issue that we had</p> <p>14 with it where we didn't feel comfortable saying</p> <p>15 yeah or nay with anything what we're doing was we</p> <p>16 couldn't see the stop bar. There's actually a</p> <p>17 curve where the sidewalk curves back around and you</p> <p>18 can't see where the stop bar is. So we don't know</p> <p>19 where the vehicle was in relation to the stop bar</p> <p>20 so we couldn't make a determination on that.</p> <p>21 Q. As a part of your investigation, as you sit here</p> <p>22 today, as a result of your investigation, do you</p> <p>23 have an opinion yourself that Mr. Granatino</p> <p>24 contributed to the accident?</p> <p>25 A. I can tell you that, but just the basic stuff. We</p>                                                                      |
| <p style="text-align: right;">Page 19</p> <p>1 A. No, sir. What we do is when we gather evidence we</p> <p>2 collected, we never say this guy's at fault or this</p> <p>3 person's at fault. We turn over our findings. We</p> <p>4 know that -- we know -- we separate what we think</p> <p>5 and what we know. We know that the Jeep was doing</p> <p>6 this. We know this. We turn over the audio</p> <p>7 statements that we have of the witnesses. And it's</p> <p>8 left up to the police department to make a</p> <p>9 determination on who they think contributed to the</p> <p>10 wreck.</p> <p>11 Q. So ultimately we need to take the deposition of</p> <p>12 Officer Johnson to confirm why he put that in that</p> <p>13 report; correct?</p> <p>14 A. Probably so. Yes, sir.</p> <p>15 Q. Okay. And would it be in the usual course for a</p> <p>16 law enforcement agency to rely upon the M.A.I.T.</p> <p>17 team investigation to reach that conclusion?</p> <p>18 A. They do with the data that we give them. In this</p> <p>19 case, again, all it was was scene documentation and</p> <p>20 speed calculation. And I completed the speed</p> <p>21 calculations for them and we documented the scene</p> <p>22 and they were actually given a copy of our forensic</p> <p>23 mapping. Once we get done with the mapping, we'll</p> <p>24 come up with a CAD drawing and they were provided</p> <p>25 with those. They actually provided us with a copy</p> | <p style="text-align: right;">Page 21</p> <p>1 never do that.</p> <p>2 Q. Okay.</p> <p>3 A. We know that the vehicle was not, as some witnesses</p> <p>4 say, traveling at a high rate of speed. We gave it</p> <p>5 a high drag factor, which you know typical we're at</p> <p>6 around .72 range. I gave what we got on the drag</p> <p>7 sled and got 39 miles-an-hour. With that you could</p> <p>8 back him up and see where he was prior to the</p> <p>9 braking event. He says he was looking straight</p> <p>10 ahead. He didn't see the kids in his interview.</p> <p>11 So when he realized that there was something in the</p> <p>12 road that he needed brake for, which was either</p> <p>13 impact or just prior to, we can set a car back,</p> <p>14 there, but as far as making a termination on what</p> <p>15 was going on with pedestrians, we couldn't do it.</p> <p>16 I do know that the intersection, I don't know about</p> <p>17 the electricity on the intersection. I know that</p> <p>18 when I arrived on the scene that the pedestrian</p> <p>19 stop and walk lights were not powered. They didn't</p> <p>20 have any power on those. They weren't lit up. And</p> <p>21 again, the intersection had been resurfaced. There</p> <p>22 were lines down on the ground where they were going</p> <p>23 to paint the crosswalks in, but the crosswalks</p> <p>24 weren't, they weren't painted down at the time, so</p> <p>25 Q. So there were some lines outlining the crosswalk</p> |

6 (Pages 18 - 21)

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Page 134</p> <p>1 MR. GIBBONS: Object to the form.</p> <p>2 A: It was not -- according to this video, I don't know</p> <p>3 whether he crossed the stop bar, so I would not be</p> <p>4 able to answer that accurately.</p> <p>5 BY MR. WHITE: (Resuming)</p> <p>6 Q: Okay. And I believe you had some notes that you --</p> <p>7 it's kind of like you're talking to yourself when</p> <p>8 you're doing the audio notes.</p> <p>9 A: The audio notes. Yeah.</p> <p>10 Q: But in those notes I believe you say, or maybe it</p> <p>11 was Craig's notes, you say that you talked to</p> <p>12 Johnson, which would have been you, because you did</p> <p>13 the interview of the officer, correct?</p> <p>14 A: Yes, sir.</p> <p>15 Q: Okay. Then it says that in his opinion based on</p> <p>16 what all the witnesses say, the driver ran a red</p> <p>17 light. Do you recall that statement by Mr.</p> <p>18 Johnson, or Officer Johnson?</p> <p>19 A: I don't recall, but if it's in my audio notes, then</p> <p>20 it would be the same.</p> <p>21 Q: Now you don't have anything to do with the charges</p> <p>22 in a situation like this, correct?</p> <p>23 A: That is correct.</p> <p>24 Q: Did they ever come to you and ask you an opinion on</p> <p>25 if they should charge anybody?</p>                                                                                                | <p>Page 136</p> <p>1 A: Correct.</p> <p>2 Q: Would you say it's common -- in your experience, is</p> <p>3 it a common practice for college students to have</p> <p>4 things like that happen?</p> <p>5 A: Horseplay, basically.</p> <p>6 Q: Horseplay.</p> <p>7 A: Oh, yes. Yes, sir.</p> <p>8 Q: And then when in the Exhibit 1 you went through</p> <p>9 Sergeant Caldwell's notes, his narrative, I guess</p> <p>10 he was given the DVD copy. He must have gone and</p> <p>11 got the copy from the City of the downtown camera</p> <p>12 footage. He says in his that he observes the</p> <p>13 crosswalk signal steady red with the Don't Walk</p> <p>14 signal. Again, that doesn't say that, correct?</p> <p>15 A: It wouldn't say Don't Walk. I mean it would just a</p> <p>16 red hand if it was a Don't Walk.</p> <p>17 Q: I think that's all the followup I have, but I want</p> <p>18 to ask you some questions from my notes. So this</p> <p>19 will be a little more organized and I apologize for</p> <p>20 that.</p> <p>21 A: That's fine.</p> <p>22 Q: I'm trying to hit everything.</p> <p>23 A: That is all right.</p> <p>24 Q: All right. What affect, if any, does the road</p> <p>25 being recently paved have on your investigation?</p>                                                         |
| <p>Page 135</p> <p>1 A: No, sir.</p> <p>2 Q: Do you have an opinion today on whether or not</p> <p>3 somebody should have been charged?</p> <p>4 A: I do not have an opinion. Again, we're just a</p> <p>5 reporting agency. We have to be unbiased, you</p> <p>6 know. Sometimes we do things that go against the</p> <p>7 state, go against pedestrians, car, whatever. So</p> <p>8 we just look at the facts and say this is what we</p> <p>9 have. There's no thinking. It's what we know. We</p> <p>10 know this, this and this, and then it's up to them</p> <p>11 to get with their attorneys or whoever they have</p> <p>12 and decide on who gets charged and what they think</p> <p>13 about that in relation to the collision.</p> <p>14 Q: Now there's been a lot of witnesses and different</p> <p>15 people that gave statements that my client had the</p> <p>16 girl on his back at the time of the collision with</p> <p>17 the car. Did you ever talk to anybody that said</p> <p>18 they know why the girl was on his back or if he</p> <p>19 consented to the girl jumping up on his back or</p> <p>20 anything? Do you have anything that goes one way</p> <p>21 or the other on that?</p> <p>22 A: No, sir.</p> <p>23 Q: Okay. And again, with University students, you're</p> <p>24 talking about individuals that are between the age</p> <p>25 of 18 and 22 usually, correct?</p> | <p>Page 137</p> <p>1 A: The only thing that has to do with our</p> <p>2 investigation is that the coefficient of friction</p> <p>3 of the pavement is higher. Fresh pavement is</p> <p>4 always higher and that where the .83 come from for</p> <p>5 the speed calculation.</p> <p>6 Q: And why is that?</p> <p>7 A: It's just fresh pavement. It's not worn down by</p> <p>8 cars driving over it. Typically, you know, the</p> <p>9 longer it stays out there, the longer cars drive</p> <p>10 over it, it will become polished and it will be</p> <p>11 easier to drag stuff. And our drag sled weighs 51</p> <p>12 pounds, so it would be easier to drag that 51</p> <p>13 pounds across it the older the asphalt is, the more</p> <p>14 worn it is, rather.</p> <p>15 Q: Do you have any idea or did you at the time know</p> <p>16 when that was paved?</p> <p>17 A: I do not know.</p> <p>18 Q: Did you ever ask anybody when it was paved?</p> <p>19 A: No, sir. Again, the pavement, itself, wasn't an</p> <p>20 issue other than for us coming up with a</p> <p>21 coefficient of friction, so.</p> <p>22 Q: And I think you testified earlier it's a pretty</p> <p>23 straight road.</p> <p>24 A: It is. There is a slight grade, but as far as</p> <p>25 being straight, it is relatively straight. Yes.</p> |

35 (Pages 134 - 137)

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1 Q What's his last name?  
 2 A I don't recall.  
 3 Q Okay. Did you know him?  
 4 A Yes.  
 5 Q Okay. You just don't recall his last name?  
 6 A Yeah.  
 7 Q Was he a business, I mean engineering major as  
 8 well?  
 9 A I believe so.  
 10 Q Do you know what year he was?  
 11 A 2016.  
 12 Q And do you know where he's from?  
 13 A No.  
 14 Q Okay. Had you been with him in a group before?  
 15 A Yes.  
 16 Q Okay. Did Kevin and Parker and Raymond live  
 17 together?  
 18 A I don't think so.  
 19 Q Okay. Did Kevin and Parker live together?  
 20 A They might have at some point.  
 21 Q Okay. All right. Did anyone else join you and  
 22 your friends?  
 23 A Not that I recall.  
 24 Q Okay. All right. So but all of you, as you were  
 25 going to your friend Alysson's house before you

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1 got to 123, were all of you together?  
 2 A Yes.  
 3 Q Okay. So all of you crossed over 123.  
 4 A Yes.  
 5 Q Did you cross over on the Starbucks side of 123 or  
 6 on the drug store side of 123?  
 7 A I believe the Starbucks side.  
 8 Q The Starbucks side, okay. Did you or anyone in  
 9 your group have any difficulty crossing the  
 10 street?  
 11 A No.  
 12 Q Okay.  
 13 MR. WHITE: Object to form.  
 14 Q Do you know whether or not, when Kevin, and  
 15 Parker, and/or Raymond joined you, that any of  
 16 them had been drinking?  
 17 A I don't know.  
 18 Q You don't know. Okay. All right. Once you got  
 19 to and crossed over 123, where did your group go  
 20 to?  
 21 A To Alysson's house.  
 22 Q Okay. And do you know Alysson's address?  
 23 A No.  
 24 Q Do you know the street that she lived on?  
 25 A No.

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1 Q All right. Well, let's cross over 123. I assume  
 2 you went over the railroad trestle?  
 3 A Um him.  
 4 Q Guide me to Alysson's house. If you go under the  
 5 railroad trestle, and then you sort of walk up a  
 6 hill, do you keep on going over the top of the  
 7 hill, or do you turn right or left at some point?  
 8 A It's a left off of that road at some point.  
 9 Q Okay. All right. The first thing you come to is,  
 10 once you go up that hill, there will be a  
 11 left-hand turn road. Is that the road that you  
 12 turned left on, or did you go past that first  
 13 left?  
 14 A I don't remember. That was the only time I went  
 15 there.  
 16 Q First time you'd been to Alysson's house?  
 17 A Correct.  
 18 Q What was going on at Alysson's house?  
 19 A There were friends at her house, and I went to say  
 20 hi.  
 21 Q So your group consisted of Elyse, your three  
 22 roommates, Kevin, Parker, and Raymond, and then  
 23 you joined another group at Alysson's house, is  
 24 that right?  
 25 A Yes.

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1 Q What was going on at Alysson's house? And this  
 2 was around 9:00 or a little after.  
 3 A I think people were just hanging out. I was not  
 4 there very long.  
 5 Q Okay. Can you estimate for me how many people  
 6 were there?  
 7 A Maybe around six or seven.  
 8 Q Okay.  
 9 Do you remember the names of any of the  
 10 people that were there that were not a part of  
 11 your group, besides Alysson?  
 12 A Yes.  
 13 Q All right. Who was there?  
 14 A Her name is Rebecca Newman.  
 15 Q Okay. Tell me about Rebecca. Is she -- she was a  
 16 Clemson student.  
 17 A Correct.  
 18 Q What year, do you remember?  
 19 A Same as Alysson.  
 20 Q 20 --  
 21 A -- 15.  
 22 Q 16? Did they live together?  
 23 A Yes.  
 24 Q Okay. All right. Do you know what her major was?  
 25 A No.

11 (Pages 38 - 41)

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1 Q And where she's from?  
 2 A No.  
 3 Q Okay. All right. So we've got Alysson. I mean,  
 4 excuse me, Rebecca. Who else?  
 5 A I don't remember who else was there that night.  
 6 Q Okay. Was there any food or drinks there?  
 7 A I believe so.  
 8 Q Okay. What type of drinks?  
 9 A I don't know.  
 10 Q Any alcohol being served?  
 11 A I think so.  
 12 Q Okay. And did you have any alcoholic drinks at  
 13 Alysson's house?  
 14 A I did not.  
 15 Q Okay. Why?  
 16 A Because I didn't.  
 17 Q Okay. To your knowledge, did Kevin have anything  
 18 to drink there?  
 19 A I don't know.  
 20 Q Okay. You don't know one way or the other?  
 21 A No.  
 22 Q And you don't know whether he had had anything to  
 23 drink before he got there?  
 24 A I don't know.  
 25 Q But alcohol was available, is that right, at

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1 Alysson's house?  
 2 A Correct.  
 3 Q What type of food did she have at the house?  
 4 A Snacks.  
 5 Q Snacks?  
 6 A Yeah.  
 7 Q No meal, but just snacks.  
 8 A Correct.  
 9 Q Okay. And had this party been going on for awhile  
 10 at Alysson's?  
 11 A I don't believe so.  
 12 Q And how long were you at Alysson's?  
 13 A Not very long. I'd say less than 30 minutes.  
 14 Q Okay. All right. So if she had six or seven  
 15 people already at her house, and then your group  
 16 was six or seven people, then we can do the math,  
 17 and we've got about 13 or 14 people at Alysson's  
 18 house while you were there, is that right?  
 19 A Sounds right.  
 20 Q Was any music being played?  
 21 A Probably.  
 22 Q Okay. Was this any sort of, like, a sorority  
 23 party, or fraternity party, or anything of that  
 24 nature?  
 25 A No.

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1 Q Okay. All right. You were there less than 30  
 2 minutes, so where did you go next?  
 3 A We left.  
 4 Q Your whole group?  
 5 A It was me, Kevin, Elyse, Parker, and Raymond, I  
 6 believe is who I was with.  
 7 Q You, Kevin, Parker, and Elyse?  
 8 A And Ray, Raymond.  
 9 Q So you, Kevin, Parker, Elyse, and Raymond left.  
 10 A I believe so.  
 11 Q Okay. And the others that initially had been with  
 12 you, they stayed, is that correct?  
 13 A They either stayed or went home. I don't know  
 14 exactly what they did.  
 15 Q And when y'all left, did you leave on foot or did  
 16 you get in a car?  
 17 A On foot.  
 18 Q On foot.  
 19 And where did y'all go when you left on  
 20 foot?  
 21 A We were headed in the direction towards campus.  
 22 Q Headed back to campus?  
 23 A Correct.  
 24 Q All right. Let me go back to the street that  
 25 Alysson's house is on. You're pretty sure it's

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1 not that first left?  
 2 A I don't believe so.  
 3 Q Could it be the second or third left street?  
 4 A It could be. I don't remember.  
 5 Q Was it close to the top of the hill?  
 6 A I don't remember.  
 7 Q Was it a free-standing house?  
 8 A Yes.  
 9 Q As opposed to an apartment.  
 10 A Correct.  
 11 Q Was her house right on that street?  
 12 A I don't remember.  
 13 Q Okay. But you had to turn off of the street that  
 14 the railroad trestle crosses over, and then how  
 15 far down did you walk to get to her house?  
 16 A Not too far.  
 17 Q And once you made that left turn, was her house on  
 18 the left side of the road or the right side of the  
 19 road?  
 20 A I believe the right side.  
 21 Q Okay. Now, as you left Alysson's house, tell me  
 22 how you walked back toward campus. Did you follow  
 23 the same route that you had -- when you first left  
 24 Wingin' It?  
 25 A Yes.

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON  
PLEAS

C.A. No. 2016-CP-39-01223

Kevin M. Granatino,

Plaintiff,

vs.

Calvin Williams,

Clemson University,

South Carolina Department of Transportation,

&amp; Thrift Development Corporation

Defendants,

AFFIDAVIT OF  
KEVIN M. GRANATINO

I, Kevin M. Granatino, being duly sworn, deposes and states as follows:

1. My name is Kevin M. Granatino and my birth date is February 3, 1993. I am now 25 years old. I live at 15 Beach Lane in Hingham, Massachusetts with my Mother, brother, and sister.

2. In August 2011, I started at Clemson University in South Carolina. I was admitted to the college's professional golf management (PGM) program. After my first year I transitioned into finance. I love the university, the students, faculty, sports and school spirit.

3. On October 23, 2014, I was in the cross walk at intersection of Route 123 (Tiger Boulevard) and College Avenue and I was hit by a vehicle speeding through a red light. I was reported to have been thrown through the air, seriously injured and knocked unconscious. I was in a coma for weeks. The doctors quickly learned that I suffered a traumatic brain injury given my poor brain functioning and damage. Many people including some doctors did not think that I would survive or that if I did survive that I would be in a minimally conscious state.

4. I understand that I was initially med flighted to Greenville Memorial Hospital. I was in the intensive care unit and the doctors' reports to my parents were grim. I had many broken bones, teeth, internal and external bleeding, and swelling including in my brain. I was immediately put on a ventilator to assist me in breathing. The doctor's there reconstructed my broken leg with a titanium rod. There were many other medical procedures done given the trauma. I do not have memories from that hospital stay.

5. In November 2014, I was angel med-flight to Mass General Hospital in Boston, Massachusetts. I do not recall that flight. I had a team of over twenty three (23) doctors given my numerous and intensive injuries. My vital signs started to show improvement and the swelling and bleeding in my brain and body started to subside. Initially, the prognosis for me gaining consciousness was very grim.



6. In December 2014, I was transferred to Spaulding Rehabilitation Hospital to their inpatient care program. I was heavily medicated to allow for my traumatized brain swelling to shrink. I had a feeding tube and suffered issues related to being on a ventilator for an extended period of time. I relied on my Mother, step Father, sister, brother, doctors, nurses and care attendants for everything. I eventually was brought to the physical therapy room to attempt to stand with a hoist and with the assistance of others and my Mother moved each foot so that I could re-learn to take steps while others balanced me. I re-learned how to walk, talk, and other basics that we simply take for granted. I had physical therapy, occupational therapy, speech, reading, sorting, counting, and brain exercises which I could barely do.

7. In January I was discharged to then attend the Spaulding Hospital outpatient program. I continued my physical therapy, occupational therapy, speech, reading, sorting, counting, and brain exercises. I exercised at home and did everything that was asked of me and then another set. It was emotionally and physically draining. My Mother bathed me, helped me shave, brushed my teeth and turned me to ensure that I did not get bedsores. Over time I grew stronger and more able to fend for myself. My sister cooked for me and my brother waited on me. My step Dad helped me walk from a walker, to trekking poles to a gate belt to holding my arm. My dog was my constant companion each day and she became my therapy dog and returned with me back to school.

8. My traumatic brain injury has taken away many aspects of my social and physical life. I had to re-learn everything I had learned from the time I was a child to present day. Some of the things I used to know how to do I have not done yet like riding a bike for fear of falling. I am now afraid to swim and I do not feel safe in a pool which is something that I used to love to do. I sometimes find it awkward to walk, my balance is off, and I will never get to full recovery. I sometimes catch a glimpse of myself in a reflection and see that I look awkward and I feel terrible.

9. Now four (4) years later, I still suffer from my traumatic brain injury. I have memory loss, sometimes confusion, nightmares, and poor sleep. My brain processing and physical movements are slow. I was once an excellent athlete in baseball, golf, ice hockey and most all sports. Now, I do not walk very far or play backyard sports with my friends. I fear falling and especially injuring my head. I am afraid of sudden noises and have fear of the unknown. I am aware that I need to take lots of breaks and not push myself too hard.

10. Per my doctor's prognosis, I suffer a lifetime risk of seizures, stroke, blood clots and other related issues due to my traumatic injuries. Both my physician and neuropsychologist shared with me that my brain is attempting to help me cope with the accident, numerous injuries and the residual effects. I often have a hard time pulling out memories and sometimes I repeat myself. I try to remember things by relying on my i-phone and creating lots of lists. I also rely on others to help me with my memory and count on them to fill in the gaps. I try to keep up with conversations but sometimes I am not able to. I rely on my parents or others to breakdown concepts and tasks.

11. On the date of the accident to the best of my memory I was in the pedestrian cross walk. I was taught never to cross outside a cross walk and to always cross in the walk. It is my practice, without exception, to only cross a street after looking both ways a few times, even on a one way



street to ensure a light is red.

12. The intersection where I was hit by a moving vehicle was under construction. Over the three (3) years that I had attended the university I had frequented the Starbucks, Walgreens, restaurants, church and other businesses in that area. When I crossed the first time, earlier that night, to go to my acquaintances home, behind the Sonic, (now a phone store), I do not recall seeing a cross walk but instead chalk lines. There were no pedestrian crossing lights to assist one across. Also, the lighting conditions were poor. There were no signs, no barriers, and no police to assist us across the road.

13. I have personally observed on football game days that Clemson University helps with the pedestrian traffic and vehicle traffic. They sometimes shut off the traffic lights and use orange cones and officers with flashlights and flashing vehicle lights to assist with the traffic and pedestrians crossing.

14. Later that evening, as we headed back to the University, I know that I looked out for traffic. I recall crossing the first half of the way across the large intersection to the median strip area where we waited. I remember waiting and then a car in the left turn lane came to a stop and the light turned red. After that I do not recall anything about that night. I am convinced the light was still red. I would not cross on any other color light.

15. I read my Deposition transcript where the other Attorneys asked me questions of my memory from that day. I remember on that day believing that the Attorneys were presenting me with facts that I was to take as true. Though after reading my statements I know some of my responses were not correct.

16. I am convinced that my testimony that the light was yellow is not correct. I think I accepted as true what an Attorney told me which was the color of the light. I had never attended a Deposition and I relied on what others represented to me as true.

17. I remember at the break asking my Attorney if I could explain my answer and he shared with me that I could fix it at a later time. I remember my step-Dad asking if South Carolina uses some kind of sheet to correct testimony because he knew I was upset about not being able to explain my answer and I was feeling confused and frustrated.

18. On many occasions because of my short-term memory and the way my brain now works I sometimes cannot keep up with the conversations. In my conference calls with my Attorney, Trevor White I asked my parents to be part of my conference call so that they could listen and help me process what was discussed. I found this strategy to be very helpful.

19. I do recall asking Attorney White to get an important Agreement between Clemson University and the City of Clemson which to this day I have not seen. At an earlier deposition someone had testified that there was an Agreement with regard to Clemson's control of a three (3) mile radius around the campus as measured from Tillman Hall. I know that the intersection is about one (1) mile or less from of Tillman Hall. I never saw the Agreement nor do I think that Attorney White ever obtained even though I asked for it multiple times.

20. I recall that Attorney White informed me that some-times a college could owe a duty of care to its students and be liable for a breach of that duty. I think it true in this case especially if the Agreement states that the University has some control or a duty to its students.

21. I think that if the Agreement between the City of Clemson and Clemson University were provided that it would help to provide more information and clarify some of the questions that I still have. I do not believe that Attorney White carried out this task which I asked him to do and I have asked Attorney Marlette to secure this Agreement. I see it as a very important missing piece to puzzle.

22. At my Deposition an Attorney asked me if I believed if Clemson University has a duty of care to me. I answered in the affirmative. I believe that in some instances a University has a duty to keep its students safe.

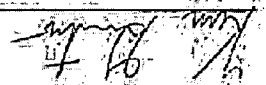
23. I think that Clemson University witnesses, police officers, first responders and administrators, if asked, would reveal that the University takes responsibility for that intersection. I understand that if this were true that a special relationship between Clemson University and its students exists.

24. I think that Clemson University does have control over this intersection. I have been back to school on a part time basis carrying a light course load with disability accommodations. When my family and I travel though that large intersection by car (which is hard not to do given the campus layout to the highway), we noticed that the intersection has since been improved and it now has additional lighting, cameras and other safety improvements.

25. My life and health has been forever negatively altered by this event. I am now disabled with permanent traumatic brain injury and physical and emotional injuries. I want a jury to hear my case and for all responsible parties to be held accountable for their wrongdoing.

SIGNED UNDER THE HAND & SEAL OF THE CLERK OF COURT, MAY 28, 2018

Kevin M. Granatino



STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS  
C.A. No. 2016-CP-39-01223

Kevin Granatino,

Plaintiff,

vs.

Calvin Williams, Clemson University,  
South Carolina Department of  
Transportation, and Thrift Development  
Corporation,

Defendants.

**PLAINTIFF'S OPPOSITION TO  
THRIFT DEVELOPMENT  
CORPORATION'S MOTION FOR  
SUMMARY JUDGMENT**

This is a negligence action alleging substantial personal and permanent emotional and physical injury or damages caused by the defendant's negligence, neglect, and/or carelessness in derogation of its duty owed to the plaintiff which breach or failure was the actual or proximate cause of the plaintiff's injuries.

The facts, supported by the pleadings, answers to interrogatories and admissions of record establish that on or about October 23, 2014 the plaintiff Kevin M Granatino, a 21-year-old senior at Clemson University, was crossing the intersection, under construction, at US 123 and College Boulevard in Clemson, Pickens County, South Carolina at which time a car operated by defendant Williams struck the plaintiff as he was crossing the intersection. At all times material to this cause of action the defendant SCDOT acted by and through its agent's contractors and employees, including, but not limited to Thrift Development Corporation, to carry on its business as the systematic planner of all construction maintenance and operation of the South Carolina highway system and was therefore liable for the negligent acts of its agent's contractors and employees under the theories of non-delegable duty and *respondere superior*. SCDOT hired the Defendant, Thrift Development Corp. to perform construction in the intersection of Route US 123 and College Avenue and on October 23, 2014, said construction was incomplete at the time

that the Plaintiff was struck and permanently injured, suffering many injuries, including, but not limited to a traumatic brain injury.

It is undisputed that at the time of the accident the roads at and or adjacent to the intersection were not properly fitted with lighting, working pedestrian signs and/or warning signs and the crosswalk lights in the intersection were under repair. There were no warning signs, no cones, no saw horses, no jersey barriers or other visible signs to warn that the intersection was not in repair consistent with other similarly congested intersections on or immediately adjacent to the campus of Clemson University. There were no police officers or persons charged to assist persons crossing that large, dangerous and under construction intersection. At the time of the accident the plaintiff was walking on College Avenue in the crosswalk toward downtown Clemson. The defendant Williams was driving east on US 123.

At least three percipient witnesses were interviewed by Lt. Gooch, of the Clemson City Police, testified that when the Plaintiff crossed the street, the motorist traffic lights were red and one testified that the pedestrian lights were not operational. (See Deposition of Corporal T.J. Brooks, dated June 29, 2017, Exhibit 1, pages 00113, 00114 and 00117) Corporal Brooks, officer in charge of the MAIT team testified that the pedestrian electronic cross lights were inoperative when he arrived at the scene. (Corporal Brooks deposition, Page 22)

Summary judgment is only appropriate upon a judicial finding that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56, SCRPC. It is the responsibility of the party seeking summary judgment to meet the burden of clearly establishing the absence of a genuine issue of material fact. Baughman V. American Tel and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In ruling on a motion for summary judgment the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Evening Post Pub Co. v. Berkeley Cnty Sch Dist., 392 S.C. 76, 81-81, 708 S.E.2d 745, 748 (2011), Knight v. Austin, 396 S.C. 518, 722 S.E.2d 802 (2012). The court in viewing the evidence in this manner may and must consider, as applicable, the pleadings, depositions, answers to interrogatories, admissions on file and affidavits, if any. Rule 56,

SCRPC, Higgins v. Medical University of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (1997). Summary Judgment is a drastic remedy which must be invoked and considered cautiously to avoid the injustice of improperly depriving a litigant of fair and deliberate consideration of his evidence at trial as to disputed factual issues. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (2008); Murphy V. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009). In fact, careful consideration of those cases in which summary judgment was granted leads to the inescapable conclusion that summary disposition is only proper when a verdict for the non-moving party is not reasonably proper under the facts presented, as when there is an absence of an essential element for the cause of action. Bloom v. Raviola, 339 S.C. 417, 529 S.E.2d 710 (2000). Summary Judgment is inappropriate when further inquiry into the facts of the case is necessary or desirable to clarify the proper application of the law to the essential and or operative facts. Englert v. LeafGuards USA, Inc., 377 S.C. 128, 659 S.E.2d 497 (2007). It is equally clear and settled that as summary judgment is a drastic remedy to be sparingly considered, it must not be granted until the non-moving party has had a full and fair opportunity to complete discovery. Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (2013). Summary Judgment is premature when the nonmoving party can make a showing that further discovery might uncover additional relevant evidence and create a genuine issue of material fact and that there is a good reason why time was insufficient under the facts of the case, or the totality of the circumstances, to have completed discovery. Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (2009).

Thrift, like its co-Defendant, SCDOT seem to essentially adopt the view that the plaintiff was more than 51% at fault, thus barring recovery. They claim that a combination of factors including but not limited to the allegations that the plaintiff had a female student on his back, may have crossed in to the roadway prior to the light cycling to red and may have consumed alcohol all constitute sufficient facts upon which this court may summarily determine that the plaintiff was more than 51% at fault. The plaintiff respectfully disagrees.

First the plaintiff disputes the claim that he crossed the lane in which he was struck on a yellow light. It is the plaintiff's best recollection that the light was red at the time that he crossed into the lane. He testified in his affidavit, dated May 28, 2018, a copy of which is filed in support of the

opposition, that it is his unvarying practice to look both ways before crossing the roadway. He did so on October 23, 2014. He recalled seeing another car traveling in the same direction as defendant Williams come to a complete stop. This observation is at variance with the defendant's claim that the light was other than red and constitutes a material fact that is susceptible to more than one inference. Three percipient witnesses offered statements to the first responder indicating that the defendant Williams passed through a red light. Did he? The MAIT team officers testified that they were not able to tell where Defendant Williams' car was in relation to the stop bar when the light cycled to red. Therefore, the color of the light at the time of Plaintiff's crossing remains a genuine issue of material fact. (Corporal Brooks Deposition Transcript, page 20)

Worthy of note is that Corporal Brooks testified that upon his arrival at the scene the pedestrian crossing lights were inoperative. This is consistent with the recollection of Plaintiff as well as other eyewitnesses interviewed. (Corporal Brooks Deposition Transcript, Page 22)

Corporal Brooks produced photographs that show barely discernable chalk lines, rather than painted lines marking the pedestrian crosswalk. It is undisputed that the intersection was still under construction at the time of the accident and that there was no warning sign of any kind or description in place. (Corporal Brooks Deposition, Exhibit #5) Cpl. Brooke testified that the MAIT team did not assign fault. His testimony was that it is the job of the MAIT team to attempt to marshal facts for local enforcement to interpret. (Corporal Brooks Deposition Transcript, page 19) The Corporal characterized the plaintiff's behavior that night as nothing more than horseplay and declined to be baited into assigning fault to the plaintiff. (Corporal Brooks Deposition, page 136)

Although the defendant asserts that the plaintiff was intoxicated at the time of the accident, there is a complete lack of probative evidence to suggest that the plaintiff was in any way perceptively affected by his consumption of alcohol. Not one witness testified that the plaintiff's speech was thick and slurred, that his eyes were glassy, that he was unsteady on his feet or that there was a strong odor of alcohol emanating from his breath. In fact, the other victim in the case Lindsey Jones testified that at no time during that evening did she observe the plaintiff to consume alcohol. (Deposition of Lindsey Jones, dated November 13, 2017, pages 39 and 42)

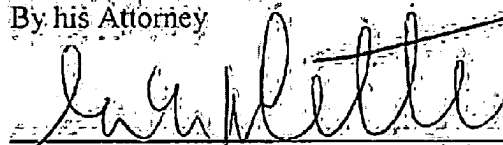
Although there was some suggestion of a blood alcohol reading, such a reading might have probative value in the context of a motorist's "operation" on a SC highway, it is hardly outcome determinative as to Plaintiff's level of functioning on October 23, 2014.

Whether the plaintiff was negligent as well as the percentage of his potential contributory culpability are questions that are reserved for jury. It is settled law in South Carolina that when an operative fact is susceptible of more than one interpretation the factual question must be submitted to a jury. Murphy v. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009)

It is undisputed from the pleadings that SCDOT had control of the highway and Thrift was hired by them to perform the construction services. It is equally settled that the construction was not complete on October 23, 2014 at the time of the accident. Apportionment of fault and the establishment of culpability must be resolved by a jury not by way of summary judgment. Furthermore, in reviewing a summary judgment motion all such facts must be viewed in a manner most favorable to the nonmoving party. Hamiter v. Retirement Div. of South Carolina Budget and Control Board, 326 S.C. 93, 484 S.E.2d 586 (1997).

WHEREFORE, based upon the foregoing, the Plaintiff prays that the Defendant's Motion for Summary Judgment be DENIED.

Kevin M. Granatino,  
By his Attorney



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Email: gmarlette@marlattelaw.com



2014-99516  
PL-163-14VOLUNTARY STATEMENT  
(NOT UNDER ARREST)

PAGE NO. 1 OF 1 PAGES

JOHN NICHOLS MCCARTER III, am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to LT. GOOCH

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

Ph. (803) 261-5636

I am 20 years of age, D.O.B. 2/29/94 and live at 206 SUNSET AVE  
CLEMSON, SC 29631

I was at the 4-way intersection of College Ave & Tiger Blvd. We were in the turning lane to go left and I heard the brakes squeal. When I heard I saw the SUV right in front of Starbucks and there were two kids crossing the road. There was a male and a female who appeared to be on his back. The white SUV collided with the two kids leaving the male face down at the intersection with blood pouring from his head. The female moved out of the road and was ok, but was screaming from shock. I walked back to the male, who was surrounded by 4 or 5 other people and we talked to him but he was unresponsive. At that time they were going to turn him over but 2 cop cars came from the station and an ambulance and a firetruck came. I stayed with the african-american male who hit the person. I tried to tell him to calm down but all he was saying was "Oh Lord why did you have to run out in the street!" After police personnel came to the actual scene I walked to my ride and we were motioned to turn left. ——— END OF STATEMENT ———

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

at CLEMSON POLICE DEPT. this 23<sup>rd</sup> day of OCTOBER, 2014

WITNESS:

WITNESS:

Signature of person giving voluntary statement

Granafino 00113

R\_0178

VOLUNTARY STATEMENT  
(NOT UNDER ARREST)2017-44510  
PL-163-14

PAGE NO. 1 OF 1 PAGES

RACHEL ELIZABETH MCCOMAS am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to LT. GOUGH  
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information  
of my own free will, for whatever purpose it may serve.I am 20 years of age, D.O.B. 1/30/93 and I live at 103 CATHOLAN ST # 14, PH. (443) 695-8515  
CLIFTON, SC 29631

The accident occurred @ the intersection of 123 Highway and downtown (highway) I was in my car on the side towards cathedral street w/ music on my right. A group of students were walking across towards downtown and waiting at the light. The traffic was flowing in the west on highway 123 and the light changed from green to yellow as the group of students started jogging into the road. One girl was on the grass back as they reached the middle of the road the light changed to red as they continued to cross when a Jeep style, navy car sped through the light hitting both the guy and the girl. One of the others in the group picked up the girl and carried her to the side by Starbucks screaming "she's dead". The driver stopped in the middle of the intersection yelling "why would you run in the street". The walk sign turned to the green ~~about~~ not long after the driver got out of the car. The guy was in the street ~~standing~~ laying on the ground. The left turn signal came on as the student held the girl. Police arrived on scene w/ traffic still @ a standstill w/ ambulances arriving after.

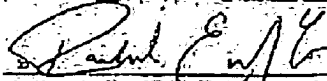
END OF STATEMENT

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

at CLEMSON POLICE DEPT this 23<sup>rd</sup> day of OCTOBER, 2014

WITNESS:

WITNESS:

  
 Signature of person giving voluntary statement

Crusatio 00114

R\_0179

VOLUNTARY STATEMENT  
(NOT UNDER ARREST)2014 77516  
PL-163-14  
PAGE NO. 1 OF 1 PAGES

SAVANNAH REED KACURA

I am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to LT. Gooditt  
 Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information  
 of my own free will, for whatever purpose it may serve.

46 CLEMON PLACE CR Ph. (843) 437-1124  
 I am 19 years of age, D.O.B. 4/8/95 and I live at CLEMON SC 29631

We were the second car in the left hand turning lane on College Ave. about to cross 123. We heard yelling from across the street and saw five people on the corner waiting to cross 123. The light had just turned red and all four lights were red. The group of people started crossing the street but the walk sign on the crosswalk wasn't on. There was a girl on a guys back who were crossing the street ahead of everybody else. When they reached the middle of the intersection a blue jeep Cherokee going very fast faster than the normal speed limit hit the guy with the girl on his back. He slammed on the breaks and there was smoke from his tires. The girl and guy both went flying in the air the guy landing on his stomach and the girl landing on her back. The guy wasn't moving and the driver of the car got out and started screaming. A guy out of the five crossing the street carried the girl out of the road and onto the grass in front of Starbucks. We ran out of our car to the girl first and she was fine, but bleeding on the back of her head and hand. She seemed fine but was hysterical and didn't remember getting hit. The guy wasn't moving in the middle of the street but was breathing. Then the EMTs came. — END OF STATEMENT

I have read each page of this statement consisting of \_\_\_\_\_ page(s), each page of which bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

at CLEMON POLICE DEPT this 23<sup>rd</sup> day of OCTOBER 2014

WITNESS:

WITNESS:

*Sarah P...* Granatino 00117  
 Signature of person giving voluntary statement

Page 18

1 one moment.  
 2 Q. Sure.  
 3 A. No, sir.  
 4 Q. Let me show you, Corporal Brooks, what has been  
 5 marked as Exhibit 2 to your deposition. And for  
 6 Counsel, this is the final accident report. It is  
 7 from the Williams productions, pages 1 and 2. You  
 8 testified earlier that your investigation is done  
 9 and then you turn over the results of that to the  
 10 original law enforcement agency, which was the  
 11 Clemson City Police, correct?  
 12 A. Yes, sir. That's correct.  
 13 Q. And they prepare the final accident report;  
 14 correct?  
 15 A. Yes, sir.  
 16 Q. Okay. That particular accident report, what does  
 17 it say about who contributed to the accident?  
 18 A. On this report it says that Williams, which was the  
 19 driver of the Jeep, did not contribute, and that  
 20 Granatino, which was the pedestrian, did  
 21 contribute, as well as Lindsey Jones as a  
 22 contributor.  
 23 Q. At some point did the M.A.I.T. team reach a  
 24 decision consistent with that report that the  
 25 Plaintiff contributed to the accident?

Page 19

1 A. No, sir. What we do is when we gather evidence we  
 2 collected, we never say this guy's at fault or this  
 3 person's at fault. We turn over our findings. We  
 4 know that -- we know -- we separate what we think  
 5 and what we know. We know that the Jeep was doing  
 6 this. We know this. We turn over the audio  
 7 statements that we have of the witnesses. And it's  
 8 left up to the police department to make a  
 9 determination on who they think contributed to the  
 10 wreck.  
 11 Q. So ultimately we need to take the deposition of  
 12 Officer Johnson to confirm why he put that in that  
 13 report, correct?  
 14 A. Probably so. Yes, sir.  
 15 Q. Okay. And would it be in the usual course for a  
 16 law enforcement agency to rely upon the M.A.I.T.  
 17 team investigation to reach that conclusion?  
 18 A. They do with the data that we give them. In this  
 19 case, again, all it was was scene documentation and  
 20 speed calculation. And I completed the speed  
 21 calculations for them and we documented the scene  
 22 and they were actually given a copy of our forensic  
 23 mapping. Once we get done with the mapping, we'll  
 24 come up with a CAD drawing and they were provided  
 25 with those. They actually provided us with a copy

Page 20

1 of a video from a clock tower somewhere down the  
 2 street. It's kind of grainy but you can see the  
 3 intersection. They provided that. But other than  
 4 that --  
 5 Q. Did you look at that video?  
 6 A. Yes, sir.  
 7 Q. What were you able to tell from that video?  
 8 A. Well, it sometimes depends on the distance and the  
 9 angle of the camera. It makes it difficult  
 10 sometimes to see where things happen. You can  
 11 actually see the Jeep come through and come to a  
 12 stop in the intersection. You can see the color of  
 13 the lights as they change. The issue that we had  
 14 with it where we didn't feel comfortable saying  
 15 yeah or nay with anything what we're doing was we  
 16 couldn't see the stop bar. There's actually a  
 17 curve where the sidewalk curves back around and you  
 18 can't see where the stop bar is. So we don't know  
 19 where the vehicle was in relation to the stop bar  
 20 so we couldn't make a determination on that.  
 21 Q. As a part of your investigation, as you sit here  
 22 today, as a result of your investigation, do you  
 23 have an opinion yourself that Mr. Granatino  
 24 contributed to the accident?  
 25 A. I can tell you that, but just the basic stuff. We

Page 21

1 never do that.  
 2 Q. Okay.  
 3 A. We know that the vehicle was not, as some witnesses  
 4 say, traveling at a high rate of speed. We gave it  
 5 a high drag factor, which you know typical we're at  
 6 around .72 range. I gave what we got on the drag  
 7 sled and got 39 miles-an-hour. With that you could  
 8 back him up and see where he was prior to the  
 9 braking event. He says he was looking straight  
 10 ahead. He didn't see the kids in his interview.  
 11 So when he realized that there was something in the  
 12 road that he needed brake for, which was either  
 13 impact or just prior to, we can set a car back  
 14 there, but as far as making a termination on what  
 15 was going on with pedestrians, we couldn't do it.  
 16 I do know that the intersection, I don't know about  
 17 the electricity on the intersection. I know that  
 18 when I arrived on the scene that the pedestrian  
 19 stop and walk lights were not powered. They didn't  
 20 have any power on those. They weren't lit up. And  
 21 again, the intersection had been resurfaced. There  
 22 were lines down on the ground where they were going  
 23 to paint the crosswalks in, but the crosswalks  
 24 weren't, they weren't painted down at the time, so  
 25 Q. So there were some lines outlining the crosswalk

6 (Pages 18 - 21)

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| <p style="text-align: right;">Page 134</p> <p>1 MR. GIBBONS: Object to the form.</p> <p>2 A: It was not -- according to this video, I don't know</p> <p>3 whether he crossed the stop bar, so I would not be</p> <p>4 able to answer that accurately.</p> <p>5 BY MR. WHITE: (Resuming)</p> <p>6 Q: Okay. And I believe you had some notes that you --</p> <p>7 it's kind of like you're talking to yourself when</p> <p>8 you're doing the audio notes.</p> <p>9 A: The audio notes. Yeah.</p> <p>10 Q: But in those notes I believe you say, or maybe it</p> <p>11 was Craig's notes, you say that you talked to</p> <p>12 Johnson, which would have been you, because you did</p> <p>13 the interview of the officer, correct?</p> <p>14 A: Yes, sir.</p> <p>15 Q: Okay. Then it says that in his opinion based on</p> <p>16 what all the witnesses say, the driver ran a red</p> <p>17 light. Do you recall that statement by Mr.</p> <p>18 Johnson, or Officer Johnson?</p> <p>19 A: I don't recall, but if it's in my audio notes, then</p> <p>20 it would be the same.</p> <p>21 Q: Now you don't have anything to do with the charges</p> <p>22 in a situation like this, correct?</p> <p>23 A: That is correct.</p> <p>24 Q: Did they ever come to you and ask you an opinion on</p> <p>25 if they should charge anybody?</p>                                                                                                | <p style="text-align: right;">Page 136</p> <p>1 A: Correct.</p> <p>2 Q: Would you say it's common -- in your experience, is</p> <p>3 it a common practice for college students to have</p> <p>4 things like that happen?</p> <p>5 A: Horseplay, basically.</p> <p>6 Q: Horseplay.</p> <p>7 A: Oh, yes. Yes, sir.</p> <p>8 Q: And then when in the Exhibit 1 you went through</p> <p>9 Sergeant Caldwell's notes, his narrative, I guess</p> <p>10 he was given the DVD copy. He must have gone and</p> <p>11 got the copy from the City of the downtown camera</p> <p>12 footage. He says in his that he observes the</p> <p>13 crosswalk signal steady red with the Don't Walk</p> <p>14 signal. Again, that doesn't say that, correct?</p> <p>15 A: It wouldn't say Don't Walk. I mean it would just a</p> <p>16 red hand if it was a Don't Walk.</p> <p>17 Q: I think that's all the followup I have, but I want</p> <p>18 to ask you some questions from my notes. So this</p> <p>19 will be a little more organized and I apologize for</p> <p>20 that.</p> <p>21 A: That's fine.</p> <p>22 Q: I'm trying to hit everything.</p> <p>23 A: That is all right.</p> <p>24 Q: All right. What affect, if any, does the road</p> <p>25 being recently paved have on your investigation?</p>                                                         |
| <p style="text-align: right;">Page 135</p> <p>1 A: No, sir.</p> <p>2 Q: Do you have an opinion today on whether or not</p> <p>3 somebody should have been charged?</p> <p>4 A: I do not have an opinion. Again, we're just a</p> <p>5 reporting agency. We have to be unbiased, you</p> <p>6 know. Sometimes we do things that go against the</p> <p>7 state, go against pedestrians, car, whatever. So</p> <p>8 we just look at the facts and say this is what we</p> <p>9 have. There's no thinking. It's what we know. We</p> <p>10 know this, this and this, and then it's up to them</p> <p>11 to get with their attorneys or whoever they have</p> <p>12 and decide on who gets charged and what they think</p> <p>13 about that in relation to the collision.</p> <p>14 Q: Now there's been a lot of witnesses and different</p> <p>15 people that gave statements that my client had the</p> <p>16 girl on his back at the time of the collision with</p> <p>17 the car. Did you ever talk to anybody that said</p> <p>18 they know why the girl was on his back or if he</p> <p>19 consented to the girl jumping up on his back or</p> <p>20 anything? Do you have anything that goes one way</p> <p>21 or the other on that?</p> <p>22 A: No, sir.</p> <p>23 Q: Okay. And again, with University students, you're</p> <p>24 talking about individuals that are between the age</p> <p>25 of 18 and 22 usually, correct?</p> | <p style="text-align: right;">Page 137</p> <p>1 A: The only thing that has to do with our</p> <p>2 investigation is that the coefficient of friction</p> <p>3 of the pavement is higher. Fresh pavement is</p> <p>4 always higher and that where the .83 come from for</p> <p>5 the speed calculation.</p> <p>6 Q: And why is that?</p> <p>7 A: It's just fresh pavement. It's not worn down by</p> <p>8 cars driving over it. Typically, you know, the</p> <p>9 longer it stays out there, the longer cars drive</p> <p>10 over it, it will become polished and it will be</p> <p>11 easier to drag stuff. And our drag sled weighs 51</p> <p>12 pounds, so it would be easier to drag that 51</p> <p>13 pounds across if the older the asphalt is, the more</p> <p>14 worn it is, rather.</p> <p>15 Q: Do you have any idea or did you at the time know</p> <p>16 when that was paved?</p> <p>17 A: I do not know.</p> <p>18 Q: Did you ever ask anybody when it was paved?</p> <p>19 A: No, sir. Again, the pavement, itself, wasn't an</p> <p>20 issue other than for us coming up with a</p> <p>21 coefficient of friction, so.</p> <p>22 Q: And I think you testified earlier it's a pretty</p> <p>23 straight road.</p> <p>24 A: It is. There is a slight grade, but as far as</p> <p>25 being straight, it is relatively straight. Yes.</p> |

35 (Pages 134 - 137)

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 38</p> <p>1 Q What's his last name?</p> <p>2 A I don't recall.</p> <p>3 Q Okay. Did you know him?</p> <p>4 A Yes.</p> <p>5 Q Okay. You just don't recall his last name?</p> <p>6 A Yeah.</p> <p>7 Q Was he a business, I mean engineering major as well?</p> <p>8 A I believe so.</p> <p>10 Q Do you know what year he was?</p> <p>11 A 2016.</p> <p>12 Q And do you know where he's from?</p> <p>13 A No.</p> <p>14 Q Okay. Had you been with him in a group before?</p> <p>15 A Yes.</p> <p>16 Q Okay. Did Kevin and Parker and Raymond live together?</p> <p>17 A I don't think so.</p> <p>19 Q Okay. Did Kevin and Parker live together?</p> <p>20 A They might have at some point.</p> <p>21 Q Okay. All right. Did anyone else join you and your friends?</p> <p>22 A Not that I recall.</p> <p>24 Q Okay. All right. So but all of you, as you were going to your friend Alysson's house before you</p>       | <p style="text-align: right;">Page 40</p> <p>1 Q All right. Well, let's cross over 123. I assume you went over the railroad trestle?</p> <p>3 A Um hmm.</p> <p>4 Q Guide me to Alysson's house. If you go under the railroad trestle, and then you sort of walk up a hill, do you keep on going over the top of the hill, or do you turn right or left at some point?</p> <p>8 A It's a left off of that road at some point.</p> <p>9 Q Okay. All right. The first thing you come to is, once you go up that hill, there will be a left-hand turn road. Is that the road that you turned left on, or did you go past that first left?</p> <p>14 A I don't remember. That was the only time I went there.</p> <p>16 Q First time you'd been to Alysson's house?</p> <p>17 A Correct.</p> <p>18 Q What was going on at Alysson's house?</p> <p>19 A There were friends at her house, and I went to say hi.</p> <p>21 Q So your group consisted of Elyse, your three roommates, Kevin, Parker, and Raymond, and then you joined another group at Alysson's house, is that right?</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">Page 39</p> <p>1 got to 123, were all of you together?</p> <p>2 A Yes.</p> <p>3 Q Okay. So all of you crossed over 123?</p> <p>4 A Yes.</p> <p>5 Q Did you cross over on the Starbucks side of 123 or on the drug store side of 123?</p> <p>7 A I believe the Starbucks side.</p> <p>8 Q The Starbucks side, okay. Did you or anyone in your group have any difficulty crossing the street?</p> <p>11 A No.</p> <p>12 Q Okay.</p> <p>13 MR. WHITE: Object to form.</p> <p>14 Q Do you know whether or not, when Kevin, and Parker, and/or Raymond joined you, that any of them had been drinking?</p> <p>17 A I don't know.</p> <p>18 Q You don't know. Okay. All right. Once you got to and crossed over 123, where did your group go to?</p> <p>21 A To Alysson's house.</p> <p>22 Q Okay. And do you know Alysson's address?</p> <p>23 A No.</p> <p>24 Q Do you know the street that she lived on?</p> <p>25 A No.</p> | <p style="text-align: right;">Page 41</p> <p>1 Q What was going on at Alysson's house? And this was around 9:00 or a little after.</p> <p>3 A I think people were just hanging out. I was not there very long.</p> <p>5 Q Okay. Can you estimate for me how many people were there?</p> <p>7 A Maybe around six or seven.</p> <p>8 Q Okay.</p> <p>9 Do you remember the names of any of the people that were there that were not a part of your group, besides Alysson?</p> <p>12 A Yes.</p> <p>13 Q All right. Who was there?</p> <p>14 A Her name is Rebecca Newman.</p> <p>15 Q Okay. Tell me about Rebecca. Is she -- she was a Clemson student.</p> <p>17 A Correct.</p> <p>18 Q What year, do you remember?</p> <p>19 A Same as Alysson.</p> <p>20 Q 20 --</p> <p>21 A -- 15.</p> <p>22 Q 16? Did they live together?</p> <p>23 A Yes.</p> <p>24 Q Okay. All right. Do you know what her major was?</p> <p>25 A No.</p>                                                                                                                                                                      |

11 (Pages 38 - 41)

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- 1 Q And where she's from?
- 2 A No.
- 3 Q Okay. All right. So we've got Alysson. I mean,
- 4 excuse me, Rebecca. Who else?
- 5 A I don't remember who else was there that night.
- 6 Q Okay. Was there any food or drinks there?
- 7 A I believe so.
- 8 Q Okay. What type of drinks?
- 9 A I don't know.
- 10 Q Any alcohol being served?
- 11 A I think so.
- 12 Q Okay. And did you have any alcoholic drinks at
- 13 Alysson's house?
- 14 A I did not.
- 15 Q Okay. Why?
- 16 A Because I didn't.
- 17 Q Okay. To your knowledge, did Kevin have anything
- 18 to drink there?
- 19 A I don't know.
- 20 Q Okay. You don't know one way or the other?
- 21 A No.
- 22 Q And you don't know whether he had had anything to
- 23 drink before he got there?
- 24 A I don't know.
- 25 Q But alcohol was available, is that right, at

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- 1 Alysson's house?
- 2 A Correct.
- 3 Q What type of food did she have at the house?
- 4 A Snacks.
- 5 Q Snacks?
- 6 A Yeah.
- 7 Q No meal, but just snacks.
- 8 A Correct.
- 9 Q Okay. And had this party been going on for awhile
- 10 at Alysson's?
- 11 A I don't believe so.
- 12 Q And how long were you at Alysson's?
- 13 A Not very long. I'd say less than 30 minutes.
- 14 Q Okay. All right. So if she had six or seven
- 15 people already at her house, and then your group
- 16 was six or seven people, then we can do the math,
- 17 and we've got about 13 or 14 people at Alysson's
- 18 house while you were there, is that right?
- 19 A Sounds right.
- 20 Q Was any music being played?
- 21 A Probably.
- 22 Q Okay. Was this any sort of, like, a sorority
- 23 party, or fraternity party, or anything of that
- 24 nature?
- 25 A No.

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- 1 Q Okay. All right. You were there less than 30
- 2 minutes, so where did you go next?
- 3 A We left.
- 4 Q Your whole group?
- 5 A It was me, Kevin, Elyse, Parker, and Raymond, I
- 6 believe is who I was with.
- 7 Q You, Kevin, Parker, and Elyse?
- 8 A And Ray, Raymond.
- 9 Q So you, Kevin, Parker, Elyse, and Raymond left.
- 10 A I believe so.
- 11 Q Okay. And the others that initially had been with
- 12 you, they stayed, is that correct?
- 13 A They either stayed or went home. I don't know
- 14 exactly what they did.
- 15 Q And when y'all left, did you leave on foot or did
- 16 you get in a car?
- 17 A On foot.
- 18 Q On foot.
- 19 And where did y'all go when you left on
- 20 foot?
- 21 A We were headed in the direction towards campus.
- 22 Q Headed back to campus?
- 23 A Correct.
- 24 Q All right. Let me go back to the street that
- 25 Alysson's house is on. You're pretty sure it's

Page 45

- 1 not that first left?
- 2 A I don't believe so.
- 3 Q Could it be the second or third left street?
- 4 A It could be. I don't remember.
- 5 Q Was it close to the top of the hill?
- 6 A I don't remember.
- 7 Q Was it a free-standing house?
- 8 A Yes.
- 9 Q As opposed to an apartment.
- 10 A Correct.
- 11 Q Was her house right on that street?
- 12 A I don't remember.
- 13 Q Okay. But you had to turn off of the street that
- 14 the railroad trestle crosses over, and then how
- 15 far down did you walk to get to her house?
- 16 A Not too far.
- 17 Q And once you made that left turn, was her house on
- 18 the left side of the road or the right side of the
- 19 road?
- 20 A I believe the right side.
- 21 Q Okay. Now, as you left Alysson's house, tell me
- 22 how you walked back toward campus. Did you follow
- 23 the same route that you had -- when you first left
- 24 Wingin' it?
- 25 A Yes.

12 (Pages 42 - 45)

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Kevin M. Granatino,

Plaintiff,

vs.

Calvin Williams,

Clemson University,

South Carolina Department of Transportation

&amp; Thrift Development Corporation

Defendants,

IN THE COURT OF COMMON

PLEAS

C.A. No. 2016-CP-39-01223

AFFIDAVIT OF  
KEVIN M. GRANATINO

I, Kevin M. Granatino, being duly sworn, deposes and states as follows:

1. My name is Kevin M. Granatino and my birth date is February 3, 1993. I am now 25 years old. I live at 15 Beach Lane in Hingham, Massachusetts with my Mother, brother, and sister.

2. In August 2011, I started at Clemson University in South Carolina. I was admitted to the college's professional golf management (PGM) program. After my first year I transitioned into finance. I love the university, the students, faculty, sports and school spirit.

3. On October 23, 2014, I was in the cross walk at intersection of Route 123 (Tiger Boulevard) and College Avenue and I was hit by a vehicle speeding through a red light. I was reported to have been thrown through the air, seriously injured and knocked unconscious. I was in a coma for weeks. The doctors quickly learned that I suffered a traumatic brain injury given my poor brain functioning and damage. Many people including some doctors did not think that I would survive or that if I did survive that I would be in a minimally conscious state.

4. I understand that I was initially med-flighted to Greenville Memorial Hospital. I was in the intensive care unit and the doctors' reports to my parents were grim. I had many broken bones, teeth, internal and external bleeding, and swelling including in my brain. I was immediately put on a ventilator to assist me in breathing. The doctor's there reconstructed my broken leg with a titanium rod. There were many other medical procedures done given the trauma. I do not have memories from that hospital stay.

5. In November 2014, I was angel med-flighted to Mass General Hospital in Boston, Massachusetts. I do not recall that flight. I had a team of over twenty three (23) doctors given my numerous and intensive injuries. My vital signs started to show improvement and the swelling and bleeding in my brain and body started to subside. Initially, the prognosis for me gaining consciousness was very grim.



6. In December 2014, I was transferred to Spaulding Rehabilitation Hospital to their inpatient care program. I was heavily medicated to allow for my traumatized brain swelling to shrink. I had a feeding tube and suffered issues related to being on a ventilator for an extended period of time. I relied on my Mother, step Father, sister, brother, doctors, nurses and care attendants for everything. I eventually was brought to the physical therapy room to attempt to stand with a hoist and with the assistance of others and my Mother moved each foot so that I could re-learn to take steps while others balanced me. I re-learned how to walk, talk, and other basics that we simply take for granted. I had physical therapy, occupational therapy, speech, reading, sorting, counting, and brain exercises which I could barely do.

7. In January I was discharged to then attend the Spaulding Hospital outpatient program. I continued my physical therapy, occupational therapy, speech, reading, sorting, counting, and brain exercises. I exercised at home and did everything that was asked of me and then another set. It was emotionally and physically draining. My Mother bathed me, helped me shave, brushed my teeth and turned me to ensure that I did not get bedsores. Over time I grew stronger and more able to fend for myself. My sister cooked for me and my brother waited on me. My step Dad helped me walk from a walker, to trekking poles to a gate belt to holding my arm. My dog was my constant companion each day and she became my therapy dog and returned with me back to school.

8. My traumatic brain injury has taken away many aspects of my social and physical life. I had to re-learn everything I had learned from the time I was a child to present day. Some of the things I used to know how to do I have not done yet like riding a bike for fear of falling. I am now afraid to swim and I do not feel safe in a pool which is something that I used to love to do. I sometimes find it awkward to walk, my balance is off, and I will never get to full recovery. I sometimes catch a glimpse of myself in a reflection and see that I look awkward and I feel terrible.

9. Now four (4) years later, I still suffer from my traumatic brain injury. I have memory loss, sometimes confusion, nightmares, and poor sleep. My brain processing and physical movements are slow. I was once an excellent athlete in baseball, golf, ice hockey and most all sports. Now, I do not walk very far or play backyard sports with my friends. I fear falling and especially injuring my head. I am afraid of sudden noises and have fear of the unknown. I am aware that I need to take lots of breaks and not push myself too hard.

10. Per my doctor's prognosis, I suffer a lifetime risk of seizures, stroke, blood clots and other related issues due to my traumatic injuries. Both my physician and neuropsychologist shared with me that my brain is attempting to help me cope with the accident, numerous injuries and the residual effects. I often have a hard time pulling out memories and sometimes I repeat myself. I try to remember things by relying on my i-phone and creating lots of lists. I also rely on others to help me with my memory and count on them to fill in the gaps. I try to keep up with conversations but sometimes I am not able to. I rely on my parents or others to breakdown concepts and tasks.

11. On the date of the accident to the best of my memory I was in the pedestrian cross walk. I was taught never to cross outside a cross walk and to always cross in the walk. It is my practice, without exception, to only cross a street after looking both ways a few times, even on a one way

street to ensure a light is red.

12. The intersection where I was hit by a moving vehicle was under construction. Over the three (3) years that I had attended the university I had frequented the Starbucks, Walgreens, restaurants, church and other businesses in that area. When I crossed the first time, earlier that night, to go to my acquaintances home, behind the Sonic, (now a phone store), I do not recall seeing a cross walk but instead chalk lines. There were no pedestrian crossing lights to assist one across. Also, the lighting conditions were poor. There were no signs, no barriers, and no police to assist us across the road.

13. I have personally observed on football game days that Clemson University helps with the pedestrian traffic and vehicle traffic. They sometimes shut off the traffic lights and use orange cones and officers with flashlights and flashing vehicle lights to assist with the traffic and pedestrians crossing.

14. Later that evening, as we headed back to the University, I know that I looked out for traffic. I recall crossing the first half of the way across the large intersection to the median strip area where we waited. I remember waiting and then a car in the left turn lane came to a stop and the light turned red. After that I do not recall anything about that night. I am convinced the light was still red. I would not cross on any other color light.

15. I read my Deposition transcript where the other Attorneys asked me questions of my memory from that day. I remember on that day believing that the Attorneys were presenting me with facts that I was to take as true. Though after reading my statements I know some of my responses were not correct.

16. I am convinced that my testimony that the light was yellow is not correct. I think I accepted as true what an Attorney told me which was the color of the light. I had never attended a Deposition and I relied on what others represented to me as true.

17. I remember at the break asking my Attorney if I could explain my answer and he shared with me that I could fix it at a later time. I remember my step-Dad asking if South Carolina uses some kind of sheet to correct testimony because he knew I was upset about not being able to explain my answer and I was feeling confused and frustrated.

18. On many occasions because of my short-term memory and the way my brain now works I sometimes cannot keep up with the conversations. In my conference calls with my Attorney Trevor White I asked my parents to be part of my conference call so that they could listen and help me process what was discussed. I found this strategy to be very helpful.

19. I do recall asking Attorney White to get an important Agreement between Clemson University and the City of Clemson which to this day I have not seen. At an earlier deposition someone had testified that there was an Agreement with regard to Clemson's control of a three (3) mile radius around the campus as measured from Tillman Hall. I know that the intersection is about one (1) mile or less from of Tillman Hall. I never saw the Agreement nor do I think that Attorney White ever obtained even though I asked for it multiple times.

20. I recall that Attorney White informed me that some-times a college could owe a duty of care to its students and be liable for a breach of that duty. I think it true in this case especially if the Agreement states that the University has some control or a duty to its students.

21. I think that if the Agreement between the City of Clemson and Clemson University were provided that it would help to provide more information and clarify some of the questions that I still have. I do not believe that Attorney White carried out this task which I asked him to do and I have asked Attorney Marlette to secure this Agreement. I see it as a very important missing piece to puzzle.

22. At my Deposition an Attorney asked me if I believed if Clemson University has a duty of care to me. I answered in the affirmative. I believe that in some instances a University has a duty to keep its students safe.

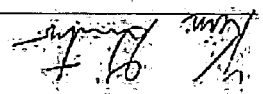
23. I think that Clemson University witnesses, police officers, first responders and administrators, if asked, would reveal that the University takes responsibility for that intersection. I understand that if this were true that a special relationship between Clemson University and its students exists.

24. I think that Clemson University does have control over this intersection. I have been back to school on a part time basis carrying a light course load with disability accommodations. When my family and I travel though that large intersection by car (which is hard not to do given the campus layout to the highway), we noticed that the intersection has since been improved and it now has additional lighting, cameras and other safety improvements.

25. My life and health has been forever negatively altered by this event. I am now disabled with permanent traumatic brain injury and physical and emotional injuries. I want a jury to hear my case and for all responsible parties to be held accountable for their wrongdoing.

SIGNED UNDER THE PAINS & PENALTIES OF PERJURY, MAY 28, 2018.

Kevin M. Granatino

A handwritten signature in black ink, appearing to read "Kevin M. Granatino", written over a horizontal line.

|                                            |   |                                     |
|--------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) |                                     |
|                                            | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF PICKENS                          | ) |                                     |
|                                            | ) |                                     |
| Kevin M. Granatino,                        | ) | <b>DEFENDANT THRIFT DEVELOPMENT</b> |
|                                            | ) | <b>CORPORATION'S MEMORANDUM IN</b>  |
|                                            | ) | <b>SUPPORT OF MOTION</b>            |
| Plaintiff,                                 | ) | <b>FOR SUMMARY JUDGMENT</b>         |
|                                            | ) |                                     |
| vs.                                        | ) |                                     |
|                                            | ) | C.A. NO.: 2016-CP-39-01223          |
| Calvin Williams, Clemson University, South | ) |                                     |
| Carolina Department of Transportation and  | ) |                                     |
| Thrift Development Corporation,            | ) |                                     |
|                                            | ) |                                     |
| Defendant.                                 | ) |                                     |

This matter is before the court on the Motion for Summary Judgment of the Defendant, Thrift Development Corporation ("Thrift"). This motion is based on the fact that the Plaintiff has failed to present any expert testimony that Thrift deviated from any professional standard of care. Further, the motion is based upon the fact that the Plaintiff was comparatively negligent and that such negligence exceeded 50%. Accordingly, Thrift requests that the court grant its Motion for Summary Judgement.

The Plaintiff, Kevin Granatino, was a student at Clemson University at the time of the accident on October 23, 2014. On that date, the Plaintiff was walking across the intersection of Highway 123/Tiger Boulevard and Highway 33/College Avenue when he was hit by a vehicle driven by the Defendant, Calvin Williams. The Plaintiff alleges that the Defendant, South Carolina Department of Transportation ("DOT") contracted with Thrift to complete construction in and around the intersection of Highway 123 and College Avenue. The Plaintiff alleges that he suffered permanent injuries as a result of being struck by Mr. Williams' vehicle.

The Plaintiff alleges that Thrift provides construction services to the DOT. The Plaintiff further alleges that on the day of the accident, the intersection had a “defective, poorly maintained, and/or unsafe construction area.” (Complaint at paragraph 24). Plaintiff further alleges that Thrift owed a duty to create and/or maintain the intersection in a reasonably safe condition and to create and/or maintain the intersection according to the standards applicable to such creation and maintenance. The Plaintiff further alleges that Thrift owed a duty to exercise reasonable care and inspections of the intersection along with a duty to warn. The Plaintiff argues negligence in the failing to correct and/or repair any dangerous conditions, negligence in creating and/or constructing the intersection, failing to maintain the intersection, failing to repair/correct hazardous conditions and failing to warn of those hazardous conditions. In Paragraph 35 of the Complaint, the Plaintiff lists seven particulars of negligence against Thrift and the DOT.

I. Plaintiff was comparatively negligent in excess of 50% and therefore barred from recovery.

Thrift submits that the Plaintiff was negligent in crossing the intersection and that his negligence exceeded 50%, therefore barring his recovery. Thrift maintains that even if it was in some way negligent, no reasonable jury could find that its negligence equaled, or was greater than, the Plaintiff’s negligence.

Under South Carolina’s Doctrine of Comparative Negligence, a Plaintiff may only recover damages if its own negligence is not greater than that of the Defendant. Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E. 2d 783 (1991).

Thrift acknowledges that ordinarily, comparison of the Plaintiff’s negligence with that of the Defendant is a question of fact for the jury to decide. Bloom v. Ravoira, 339 S.C. 417, 429 S.E. 2d 710 (2000). The Ravoira court further stated as follows: “In a comparative negligence

case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the Plaintiff's negligence exceeded 50%." Bloom, 529 S.E. 2d at 711.

In Bloom, the case involved a driver and a pedestrian. The pedestrian was crossing the street when he was struck by the Defendant's car. The trial court granted the Defendant's Motion for Summary Judgment, finding that even if the Defendant was "in some way negligent, no reasonable jury could find that [Defendant's] equaled, or was greater than, [Plaintiff's] negligence." Bloom, 529 S.E. 2d at 711.

In reaching this decision, the Bloom court stated that it must view the facts in the light most favorable to the non-moving party. However, it further said that a court cannot ignore facts "unfavorable to that party and it must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom, 527 S.E. 2d at 713. The court then cited the many facts which, even when viewed in the light most favorable to the Plaintiff, clearly showed that the Plaintiff was negligent.

In upholding the trial court's decision to grant summary judgment to the Defendant, the Bloom court stated as follows: "Here, the undisputed facts established that Bloom attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to Ravoira's fault in this accident cannot alter the inescapable conclusion that, as a matter of law, Bloom's fault exceeded 50%. Where evidence of the Plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the Defendant is simply not enough for a case to go to the jury." Bloom, 529 S.E. 2d at 713-714.

The Bloom court concluded that its decision is no departure from the rule that summary judgment is a “drastic remedy” which should be “cautiously invoked”. Bloom, 529 S.E. 2d at 714.

Nevertheless, in the rare case where a verdict is not reasonably possible under the facts presented, summary judgment is proper. Accordingly, we find that the trial court correctly granted summary judgment...

Bloom, 529 S.E. 2d at 714.

As in Bloom, the Plaintiff in this case was clearly negligent in excess of 50%, and accordingly, summary judgment is the proper remedy. Even if Thrift was in some way negligent, no reasonable jury could find that Thrift’s negligence equaled, or was greater than, the Plaintiff’s negligence. The Plaintiff attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to Thrift’s fault cannot alter the “inescapable conclusion” that, as a matter of law, Plaintiff’s fault exceeded 50%.

While Thrift understands that summary judgment in such circumstances is a “drastic remedy,” it is nevertheless warranted. For other cases in which the court reached similar results, see Hopson v. Clary, 321 S.C. 312, 468 S.E. 2d 305 (Ct. App. 1996); Estate of Haley v. Brown, 370 S.C. 240, 634 S.E. 2d 62 (Ct. App. 2006).

The Plaintiff’s own sworn testimony supports the conclusion that he was negligent, and that such negligence was more than 50%. The Plaintiff, 21 years old at the time, was racing into the busiest intersection<sup>1</sup> in Clemson on a Thursday night before a Clemson home game, after drinking alcohol to excess (.122 according to the medical records), carrying his friend piggy-back style. He testified repeatedly in his deposition that the traffic light turned yellow after he got into the middle of the intersection. (Granatino @ 121; See also, Granatino @ 141-142) At

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<sup>1</sup> The Plaintiff identified the intersection shown in the photographs of Exhibit 6 to Officer Brooks’ deposition.



that point, he had already crossed several lanes of travel. The clear implication is that the light was green when he and his friend hurried into the busy street and were hit by the Williams' vehicle. (Granatino @ 21; See also, Granatino @ 40-41). The Plaintiff's own description of his action leading up to the incident establish that he violated South Carolina law and evidence of negligence per se.

Earlier that evening, the Plaintiff and several of his friends met up with 5 or 6 girls, including Lindsay Jones. As they walked from a local apartment, they had to cross through the intersection of Highway 123 and College Avenue before they entered the intersection at the time of the accident. The Plaintiff recalls stopping and looking for traffic at that intersection earlier that evening. Further, the Plaintiff was familiar with the intersection as he had been through the intersection both on foot and by car on previous occasions. The Plaintiff recalls they were either going to go downtown or to one of the bars. At some point before arriving at the intersection, the Plaintiff began carrying Ms. Jones on his back. (Granatino @ 12-20)

The Plaintiff further recalled that when he stepped into the roadway, he was carrying Ms. Jones on his back and continued to do so until they got to the middle of the road. He stopped in the middle of the road because "there was cars going the other way, so we just wanted to make sure we were safe to cross." (Granatino @ 121; See also, Granatino @ 141-142) At that point, the light turned yellow and they continued to crossing the intersection at which time they were struck by the Williams' vehicle. (Granatino @ 23-25; Granatino @ 32-33)

The accident report (Exhibit 2 to Brooks' deposition) includes a diagram and narrative of what happened that night. Several MAIT officers in the Clemson City Police Department investigated the accident. They concluded that Plaintiff and his friend were "unlawfully in the

roadway” and “failed to yield to the traffic.” As a result, Plaintiff was found to have contributed to the accident.

While the Plaintiff has now submitted an affidavit directly contradicting his prior testimony, on several occasions during the deposition he admitted that the light turned yellow after they had gotten to the middle of the intersection. (Granatino @ 40-41; Granatino @ 21; Granatino @ 121; Granatino @ 141-142) To the extent the Plaintiff’s affidavit offered in opposition to the Motion for Summary Judgment materially and directly conflicts with his prior sworn testimony, the Court should not consider the affidavit. Our courts have consistently held that the trial court may disregard a subsequent affidavit as a “sham,” that is, does not create an issue of fact merely by contradicting that party’s own prior testimony. In distinguishing between a sham affidavit and a correcting or clarifying affidavit, the court must take into account a number of considerations including when the affidavit is offered in relation to the Summary Judgment motion. In this case, the Plaintiff’s affidavit was not offered until mere days before the motion hearing and he has not offered a credible explanation for the statements that contradict his prior sworn testimony. Accordingly, the court should reject the affidavit as a sham. Ins. Prods Mktg. v Conseco Life Ins. Co., 2012 U.S. Dist. LEXIS 113111 (2012); Cothran v. Brown, 357 S.C. 210, 592 S.E. 2d 629 (2004); Wells Fargo Bank, N.A. v. Prescott, 2017 S.C. App. Unpub. LEXIS 54 (2017)

While the Plaintiff admitted that he could have been intoxicated that night and simply did not remember, the medical records make it clear that he was in fact intoxicated. (Greenville Memorial Hospital records 1100-GHS-83; 1100-GHS-394). Officer Brooks from MAIT testified that he has investigated numerous cases involving the issue of intoxication and impairment by alcohol. He has encountered drivers in the past who were impaired when they had a blood

alcohol of .122 as the Plaintiff in this case. He confirmed that is above the legal limit as far as operating a vehicle on public highways. He further testified that if someone has alcohol in their system above the legal limit, then S.C. Code Ann §56-5-3270 would be applicable. That statute specifically provides that pedestrians who are under the influence of alcohol “which renders himself a hazard shall not walk on or be upon a roadway except a sidewalk” (Brooks @ 95-97). Officer Craig from MAIT also testified that it was unsafe for a pedestrian who was under the influence to walk into a roadway. (Craig @ 93-94) Officer Craig further testified that it was his experience with the Highway Patrol that individuals with .122 alcohol level are often impaired. Officer Craig agreed that the effects of such impairment could include their judgment. (Craig @ 94-95)

Officer Johnson with the Clemson City Police Department also testified that it has been his experience that when someone’s alcohol level is at .08 or greater, that they will show signs of impairment. That impairment includes being unsteady on their feet, impairment in their thinking and judgment, and the inability to judge distance and speed. (Johnson @ 112-115)

While Ms. Jones could not recall whether the Plaintiff consumed alcohol that night, she admitted that she drank liquor and was intoxicated. She further testified that they had crossed through the Highway 123/College Avenue intersection at least two times that night before the accident and that the girls who were with her had also been drinking. (Jones @ 26-28; 33-35; 39; 46-47)

In summary, the Plaintiff violated at least five different statutes governing pedestrians in or around the highway and intersections:

§56-5-3110 – Pedestrians shall obey the instructions of any official traffic control device.

§56-5-3130 – No pedestrian shall suddenly leave a curb or other place of safety to walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

§56-5-3150 – Pedestrians shall yield the right of way upon the roadway.

§56-5-3160 – Any pedestrian upon a roadway shall yield a right of way to all vehicles upon the roadway.

§56-5-3270 – A pedestrian who is under the influence of alcohol to a degree which renders himself a hazard shall not walk or be upon a highway except a sidewalk.

Based upon the Plaintiff's own testimony and testimony of other witnesses, the Plaintiff was clearly comparatively negligent in excess of 50%, and accordingly, his claim is barred.

- II. Thrift is entitled to judgment as a matter of law because the Plaintiff has not presented any expert testimony that it deviated from a professional standard of care.

The Plaintiff has alleged that Thrift was negligent in many different respects concerning the construction at the intersection of Highway 123 and College Avenue. Those allegations include construction services and management, as well as coordination of the work of various sub-contractors. The allegations also refer to concerns compliance with industry standards, including the Manual On Uniform Traffic Control Devices. Such matters are not within the area of common knowledge and experience of the layman, and therefore, expert testimony is necessary to establish both the standard of care and Thrift's deviation from that standard. City of York Co. v Turner-Murphy Co., 317 S.C. 194, 452 S.E. 2d 615 (1994).

In the City of York case, the Plaintiff alleged that the project engineer was negligent in failing to adequately observe, inspect, and supervise the construction and failing to ensure conformance with the plans and specifications. In reaching this conclusion, the City of York court found that expert testimony was necessary to establish the standard of care. In reaching that conclusion, the court found as follows:

That capability requires professional knowledge of construction methods and procedures to determine whether any engineering company should have anticipated this problem based upon difficulties encountered during the construction process.

City of York, 452 S.E. 2d at 617.

Similarly, Thrift was the general contractor for this construction project and analysis of the performance of their duties requires something more than the common knowledge and experience of a layman. There must be testimony to establish that a reasonable and prudent construction management company would anticipate the particular problems, if any, regarding the placement of traffic control devices and management of the intersection generally. As the City of York court stated:

In a professional negligence cause of action, the Plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the Plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law.

City of York, 452 S.E. 2d at 615.

An expert witness “must have acquired by reason of study or experience or both, such knowledge and skill in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” City of York, 477 S.E. 2d at 472.

In this particular case, the parties entered into a Consent Scheduling Order which required the Plaintiff to identify an expert by January 1, 2018. The Plaintiff has failed to identify any such experts, and correspondingly, has no competent evidence or testimony to establish a breach of a duty on the part of Thrift. This failure to offer expert testimony under the circumstances of this case is fatal and the court should grant Thrift’s Motion for Summary Judgment.

s/C. Stuart Mauney

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Greenville, SC  
May 31, 2018

CLW EXHIBIT 629-1

172

Brooks

ORIGINAL-AMENDED

SOUTH CAROLINA DISCLOSE & DIVULGE ACT

[illegible]

| Case Information    |                    | Court Information |          | Case Details            |                        |
|---------------------|--------------------|-------------------|----------|-------------------------|------------------------|
| Case No.            | Case Name          | Court             | Judge    | Case Type               | Case Status            |
| 2016CP3901223       | PICKENS, ANN       | Common Pleas      | Judge    | Case Type               | Case Status            |
| <b>Case History</b> |                    |                   |          |                         |                        |
| Date                | Event              | Location          | Time     | Notes                   | Remarks                |
| 2016-05-31          | Case Filed         | Court             | 10:00 AM | Case filed by Plaintiff | Case Status: Pending   |
| 2016-06-01          | Case Assigned      | Court             | 10:00 AM | Case assigned to Judge  | Case Status: Pending   |
| 2016-06-02          | Case Set for Trial | Court             | 10:00 AM | Case set for trial      | Case Status: Pending   |
| 2016-06-03          | Case Dismissed     | Court             | 10:00 AM | Case dismissed by Judge | Case Status: Dismissed |
| <b>Case Details</b> |                    |                   |          |                         |                        |
| Case No.            | Case Name          | Court             | Judge    | Case Type               | Case Status            |
| 2016CP3901223       | PICKENS, ANN       | Common Pleas      | Judge    | Case Type               | Case Status            |
| <b>Case History</b> |                    |                   |          |                         |                        |
| Date                | Event              | Location          | Time     | Notes                   | Remarks                |
| 2016-05-31          | Case Filed         | Court             | 10:00 AM | Case filed by Plaintiff | Case Status: Pending   |
| 2016-06-01          | Case Assigned      | Court             | 10:00 AM | Case assigned to Judge  | Case Status: Pending   |
| 2016-06-02          | Case Set for Trial | Court             | 10:00 AM | Case set for trial      | Case Status: Pending   |
| 2016-06-03          | Case Dismissed     | Court             | 10:00 AM | Case dismissed by Judge | Case Status: Dismissed |
| <b>Case Details</b> |                    |                   |          |                         |                        |
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| 2016CP3901223       | PICKENS, ANN       | Common Pleas      | Judge    | Case Type               | Case Status            |
| <b>Case History</b> |                    |                   |          |                         |                        |
| Date                | Event              | Location          | Time     | Notes                   | Remarks                |
| 2016-05-31          | Case Filed         | Court             | 10:00 AM | Case filed by Plaintiff | Case Status: Pending   |
| 2016-06-01          | Case Assigned      | Court             | 10:00 AM | Case assigned to Judge  | Case Status: Pending   |
| 2016-06-02          | Case Set for Trial | Court             | 10:00 AM | Case set for trial      | Case Status: Pending   |
| 2016-06-03          | Case Dismissed     | Court             | 10:00 AM | Case dismissed by Judge | Case Status: Dismissed |



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF PICKENS

3 KEVIN GRANATINO,

4 Plaintiff,

5 vs.

CASE NO. 2016-CP-39-01223.

6 CALVIN WILLIAMS, CLEMSON UNIVERSITY,

7 SOUTH CAROLINA DEPARTMENT OF

TRANSPORTATION, and THRIFT DEVELOPMENT

8 CORPORATION

Defendants.

9  
10 DEPOSITION OF: KEVIN GRANATINO

11 DATE: December 15, 2017

12 TIME: 10:00 a.m.

13 LOCATION: Law Offices of  
14 White, Davis & White  
209 E. Calhoun St.  
Anderson, SC

15  
16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: ERIC S. GLAZIER, Court Reporter

18  
19  
20  
21  
22  
23  
24  
25 Job No. CS2774001

Page 10

1 Q. Okay. When did you study abroad?  
 2 A. Spring 2013.  
 3 Q. And where did you go?  
 4 A. I went to Paris.  
 5 Q. Okay. Were you there for a semester?  
 6 A. Yes, sir.  
 7 Q. Okay. And give us your address in  
 8 Massachusetts.  
 9 A. 15 Beach Lane.  
 10 Q. And that's in the city of...  
 11 A. Hingham.  
 12 Q. And who do you live with at that  
 13 address?  
 14 A. My mom.  
 15 Q. Okay. And your mom's name?  
 16 A. Kimberly Granatino.  
 17 Q. Okay. She's with us here today?  
 18 A. She is.  
 19 Q. Okay. And your stepdad, is he with us  
 20 today?  
 21 A. He is.  
 22 Q. Okay. Tell us his name.  
 23 A. George Marlette.  
 24 Q. Okay. Tell us your date of birth.  
 25 A. Date of birth is 2/3/93. February 3rd,

Page 11

1 1993.  
 2 Q. Okay. I'm going to ask you some  
 3 questions about the accident itself, whatever you  
 4 remember. The day as I understand it was  
 5 October 23rd, 2014, and it was a Thursday. Is that  
 6 your understanding, that it was a Thursday night?  
 7 A. Yes.  
 8 Q. Okay. Do you recall anything about  
 9 that day?  
 10 A. I very -- I very vaguely remember the  
 11 accident, or starting to like cross the street, but  
 12 I don't remember much.  
 13 Q. Okay. Do you recall what you were  
 14 doing before the accident?  
 15 A. I think we went up to meet with some  
 16 girls, and then our plan was to walk downtown. I  
 17 lived downtown. We were going to go hang out  
 18 downtown, but we didn't make it, or I didn't make  
 19 it.  
 20 Q. Did you go to class that day?  
 21 A. I think so. I don't remember much from  
 22 the day.  
 23 Q. Would you -- would that normally have  
 24 been a class day for you, a Thursday during that  
 25 semester?

Page 12

1 A. Yes.  
 2 Q. Do you remember anything else about  
 3 that day before going out that night?  
 4 A. No.  
 5 Q. Anything special?  
 6 A. I don't think so.  
 7 Q. Do you have any specific recollection  
 8 of actually going to class?  
 9 A. No.  
 10 Q. Okay. At some point you got together  
 11 with some friends?  
 12 A. Yes.  
 13 Q. Okay. Where did you meet up with those  
 14 friends?  
 15 A. Well, the two kids I remember meeting  
 16 up with were Ray and Skylar. I lived with Ray, so  
 17 I think we went from my house to meet up with the  
 18 girls. And the girls were at someone's apartment  
 19 behind what used to be Sonic.  
 20 Q. And do you know whose apartment that  
 21 was?  
 22 A. I don't.  
 23 Q. And you said Ray and Skylar?  
 24 A. Yes.  
 25 Q. What is Ray's name?

Page 13

1 A. Ray Matsumoto.  
 2 Q. Was he a roommate?  
 3 A. He was.  
 4 Q. And Skylar?  
 5 A. Skylar Cane. He was not a roommate,  
 6 but he's a friend.  
 7 Q. Okay. Where is Ray now?  
 8 A. He's a graduate student at Vanderbilt.  
 9 I'm not sure what he's studying, but I know he's at  
 10 Vandy.  
 11 Q. What about Skylar?  
 12 A. He's in D.C. or Northern Virginia. I'm  
 13 not positive.  
 14 Q. What's he doing? Do you know?  
 15 A. No.  
 16 Q. Are you in touch with either one of  
 17 them on a regular basis?  
 18 A. No.  
 19 Q. So was it just the three of you as  
 20 you -- and when you left did the three of you leave  
 21 together from your apartment?  
 22 A. Yeah, to go to the girls' apartment.  
 23 Yes.  
 24 Q. And were you walking?  
 25 A. We were either walking or -- I'm not

4 (Pages 10 - 13)

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1. positive.

Page 14

2. Q. I'm sorry?

3. A. I'm not -- I don't remember --

4. Q. Okay. So you don't specifically  
5 remember whether you were walking or in a car?

6 A. Correct.

7 Q. Okay. Do you remember being at that  
8 apartment where you met up with some girls?

9 A. No.

10 Q. So you don't remember anything about  
11 the apartment?

12 A. I know we met up with five or six  
13 girls. I don't know much beyond that though.

14 Q. Do you know the names of any of those  
15 girls?

16 A. I know the girl I was carrying her  
17 name was Lindsey Jones, but that's it.

18 Q. Do you remember if Lindsey was with you  
19 at the apartment?

20 A. At the apartment we went to, yes.

21 Q. Okay. Do you remember anything that  
22 you did while you were at the apartment?

23 A. No.

24 Q. Do you remember anything that Lindsey  
25 did while you were at the apartment?

1 A. I don't remember any pedestrian signal.

2 I know like when I was going across the road, I  
3 didn't make it. The first car was stopped --

4 Q. Okay. And I want to back up just a  
5 second.

6 A. Okay.

7 Q. I'm talking about the time that you  
8 crossed the intersection on your way to the girls'  
9 apartment.

10 A. Yeah.

11 Q. Okay. Do you remember seeing the  
12 pedestrian signal?

13 A. No.

14 Q. Okay. Is that because it wasn't -- do  
15 you remember specifically looking at it?

16 A. I remember looking for it, but I don't  
17 remember seeing it.

18 Q. Okay. And what did you do before you  
19 crossed the intersection that night?

20 A. I don't remember.

21 Q. Did you stop and look for traffic?

22 A. Yeah.

23 Q. Okay. But you don't remember whether  
24 the traffic pedestrian signal told you whether to  
25 walk or not? Do you remember that?

Page 16

Page 15

1 MR. WHITE: I object.

2 A. No.

3 Q. Did you go anywhere between your  
4 apartment and meeting the girls at that particular  
5 apartment?

6 A. No.

7 Q. Was it a walkable distance?

8 A. I think it is, yes.

9 Q. And in order to get from your apartment  
10 to where the girls were at that apartment, would  
11 you have had to cross through the intersection of  
12 College Avenue and 123?

13 A. Yes.

14 Q. Okay. Do you have any specific  
15 recollection of crossing that intersection that  
16 night?

17 A. Going to the girls' house or --

18 Q. Yes, going to the girls' house.

19 A. No.

20 Q. Anything about that?

21 A. No.

22 Q. Okay. Do you remember anything about  
23 the lights, the traffic light?

24 A. No.

25 Q. Or a pedestrian signal?

1 A. I don't remember it working.

2 Q. Okay. Do you have any specific  
3 recollection that it wasn't working?

4 A. I remember looking for it, but didn't  
5 see it.

6 Q. Okay. And we'll get back to that in a  
7 minute. But you had been through that intersection  
8 before?

9 A. Yes.

10 Q. Okay. Do the hospital records show  
11 that you had alcohol in your system? Do you  
12 remember drinking alcohol that night?

13 MR. WHITE: Object to the form.

14 Q. Is that a no?

15 A. No.

16 Q. Okay. Has anyone that you've talked  
17 with about the accident said to you that, hey, we  
18 were drinking alcohol?

19 A. No.

20 Q. Have you talked to Lindsey Jones about  
21 that?

22 A. Not really, no.

23 Q. Have you had any conversations with  
24 anyone about the use of alcohol that night before  
25 the accident?

Page 17

Page 18

1 A. No.  
 2 Q. Okay. Was alcohol available at that  
 3 apartment that you went to?  
 4 A. I don't remember.  
 5 Q. Okay. Do you have a specific  
 6 recollection of why you were going to that  
 7 apartment? Was there somebody special you were  
 8 going to see or...  
 9 A. There were girls there.  
 10 Q. Okay. Was there a special girl there?  
 11 A. No. Just friends.  
 12 Q. And Lindsey was just a friend?  
 13 A. Yes.  
 14 Q. Had you been to that apartment before  
 15 in the past?  
 16 A. I don't think so.  
 17 Q. Okay. And when you would go out with  
 18 your roommates, sometimes would y'all drink  
 19 alcohol?  
 20 MR. WHITE: Object to form.  
 21 A. Not --  
 22 Q. You can answer.  
 23 A. Not all the time.  
 24 Q. Sometimes?  
 25 A. Like game days, was a big day.

Page 19

1 Q. Was there a game that weekend?  
 2 A. I don't remember.  
 3 Q. Okay. And what type of alcohol would  
 4 you typically drink?  
 5 A. Just beers.  
 6 Q. Beers?  
 7 A. Beers for the game.  
 8 Q. What about liquor?  
 9 A. I don't remember.  
 10 Q. Okay. Had you -- had you in addition  
 11 to drinking beer drank liquor before this accident  
 12 at any time in the past?  
 13 MR. WHITE: Object to form.  
 14 A. I don't remember.  
 15 Q. Okay. Had you been out socially with  
 16 Lindsey before this night?  
 17 A. We were friends, so maybe. I really  
 18 don't remember the details.  
 19 Q. Okay. Do you remember if you had  
 20 classes the next day?  
 21 A. I don't remember.  
 22 Q. Okay. Did you have a Friday class that  
 23 you remember on that semester?  
 24 A. I don't remember.  
 25 Q. Okay. Now, at some point you mentioned

Page 20

1 Lindsey being with you at the intersection as y'all  
 2 were headed downtown?  
 3 A. Yes.  
 4 Q. Were y'all going somewhere in  
 5 particular?  
 6 A. I don't -- we were either going to go  
 7 downtown -- I lived downtown, so either my house or  
 8 go to one of the bars or something. I'm not  
 9 positive.  
 10 Q. And I may have asked this, but do you  
 11 recall that Lindsey was with you at the apartment?  
 12 A. At the girls' apartment I went to, yes;  
 13 she was there.  
 14 Q. Okay. And y'all left that apartment on  
 15 foot?  
 16 A. Yes.  
 17 Q. And who all was in the group as you  
 18 left the apartment?  
 19 A. I remember Skylar, Ray, and Lindsey.  
 20 There were more people. I don't remember who,  
 21 though.  
 22 Q. And do you recall walking from that  
 23 apartment to the intersection of 123 and College  
 24 Avenue?  
 25 A. A little bit.

Page 21

1 Q. Okay. Do you remember having anything  
 2 with you?  
 3 A. No.  
 4 Q. Carrying anything?  
 5 A. Carrying Lindsey. At some point she  
 6 said her feet were hurting or she -- I don't --  
 7 some reason she needed -- I carried her. I'm not  
 8 positive why, like she was tired or wearing heels.  
 9 I'm not sure exactly. But I'm a gentleman, so I  
 10 carried her.  
 11 Q. Do you remember if any of the other of  
 12 them had anything with them?  
 13 A. I don't.  
 14 Q. Alcohol?  
 15 A. I don't remember.  
 16 Q. Okay. So tell me what you remember as  
 17 you got to the -- as you approached that  
 18 intersection.  
 19 A. I just remember we crossed, we made it  
 20 to the middle like of the intersection, and then  
 21 the lights turned yellow, the car closest to us  
 22 stopped, and then we started to cross, and then I  
 23 got hit.  
 24 Q. And let's back up to when you first  
 25 stepped off the sidewalk to cross, okay. What do

Page 22

1. you remember doing? Did you stop?  
 2. A. We stopped, and then the car in the  
 3. first lane came to a complete stop, so we started  
 4. across.  
 5. Q. And the stopping of that vehicle, is  
 6. that what signalled to you that it was appropriate  
 7. to go into the intersection?  
 8. A. Yeah. And well, the light was yellow,  
 9. turning red, the first car stopped, so we thought  
 10. we were good to cross.  
 11. Q. Do you remember looking at the  
 12. pedestrian signal?  
 13. A. I don't remember it working or being  
 14. on.  
 15. Q. Do you have a specific recollection of  
 16. looking at it and that it was not on?  
 17. A. I remember looking and just didn't see  
 18. it.  
 19. Q. Okay. Did you talk with any of these  
 20. other folks after the accident about what happened  
 21. and what they saw?  
 22. A. No. I mean, I asked them, but nobody  
 23. really remembers.  
 24. Q. So did either Ron-- is it Ron?  
 25. A. Ray.

Page 23

1. Q. Ray, sorry.  
 2. A. No, it's okay.  
 3. Q. -- Ray and Skylar have any particular  
 4. recollection of the lights or anything related to  
 5. that?  
 6. MR. WHITE: Object to form.  
 7. A. No, I don't think so.  
 8. Q. What about Lindsey?  
 9. MR. WHITE: Object to the form.  
 10. A. No. I don't think she remembers much.  
 11. Q. And as you crossed the intersection,  
 12. did you -- there's a place where the sidewalk stops,  
 13. and it kind of curves down and becomes level with  
 14. the road. Do you know what I'm talking about,  
 15. where you step off -- when you step off the curb  
 16. into the road?  
 17. A. Yeah, okay.  
 18. Q. Okay. Did you have any problem that  
 19. night identifying where you should enter the  
 20. intersection?  
 21. A. I don't remember.  
 22. Q. Okay. And as far as you know, you just  
 23. walked straight across?  
 24. A. Yeah.  
 25. Q. Okay. Now, there's -- tell me what the

Page 24

1. road is like at that intersection that night. How  
 2. many lanes? Do you remember?  
 3. A. Two or three. I'm not positive. I  
 4. think three.  
 5. Q. And so you're coming from the Sonic  
 6. side --  
 7. A. Yes.  
 8. Q. -- crossing to the other side?  
 9. A. Yes.  
 10. Q. Going toward Clemson?  
 11. A. Correct.  
 12. Q. And so as you entered the roadway you  
 13. would have crossed over several lanes of 123 before  
 14. you got to the middle?  
 15. A. Yes.  
 16. Q. At least two lanes?  
 17. A. Yes.  
 18. Q. And when you got to the middle you  
 19. stopped?  
 20. A. Correct.  
 21. Q. Okay. Now, where were Ray and Skylar  
 22. at that point?  
 23. A. I don't remember. Either in front or  
 24. behind me. I was carrying Lindsey, so...  
 25. Q. And when did you start carrying

Page 25

1. Lindsey?  
 2. A. I think at some point walking down the  
 3. hill to get to the intersection.  
 4. Q. So it was before you stopped at the  
 5. intersection to enter it?  
 6. A. Yes.  
 7. Q. And from the point you stepped into the  
 8. roadway until you got to the middle of the road,  
 9. were you carrying Lindsey?  
 10. A. I think so.  
 11. Q. And is that what I would call  
 12. piggyback?  
 13. A. Yes.  
 14. Q. Okay. Were you walking, running,  
 15. trotting?  
 16. A. I think like a brisk walk, walking as  
 17. fast as I could while carrying somebody.  
 18. Q. And so why did you stop when you got to  
 19. the middle?  
 20. A. Because there was cars going the other  
 21. way, so we just wanted to make sure we were safe to  
 22. cross.  
 23. Q. And when you say cars going the other  
 24. way, what do you mean? From where?  
 25. A. From -- I don't know landmarks, but

7 (Pages 22 - 25)

Page 30

1 A. I don't remember.  
 2 Q. Okay. The reason I ask is, there was  
 3 part of a shot glass found at the -- in the  
 4 intersection. That's the reason I ask. But you  
 5 have no recollection of that?  
 6 A. No.  
 7 Q. Do you remember anybody else having a  
 8 shot glass with them that night?  
 9 A. No.  
 10 Q. You told me your date of birth, but how  
 11 old were you at the time of the accident?  
 12 A. It was what, February -- I was 21.  
 13 Q. Okay. Have you ever had any problems  
 14 at Clemson, disciplinary problems, anything like  
 15 that?  
 16 A. No.  
 17 Q. I believe we talked about where you've  
 18 lived at Clemson. Where were you living at the  
 19 time? That was -- was that Calhoun Courts or --  
 20 A. I was living downtown.  
 21 Q. Okay. What was the name of the place?  
 22 A. It was a house. I don't remember the  
 23 address.  
 24 Q. Okay. So you were just renting a house  
 25 with some other guys?

Page 31

1 A. Yes.  
 2 Q. Okay. And it was after you came back  
 3 that you went to Calhoun Courts?  
 4 A. After I came back --  
 5 Q. After you came back from after the  
 6 accident?  
 7 A. Yes.  
 8 Q. Okay. Did you have any -- who were  
 9 your roommates at the time of the accident?  
 10 A. My roommates were Ray and Mike.  
 11 Q. Okay. What's Mike's last name?  
 12 A. Ortman. O-R-T-M-A-N, Ortman.  
 13 Q. And where is Mike now?  
 14 A. Mike's -- he's back in Ohio.  
 15 Q. Do you stay in touch with Mike?  
 16 A. Like very infrequently. I mean, I'll  
 17 wish Mike a merry Christmas. I think I said happy  
 18 Thanksgiving, and he said happy Thanksgiving back.  
 19 That's about it.  
 20 Q. Do you recall talking to him about the  
 21 accident and what had happened?  
 22 A. No.  
 23 Q. Has anyone ever come up to you since  
 24 then and said that they saw the accident or were  
 25 there that night?

Page 32

1 A. No.  
 2 Q. The girls that you were going to see,  
 3 had you been out with them before?  
 4 A. I don't know.  
 5 Q. If you'll give me just a minute, Kevin,  
 6 I'm going to look for some photographs. It won't  
 7 take but just a minute to find them, I don't  
 8 believe.  
 9 A. Okay.  
 10 Q. The intersection that we're talking  
 11 about, 123 and College Avenue, you had been through  
 12 that intersection before that night?  
 13 A. Yes.  
 14 Q. Okay. Had you been through that  
 15 intersection going both ways?  
 16 A. I think so, yeah.  
 17 Q. Coming and going from town?  
 18 A. Yes.  
 19 Q. Okay. And was it a route that you used  
 20 to get to a particular place before the accident?  
 21 A. To Waffle House.  
 22 Q. To Waffle House?  
 23 A. Yeah, or like food. To get food, yeah.  
 24 Q. Okay. All right. And that was  
 25 normally on foot?

Page 33

1 A. No. Normally in cars.  
 2 Q. Okay. But sometimes on foot?  
 3 A. I think so. I don't remember.  
 4 Q. Okay. Do you recall ever having a  
 5 problem walking across that intersection in terms  
 6 of the traffic lights?  
 7 A. I don't remember.  
 8 Q. Or the pedestrian signal?  
 9 A. I don't remember.  
 10 Q. Okay. Do you recall that there was a  
 11 pedestrian signal at that intersection?  
 12 A. I don't remember.  
 13 Q. -- in the past?  
 14 A. I don't remember.  
 15 Q. Okay. Let me show you what's been  
 16 marked as Exhibit 1 to Officer Wren Johnson's  
 17 deposition.  
 18 COURT REPORTER: You said Wren Johnson?  
 19 MR. MAUNEY: Wren, W-R-E-N.  
 20 BY MR. MAUNEY:  
 21 Q. Do you recognize that as something that  
 22 you have seen at that intersection in the past?  
 23 A. I don't remember.  
 24 Q. Okay.  
 25 MR. WHITE: Stuart, just for

9 (Pages 30 - 33)

Page 34

1 clarification; these are the pictures that you took  
 2 present day correct?  
 3 MR. MAUNEY: Yeah.  
 4 MR. WHITE: Okay.  
 5 BY MR. MAUNEY:  
 6 Q: And let me show you Exhibit 2, 3, 4,  
 7 and 5, which are part of the pedestrian signal. Do  
 8 you recall in the past before this accident seeing  
 9 those kinds of signals?  
 10 A: I don't.  
 11 Q: Okay. Do you remember seeing that and  
 12 looking at that to guide you across the road since  
 13 the accident?  
 14 A: I don't remember.  
 15 Q: Have you been out there and looked and  
 16 said, gee, I wonder what the pedestrian signal  
 17 looks like?  
 18 A: No.  
 19 Q: Okay. And let me show you what's been  
 20 marked as Exhibit 6, 7, and 8 to Officer Johnson's  
 21 deposition. Do you recognize that as how the  
 22 sidewalk and the area where you enter the  
 23 intersection looked before you went there that  
 24 night?  
 25 A: I don't remember.

Page 35

1 Q: What about that night?  
 2 A: I don't remember.  
 3 Q: Okay. Do you remember walking and  
 4 leaving the concrete and then going onto the bricks  
 5 before entering the roadway?  
 6 A: I don't remember.  
 7 Q: Okay. Let me show you what's -- I'm  
 8 pausing because it doesn't have a...  
 9 MR. WHITE: I think they were done as a  
 10 group, Stuart.  
 11 MR. MAUNEY: Were they?  
 12 MR. LOGAN: Is that what you're looking  
 13 at?  
 14 MR. MAUNEY: Hold on a second. I think  
 15 I've got another group. Yeah, here's another  
 16 group.  
 17 MR. LOGAN: I have that Brooks 6A and  
 18 B.  
 19 MR. MAUNEY: That's what I'm going to  
 20 use now. So let me back up. I'm going to use a  
 21 different set. These are A through E, Exhibit 6 to  
 22 Officer Brooks' deposition. And this first page,  
 23 A, I guess you would say, that was taken on the  
 24 night of the accident.  
 25

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1 BY MR. MAUNEY:  
 2 Q: Do you recognize that as the  
 3 intersection?  
 4 A: Yeah, that looks like the intersection.  
 5 Q: Okay. And would you have been  
 6 coming -- if you would, hold that intersection --  
 7 if you would, just kind of hold that up. So would  
 8 you have been coming from the left side of that  
 9 photograph?  
 10 A: Yeah, and then I think towards campus;  
 11 would be on the right.  
 12 Q: Now, in that photograph do you see some  
 13 debris in the road?  
 14 A: I do.  
 15 Q: Do you recognize any of that?  
 16 A: No.  
 17 Q: Okay. Let me just have that back for  
 18 just one second. In that top photograph of  
 19 Exhibit 6 do you see a pair of white lines across  
 20 the road?  
 21 A: I do.  
 22 Q: And do you recall seeing those white  
 23 lines that night?  
 24 A: Like these white lines?  
 25 Q: Yes.

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1 A: I don't.  
 2 Q: And there's a P between those white  
 3 lines. Do you see that P written on the --  
 4 A: Yeah.  
 5 Q: Okay. But you don't remember  
 6 specifically seeing those white lines?  
 7 A: No.  
 8 Q: Okay. There's a lot about that night  
 9 you don't remember, is that true?  
 10 A: Yes.  
 11 Q: And because of your injury?  
 12 A: Correct. Was this the car?  
 13 Q: Yes.  
 14 A: I don't remember that.  
 15 Q: Have you ever seen those photographs  
 16 before?  
 17 A: No.  
 18 Q: At any time after this accident, do you  
 19 remember having any conversation with the driver of  
 20 that SUV, Mr. Williams?  
 21 A: I don't think so.  
 22 Q: How often would you say you went  
 23 through that intersection before the accident?  
 24 Every week?  
 25 A: Maybe once a week or something.

10 (Pages 34 - 37)

Page 38

1 Q. Okay. Had you been through that  
2 intersection at night?  
3 A. I would think so, yes.  
4 Q. Had you walked through it at night?  
5 A. I don't remember.  
6 Q. Okay. When you would go through that  
7 intersection, I think you said that you would cross  
8 from both sides?  
9 A. Yes.  
10 Q. Okay. Do you recall any difference on  
11 the night of the accident from what you had seen  
12 before at that intersection? Was there anything  
13 different about it?  
14 A. I don't remember.  
15 Q. Were you dating someone at that time,  
16 somebody special? Did you have a girlfriend?  
17 A. No.  
18 Q. Okay. And how long had you known  
19 Lindsey?  
20 A. I think I met her that semester. I'm  
21 not sure when exactly, but I think it was that  
22 semester.  
23 Q. Okay. We've taken Lindsey's  
24 deposition, and she testified that she went to a  
25 place called Wingin' It. Do you know where that

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1 is?  
2 A. I do.  
3 Q. Okay. She said she had been there that  
4 night before going to her friend's apartment.  
5 A. Okay.  
6 Q. Do you remember being with anyone at  
7 Wingin' It?  
8 A. No. I don't remember going to Wingin'  
9 It.  
10 Q. Have you been there before?  
11 A. Yes.  
12 Q. And I believe Ms. Jones mentioned a  
13 friend by the name of Alison Randolph. Do you  
14 recognize that name?  
15 A. No.  
16 Q. Do you know, happen to know whether it  
17 was her house or apartment that you were at that  
18 night?  
19 A. I don't know.  
20 Q. Do you know a Parker Jones?  
21 A. I do.  
22 Q. Okay. Do you remember being with  
23 Parker that night?  
24 A. No.  
25 Q. How do you know Parker?

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1 A. He was in my fraternity.  
2 Q. Okay. What's the name of your  
3 fraternity?  
4 A. Phi Delta Theta.  
5 Q. And you were a member of that  
6 fraternity at the time of the accident?  
7 A. Yes.  
8 Q. Okay. Are you still a member?  
9 A. Inactive, so...  
10 Q. What about a young lady by the name of  
11 Elyse -- Elyse?  
12 A. I don't know any Elyses.  
13 Q. Did you have a car at Clemson at that  
14 time?  
15 A. No.  
16 Q. Did you have access to one or --  
17 A. I had friends with cars.  
18 Q. Right. Okay. So if you -- if it was  
19 walkable to wherever you needed to go, you would  
20 pretty much walk?  
21 A. Yeah.  
22 Q. Were you living at that time within  
23 walking distance of classes and that kind of thing?  
24 A. Yes.  
25 Q. When you were at the intersection that

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1 night and you stepped into the roadway, Lindsey was  
2 on your back, correct?  
3 A. I think she was, yes.  
4 Q. And she was still on your back when you  
5 got to the middle of the road?  
6 A. I think she was, yes.  
7 Q. Okay. And as you stood on the sidewalk  
8 before you entered the roadway, were you able to  
9 see all the way across to the other side of 123?  
10 A. I don't remember.  
11 Q. Do you remember looking?  
12 A. I do, but like I don't remember doing  
13 it. I don't remember much of the day, the  
14 accident.  
15 Q. So you have a specific recollection of  
16 looking across 123?  
17 A. Yeah, because I mean, we had to cross,  
18 so we looked. When it was safe, we crossed to the  
19 middle, and then we got to the middle, and then  
20 we'll look at the other side, and I don't remember  
21 much.  
22 Q. Okay. What happened -- after you got  
23 to the middle what's the next thing you remember?  
24 A. The car in the lane closest to us, when  
25 the light turned yellow that car stopped, and so we

11 (Pages 38 - 41))



Page 42

1 started across. And then I saw the next car, and  
2 we weren't going to get out of the way, so my first  
3 instinct -- all I remember is, I've got to protect  
4 Lindsey.

5 Q: I'm sorry?

6 A: I've got to protect Lindsey. So I  
7 tried to protect her.

8 Q: How did you try to protect her?

9 A: I don't know if I like threw her off or  
10 what I did, but...

11 Q: So the vehicle that hit you, do you  
12 remember seeing it before it hit you?

13 A: No.

14 MR. MAUNEY: Where are the ones that we  
15 marked? Do I have those?

16 COURT REPORTER: Yeah, I handed those  
17 back to you. Do you want these back?

18 MR. MAUNEY: No. Those are fine.  
19 I just wanted to make sure I can find the ones we  
20 marked. For some reason -- here they are.

21 MR. LOGAN: What's the exhibit number?

22 MR. MAUNEY: I.

23 MR. LOGAN: Thanks.

24 (DFT. EXHIBIT 1, TRAFFIC COLLISION  
25 REPORT, was marked for identification.)

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1 BY MR. MAUNEY:

2 Q: Let me show you what's been marked as  
3 Exhibit 1 to your deposition.

4 Are you good to continue? Do you need  
5 to take a break yet?

6 A: In like ten minutes.

7 Q: Okay. All right. You just tell me.

8 A: Okay. Thank you.

9 Q: This is the accident report prepared by  
10 the investigating officer. Do you remember seeing  
11 this before?

12 A: No.

13 Q: Okay. And you'll see, he's got a  
14 diagram on there where the vehicle enters the  
15 intersection, and the point of impact with you and  
16 Lindsey. Do you see that?

17 A: Yeah.

18 Q: And so at that point you would have  
19 crossed two lanes of 123 and crossed a turn lane on  
20 123; is that right?

21 A: That's what it looks like.

22 Q: Okay. He has written in the  
23 description that the pedestrians, referring to you  
24 and Lindsey presumably, running across 76 north to  
25 south, and that you were unlawfully in the roadway

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1 due to them not complying with the crosswalk  
2 signals. Do you have any idea why he would have  
3 written that or concluded that?

4 A: No.

5 Q: Do you know of any witnesses to the  
6 accident who said that?

7 A: No.

8 Q: Okay. And then he also says that you  
9 failed to yield the right of way to traffic. Do  
10 you know why he -- have any idea why he would say  
11 that?

12 A: Because I got hit by a car.

13 Q: Have you reviewed any of the material  
14 from the highway patrol, the MAIT report, witness  
15 statements?

16 A: I don't remember.

17 Q: Okay. Have you ever talked to anyone  
18 at Thrift Development Corporation, my client?

19 A: I don't remember.

20 Q: Okay. Do you know or have an opinion  
21 about anything they did to cause the accident?

22 A: I don't know what they did.

23 Q: Have you read any of the documents,  
24 contracts, plans, and specs for the construction  
25 project?

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1 A: I may have. I don't remember them.

2 Q: Okay. Have you reviewed any of the  
3 DOT's documents, Department of Transportation?

4 A: I may have. I don't remember.

5 Q: Okay. Do you know as we sit here today,  
6 what their role was in this project, the DOT?

7 A: They're the Department of  
8 Transportation, so I assume that they have some  
9 control over the highways.

10 Q: Do you know or have an opinion about  
11 anything that they did wrong?

12 A: No, I don't know.

13 Q: Okay. Have you been, other than  
14 physicians that you've seen and counselors and  
15 folks like that related to your medical condition,  
16 have you been interviewed by anyone about this  
17 accident?

18 A: I don't think so, no.

19 Q: Have you given any kind of statement,  
20 written or recorded, to anyone?

21 A: I don't think so.

22 Q: Have you read statements of others?

23 A: I don't remember.

24 Q: You don't have any specific  
25 recollection of reading statements that witnesses

12 (Pages 42 - 45)

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1 care of that. Who would that be?  
 2 A. I don't know.  
 3 Q. Okay. So you think that Clemson can  
 4 make the South Carolina Department of  
 5 Transportation or Thrift Corporation or the City of  
 6 Clemson put up signs or traffic signals or make  
 7 arrangements for safety on roads that they don't  
 8 own or control?  
 9 A. I do.  
 10 Q. Do you have any evidence of that?  
 11 A. No.  
 12 Q. Have you ever known of that happening  
 13 before?  
 14 A. I've never heard -- no.  
 15 Q. Okay. Why are you going to school at  
 16 Clemson if you think they are at fault for your  
 17 accident?  
 18 MR. WHITE: Object to form.  
 19 A. I came down here as a golf management  
 20 major because I thought I wanted to pursue the  
 21 career of golf, and then I changed majors. And I  
 22 really like Clemson, so...  
 23 Q. So you decided to stay?  
 24 A. Yeah. I didn't plan on getting hit by  
 25 a car.

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1 Q. And you are intending to finish out  
 2 your time at Clemson?  
 3 A. I hope so.  
 4 Q. And you have a challenged older brother  
 5 that's in the LIFE program at Clemson?  
 6 A. I do.  
 7 Q. Okay. But you think that they're  
 8 liable in this case and should be held responsible  
 9 for your injuries?  
 10 A. I do.  
 11 Q. Okay. Does your brother live on campus  
 12 or off campus?  
 13 A. He lived on campus for two years. Now  
 14 he lives just off campus.  
 15 Q. Let me ask you some questions, Kevin.  
 16 about your background. You were born and raised in  
 17 Massachusetts, is that right?  
 18 A. Yes, sir.  
 19 Q. What's the name of your hometown?  
 20 A. Hingham.  
 21 Q. Is that a suburb of a larger town?  
 22 A. I don't --  
 23 Q. Or is it a --  
 24 A. It's not small. It's not large. It's  
 25 like a medium-size town I think.

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1 Q. Okay. And do you live in a  
 2 neighborhood there or do you live inside the town  
 3 itself?  
 4 A. Yeah, I live in a neighborhood.  
 5 Q. Do you have roads around your house?  
 6 A. I do.  
 7 Q. Do you have roads with stop signs and  
 8 traffic signals?  
 9 A. I do.  
 10 Q. When you were growing up did you ever  
 11 walk to school or to practice or a friend's house  
 12 or anything like that?  
 13 A. I walked to a friend's house.  
 14 Q. Okay. Did you ever cross the street  
 15 with traffic signals and lights and things?  
 16 A. Not normally to friends' houses, like  
 17 friends lived in the neighborhood.  
 18 Q. Did you ever walk to school or were you  
 19 taken by bus or --  
 20 A. School was pretty far away. Bus or  
 21 ride.  
 22 Q. Okay. Did you ever go into Boston?  
 23 A. Yeah, to watch the Red Sox play or  
 24 something.  
 25 Q. So you've been in large metropolitan

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1 areas before?  
 2 A. Yes, sir.  
 3 Q. And you've used streets with pedestrian  
 4 signals and signs before?  
 5 A. Yes, sir.  
 6 Q. And I'm sure your parents or your mom  
 7 or your dad or your stepdad taught you to stop and  
 8 look before you cross the street?  
 9 A. They did.  
 10 Q. And make sure traffic was clear before  
 11 you attempted to cross?  
 12 A. Yes.  
 13 Q. And if you had a traffic signal or a  
 14 light telling you not to cross, you don't cross,  
 15 right?  
 16 A. Correct.  
 17 Q. The -- your high school, you said you  
 18 played golf, is that right?  
 19 A. (Nods head up and down).  
 20 Q. And did you have any other activities  
 21 in high school?  
 22 A. Played hockey. Big hockey player.  
 23 Q. You played hockey a lot?  
 24 A. Yes, sir.  
 25 Q. Any other clubs or groups or anything.

26 (Pages 98 - 101)

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1 Q. Have you ever talked to Mike about  
2 that?  
3 A. No.  
4 Q. All right. And then it's your  
5 understanding -- well, let me ask you this. Had  
6 you met up with the girls earlier that night or  
7 were you -- in other words, had you been with them  
8 previously before the accident, before you went to  
9 their apartment?  
10 A. I don't remember.  
11 Q. Okay. But it's your recollection that  
12 the group, you and Ray and Skylar and the girls,  
13 including Lindsey, were going back downtown?  
14 A. Yes, sir.  
15 Q. Either back out or to your apartment?  
16 A. Yes, sir.  
17 Q. Okay. Let me ask you a little bit  
18 about the drinking thing. How old were you when  
19 this accident happened, Kevin?  
20 A. 21.  
21 Q. So you were able to purchase alcohol  
22 legally?  
23 A. Yes, sir.  
24 Q. How often did you drink during this  
25 time? How often? How many days a week?

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1 A. Occasional, like game days and maybe a  
2 Thursday or Friday.  
3 Q. Would that be you think once or twice a  
4 week?  
5 A. Yeah.  
6 Q. Is Thursday a typical day that you  
7 would go out and drink with your friends?  
8 A. I wouldn't say typical, but sometimes.  
9 Q. Okay. And when you went out on  
10 Thursdays or any time and had some drinks with your  
11 friends, you testified you typically drink beer?  
12 A. Yes, sir.  
13 Q. And would you all go to any particular  
14 bar or restaurant or place?  
15 A. We would kind of bounce around.  
16 Q. Where would you all bounce around to?  
17 A. To Wingin' It, which is no longer  
18 there.  
19 Q. Right.  
20 A. 356. I don't know, just bars in  
21 Clemson.  
22 Q. Okay. And how would you normally pay  
23 for your drinks when you went to places in Clemson?  
24 A. I would work over the summers, and I  
25 saved some money up, so my own money.

Page 116

1 Q. Okay. Did you have a credit card or a  
2 debit card that you would use?  
3 A. Probably a debit card, yeah.  
4 Q. All right. And did you have tabs or  
5 anything like that at any bars?  
6 A. I don't think so.  
7 Q. What bank is your debit card on? At  
8 that time what bank did you --  
9 A. I think Bank of America.  
10 Q. Do you still have that debit card?  
11 A. I do.  
12 Q. Could you get the account number to  
13 your lawyer?  
14 A. I could.  
15 Q. Thank you. All right. Did you ever --  
16 when you went out drinking, did you ever go out and  
17 drink to the point that you became impaired or  
18 intoxicated?  
19 MR. WHITE: Object to the form.  
20 Q. You can answer.  
21 A. I think so, yeah.  
22 Q. Was that frequent when you went out?  
23 A. No.  
24 Q. Your testimony is it was infrequently  
25 that you would drink to the point where you were

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1 impaired or intoxicated?  
2 A. Yes, sir.  
3 Q. Okay. Before you came to Clemson did  
4 you ever drink?  
5 A. No.  
6 Q. So you started drinking once you got to  
7 Clemson?  
8 A. Yeah.  
9 Q. Did you ever use any drugs, illegal  
10 drugs?  
11 A. No.  
12 Q. All right. Had you ever gotten any  
13 minor in possession charges while you were in high  
14 school or at Clemson?  
15 A. No.  
16 Q. Never been arrested for any reason?  
17 A. No.  
18 Q. Did you have a driver's license?  
19 A. Yeah.  
20 Q. Was it a South Carolina driver's  
21 license or Massachusetts?  
22 A. Massachusetts.  
23 Q. Have you ever had that driver's license  
24 suspended or revoked for any reason?  
25 A. No, sir.

30 (Pages 114 - 117)

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1 MR. TURNER: Trevor, can we get that  
2 driver's license too?

3 MR. WHITE: Sure.

4 MR. TURNER: Thank you.

5 BY MR. TURNER:

6 Q: Had you ever been the subject of any  
7 student affairs or OCS investigation or action  
8 while you were at Clemson?

9 A: No.

10 Q: Okay. How about Ray or Skylar?

11 A: I don't think so.

12 Q: Or Mike?

13 A: No.

14 Q: So y'all are heading the group, after  
15 leaving the girls' apartments, are heading back  
16 across 123 going towards campus?

17 A: Yes, sir.

18 Q: And you said that -- well, let me ask  
19 you this way: When you first approached the  
20 intersection of College Avenue and 123, you were --  
21 which side of the intersection were you on? Were  
22 you on the Sonic side going towards BB&T --

23 A: Yes, sir.

24 Q: -- bank?

25 A: Yes, sir.

Page 119

1 Q: And is there a sidewalk there?

2 A: I think so.

3 Q: Okay. And when you first got to that  
4 intersection did you have to stop for traffic?

5 A: I think so.

6 Q: Okay. And how long were you stopped  
7 for traffic before you started across?

8 A: I don't remember.

9 Q: Do you remember the time?

10 A: No.

11 Q: Do you remember how you were dressed?

12 A: No.

13 Q: Do you remember how Lindsey was  
14 dressed?

15 A: No.

16 Q: At what point did you put Lindsey on  
17 your back?

18 A: I think it was some time walking down  
19 the hill. She said her ankle was hurting or I  
20 don't know what her reason was, but she is an  
21 attractive girl, so I helped her out.

22 Q: Okay. And what hill are you talking  
23 about, Kevin?

24 A: The one -- like when you go -- like you  
25 see Sonic and like you go up that way.

Page 120

1 Q: Oh, okay. Past Sonic?

2 A: Yeah. You keep going further away from  
3 campus.

4 Q: I got you. So y'all were coming down  
5 that hill, and she says --

6 A: She said something.

7 Q: -- I'm tired, my legs hurt, my feet, or  
8 whatever?

9 A: Yeah.

10 Q: And at that point you put her on your  
11 back?

12 A: Yeah. I'm a gentleman.

13 Q: And started piggybacking her?

14 A: Yes, sir.

15 Q: And you carried her on your back to the  
16 intersection?

17 A: (Nods head up and down)

18 Q: Did you ever put her down before you  
19 attempted to cross the intersection?

20 A: I don't know. I don't remember.

21 Q: And so she's on your back and you stop  
22 because you have to wait on traffic, and at some  
23 point you see the light turn yellow, is that right,  
24 on 123?

25 A: Yeah.

Page 121

1 Q: Did the light turn yellow before you  
2 attempted -- started to attempt to cross 123?

3 A: I think so.

4 Q: And then you attempt to cross 123, and  
5 this is where I'm unclear, okay? Did you stop  
6 again before the accident happened?

7 A: Yeah, because when we made it from the  
8 Sonic side to the middle, we stopped again.

9 Q: Okay.

10 A: And then the car closest to the middle  
11 stopped. The light turned yellow, so the car  
12 stopped. We were like, all right. It came to a  
13 complete stop. We started to cross again, didn't  
14 see the car in the next lane that hit me.

15 Q: Okay. So you see the light turn  
16 yellow. Why did you start across? What prompted  
17 you to start across with Lindsey on your back?

18 A: Well, the car in the closest lane came  
19 to a complete stop.

20 Q: Okay. When you say closest lane, okay,  
21 again, you're crossing from Sonic to BB&T?

22 A: Yes.

23 Q: Right. And when you say the car in the  
24 closest lane stopped, do you mean the closest lane  
25 going towards Greenville and Easley? Or which

31 (Pages 118 - 121)

Page 122

1. direction was that car stopped, going --  
 2. A. So like it's Sonic and then two or  
 3. three lanes and then the middle. So we were  
 4. standing in the middle, and the car in the next  
 5. lane going towards Greenville in that direction  
 6. stopped.  
 7. Q. Okay. And is that when you started  
 8. across and the accident happened?  
 9. A. Yeah.  
 10. Q. Okay. So let me back up. I'm going to  
 11. rewind with you, okay? You've got Lindsey on your  
 12. back.  
 13. A. Yeah.  
 14. Q. You come up to the intersection, you  
 15. stop?  
 16. A. Mm-hmm (affirmatively).  
 17. Q. Before you ever start crossing the  
 18. street, you stop because traffic is coming,  
 19. correct?  
 20. A. Mm-hmm (affirmatively).  
 21. Q. And then at some point the light turns  
 22. yellow, okay, and you start across the street with  
 23. Lindsey on your back?  
 24. A. Mm-hmm (affirmatively).  
 25. Q. And then once you get to the middle, as

Page 124  
 1 you saw the car stop, and that's why you started  
 2 across when the accident happened. Why did you  
 3 start to cross the street on the Sonic's side to  
 4 begin with?  
 5. A. Because we had to get downtown.  
 6. Q. Well, why did you think it was safe to  
 7. cross then?  
 8. A. I don't remember.  
 9. Q. Had the light turned yellow at that  
 10. point or were you just trying to make your way to  
 11. the middle so when the light turned yellow you  
 12. could then go across?  
 13. A. Well, there's two different lights,  
 14. like one for the cars going each way.  
 15. Q. Right.  
 16. A. And then up and down.  
 17. Q. Right.  
 18. A. And I don't remember, but we made it to  
 19. the middle, and that's kind of all I remember.  
 20. Q. Yeah. Did you go to the middle on a  
 21. green light or a yellow light for traffic on 123?  
 22. A. I don't remember.  
 23. Q. Did you think you were intoxicated or  
 24. impaired that night?  
 25. A. I don't remember.

Page 123

1 you described it, you stop again?  
 2. A. Yes, sir.  
 3. Q. And then the car closest to you, in the  
 4. lane closest to you going towards Greenville,  
 5. stops?  
 6. A. Stopped because the light turned yellow  
 7. and they stopped.  
 8. Q. Okay. And then you start across. You  
 9. get past that car.  
 10. A. Yes, sir.  
 11. Q. Okay. And that's when you're hit by a  
 12. car in the one lane over?  
 13. A. Yeah.  
 14. Q. Is that right?  
 15. A. That is.  
 16. Q. Was the car that was stopped going  
 17. toward Greenville in the inside lane or in the turn  
 18. lane where you can turn going towards the direction  
 19. of their apartments?  
 20. A. I don't. I think it was the inside  
 21. lane. I'm not positive, but I think it was the  
 22. inside lane.  
 23. Q. Okay. All right. And I know you feel  
 24. like I'm repeating things, and I may be. I'm not  
 25. meaning to. But what I'm trying to get clear is,

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1 Q. Could have been. You just don't  
 2 remember?  
 3. A. Correct.  
 4. MR. WHITE: Object to form.  
 5. Q. If you were impaired or intoxicated, do  
 6. you think that it had any bearing on why this  
 7. accident happened?  
 8. MR. WHITE: Object to form.  
 9. A. I don't remember.  
 10. Q. Could have been. You just don't  
 11. remember?  
 12. MR. WHITE: Same objection.  
 13. Q. Is that right?  
 14. A. Yeah.  
 15. Q. How many times do you think you had  
 16. gone through this intersection either on foot or in  
 17. a car?  
 18. A. I don't know. I mean, in a car I would  
 19. assume a decent amount to get food.  
 20. Q. Okay. Well, you've been at Clemson for  
 21. four years, correct?  
 22. A. Yes, sir.  
 23. Q. And it was not infrequently that y'all  
 24. went to 123 to get some food somewhere?  
 25. A. Correct.

32 (Pages 122 - 125)

Page 126

1 Q: And so would you believe you were  
2 familiar with the intersection?  
3 A: I think so.  
4 Q: Had you ever noticed the construction  
5 project going on at the intersection before this?  
6 A: I don't remember.  
7 Q: Do you remember going through the  
8 intersection during the construction project?  
9 A: I don't remember.  
10 Q: Do you understand what the construction  
11 project was for, what they were doing on the  
12 intersection?  
13 A: No.  
14 Q: Before going through the intersection  
15 did you feel the intersection was unsafe?  
16 A: I don't remember.  
17 Q: Did you ever call Clemson or the City  
18 of Clemson or Thrift or the highway department and  
19 tell them you thought the intersection was unsafe?  
20 A: I don't remember.  
21 Q: Do you know anybody who had done that,  
22 called anybody about the intersection?  
23 A: I don't remember.  
24 Q: Kevin, do you think you have a duty or  
25 responsibility to look out for your own safety in

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1 crossing streets?  
2 A: I do.  
3 Q: Have you ever talked to anybody at  
4 Clemson about what happened in the accident? I  
5 know you've had a lot of contact with a lot of  
6 people at Clemson about your classes and going to  
7 school there and what have you, but have you ever  
8 talked to anybody at Clemson about how the accident  
9 happened or what happened?  
10 A: I don't think so.  
11 Q: Have you ever received any counseling  
12 at Redfern?  
13 A: No.  
14 Q: Have you ever had a fake ID, Kevin?  
15 A: I don't think so.  
16 Q: You don't think so?  
17 A: I don't think so.  
18 Q: You don't remember?  
19 A: I don't remember.  
20 Q: You might have. You just don't  
21 remember?  
22 A: Yeah, I don't remember.  
23 Q: How did you drink while you were at  
24 Clemson when you were underage?  
25 MR. WHITE: Object to form.

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1 A: I don't remember.  
2 Q: Did people buy it for you, or do you  
3 remember?  
4 MR. WHITE: Same objection.  
5 A: I don't remember.  
6 Q: Did you ever drink with your  
7 fraternity?  
8 A: I think so, yeah.  
9 Q: Did y'all ever have any parties with  
10 alcohol there?  
11 A: Yes.  
12 Q: Was that frequent?  
13 A: Not frequent, but we had parties.  
14 Q: If you had a keg or beer out or  
15 whatever?  
16 A: No kegs.  
17 Q: Okay. You had beer out?  
18 A: Yeah.  
19 Q: Cooler?  
20 A: Yeah.  
21 Q: You said you thought Clemson was at  
22 fault in this case. Who else do you think is at  
23 fault for this accident?  
24 A: I think whoever controlled that  
25 highway.

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1 Q: Okay. And why are they at fault?  
2 A: Because it wasn't safe to cross. I  
3 don't remember the crossing -- the pedestrian  
4 lights working, so I think that's something they  
5 should probably take care of.  
6 Q: Okay. Anybody else?  
7 A: Clemson DOT. I don't know who else.  
8 Q: How about Mr. Williams, the driver of  
9 the vehicle?  
10 A: The guy who hit me? Yes, yes, yes.  
11 Q: Have you talked to anybody who saw the  
12 accident who could testify as to Mr. Williams'  
13 speed?  
14 A: No.  
15 Q: Have you ever seen anything that  
16 indicates he may have been traveling 50 miles an  
17 hour or more?  
18 A: I don't remember, no.  
19 COURT REPORTER: Did you say 15 or 50?  
20 MR. TURNER: 50.  
21 A: I don't know. I don't remember.  
22 Q: But you do think he's at fault in your  
23 opinion?  
24 A: I do.  
25 Q: And why is he at fault?

33 (Pages 126 - 129)

Page 138

1 Q. And then you would walk for about two  
2 minutes behind Spill the Beans, and that's where  
3 this house would be, is that right?  
4 A. Yes, sir.  
5 Q. Okay. So to then go from there to  
6 walking down to the intersection of 123 and College  
7 Avenue, you would come out at Spill the Beans and  
8 then walk on down that side?  
9 A. Yeah.  
10 Q. -- of College Avenue?  
11 A. That's how you get there.  
12 Q. Okay. All right. When you went -- let  
13 me ask you this: What is the last clear memory  
14 that you have prior -- on the day of this accident,  
15 the day and the evening of this accident, of that  
16 day or evening, what's the last clear thing you  
17 remember?  
18 A. The car pulling up and stopping.  
19 Q. Okay. You have no memory of the  
20 activities that preceded that on that evening or  
21 that day? Is that what you're telling us?  
22 A. Yeah. My friend told me we had an  
23 accounting test. I don't remember that.  
24 Q. Okay. What about the day prior to  
25 that? What's the last clear memory that you have

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1 prior to this accident?  
2 A. I don't know. I don't remember much.  
3 I don't really remember anything.  
4 Q. You don't remember being in class that  
5 week at all?  
6 A. I remember -- well, from that semester  
7 me and my roommate Mike went to the gym a lot.  
8 That's probably why I survived getting hit by a  
9 car, because I was in pretty good shape I would  
10 say.  
11 Q. All right.  
12 A. So.  
13 Q. So you remember going to the gym --  
14 A. I just remember we went to the gym a  
15 lot.  
16 Q. Okay. All right. Anything else you  
17 remember about that week?  
18 A. No, sir.  
19 Q. Okay. What about at any time that --  
20 what's the last memory you have of anything you  
21 were doing that semester at Clemson prior to this  
22 accident?  
23 A. I don't -- nothing in particular.  
24 Just.  
25 Q. Okay. Now, when you went out drinking,

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1 on the occasions that you did, who would you  
2 usually go with?  
3 MR. WHITE: Object to form.  
4 A. Like Skylar, Ray, Mike.  
5 Q. The ones that you've mentioned here?  
6 A. My three friends, yes.  
7 Q. Okay. When you went drinking with  
8 these folks, were you pretty much always together  
9 when you were engaging in that conduct?  
10 A. I think so, yeah.  
11 Q. Okay. Anybody else that would be in  
12 that group with you?  
13 A. I don't remember.  
14 Q. Okay. Any females?  
15 A. No.  
16 Q. You don't recall having anything to eat  
17 or drink at all the day of this accident. Is that  
18 what you're telling us?  
19 A. I don't remember that day.  
20 Q. Okay. Now, if I understand your  
21 testimony correctly, and I'm talking about the --  
22 your conduct immediately prior to this accident,  
23 the young lady was on your back because of the  
24 reasons that you have given us, but you don't know  
25 who else, if anybody, was with you at that time.

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1 Is that correct?  
2 A. Correct. Maybe Skylar, maybe Ray, but  
3 it's not definite. I don't really remember that  
4 day.  
5 Q. And you carried her down the hill  
6 underneath the railroad trestle, down the hill to  
7 the intersection with 123?  
8 A. Yes, sir.  
9 Q. On the Sonic side?  
10 A. I think so, yeah.  
11 Q. Okay. And you cannot tell us what the  
12 color of the light was for the traffic that would  
13 be coming from left to right at that intersection?  
14 A. I don't -- I can't.  
15 Q. You don't remember that?  
16 A. I don't remember.  
17 Q. Okay. All you remember is that you,  
18 with this young lady on your back, crossed that  
19 lane of travel, and you don't remember the color of  
20 the light to the median area?  
21 A. Yes, sir.  
22 Q. Okay. And when you got to the median  
23 area, you do remember that the light for the  
24 traffic that was following on -- that was traveling  
25 on 123 from right to left was yellow?

36 (Pages 138 - 141)

Page 142

1 A. Yes, sir.  
 2 Q. And when that light was yellow, you,  
 3 with that lady on your back, started crossing that  
 4 lane of travel?  
 5 A. Because the first car was stopped, so  
 6 we started to cross.  
 7 Q. The first car was stopped, but you  
 8 testified that the light was yellow?  
 9 A. From what I remember.  
 10 Q. From what you remember. And with that  
 11 knowledge you still started crossing that light,  
 12 that intersection with that light in that  
 13 condition, if I understand your testimony?  
 14 A. I think so.  
 15 Q. Okay.  
 16 A. I'm not positive, though.  
 17 MR. LOGAN: Okay. Thank you, sir.  
 18 That's all I've got.  
 19 MR. WHITE: I have nothing. If you all  
 20 have follow-up questions.  
 21 MR. TURNER: I don't have anything.  
 22 MR. MAUNEY: I actually have a few, but  
 23 we won't be long. I think I need the mic. There's  
 24 only one, so we have to share.  
 25 (Off-the-record conference.)

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## EXAMINATION

1 BY MR. MAUNEY:  
 2 Q. What was your first semester at  
 3 Clemson?  
 4 A. Fall 2011.  
 5 Q. Do you remember in August of 2012,  
 6 August 16th, 2012, being at Boston Children's  
 7 Hospital and being diagnosed with acute hepatitis?  
 8 A. I don't.  
 9 Q. Okay. Do you recall that you reported  
 10 to them increased drinking over the past two weeks  
 11 with friends?  
 12 A. I don't.  
 13 Q. That you had been, in the words from  
 14 the medical records, binge drinking with friends?  
 15 A. I don't.  
 16 Q. Do you recall any of your doctors ever  
 17 talking to you about your history of hepatitis?  
 18 A. I don't.  
 19 Q. Do you recall any of your physicians  
 20 instructing you to avoid excessive alcohol  
 21 consumption because of that?  
 22 A. I don't.  
 23 Q. What was your father's cause of death?  
 24 A. Drinking.

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1 Q. It was related to alcohol?  
 2 A. I think so.  
 3 Q. Have you ever used marijuana?  
 4 A. I don't think so.  
 5 Q. Do you know why the Greenville Hospital  
 6 System records, dated 11/3/14, refer to a history  
 7 of social alcohol and episodic marijuana abuse?  
 8 A. I do not.  
 9 Q. I know we talked about you took a  
 10 German course at Boston University in 2015 after  
 11 the accident. There's a reference in Dr.  
 12 Parks-Cohen's neuropsychological report to your  
 13 enrolling also in finance and accounting classes at  
 14 Harvard Extension School?  
 15 A. I forgot about those.  
 16 Q. Okay. Did you complete those classes?  
 17 A. I think so.  
 18 Q. Okay. Where did you physically have to  
 19 go to take those?  
 20 A. I think one was online and the other I  
 21 had to -- my mom or stepdad would drive me into the  
 22 city.  
 23 Q. Do you remember how you did on those?  
 24 A. I don't.  
 25 MR. MAUNEY: That's all the questions I

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1 have. Thank you.  
 2 VIDEOGRAPHER: With no other questions,  
 3 then, this completes our video deposition. We  
 4 created two media files. Going off the record at  
 5 13:16.  
 6 (The witness, after having been advised  
 7 of his right to read and sign this transcript,  
 8 waives that right.)  
 9 COURT REPORTER: Mr. Mauney, you are  
 10 going to get the original. Would you like a hard  
 11 or electronic copy with that?  
 12 MR. MAUNEY: Both.  
 13 COURT REPORTER: And Mr. White, would  
 14 you like a copy?  
 15 MR. WHITE: Yeah. I'll both take both  
 16 as well.  
 17 COURT REPORTER: Mr. Mauney, would you  
 18 like your video synced?  
 19 MR. MAUNEY: Synced.  
 20 COURT REPORTER: And Mr. White, would  
 21 you like the video?  
 22 MR. WHITE: I don't need the video.  
 23 COURT REPORTER: Mr. Turner, do you  
 24 want a copy of the transcript?  
 25 MR. TURNER: Yes, I do. I want hard

37 (Pages 142 - 145)



Volume: I

Pages: 1-94

Exhibits: One

IN THE COURT OF COMMON PLEAS  
STATE OF SOUTH CAROLINA

CONDENSED  
TRANSCRIPT

COUNTY OF PICKENS

SUPERIOR COURT

CIVIL ACTION NO. 2016-CP-01223

\* \* \* \* \*

KEVIN M. GRANATINO,

PLAINTIFF

v.

CALVIN WILLIAMS, CLEMSON UNIVERSITY,  
SOUTH CAROLINA DEPARTMENT OF  
TRANSPORTATION and THRIFT DEVELOPMENT  
CORPORATION,

DEFENDANTS

\* \* \* \* \*

DEPOSITION OF LINDSEY JONES, a witness called on  
behalf of the Defendant, South Carolina Department of  
Transportation pursuant to the provisions of the South  
Carolina Rules of Civil Procedure, before Lisa  
McDonald Valdario, (CSR #130093), a Registered  
Professional Reporter, Certified Realtime Reporter,  
and Notary Public in and for the Commonwealth of  
Massachusetts, held at Homewood Suites by Hilton  
Boston/Brookline, 111 Boylston Street, Brookline,  
Massachusetts 02445, on Monday, November 13, 2017,  
commencing at 10:22 a.m.

Job No. CS2730629

Page 26

1 Q Okay. Do you remember the first place that y'all  
2 went to?  
3 A Yes.  
4 Q Where was that?  
5 A We went, we were downtown at Wingin' It.  
6 Q At Wingin' It?  
7 A Correct.  
8 Q And where is that located?  
9 A Downtown Clemson.  
10 Q Okay. Well, I know -- I realize that's not very  
11 big, but can you, in relation to, say, the  
12 Tigertown Graphics, or some of the stores  
13 downtown, where is it located?  
14 A I believe across the street.  
15 Q From?  
16 A From Tigertown.  
17 Q From Tigertown?  
18 A Correct.  
19 Q Is it still there?  
20 A Yes.  
21 Q Okay. How long did y'all stay there?  
22 A Maybe an hour or two.  
23 Q And what did you do there?  
24 A We ate, had drinks.  
25 Q Okay. Did anyone else join your party while you

Page 27

1 were at Wingin' It?  
2 A I don't recall.  
3 Q Okay. And you were there for about an hour?  
4 A Or two.  
5 Q Or two. Do you recall how much -- when you say  
6 "drinks," are you talking about alcohol?  
7 A Correct.  
8 Q Okay. Do you recall how much alcohol you drank?  
9 A No, sir.  
10 Q You don't recall what type of alcohol you drank?  
11 A No.  
12 Q Do you recall what kind of drinks that you had, if  
13 they had a name?  
14 A No.  
15 Q But it was not -- it was alcohol as opposed to  
16 just beer.  
17 A Correct.  
18 Q Okay. What do you normally drink, alcoholic-wise?  
19 Did you have a favorite drink?  
20 A I don't drink very much very often.  
21 Q Okay. Well, that night, did you have a favorite  
22 drink that night?  
23 A I don't remember.  
24 Q You don't remember. Okay.  
25 But you had several drinks while you were

Page 28

1 there for that hour or two hours.  
2 A Correct.  
3 Q You have no idea how many.  
4 A No.  
5 Q Okay.  
6 Did you feel, when you left there, that you  
7 were intoxicated?  
8 A I suppose.  
9 Q You suppose? Okay.  
10 A Yeah.  
11 Q And where did you go after you left Wingin' It?  
12 A I went to a friend's house.  
13 Q Okay. How did you get -- did you -- strike that.  
14 When you left your apartment, the loft, that's  
15 where your group left from originally around 7, is  
16 that right?  
17 A I believe we left from the hotel, is where we were  
18 living at the time.  
19 Q Oh, I thought you referred to that as the loft.  
20 Okay. That's the hotel?  
21 A Sorry. Yeah.  
22 Q Okay. And how did you get from the hotel to  
23 Wingin' It?  
24 A We walked.  
25 Q You walked. Okay.

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1 All right, when you left Wingin' It, how did  
2 you leave there going to a friend's house?  
3 A We walked.  
4 Q Okay. And who was that friend?  
5 A My friend Alysson.  
6 Q Alysson. Spell that for me, please?  
7 A A L Y S S O N.  
8 Q And last name?  
9 A Randolph.  
10 Q R A N D?  
11 A O L P H.  
12 Q Okay. And Alysson is female?  
13 A Correct.  
14 Q And how old is Alysson, or how old was she at the  
15 time?  
16 A How old?  
17 Q Yes.  
18 A She's a year older than me.  
19 Q So if you were 21, she was 22 at the time, okay?  
20 And where did she live?  
21 A In a house.  
22 Q Where?  
23 A Up past the Sonic.  
24 Q Okay. So you went back toward 123.  
25 A Correct.

8 (Pages 26 - 29)

Page 30

1 Q Okay. And when you left the hotel, tell me the  
2 route that you took to get to Wingin' It. Did  
3 you -- if it's on the opposite side of 123, where  
4 did you cross over 123 to walk downtown?  
5 A At the set of lights.  
6 Q Okay. Where this incident ultimately occurred?  
7 A Yes. But it would have been on the other side.  
8 Q Okay. So you approach from the hotel. Did you  
9 walk along the railroad side of 123?  
10 A Correct.  
11 Q And then you walked to the intersection where the  
12 railroad trestle is, is that correct?  
13 A Correct.  
14 Q Did you cross over Tiger Boulevard, or did you  
15 cross over 123 at that intersection, if you  
16 remember?  
17 A I don't remember.  
18 Q Okay. But at that intersection, you crossed over  
19 123, and is that called Tiger Boulevard that you  
20 went on down to Wingin' It?  
21 A I believe so.  
22 Q Then you walked from there down to Wingin' It?  
23 A Correct.  
24 Q So to get to Wingin' It, you had to cross 123  
25 initially.

Page 31

1 A Yes.  
2 Q And was it still daylight or was it dark at that  
3 time?  
4 A Yes.  
5 Q It was daylight?  
6 A Right.  
7 Q Did you have any trouble, did any of y'all in the  
8 group have any trouble walking across 123 at that  
9 point?  
10 A No.  
11 Q Okay.  
12 MR. WHITE: Object to form.  
13 Q He's just preserving the record. You can still  
14 answer the question.  
15 How was the traffic when you crossed over at  
16 that time?  
17 A I don't remember.  
18 Q But you don't remember having any difficulty  
19 crossing over 123 at that point.  
20 A No.  
21 Q All right. Did you notice any traffic lights or  
22 traffic signals operating?  
23 A No.  
24 Q You didn't pay any attention one way or the other?  
25 A I did this walk everyday almost. It became second-

Page 32

1 nature.  
2 Q Well, how did you know when to cross over safely?  
3 A I don't know.  
4 Q Did you look for signs telling you that, or  
5 signals telling you it was okay for pedestrians to  
6 cross, did you look for traffic lights for traffic  
7 on 123 being either red, or green, or --  
8 A I don't remember what I did that day.  
9 Q What did you normally do? Since you crossed over  
10 that street so much, what did you normally do?  
11 A Just checked the traffic.  
12 Q Just checked the traffic?  
13 A Yes.  
14 Q Okay. Did you ever notice any pedestrian signals  
15 for traffic to -- I mean for pedestrians to cross  
16 over?  
17 A Yes.  
18 Q Okay. So they were operating, -- as well as you  
19 remember, pedestrian signals were operating at  
20 that time that you crossed over.  
21 A I don't remember if it was that time.  
22 MR. WHITE: Object to form.  
23 Q Well, do you ever remember a time when you crossed  
24 over 123 that pedestrian signals were not working  
25 for pedestrians?

Page 33

1 A Not that I recall.  
2 Q Okay. Do you ever remember a time when you were  
3 crossing over 123, that traffic lights for  
4 vehicles traveling 123 were not operating?  
5 A I don't recall.  
6 Q Okay. You don't remember a time, do you?  
7 A No.  
8 Q Okay. Now, to get from Wingin' It to your friend  
9 Alysson's house, did you have to walk back down  
10 Tiger Boulevard to 123?  
11 A Correct.  
12 Q Okay. So you and your roommates and Elyse made  
13 that walk again, is that right?  
14 A Yes.  
15 Q All right. Did you cross back over 123?  
16 A Yes.  
17 Q To get to her house.  
18 A Yes.  
19 Q And by that time, was it dark?  
20 A I don't remember.  
21 Q Okay. Well, that would have been, if you started  
22 out around 7, that would have been around 9 p.m.  
23 So in October of that time of year, don't you  
24 think it probably would have been dark at that  
25 time?

9 (Pages 30 - 33)

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Page 34

- 1 A. Probably.
- 2 Q. Okay. Did either you or your friends have any
- 3 difficulty crossing over, 123 this second time?
- 4 A. No.
- 5 MR. WHITE: Object to form.
- 6 Q. To your knowledge, were the -- did you -- were
- 7 there pedestrian signals that were working when
- 8 you crossed back over?
- 9 A. I don't remember.
- 10 Q. Okay. But you don't ever remember a time when
- 11 they weren't working, is that correct?
- 12 A. Correct.
- 13 Q. Were the traffic lights working for vehicles at
- 14 that time, now around 9:00?
- 15 A. I don't remember.
- 16 Q. Okay. All right. Now, these other young ladies
- 17 that were with you, had they had alcohol to drink
- 18 at Wingin' It?
- 19 A. Yes.
- 20 Q. Okay. Had anybody joined you from walking from
- 21 Wingin' It to your friend's house?
- 22 A. Yes.
- 23 Q. And who was that?
- 24 A. Kevin.
- 25 Q. Okay, where did you meet up with Kevin?

Page 35

- 1 A. I don't remember exactly.
- 2 Q. Did he come in to Wingin' It?
- 3 A. I don't remember.
- 4 Q. Okay. Did he -- were you already at your friend's
- 5 house, Alysson's house, when he joined you?
- 6 A. No.
- 7 Q. Okay. So somewhere along either at Wingin' It or
- 8 as you and your friends were walking to Alysson's
- 9 house, Kevin joined you, is that correct?
- 10 A. Correct.
- 11 Q. Did anyone else join you?
- 12 A. Yes.
- 13 Q. Who all joined you?
- 14 A. His name is Parker Jones.
- 15 Q. Tell me about Parker. Is he a -- was he a student
- 16 there?
- 17 A. Correct.
- 18 Q. Do you know what his major was?
- 19 A. Engineering.
- 20 Q. And what year was he?
- 21 A. I think he graduated a year after us.
- 22 Q. So that would be 2017? Do you know where he's
- 23 from?
- 24 A. Massachusetts.
- 25 Q. Okay. And how did you know Parker?

Page 36

- 1 A. He was a friend.
- 2 Q. Okay. How did you know Kevin?
- 3 A. He was a friend.
- 4 Q. So you'd known Kevin for awhile? Did y'all ever
- 5 go out together?
- 6 A. We would see each other.
- 7 Q. So it wasn't uncommon for you, and Kevin, and
- 8 Parker, and your roommates to gather and have a
- 9 little group that you went out with, is that what
- 10 you're telling me?
- 11 A. Correct.
- 12 Q. Did you know Kevin before you got to Clemson?
- 13 A. No.
- 14 Q. Okay. But he's from this area in Massachusetts,
- 15 is that right?
- 16 A. Correct.
- 17 Q. But you didn't know him or his family?
- 18 A. No.
- 19 Q. Until you got to Clemson.
- 20 A. Correct.
- 21 Q. Did you ever meet his parents? Have you ever met
- 22 his parents or stepparents?
- 23 A. Yes.
- 24 Q. When did you meet them?
- 25 A. After.

Page 37

- 1 Q. After the incident?
- 2 A. Correct.
- 3 Q. Okay. And where did you meet them?
- 4 A. I've met them at the hospital.
- 5 Q. Okay. In Anderson?
- 6 Do you need to take a break? You okay? You
- 7 need some kleenex?
- 8 Okay.
- 9 Have you spoken with him since you saw them
- 10 at the hospital?
- 11 A. I visited him several times in the hospital.
- 12 Q. Okay.
- 13 A. But not since then.
- 14 Q. Okay. Have you spoken with him by phone at all?
- 15 A. No.
- 16 Q. Okay. All right, let's go back to that night.
- 17 Kevin joined you, and did Parker join you with
- 18 Kevin?
- 19 A. Yes.
- 20 Q. All right. Who else joined you, if anybody?
- 21 A. There was a boy named Raymond.
- 22 Q. Raymond?
- 23 A. Correct.
- 24 Q. R A Y M O N D?
- 25 A. Yes.

10 (Pages 34 - 37)

Page 38

1 Q What's his last name?  
 2 A I don't recall.  
 3 Q Okay. Did you know him?  
 4 A Yes.  
 5 Q Okay. You just don't recall his last name?  
 6 A Yeah.  
 7 Q Was he a business, I mean engineering major as  
 8 well?  
 9 A I believe so.  
 10 Q Do you know what year he was?  
 11 A 2016.  
 12 Q And do you know where he's from?  
 13 A No.  
 14 Q Okay. Had you been with him in a group before?  
 15 A Yes.  
 16 Q Okay. Did Kevin and Parker and Raymond live  
 17 together?  
 18 A I don't think so.  
 19 Q Okay. Did Kevin and Parker live together?  
 20 A They might have at some point.  
 21 Q Okay. All right. Did anyone else join you and  
 22 your friends?  
 23 A Not that I recall.  
 24 Q Okay. All right. So but all of you, as you were  
 25 going to your friend Alysson's house before you

Page 39

1 got to 123, were all of you together?  
 2 A Yes.  
 3 Q Okay. So all of you crossed over 123.  
 4 A Yes.  
 5 Q Did you cross over on the Starbucks side of 123 or  
 6 on the drug store side of 123?  
 7 A I believe the Starbucks side.  
 8 Q The Starbucks side, okay. Did you or anyone in  
 9 your group have any difficulty crossing the  
 10 street?  
 11 A No.  
 12 Q Okay.  
 13 MR. WHITE: Object to form.  
 14 Q Do you know whether or not, when Kevin, and  
 15 Parker, and/or Raymond joined you, that any of  
 16 them had been drinking?  
 17 A I don't know.  
 18 Q You don't know. Okay. All right. Once you got  
 19 to and crossed over 123, where did your group go  
 20 to?  
 21 A To Alysson's house.  
 22 Q Okay. And do you know Alysson's address?  
 23 A No.  
 24 Q Do you know the street that she lived on?  
 25 A No.

Page 40

1 Q All right. Well, let's cross over 123. I assume  
 2 you went over the railroad trestle?  
 3 A Um-hmm.  
 4 Q Guide me to Alysson's house. If you go under the  
 5 railroad trestle, and then you sort of walk up a  
 6 hill, do you keep on going over the top of the  
 7 hill, or do you turn right or left at some point?  
 8 A It's a left off of that road at some point.  
 9 Q Okay. All right. The first thing you come to is,  
 10 once you go up that hill, there will be a  
 11 left-hand turn road. Is that the road that you  
 12 turned left on, or did you go past that first  
 13 left?  
 14 A I don't remember. That was the only time I went  
 15 there.  
 16 Q First time you'd been to Alysson's house?  
 17 A Correct.  
 18 Q What was going on at Alysson's house?  
 19 A There were friends at her house, and I went to say  
 20 hi.  
 21 Q So your group consisted of Elyse, your three  
 22 roommates, Kevin, Parker, and Raymond, and then  
 23 you joined another group at Alysson's house, is  
 24 that right?  
 25 A Yes.

Page 41

1 Q What was going on at Alysson's house? And this  
 2 was around 9:00 or a little after.  
 3 A I think people were just hanging out. I was not  
 4 there very long.  
 5 Q Okay. Can you estimate for me how many people  
 6 were there?  
 7 A Maybe around six or seven.  
 8 Q Okay.  
 9 Do you remember the names of any of the  
 10 people that were there that were not a part of  
 11 your group, besides Alysson?  
 12 A Yes.  
 13 Q All right. Who was there?  
 14 A Her name is Rebecca Newman.  
 15 Q Okay. Tell me about Rebecca. Is she -- she was a  
 16 Clemson student?  
 17 A Correct.  
 18 Q What year, do you remember?  
 19 A Same as Alysson.  
 20 Q 20 --  
 21 A -- '15.  
 22 Q '16? Did they live together?  
 23 A Yes.  
 24 Q Okay. All right. Do you know what her major was?  
 25 A No.

11 (Pages 38 - 41)

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Page 46

- 1 Q Okay. So this time you would have walked down  
2 that street, turned to the right?  
3 A Um hmm.  
4 Q The street that Alysson's house is on, turned to  
5 the right, walked down the hill toward the  
6 railroad trestle.  
7 A Yes.  
8 Q Underneath the trestle, and then to the  
9 intersection of that street with 123, is that  
10 right?  
11 A Yes.  
12 Q And then what did you do? Did you stop anywhere  
13 before or during the time that you left Alysson's  
14 house, other than stopping at the intersection of  
15 123?  
16 A I don't believe so.  
17 Q You didn't go to anybody else's house?  
18 A No.  
19 Q No other function, or no other party or anything  
20 of that nature?  
21 A No.  
22 Q So you walked straight from Alysson's house down  
23 123. Tell me what you did when you got down 123.  
24 A I don't remember.  
25 Q You don't remember. Okay.

Page 47

- 1 But the ones that were with you, were you,  
2 Kevin, Parker, Elyse, and Raymond.  
3 A Yes.  
4 Q Okay. All right. I've got some information and  
5 records that we'll get to in a few minutes that  
6 indicate that you were riding on Kevin's back  
7 crossing the street. Do you remember doing that?  
8 A I don't remember physically doing that, no. I  
9 remember why.  
10 Q Why?  
11 A My boot had been giving me a blister and he  
12 offered to --  
13 Q Your boot. Which one, left or right?  
14 A I think it was right.  
15 Q Okay. And he offered to carry you across the  
16 street?  
17 A Yes.  
18 Q Okay. All right. Tell me what you do remember,  
19 if anything, from the time -- I assume you got on  
20 his back before you tried to cross 123, is that  
21 right?  
22 A Um hmm.  
23 Q Do you actually remember jumping on his back?  
24 A No.  
25 Q Okay. What's the last thing you remember as you

Page 48

- 1 were approaching 123?  
2 A I don't remember anything around that time.  
3 Q Okay. You don't remember the accident?  
4 A No.  
5 Q Do you remember anything about -- you need to take  
6 a break? Do you remember anything about the  
7 traffic lights and their operation?  
8 A Nothing.  
9 Q Do you remember anything about the pedestrian  
10 signals and their operation?  
11 A No, sir.  
12 Q What's the first thing -- what's the last thing  
13 you remember as you were traveling down toward  
14 123?  
15 A Just walking in a group.  
16 Q In a group?  
17 A Yeah.  
18 Q Do you actually remember getting to the  
19 intersection?  
20 A No.  
21 Q Okay. Do you remember crossing under the railroad  
22 trestle?  
23 A No.  
24 Q Do you remember leaving Alysson's house?  
25 A Yes.

Page 49

- 1 Q Okay. But some time between Alysson's house and  
2 that walk is when your memory stops, is that  
3 correct?  
4 A Yes.  
5 Q Okay. Can you estimate for me how long it takes  
6 you to get from the trestle to Alysson's house?  
7 A Maybe 10 or 15 minutes.  
8 Q Okay. So sometime between leaving Alysson's house  
9 and getting to 123, during that 10 to 15 minutes,  
10 is when your memory goes blank.  
11 A Correct.  
12 Q So you don't even remember getting to 123, is that  
13 right?  
14 A No.  
15 Q Okay. And you don't remember jumping on his back?  
16 A No.  
17 Q You don't remember anything about the lights.  
18 A No.  
19 Q Either traffic or pedestrian. You don't remember  
20 anything about the incident -- the collision with  
21 the vehicle.  
22 A No.  
23 Q At all, is that correct?  
24 A Correct.  
25 Q What's the first thing you remember about this

13 (Pages 46 - 49)

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS  
2 COUNTY OF PICKENS )  
3

4 Kevin M. Granatino,  
5 Plaintiff,  
6

Condensed  
Transcript

-vs-

) C.A. No: 2016-CP-39-01223  
)

7 Calvin Williams, Clemson )  
8 University, South Carolina )  
9 Department of Transportation )  
and Thrift Development )  
Corporation, )  
10 Defendants. )  
11  
12

Deposition of LANCE CORPORAL J.L. CRAIG, a witness  
called by Counsel on behalf of the Defendants, pursuant  
to the applicable provisions of the South Carolina Rules  
of Civil Procedure, taken before Cynthia L. Weathers, a  
Professional Court Reporter and Notary Public in and for  
the State of South Carolina, on June 29, 2017 at  
Gallivan White & Boyd, P.A., 55 Beattie Place, Suite  
1200, Greenville, South Carolina, commencing at the hour  
of 2:05 p.m.

21  
22  
23  
24  
25 Job No. CS2633468

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Page 34

1 him a reading there of what that drag factor would  
2 be.  
3 Q. The .83 drag sled factor that was used, were you  
4 involved in determining that?  
5 A. Well, I pulled the drag sled. Corporal Brooks  
6 performed all the calculations on this case, so he  
7 would have been the one that come up with a .83  
8 based on his calculations.  
9 Q. If you'd turn the page to page 45, this was the  
10 original report prepared by the City Police, is  
11 that correct?  
12 A. Yes, sir. It appears to be.  
13 Q. And then they prepared a final report after the  
14 investigation was done?  
15 A. Yes, sir. And I assume that's the one that you had  
16 showed me earlier.  
17 Q. Yes. It shows the speed as 39 miles per hour for  
18 Mr. Williams based on ya'll's calculation?  
19 A. On the final --  
20 Q. Yes?  
21 A. -- TR-310.  
22 Q. Yes?  
23 A. Yes, sir. Yes, sir. It is.  
24 Q. It also states no for alcohol/drug info. Do you  
25 see that?

Page 35

1 A. Yes, sir. That's on the back page of the report.  
2 Q. And did you become aware at any time that there was  
3 information from the hospital that he had tested  
4 positive for alcohol?  
5 A. No, sir.  
6 MR. WHITE: Object to form.  
7 BY MR. MAUNEY: (Resuming)  
8 Q. Have you seen those results?  
9 A. No, sir.  
10 MR. WHITE: Object to form.  
11 BY MR. MAUNEY: (Resuming)  
12 Q. The description that Officer Johnson had in  
13 accident report, I may have asked you this but I  
14 just want to make sure I'm clear, it states that  
15 pedestrians were "unlawfully in the roadway due to  
16 them not complying with crosswalk signals." Do you  
17 know why that information was placed in the  
18 accident report?  
19 MR. WHITE: Object to form.  
20 A. No, sir.  
21 BY MR. MAUNEY: (Resuming)  
22 Q. Okay. It also says the pedestrians failed to yield  
23 to the traffic. So you see that?  
24 A. Yes, sir.  
25 Q. Okay. Did you receive information in your

Page 36

1 investigation that suggested that they had failed  
2 to yield to traffic?  
3 A. Well, it depends on -- well, yes, sir. I mean  
4 obviously they failed to yield to traffic because  
5 there's traffic there or they wouldn't have been  
6 struck. So I'm not sure if I understand  
7 specifically what you're asking.  
8 Q. Well, my understanding, and let's be very clear  
9 about this, my understanding from this description  
10 is Officer Johnson, who we haven't deposed yet, so  
11 in fairness I don't know what he's going to say --  
12 A. Okay.  
13 Q. -- and I understand I'm asking about what somebody  
14 else said. But I guess ultimately I'm asking your  
15 opinion. Do you have an opinion based upon your  
16 investigation that they failed to yield the way to  
17 traffic legally?  
18 A. Yes, sir. In my opinion they did because there's  
19 no marked crosswalk there, so they have to yield to  
20 the traffic before they cross that road.  
21 Q. And that would be a violation of a state statute?  
22 A. Yes, sir.  
23 Q. The weather condition that night while you were  
24 there was clear?  
25 A. Yes, sir.

Page 37

1 Q. The roadway fairly level at where the accident  
2 happened?  
3 A. Yes, sir.  
4 Q. Do you recall whether there were any signs,  
5 construction signs, yellow construction signs?  
6 A. I don't recall, but they would be visible in  
7 Corporal Brooks' pictures if there were any there.  
8 Q. Were you aware generally that there had been some  
9 work being done in that area?  
10 A. Well, I can tell that based on the asphalt. The  
11 asphalt appeared to be very new and because the  
12 crosswalks weren't back down painted on the  
13 asphalt. Yes, sir.  
14 Q. Page 47 of that report is a field sketch done by  
15 Officer Brooks, is that right?  
16 A. Yes, sir.  
17 Q. There are a number of items under the legend of  
18 evidence that was found at the scene. Did you  
19 observe any of that yourself?  
20 A. I'm sure that I did. I just can't specifically  
21 remember it from three years ago now to tell you I  
22 can remember, you know, specifically remember  
23 looking at them, but I'm sure that I did.  
24 Q. Sure. And were you involved in working that  
25 evidence or collecting that evidence?

10 (Pages 34 -37)



Page 38

1 A. No, sir.  
 2 Q. And the subsequent pages of 48, 49, 50 and 51 were  
 3 the result of your forensic mapping work?  
 4 A. Yes, sir.  
 5 Q. And your role in that was operating the total  
 6 station?  
 7 A. Yes, sir. That's correct.  
 8 Q. Who generated these diagrams? Was that Trooper  
 9 Brooks?  
 10 A. Yes, sir.  
 11 Q. Page 52 are some case notes prepared by Trooper  
 12 Brock, is that correct?  
 13 A. Yes, sir.  
 14 Q. Okay. That was written by him?  
 15 A. Yes, sir.  
 16 Q. Part of his notes state that witnesses stated that  
 17 the vehicle disregarded the traffic signal. Do you  
 18 see that about half-way down that main paragraph?  
 19 A. Yes, sir. I do.  
 20 Q. Did you talk to witnesses who said that the vehicle  
 21 disregarded the traffic signal?  
 22 A. Yes, sir. As we indicate earlier when we went  
 23 through, there were a couple of those witnesses  
 24 that felt like that the vehicle had disregarded the  
 25 red light.

Page 39

1 Q. Trooper Brock also states the peds, pedestrians,  
 2 were illegally in the road crossing. Do you see  
 3 that?  
 4 A. Yes, sir.  
 5 Q. Okay. Did you discover information in your  
 6 investigation that supports that statement?  
 7 A. Well, it would just be based on the fact that they  
 8 were crossing the road and the vehicle had the  
 9 right-of-way. That's what would make them  
 10 illegally in the roadway, because they weren't  
 11 yielding to the traffic.  
 12 Q. Plus the light was yellow when some of them entered  
 13 the roadway.  
 14 MR. WHITE: Object to form.  
 15 A. Based on what I know one of the witnesses said that  
 16 we talked about earlier.  
 17 BY MR. MAUNEY: (Resuming)  
 18 Q. Starting on page 53 are some vehicle  
 19 specifications. Do you recall anything that you  
 20 learned as a result of your investigation that  
 21 suggested a problem with Mr. Williams' vehicle?  
 22 A. No, sir.  
 23 Q. Did you operate that vehicle?  
 24 A. No, sir. I didn't.  
 25 Q. Did you examine it in any way?

Page 40

1 A. I'll look at the general vehicle exam. I don't  
 2 know if I did or if Corporal Brooks did on this  
 3 particular collision. No, sir. I didn't.  
 4 Corporal Brooks performed the general vehicle exam  
 5 on that vehicle.  
 6 Q. What page are you looking at?  
 7 A. I'm looking at page 67.  
 8 Q. So page 67 of Exhibit 1 of Trooper Brooks is the  
 9 general vehicle exam and those marks or handwriting  
 10 were made by Trooper Brooks?  
 11 A. Yes, sir. That's correct.  
 12 Q. And I believe you said that any of the calculations  
 13 done related to the speed would have been done by  
 14 Trooper Brooks?  
 15 A. Yes, sir.  
 16 Q. There was no data to download for that vehicle?  
 17 A. No, sir. It was not image able.  
 18 Q. There are a number of narrative reports within the  
 19 M.A.I.T report by various officers from both --  
 20 primarily from the City of Clemson Police. Did you  
 21 prepare a narrative written -- type-written  
 22 narrative?  
 23 A. No, sir.  
 24 Q. Okay. However you did do a audio, some audio notes  
 25 of your investigation.

Page 41

1 A. Yes, sir.  
 2 Q. And in those audio notes you refer to your  
 3 interview of Mr. Williams.  
 4 A. I'm sure I did. I haven't listened to my audio  
 5 notes from that night.  
 6 Q. It's my understanding that when you interviewed Mr.  
 7 Williams, you asked him about his speed.  
 8 A. Yes, sir. I did.  
 9 Q. And according to my notes from listening to that  
 10 audio interview, he said 40 to 41 to possibly 42.  
 11 A. Yes, sir. That's right.  
 12 Q. Is that what you recall?  
 13 A. Yes, sir. I actually put that in my notes when I  
 14 listened to his interview.  
 15 Q. And the speed limit's 40?  
 16 A. Yes, sir.  
 17 Q. That's a posted speed limit, right?  
 18 A. Yes, sir.  
 19 Q. And did Mr. Williams also tell you that he had been  
 20 to Seneca bowling?  
 21 A. Yes, sir.  
 22 Q. And was returning from that?  
 23 A. Yes, sir.  
 24 Q. Stopped at the Chick-fil-A to get something to eat?  
 25 A. Yes, sir.

11 (Pages 38-41)

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Page 90

1 You know that's the reason I think that's kind  
2 of --  
3 BY MR. WHITE: (Resuming)  
4 Q: And we're talking about 18 to 22 years olds that  
5 are frequently crossing across this road, is that  
6 correct?  
7 A: Yes, sir. But I still believe that speculative. I  
8 mean it depends on each individual person how much  
9 weight they want to put on that light working  
10 properly. I mean even if the light's on, I'm going  
11 to check before I cross traffic, me personally.  
12 But if I'm a college student out there and I'm kind  
13 of goofing around with friends and all, I don't  
14 know how much weight and trust they're putting into  
15 that light and that crosswalk, so.  
16 Q: That's what I'm getting at. I mean the college  
17 students, you would agree that they don't  
18 necessarily look out for their safety as much as an  
19 older individual.  
20 A: In my opinion, for what that's worth, yes, sir. I  
21 would agree with that.  
22 Q: And you would say that this intersection is  
23 frequently crossed by other 18 to 22 year olds?  
24 A: It was by several that night during our  
25 investigation.

Page 91

1 Q: And you believe that that's probably one of the  
2 reasons why there's a crosswalk signal there and  
3 the crosswalk paint is on there.  
4 A: Yes, sir. I would think that's the whole reason  
5 that there's a place for one there.  
6 Q: Now in your opinion, -- well, let me see.  
7 MR. WHITE: Can I see, Stuart, that marked  
8 exhibit in the paragraph?  
9 MR. MAUNEY: This one?  
10 MR. WHITE: Yeah.  
11 BY MR. WHITE: (Resuming)  
12 Q: I'm going to show you some pictures and I will  
13 represent to you that these pictures were taken a  
14 couple of weeks after this accident, okay, of the  
15 intersection. Do you believe that that is safer  
16 for students?  
17 MR. LOGAN: Object to the form.  
18 BY MR. WHITE: (Resuming)  
19 Q: And we're referring to page 19 of the Granatino  
20 production.  
21 A: I would go back to my same answer I gave you  
22 earlier. It's speculative. I mean it depends on  
23 how much weight and trust a person puts in those  
24 lights and that crosswalk, itself.  
25 Q: But in terms of the 18 to 22 year olds crossing.

Page 92

1 that road, is this a safer crosswalk or is this a  
2 safer crosswalk, --  
3 MR. LOGAN: Objection to form.  
4 BY MR. WHITE: (Resuming)  
5 Q: -- meaning the one after they've painted or before?  
6 A: Honestly, I'm not trying to be evasive, but that's  
7 impossible.  
8 Q: I understand.  
9 A: I have a 21 year-old daughter that's a college  
10 student. My daughter probably having grown up with  
11 a daddy being a trooper for 24 years is overly  
12 cautious. My daughter's not going to cross that  
13 road regardless of the lights or the crosswalk or  
14 anything if she can see anything near there. But  
15 with the average college student, I don't know. I  
16 that speculative. It would depend on each  
17 individual.  
18 Q: I understand. Okay. So do you believe that more  
19 could have been done to make this intersection  
20 safer?  
21 MR. LOGAN: Object to the form.  
22 A: Well, it looks like they're in the process of doing  
23 that, you know, when this collision occurred. I  
24 mean they've got lines here to indicate where that  
25 crosswalk is going back to. So obviously, I guess

Page 93

1 really, in my opinion, obviously they think it's  
2 safe, because if not, they wouldn't have the  
3 crosswalk there to begin with. If they don't  
4 believe that this is safer than this, there would  
5 be no reason for putting it back to that anyway.  
6 BY MR. WHITE: (Resuming)  
7 Q: And do you believe that it's safer to have the  
8 pedestrian lights working?  
9 MR. LOGAN: Same objection.  
10 A: Same answer as before. It's speculative. I mean I  
11 don't know that it's any safer or more dangerous.  
12 It depends on the student that's attempting to  
13 cross there.  
14 Q: I have no further questions for you. I appreciate  
15 you answering my questions today and I appreciate  
16 you being here.  
17 A: Yes, sir. No problem at all.  
18 REDIRECT EXAMINATION  
19 BY MR. MAUNEY:  
20 Q: Trooper, just a couple of follow-ups.  
21 A: Okay.  
22 Q: Is it unsafe for a pedestrian who is under the  
23 influence of alcohol to walk into a roadway?  
24 MR. WHITE: Objection.  
25 A: My initial response is yes. Again, I'm not trying

24 (Pages 90 - 93)

Page 94

- 1 to evade your question, but I guess that would  
 2 depend on how intoxicated they were.  
 3 BY MR. MAUNEY: (Resuming)  
 4 Q. Well, let's just be very clear about it. Statute  
 5 of South Carolina 56-5-3270 states that a  
 6 pedestrian who is under the influence of alcohol or  
 7 any drug to a degree which renders himself a  
 8 hazard, shall not walk or be upon a highway except  
 9 a sidewalk.  
 10 A. Yes, sir.  
 11 Q. Is that correct?  
 12 A. Yes, sir.  
 13 Q. And as a part of your career -- How long have you  
 14 been a Highway Patrol?  
 15 A. Twenty-four years.  
 16 Q. Okay. As a part of the experience, have you  
 17 encountered people, either drivers or pedestrians,  
 18 who were under the influence of alcohol?  
 19 A. Yes, sir.  
 20 Q. You've had an opportunity to test them for that?  
 21 A. Yes, sir.  
 22 Q. Had an opportunity to observe their conduct --  
 23 A. Yes, sir.  
 24 Q. -- while under the influence of alcohol?  
 25 A. Yes, sir.

Page 95

- 1 Q. What's the legal limit?  
 2 A. .08.  
 3 Q. Okay. And if in this case Mr. Granatino is found  
 4 to have been .122, would that number be in excess  
 5 of the legal limit --  
 6 A. Yes, sir.  
 7 MR. WHITE: Object to form.  
 8 BY MR. MAUNEY: (Resuming)  
 9 Q. -- which would be against the law of South Carolina  
 10 if he was driving a vehicle.  
 11 A. Yes, sir.  
 12 Q. Is it your experience as a Highway Patrolman that  
 13 individuals with a .122 can be impaired by the  
 14 alcohol in their system?  
 15 MR. WHITE: Object to form.  
 16 A. Yes, sir.  
 17 BY MR. MAUNEY: (Resuming)  
 18 Q. I'm not asking you if Mr. Granatino was impaired.  
 19 I'm just asking if your general experience is that  
 20 people with .122 can exhibit impairment?  
 21 A. Yes, sir.  
 22 MR. WHITE: Object to form.  
 23 BY MR. MAUNEY: (Resuming)  
 24 Q. And under those circumstances, they shouldn't be  
 25 walking into the highway at any point in time.

Page 96

- 1 MR. WHITE: Object to form.  
 2 A. Yes, sir, because that would affect their  
 3 judgement.  
 4 BY MR. MAUNEY: (Resuming)  
 5 Q. There a number of voluntary statements in the  
 6 M.A.I.T. file that was produced to us under the  
 7 PL-16314, and those are handwritten notes taken by  
 8 Lieutenant Gooch with the Clemson Police  
 9 Department. Three of those statements I'll  
 10 represent to you, witnesses, all of them were taken  
 11 on the night of the accident and are dated October  
 12 23rd, 2014, and apparently written in the  
 13 handwriting of the witnesses and signed by the  
 14 witnesses. Three of those witnesses said in effect  
 15 that the people who were crossing at some point in  
 16 time did not have the walk signal, implying that  
 17 the walk signal was, in fact, operational at the  
 18 time of the accident. Do you understand my  
 19 statement?  
 20 A. Yes, sir.  
 21 MR. WHITE: Object to form.  
 22 BY MR. MAUNEY: (Resuming)  
 23 Q. Okay. If there are folks who say that, would that  
 24 be a reason to say or evidence to support that Mr.  
 25 Granatino contributed to the accident?

Page 97

- 1 MR. WHITE: Object to form.  
 2 A. As long as there's no evidence to the contrary of  
 3 that.  
 4 BY MR. MAUNEY: (Resuming)  
 5 Q. And what do you mean by that?  
 6 A. If you had other individuals kind of like what I  
 7 actually had with my witness statements that are  
 8 referring to the other lights, the traffic signals,  
 9 not the crosswalks. But if you had some people  
 10 saying it's yellow, some saying it's red, some  
 11 saying it's green, and in the case you're referring  
 12 to some people are saying the crosswalk light is  
 13 working, if I have other people saying no, it  
 14 wasn't on the on. The whole time I looked at it it  
 15 was malfunctioning. It wasn't on. Then no, sir.  
 16 I don't think you could base your conclusion on  
 17 that.  
 18 Q. What if you didn't have any statements from anybody  
 19 who said that the crosswalk signals weren't  
 20 working?  
 21 A. Well, yes, sir. I think you could put some weight  
 22 on that at that point.  
 23 Q. Did you interview anyone in your audio statements  
 24 who said the crosswalks weren't working --  
 25 MR. WHITE: Object to form.

25 (Pages 94 - 97)

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Page 100

- 1 BY MR. MAUNEY: (Resuming)  
 2 Q. -- crosswalk signals weren't working?  
 3 A. No, sir.  
 4 Q. Okay. Are you aware of any witnesses from any  
 5 statements who say that the pedestrian electronic  
 6 signals weren't working that night?  
 7 A. No, sir.  
 8 MR. WHITE: Object to form.  
 9 BY MR. MAUNEY: (Resuming)  
 10 Q. You brought some -- Let's just kind of clean things  
 11 up in terms of the deposition. I know you made  
 12 some notes from your review of some of the audio  
 13 interviews or maybe all the audio interviews --  
 14 A. Yes, sir.  
 15 Q. -- with you to the deposition. What I'd like to do  
 16 is just mark those as an exhibit and attach them to  
 17 the deposition if that's all right with you.  
 18 A. Absolutely.  
 19 Q. If you would rather keep the originals and we can  
 20 make a copy, I'm fine with that, otherwise we'll  
 21 just attach the originals.  
 22 A. I would like to have a copy simply because if this  
 23 were to go to trial or something, I'd like to refer  
 24 back to what I actually had.  
 25 Q. Oh, absolutely. Absolutely. They will be with the

Page 99

- 1 deposition?  
 2 A. Okay.  
 3 Q. Well, let's just go ahead and mark those as one  
 4 exhibit. Would this be Exhibit 2?  
 5 (Whereupon, Notes of Review of Audio  
 6 Interviews was marked as Defendant's  
 7 Exhibit 2).  
 8 Q. So just for clarity, Exhibit 2 is your handwritten  
 9 notes made of the various audio interviews that you  
 10 did. And those were notes you made to prepare for  
 11 today's deposition.  
 12 A. Yes, sir. That's correct.  
 13 Q. If I wanted to find out, if I wanted to ask  
 14 somebody whether there was power or electricity to  
 15 those pedestrian signals that night or not, who  
 16 would I ask?  
 17 A. I don't really know how those lights are monitored,  
 18 or how they keep a check on those. If I were going  
 19 to go do that, the first person I would go to I  
 20 guess would be SCDOT and see if they maybe had a  
 21 maintenance record or something on those lights.  
 22 Q. Mr. Granatino, somewhere in here I think I saw his  
 23 date of birth as February --  
 24 A. It's the 3rd, 1993.  
 25 Q. So he was 21 at the time of the accident?

- 1 A. That's an argument a lot of people have. It 18 in  
 2 the military, 21 to be able to consume alcohol.  
 3 Twenty-one. Yes, sir.  
 4 Q. Okay. Eighteen, you've got the right to vote; is  
 5 that right?  
 6 A. And serve in the military especially. Yes.  
 7 Q. And serve in the military. You're an adult when  
 8 you turn 18; is that right, whether you're mature  
 9 or not, you're treated as an adult; is that right?  
 10 A. Yes, sir.  
 11 Q. Okay. So in fact somebody's a college student, if  
 12 they're 18, they're still an adult; is that right?  
 13 A. Yes, sir.  
 14 Q. The fact that they're a college student, if they're  
 15 21 years old, they're still an adult; is that  
 16 right?  
 17 A. Yes, sir.  
 18 Q. So they're judged by the same standards and laws  
 19 and regulations as adults. They're not children;  
 20 is that right?  
 21 A. Yes, sir.  
 22 Q. All right. And that's under the law in the state  
 23 of South Carolina.  
 24 A. Yes, sir.  
 25 Q. Okay. So if they drink alcohol and they shouldn't

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26 (Pages 98 - 101)

Page 102

1 be drinking alcohol, if they violate the traffic  
2 regulations or the statutes of South Carolina, as  
3 an adult, they're not treated as a college student.  
4 They're not treated as a child. They're treated as  
5 an adult, is that correct?

6 A. Yes, sir.

7 MR. WHITE: Object to form.

8 BY MR. LOGAN: (Resuming)

9 Q. That's all I've got. Thank you.

10 FURTHER CROSS EXAMINATION

11 BY MR. GIBBON:

12 Q. I just want to be clear on something, Trooper.  
13 Earlier, you were asked some questions and I think  
14 you've described the calculation that was performed  
15 with the .83 drag factor as a minimum speed  
16 calculation, is that right?

17 A. Yes, sir.

18 Q. I thought I understood your testimony to be, but  
19 correct me if I'm wrong, please, 39 miles per hour  
20 calculated by Trooper Brooks would be on the high  
21 end based on that F factor of .83, is that right?

22 A. Yes, sir. If that F factor decreases, Mr.  
23 Williams' speed would decrease along with that.

24 Q. Okay. So ya'll actually used a pretty high  
25 F factor based on it being new pavement.

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1 A. Yes, using that drag factor -- that drag sled  
2 reading. Yes, sir.

3 Q. Okay. A little while ago Mr. White proposed a  
4 hypothetical to you, and in it you were asked to  
5 assume several things. What I want to ask you  
6 about is during your interviews with the witnesses,  
7 did any witness tell you that Mr. Granatino stopped  
8 and looked for traffic?

9 A. No, sir.

10 Q. Did any witness describe to you that Mr. Granatino  
11 was crossing the roadway cautiously?

12 A. No, sir.

13 Q. Did any witness -- well, and in fact I believe from  
14 your earlier testimony, several of the witnesses  
15 described in various ways either running, horse  
16 playing, is that fair?

17 A. Yes, sir.

18 Q. Okay. All right. Thank you, sir.

19 MR. CARSON: I don't have any questions.

20 FURTHER CROSS EXAMINATION

21 BY MR. WHITE:

22 Q. I've just got a couple of follow-ups. Did you ever  
23 specifically ask any of the witnesses that you  
24 talked to whether or not they saw the crosswalk  
25 signals for the pedestrians?

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1 A. No, sir. I don't think based on their position,  
2 they were giving me, that I assume they would be  
3 able to see those where they were at. I don't  
4 remember asking them that specifically.

5 Q. Okay. So when you say that nobody told you  
6 anything about the crosswalks earlier, I think you  
7 testified that nobody told you anything about the  
8 crosswalks and whether or not they were working,  
9 would part of that reason be because you didn't  
10 ask? And I mean that wasn't something you weren't  
11 focused on?

12 A. Trying to think back and just go from memory, I  
13 think we were under the assumption at that time  
14 that those lights weren't working at all, because  
15 they weren't working during the time we were there.  
16 So I would have just assumed there was no relevance  
17 in that question, because if they're not working,  
18 there's nothing for anybody to see. Otherwise, I  
19 think I would have specifically asked that had I  
20 not already been assuming that.

21 Q. And would assume that if they were working three  
22 hours before during the accident, you would still  
23 assume they would still be working?

24 A. Yes, sir. That would be my assumption.

25 Q. And there would be no reason in your eyes to turn

Page 105

1 those off.

2 A. That's correct.

3 Q. So nothing you were doing at the scene required  
4 those lights to be turned off?

5 A. No, sir.

6 Q. Now I know you've reviewed that video. It's a  
7 little grainy and I understand that. You can't see  
8 much. But did you ever see any video from a  
9 different day around the same time to see if you  
10 could see the pedestrian lights when we know  
11 they're working?

12 A. No, sir.

13 Q. Do you know if anybody did?

14 A. No, sir.

15 Q. Now your supervisor at the time, that would have  
16 been Brooks you said, is that correct, one of your  
17 supervisors?

18 A. Yes, sir.

19 Q. Now he testified as well today that there was no  
20 signal, and what I mean by that is no crosswalk  
21 signal working. So that would fall in line with  
22 you're testifying to?

23 A. Yes, sir.

24 Q. Okay. And have you talked to him about this case  
25 since ya'll worked on it and finished up?

27 (Pages 102 - 105)

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2 COUNTY OF PICKENS. )

3 Kevin M. Granatino, )

4 Plaintiff, )

5 -vs- )

C.A. No: 2016-CP-39-01223

6 Calvin Williams, Clemson )

7 University, South Carolina )

8 Department of Transportation )

and Thrift Development )

9 Corporation, )

10 Defendants. )

11  
12 Deposition of CORPORAL T.J. BROOKS, a witness  
13 called by Counsel on behalf of the Defendants, pursuant  
14 to the applicable provisions of the South Carolina Rules  
of Civil Procedure, taken before Cynthia L. Weathers, a  
15 Professional Court Reporter and Notary Public in and for  
the State of South Carolina, on June 29, 2017 at  
Gallivan White & Boyd, P.A., 55 Beattie Place, Suite  
16 1200, Greenville, South Carolina, commencing at the hour  
of 9:00 a.m.  
17  
18  
19  
20  
21  
22  
23  
24  
25

Job No. CS2633468

Page 22

1 but not what you thought would be the final  
 2 outline.  
 3 A. Right. They were just lines drawn where I guess  
 4 they were going to put the lines on top of these  
 5 lines, but.  
 6 Q. And you say that the pedestrian signals were not  
 7 lit when you got there, is that correct?  
 8 A. That's correct.  
 9 Q. Okay. Were there witnesses who testified that  
 10 those signals were, in fact, operating and that Mr.  
 11 Granatino entered the intersection against one of  
 12 those lights?  
 13 A. I don't recall any of witnesses saying that. I  
 14 know for me, physically, there was no power on the  
 15 lights.  
 16 Q. Okay. Did you investigate that in any way to  
 17 determine why that was the case?  
 18 A. No, sir.  
 19 Q. Do you know why that was the case?  
 20 A. No, sir.  
 21 Q. Had there been a loss of power in that area that  
 22 evening that you know about?  
 23 A. No, sir, not that I know of.  
 24 Q. Okay. Did you determine as part of your  
 25 investigation that the lack of any kind of

Page 23

1 operational pedestrian signal contributed to the  
 2 accident in any way?  
 3 A. No, sir.  
 4 Q. And how long after the accident did you arrive?  
 5 A. I got there at 2330. I'm not sure what --  
 6 Q. Which is -- help me.  
 7 A. 11:30 at night.  
 8 Q. And the accident happened about 10:00 p.m.?  
 9 A. At 9:56 according to the wreck report.  
 10 Q. So an hour-and-a-half or so after is when you first  
 11 got there.  
 12 A. Right.  
 13 Q. Did you have any conversation with the Clemson City  
 14 Police about the pedestrian signals and whether  
 15 they had been working earlier?  
 16 A. No, sir.  
 17 Q. Could you determine the point of impact?  
 18 A. We determined an area of impact. Typically with a  
 19 point, it's just too hard to find. There was  
 20 actually a scuff on the pavement from the shoe that  
 21 the victim had on. That typically is right there  
 22 where the, you know, the body starts loading up  
 23 from impact with whatever hits the pedestrian. So  
 24 as far as a point itself, we've got an area, but an  
 25 exact point we don't have.

Page 24

1 Q. And that shoe scuff, was there actually a boot that  
 2 was found at the scene?  
 3 A. Yes, sir. We say shoe, but it's just transfer of  
 4 rubber from the sole of some portion of footwear.  
 5 BY MR. MAUNEY: (Resuming)  
 6 Q. And the footwear that was found at the scene, was  
 7 the condition of that consistent with the scuff  
 8 that you saw?  
 9 A. Yes, sir.  
 10 Q. Okay. And so you determined that that scuff on the  
 11 road was most probably made by that shoe.  
 12 A. Yes, sir.  
 13 Q. And that that shoe was worn by Mr. Granatino.  
 14 A. Yes, sir.  
 15 Q. The area of impact that you described, is that  
 16 where you would expect someone to be if crossing  
 17 from one side or the other in that intersection?  
 18 MR. WHITE: Object to form.  
 19 A. Let me pull up a CAD here that I have, which is the  
 20 drawing. Yes, sir. It looks on the CAD drawing  
 21 that is probably where -- and let me pull up my  
 22 photographs actually, if I can get my mouse to  
 23 work. There we go.  
 24 BY MR. MAUNEY: (Resuming)  
 25 Q. And while you're looking, I'm going to ask you to

Page 25

1 take a look at Exhibit 1 to your deposition, which  
 2 for Counsel is a copy of the M.A.I.T. report  
 3 produced by Mr. Granatino's lawyer, and is Bates as  
 4 Granatino 36 through 168. And so from Exhibit 1  
 5 I'm looking at page 135, the photograph on the  
 6 bottom.  
 7 A. Okay.  
 8 Q. Does that show the area of impact?  
 9 A. Yes, sir.  
 10 Q. And based upon the white line that you see, was  
 11 that area of impact within what you would expect to  
 12 be the crosswalk?  
 13 A. Yes, sir.  
 14 Q. And is that consistent with what you were telling  
 15 me? You were looking for a photograph. Is there  
 16 one that shows that differently, or?  
 17 A. Yes, sir. I have that photograph up.  
 18 MR. LOGAN: Can you show me in that group  
 19 which photo you're looking at?  
 20 MR. MAUNEY: I don't know that it's -- I think  
 21 it's this one.  
 22 BY MR. MAUNEY: (Resuming)  
 23 Q. Did you ever talk to anyone at the DOT about this  
 24 accident?  
 25 A. No, sir.

7 (Pages 22 - 25)

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1 the Williams production. I may not have even  
 2 gotten the recent production.  
 3 MR. MAUNEY: Yeah. You can look. I'm sorry, I  
 4 don't.  
 5 MR. LOGAN: Can I get that later --  
 6 MR. MAUNEY: Yes. Absolutely.  
 7 MR. LOGAN: -- while he's looking at that? Do  
 8 ya'll want copies, too?  
 9 MR. MAUNEY: Yeah. Let me go get that. I'll  
 10 get it.  
 11 (Off the record)  
 12 BY MR. MAUNEY: (Resuming)  
 13 Q: Have you had a chance to look at that?  
 14 A: I have.  
 15 Q: And I was asking you about the narrative  
 16 description of the accident that refers to  
 17 Granatino and Jones as pedestrians who were  
 18 "unlawfully in the roadway due to them not  
 19 complying with crosswalk signals." Do you see that  
 20 description?  
 21 A: I do see that. Yes, sir.  
 22 Q: Okay. Did you make any determination yourself or  
 23 as part of the M.A.I.T. investigation that that was  
 24 in fact the case?  
 25 A: No, sir. Again, like I testified to earlier, there

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1 was no power on the crosswalk signal, so -- and  
 2 again, we weren't privy to this report, so I don't  
 3 know whether they got that from.  
 4 Q: Okay. The description also states that Granatino  
 5 and Jones "also failed to yield to the traffic."  
 6 Do you know where that came from?  
 7 MR. SMITH: Object to form.  
 8 A: The way the laws are written is, you know, vehicles  
 9 that travel on a roadway have to yield to  
 10 pedestrians that are in a clearly marked crosswalk.  
 11 In this case, there wasn't a clearly marked  
 12 crosswalk there. And again, with that you'd have  
 13 to treat it like a regular -- like a collision with  
 14 a regular car wreck. You've got to yield to  
 15 something that's on the road that coming. In the  
 16 case of the video with traffic lights, it's obvious  
 17 that it's a huge intersection. I know you probably  
 18 been through there. If familiar with it, it's a  
 19 giant intersection. And so at some point while the  
 20 lights were cycling through, that you can see on  
 21 the video when they're on green and the cars are  
 22 waiting. They switch to yellow, then when it goes  
 23 to red you see the car coming through. We know  
 24 that the two kids that got struck were not on the  
 25 sidewalk waiting to cross when the light changed

Page 40

1 red. They would have had to have been at least  
 2 halfway to make it that distance during that short  
 3 amount of time. So as far as a regular car goes,  
 4 it would be a failure to yield if it was two cars  
 5 doing it. And again, there wasn't a clearly marked  
 6 crosswalk. And I believe Mr. Williams actually  
 7 lives in Clemson and he would probably, you know,  
 8 be able to see the painted crosswalks. They  
 9 usually do a good job around a heavier foot traffic  
 10 area when they put them down.  
 11 Q: The reviewing officer was Sergeant Josh Caldwell.  
 12 What was his role in the investigation, do you  
 13 know?  
 14 A: He is a -- he was one of their night shift  
 15 Sergeants at the time. I believe he's still a  
 16 Sergeant. He may be a lieutenant now.  
 17 Q: And that's with the Clemson Police Department.  
 18 A: It is, Clemson Police.  
 19 Q: Weather condition that night was clear?  
 20 A: Yes, sir.  
 21 Q: Street lamps at the corners of this intersection?  
 22 A: It does have some lighting. Let me refer back to  
 23 my photographs. Yeah. There are some street lamps  
 24 that are lit on the traffic -- right beside the  
 25 traffic light poles.

Page 41

1 Q: And is it your understanding that Mr. Granatino and  
 2 Ms. Jones were crossing 123 going from the Sonic  
 3 side toward Clemson?  
 4 A: Yes, sir.  
 5 Q: Sonic would have been open at that hour?  
 6 A: I don't know about -- I don't know if it was open  
 7 or not. Well, I know that the restaurants and the  
 8 things downtown on College Avenue are open later,  
 9 so I would assume that's where they were going.  
 10 Q: Do you know where they were coming from?  
 11 A: No, sir.  
 12 MR. WHITE: Object to form.  
 13 BY MR. MAUNEY: (Resuming)  
 14 Q: Or where they had been?  
 15 A: No, sir. I do not.  
 16 Q: The road was dry that night?  
 17 A: Yes, sir. It was.  
 18 Q: Fairly level and straight?  
 19 A: Yes, sir.  
 20 Q: Okay. Let me ask you to turn to 47 in your report,  
 21 Exhibit I. This is the M.A.I.T. field sketch?  
 22 A: Yes, sir.  
 23 Q: Was this prepared by you?  
 24 A: It was.  
 25 Q: There's a legend in the bottom left corner;

11 (Pages 38 - 41)

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- 1 correct?
- 2 A: Yes, sir.
- 3 Q: And that legend, does it correspond with the
- 4 numbers on the scene -- on the diagram?
- 5 A: Yes, sir. It does.
- 6 Q: And 1 through 5 were identified as blood?
- 7 A: Yes, sir.
- 8 Q: Number 6 was identified as a shirt?
- 9 A: Yes, sir.
- 10 Q: Was that Mr. Granatino's shirt?
- 11 A: Yes, sir. I believe it was.
- 12 Q: And 7 through 9 were also blood?
- 13 A: Yes, sir.
- 14 Q: Ten was a boot. Was that Mr. Granatino's?
- 15 A: Yes, sir.
- 16 Q: And is that the footwear that you described as
- 17 making a scuff mark?
- 18 A: Yes, sir. It is.
- 19 Q: Would that be the first piece of evidence or debris
- 20 that you found at the intersection as you went into
- 21 the intersection? Does that make sense?
- 22 A: Well, the blood would be because we go -- actually,
- 23 we start --
- 24 Q: And when I say -- I'm sorry. Let me clarify that
- 25 question. When I say first, I mean in terms of

Page 43

- 1 literally as you stand at the stop bar, --
- 2 A: Yes, sir.
- 3 Q: -- you start walking through that intersection to
- 4 where the area of impact was, --
- 5 A: Yes, sir.
- 6 Q: -- what would be the first piece of evidence that
- 7 you would have come to?
- 8 A: The #1, the blood spot.
- 9 Q: Okay.
- 10 A: Yes, sir. And again, with the shirt and the boot,
- 11 that stuff's typically pulled off by EMS. And we
- 12 mark it and we map it where it's laying when we get
- 13 there, because you never know. Somebody may have
- 14 kicked the boot. Somebody may have moved -- we
- 15 know for a fact they took their shirt off. So we map
- 16 it where it's laying.
- 17 Q: And the shoe scuff would have been closer to the
- 18 stop bar than the first mark of blood that you
- 19 notified.
- 20 A: Correct. If we're talking the legend, the first
- 21 one, #1 would be the blood, but the shoe scuff is
- 22 the first piece of evidence that's on the pavement.
- 23 Q: Item 12 is a broken shot glass, is that correct?
- 24 A: Yes, sir.
- 25 Q: Did you determine whose that was?

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- 1 A: No, sir. But since it was there we went ahead and
- 2 mapped it. And I think even Mr. Williams in his
- 3 audio interview refers to a shot glass. I'm not
- 4 sure in what context he referred to it unless he
- 5 was just walking around and saw it, but since it
- 6 was there and it was within, you know, those two
- 7 lanes of traffic, we went ahead and mapped it.
- 8 Q: There's some writing on the right bottom corner of
- 9 page 47 of Exhibit 1. It says "due to repaving
- 10 there are no crosswalk on roadway."
- 11 A: Correct.
- 12 Q: Do you know anything about the status of this road
- 13 project in terms of the crosswalk markings?
- 14 A: No, sir.
- 15 Q: And that wasn't part of your investigation.
- 16 A: No, sir. It was not.
- 17 Q: Okay. There's also a handwritten note, "walk and
- 18 wait lights not functioning up my arrival (power)."
- 19 A: Yes, sir.
- 20 Q: Is that consistent with your previous testimony
- 21 about the pedestrian signals? That's what you're
- 22 talking about?
- 23 A: Yes, sir. It is.
- 24 Q: Okay. If you would, turn to page 48 which begins a
- 25 series diagrams. Was this a part of the mapping

Page 45

- 1 that you did?
- 2 A: Yes, sir. It is. This is what we rendered as far
- 3 as our report goes. This is our CAD drawing. What
- 4 it does is the forensic mapping tool that we use
- 5 again maps on the roadway. We tell the data
- 6 collector what we want the point described as. And
- 7 then once we put in our drawing program, we're able
- 8 to go back and say okay, we know because it says
- 9 this was a lane line, we know that it's a lane
- 10 line. We've got points at the beginning and at the
- 11 end of the lane line. So what we ending up
- 12 generating here in this particular is a 1 in 30
- 13 scale diagram of the collision scene.
- 14 Q: And on page 49 tell me what that shows.
- 15 A: On page 49, that would be -- it has a blowup box of
- 16 the area of impact. We're able to put the
- 17 pedestrian by it because from witness statements
- 18 the male had the female sort of riding horsey
- 19 across the road on his back.
- 20 Q: Piggy back?
- 21 A: Piggy back. Yeah. I like horses. I don't like
- 22 pigs. But anyway.
- 23 Q: Sorry.
- 24 A: But we put the foot down which foot that we thought
- 25 it was that was on the ground that made the scuff.

12 (Pages 42 - 45)

Page 82

1 A: Yes, sir.  
 2 Q: And to be clear, what does that tell us?  
 3 A: That was painted down by Clemson Police Department  
 4 where they -- a lot of the police departments still  
 5 refer to areas as points of impact. And the P  
 6 would have been where they said a point of impact  
 7 occurred.  
 8 Q: Okay. And that's generally --  
 9 A: That was beside the scuff mark. Yes, sir.  
 10 Q: And then you see a white line across the middle of  
 11 that bottom photograph?  
 12 A: Yes, sir.  
 13 Q: And on the top one you see two lines, right?  
 14 A: That is correct.  
 15 Q: Okay. Now there's another orange paint mark in  
 16 those photographs. What is that?  
 17 A: The arc? The little curved paint mark?  
 18 Q: Yes.  
 19 A: That's where they bracketed the beginning of the  
 20 right side tire mark. That's where what we call  
 21 the impending skid where the tire starts to heat up.  
 22 That's where they mark it prior to it fading out,  
 23 because it eventually, you know, fade away, so.  
 24 Q: And the #1 piece of evidence marked, that's a blood  
 25 spot?

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1 A: Yes, sir.  
 2 Q: The position of the Jeep in terms of its rear and  
 3 front tires was marked with orange paint as well?  
 4 A: It was. Yes, sir.  
 5 Q: Let me show you what's been marked as Exhibit 5,  
 6 which is the Granatino production, pages 1-35. If  
 7 you'll give me just a minute, I'll see if I can --  
 8 Well, we can start with page 1. It shows the Sonic,  
 9 side and railroad trestle, correct?  
 10 A: That's correct.  
 11 Q: And Granatino and Jones would have been walking  
 12 away from the Sonic?  
 13 A: Yes, sir. And if you look at that photo, had been  
 14 coming towards us as you're looking at it.  
 15 Q: Let's look at page 6 of Exhibit #5. It also shows  
 16 the Sonic, correct?  
 17 A: Yes, sir. It does.  
 18 Q: And can you also see some of the orange paint  
 19 marks?  
 20 A: Yes, sir. I can.  
 21 Q: And that's within the boundaries of those white  
 22 lines?  
 23 A: Yes, sir.  
 24 Q: Now looking at that photograph, there's a -- well,  
 25 there's two post. One appears to be what I call a

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1 telephone pole on kind of the right side.  
 2 A: Yes, sir.  
 3 Q: And then a black pole which appears to be kind of  
 4 in the area if you extend those white lines all the  
 5 way across, they would be within those white  
 6 lines?  
 7 A: Yes, sir. That's the traffic light, the standards  
 8 that hold the traffic lights up.  
 9 Q: Okay. And when you say the traffic lights, are you  
 10 talking about the stop light or are you talking  
 11 about the pedestrian signal?  
 12 A: Well, it holds everything. Clemson went back and  
 13 put up these new light poles to hold the lights up.  
 14 But you can tell. Where the sidewalk actually goes  
 15 down the curbing is where the crosswalk would have  
 16 started on that opposite side in front of that  
 17 black pole.  
 18 Q: That was what I was going to ask you -- Well,  
 19 before I ask you that, that black pole, is it your  
 20 understanding that that also held the pedestrian  
 21 electric Walk/Don't Walk signal?  
 22 A: Yes, sir. I believe so.  
 23 Q: Okay. And you mentioned that the sidewalk -- tell  
 24 me the condition of the sidewalk in that area as  
 25 you recall it.

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1 A: The sidewalks are in good shape. It hasn't been  
 2 many years that they redid that. And again, the  
 3 indentation that you see in this photo is just  
 4 showing where the crosswalk would begin. So the  
 5 curbing would go down close to even with the  
 6 pavement so it wouldn't be -- somebody would have  
 7 to step off of an elevated portion onto the  
 8 pavement.  
 9 Q: Which would be an indicator of where a pedestrian  
 10 is to enter the highway, --  
 11 A: That's correct.  
 12 Q: -- enter the intersection. And in that area, as I  
 13 recall it, the condition at the time of the  
 14 accident, the concrete pavement ends and then  
 15 there's some pavers in that area where the curb  
 16 comes to the level of the street, is that correct?  
 17 A: That's correct.  
 18 MR. WHITE: Object to the form.  
 19 BY MR. MAUNEY: (Resuming)  
 20 Q: And this photograph, Exhibit 6, does this show the  
 21 condition of the sidewalk and crosswalk area and  
 22 the location of that pole and the pavers, does it  
 23 fairly and accurately show the way it would have  
 24 existed that night?  
 25 A: Yes, sir. It does.

22: (Pages 82 - 85)

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1 Q. And on the next page 7 of Exhibit 5, in the front  
2 of that blue car you can kind of see where the curb  
3 angles down and the pavers are there as an  
4 indicator of where you walk into the intersection.

5 A. Yes, sir.

6 Q. Is that also the Sonic side?

7 A. Hard to tell. Let's see. It's hard to tell from  
8 that angle.

9 Q. That's fine. Go to page 9 of Exhibit 5. Does that  
10 show in the foreground of that photograph how the  
11 crosswalk area where people would walk into the  
12 intersection looked?

13 A. Yes, sir.

14 Q. Okay. And did it look that way on each corner of  
15 this intersection that night?

16 A. Yes, sir.

17 Q. And Exhibit 9, does it fairly and accurately show  
18 how the pavers and the other area of the sidewalk  
19 were at the point where people would enter the  
20 intersection that night?

21 A. Yes, sir.

22 Q. And actually in addition to the pavers, it looks  
23 like there's something else, a change in texture  
24 from the pavers to something else.

25 A. Yes, sir. That's to signal people who are visually

1 requirements and the duty of a person to use care."  
2 Is that correct?

3 A. That is correct.

4 Q. And those provisions would have been in effect and  
5 would have applied to the activity of Mr. Williams  
6 that evening?

7 A. Yes, sir.

8 Q. Section C refers to an urban district. I was a  
9 little confused about this where the speed limit is  
10 actually 30 miles an hour. Here you have a posted  
11 speed limit of 40, right?

12 A. Yes, sir.

13 Q. If it's 30, is it posted typically if it's in an  
14 urban district?

15 A. If it's not posted and you're in an urban district,  
16 then that's speed that you need to be traveling,  
17 so.

18 Q. And here it was specifically posted as 40.

19 A. Yes, sir.

20 Q. Section F under Section 56-5-1520, "The driver of a  
21 vehicle shall drive, consistent with the  
22 requirements of subsection (A), at an appropriate  
23 reduced speed when approaching and crossing an  
24 intersection." Do you see that?

25 A. Yes, sir.

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1 impaired that that's a crossing.

2 Q. And was that type of material at every corner of  
3 this intersection at that time?

4 A. Yes, sir.

5 Q. At some point a crosswalk painting was done at this  
6 intersection. Do you know when that was done?

7 A. I do not know the date that it was completed. No,  
8 sir.

9 MR. MAUNEY: These are copies for ya'll that  
10 are marked as an exhibit.

11 BY MR. MAUNEY: (Resuming)

12 Q. Let me show you what's been marked as Exhibit 3.

13 That is titled South Carolina Code section 56-5-  
14 1520 concerning maximum speed limits. Are you  
15 familiar with that statute?

16 A. Yes, sir.

17 Q. Okay. Section A states that "A person shall not  
18 drive a vehicle on a highway at a speed greater  
19 than is reasonable and prudent under the conditions  
20 and having regard to the actual and potential  
21 hazards then existing." Is that correct?

22 A. That is correct.

23 Q. "Speed must be so controlled to avoid colliding  
24 with a person, vehicle, or other conveyance on or  
25 entering the highway in compliance with the legal

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1 Q. Is that your understanding of the law at the time  
2 of this accident?

3 A. It is.

4 Q. The area where this happened, is that defined as an  
5 intersection?

6 A. It is. Yes, sir.

7 Q. The activity that Mr. Williams was undergoing was  
8 crossing an intersection.

9 A. That's correct.

10 Q. Section F also states that reduced speed when  
11 special hazard exist with respect to pedestrians or  
12 other traffic or by reason of weather or highway  
13 conditions, is that correct?

14 A. Yes, sir.

15 Q. So a driver would have a duty to drive at a reduced  
16 at a reduced speed when a special hazard exist  
17 with respect to pedestrians.

18 A. That's correct.

19 Q. What does that mean, with respect to pedestrians?

20 A. I would assume that it would mean with pedestrian  
21 traffic walking on sidewalks they had the potential  
22 of crossing the roadway.

23 MR. LOGAN: Did you guys assign a number to  
24 that?

25 MR. MAUNEY: That is Exhibit #3.

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1 BY MR. MAUNEY: (Resuming),  
 2 Q. Let me show you what's been marked as Exhibit 4,  
 3 which is a series of statutes beginning with  
 4 56-5-3110. If you would, read section A into the  
 5 record for me.  
 6 A. "A pedestrian shall obey the instructions of any  
 7 official traffic control device specifically  
 8 applicable to him, unless otherwise directed by a  
 9 police officer."  
 10 Q. If the pedestrian signals were operating at the  
 11 time of this accident and at the time that Mr.  
 12 Granatino and Ms. Jones entered into the  
 13 intersection, would this section have applied to  
 14 them?  
 15 MR. WHITE: Objection to form.  
 16 A. Yes, sir.  
 17 BY MR. MAUNEY: (Resuming)  
 18 Q. Would a pedestrian signal as such that was out  
 19 there qualify as an office traffic control device?  
 20 A. Yes, sir.  
 21 Q. The next page concerns local regulations. As far  
 22 as you know, were there any local City of Clemson  
 23 regulations that would have changed the rules of  
 24 the road for that intersection?  
 25 A. No, sir.

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1 Q. Section 56-5-3130, Section A talks about when  
 2 traffic control signals are not in place or not in  
 3 operation. Does that refer to the stop light?  
 4 A. No, no. That refers to the traffic control of the  
 5 pedestrians.  
 6 Q. Oh, for pedestrians.  
 7 A. Yes, sir.  
 8 Q. So if they're not in operation, what does it say  
 9 about the situation?  
 10 A. "When traffic control signals are not in place or  
 11 not in operation the driver of a vehicle shall  
 12 yield the right-of-way, slowing down or stopping if  
 13 need be to yield to a pedestrian crossing the  
 14 roadway within a crosswalk when the pedestrian is  
 15 upon the half of the roadway upon which the vehicle  
 16 is traveling or when the pedestrian is approaching  
 17 so closely from the opposite half of the roadway as  
 18 to be in danger." Well, that does actually refer  
 19 to traffic control signals, the stop red lights for  
 20 cars.  
 21 Q. Well, I was going to ask--  
 22 A. Yes, sir.  
 23 Q. --would that include pedestrian signals? For  
 24 example if in fact pedestrian signals were not  
 25 operational that night, if that was the

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1 situation--  
 2 A. Correct.  
 3 Q. --would Section A of this statute apply to Mr.  
 4 Williams?  
 5 MR. WHITE: Object to form.  
 6 A. It would apply to Mr. Williams.  
 7 BY MR. MAUNEY: (Resuming)  
 8 Q. I'm sorry. Would?  
 9 A. Yes, sir. So when traffic control signals are not  
 10 in place or not in operation. And again, I think  
 11 now that I reflect on it, it's referring to the  
 12 stop and go for the car and not the pedestrian.  
 13 Q. Okay. And here as far as we know the traffic light  
 14 signal was actually working.  
 15 A. Yes, sir. And you actually see that on the video  
 16 that it was actually functioning properly.  
 17 Q. Section B of 56-5-3130, if you will read that,  
 18 please.  
 19 A. No pedestrian shall suddenly leave a curb or other  
 20 place of safety and walk or run into the path of a  
 21 vehicle which is so close as to constitute an  
 22 immediate hazard."  
 23 Q. And would this have been the correct statement of  
 24 the law the time of the accident involving Mr.  
 25 Granatino?

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1 A. Yes, sir.  
 2 Q. And this would have applied to him if he was under  
 3 those circumstances.  
 4 BY MR. WHITE: Object to form.  
 5 A. Yes, sir.  
 6 Q. The next page is 56-5-3140. Tell me what that  
 7 means. I'm not sure I understand that statute.  
 8 A. Well, when you have traffic walking both ways, like  
 9 if you were on Sonic side you need to go to the  
 10 right so the people that are walking towards Sonic  
 11 would, you know, they would also walk to the right  
 12 so they would have free movement within the  
 13 crosswalk.  
 14 Q. So where was Mr. Granatino in the area of impact?  
 15 Was he on the right or the left?  
 16 A. Let me look back at the photographs. Give me just  
 17 one moment. Close to the left where that little  
 18 line is drawn on the pavement.  
 19 Q. Next is 56-5-3150, if you would read that, please.  
 20 A. Yes, sir. "Every pedestrian crossing a roadway at  
 21 any point other than within a marked crosswalk or  
 22 within an unmarked crosswalk at an intersection  
 23 shall yield the right-of-way to all vehicles upon  
 24 the roadway."  
 25 Q. All right. Is that a correct statement of what the

24 (Pages 90 - 93)

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1. law was at the time as far as you know?  
 2. A. Yes, sir. As far as I know.  
 3. Q. What is your interpretation of that statute as it  
 4. relates to Mr. Granatino and the condition of the  
 5. crosswalk at the time of the accident?  
 6. MR. WHITE: Object to form.  
 7. A. Well, the second portion of that where it says or  
 8. within an unmarked crosswalk at an intersection,  
 9. shall yield the right-of-way. So in relation to  
 10. this collision, I would consider that as an  
 11. unmarked crosswalk. Even though there was some  
 12. lines down there, that was just to show the guys  
 13. where to put the lines down.  
 14. BY MR. MAUNEY: (Resuming).  
 15. Q. And in your experience as highway patrol officer  
 16. and a member of the M.A.I.T. team, Mr. Granatino  
 17. would have been within and unmarked crosswalk at an  
 18. intersection?  
 19. A. I do believe so. Yes, sir.  
 20. Q. And therefore he would have had the duty to yield  
 21. the right-of-way to vehicles upon the roadway based  
 22. upon this statute.  
 23. A. Yes, sir. According to this statute.  
 24. Q. And 46-5-3230, drivers to exercise due care, if you  
 25. would read that into the record.

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1. A. Yes, sir. "Notwithstanding other provisions of any  
 2. local ordinance, every driver of a vehicle shall  
 3. exercise due care to avoid colliding with any  
 4. pedestrian or any person propelling a human-powered  
 5. vehicle and shall give an audible signal when  
 6. necessary and shall exercise proper precaution upon  
 7. observing any child or any obviously confused,  
 8. incapacitated or intoxicated person."  
 9. Q. Drivers basically have to use due care while  
 10. they're driving on the road.  
 11. A. Yes, sir.  
 12. Q. Have you had an opportunity as a part of your  
 13. duties as a highway patrol officer to investigate  
 14. persons who are intoxicated?  
 15. A. Yes, sir.  
 16. Q. How often are you involved in those kinds of  
 17. investigations?  
 18. A. That's a majority of the M.A.I.T. cases.  
 19. Q. A majority of M.A.I.T. cases involved the issue of  
 20. intoxication?  
 21. A. In relation to pedestrian strikes.  
 22. Q. Okay.  
 23. A. A majority of those pedestrians we work are  
 24. intoxicated pedestrians.  
 25. Q. And have you investigated accidents being part of

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1. the M.A.I.T. team where you found that the  
 2. pedestrian was intoxicated and impaired?  
 3. A. Yes, sir.  
 4. Q. Okay. In this particular incident, it's my  
 5. understanding that the hospital records show a  
 6. blood alcohol of .122. Have you encountered  
 7. individuals in the past with that alcohol level?  
 8. MR. WHITE: Object to form.  
 9. A. Typically in relation to the M.A.I.T. team, when we  
 10. deal with pedestrian wrecks, the pedestrians are  
 11. dead. So I mean, you know, what we get back from  
 12. autopsy later on is for statistical purposes only,  
 13. so.  
 14. Q. What about for drivers? You encounter drivers who  
 15. are impaired.  
 16. A. Yes, sir.  
 17. Q. Is that right?  
 18. A. Yes, sir.  
 19. Q. Have you encountered drivers in the past who were  
 20. impaired when they had a blood alcohol of about  
 21. .122?  
 22. A. Yes, sir.  
 23. Q. And that's above the legal limit as far as  
 24. operating a vehicle, at least, on the public  
 25. highways.

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1. A. That is correct.  
 2. Q. The last page of this is 56-5-3270. If you would,  
 3. read that into the record, please.  
 4. A. Yes, sir. "A pedestrian who is under the influence  
 5. of alcohol, or any drug, to a degree which renders  
 6. himself a hazard shall not walk on or be upon a  
 7. roadway except a sidewalk." Or high except a  
 8. sidewalk.  
 9. Q. If someone has above the legal limit of alcohol in  
 10. their system, would this statute apply to them as a  
 11. pedestrian to the extent it would render themselves  
 12. a hazard?  
 13. MR. WHITE: Object to form.  
 14. A. Yes, sir. According to the statute it would.  
 15. Q. Do you have -- have you formed any opinion in this  
 16. case that Thrift did anything to contribute to this  
 17. accident?  
 18. A. No, sir.  
 19. Q. What about the DOT?  
 20. A. No, sir. In this particular incidence I was just  
 21. called to document the scene and do a speed  
 22. calculation.  
 23. Q. That's all the questions I have for now.  
 24. CROSS-EXAMINATION  
 25. BY MR. LOGAN:

25 (Pages 94 - 97)

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1 Q: Most of what I would ask has been covered. I think  
 2 you've already acknowledged that you have had no  
 3 contact with any person or persons representing the  
 4 South Carolina Department of Transportation.  
 5 A: Yes, sir. That's correct.  
 6 Q: So you've not talked with any of the engineers,  
 7 you've not talked with any of the personnel that  
 8 work for DOT about this incident or about the  
 9 roadway or anything pertaining to this incident.  
 10 A: Yes. That's correct.  
 11 Q: I don't have the numbers, but -- Well, why don't we  
 12 just use the accident report. We've established  
 13 that the scuff mark is located as shown on this  
 14 document right here, --  
 15 A: Yes, sir.  
 16 Q: -- whatever Exhibit that is. It's part of  
 17 Exhibit 1.  
 18 A: Yes, sir. That's correct.  
 19 Q: Now looking at Exhibit #2, I think you've still got  
 20 a copy of that in front of you, is the point of  
 21 impact reasonably close to where that scuff mark  
 22 was found to be located upon your investigation?  
 23 A: Yes, sir. The area of impact is, but it is fairly  
 24 to, yes, sir.  
 25 Q: Okay. Now I want to ask you a sequence of

1 traffic traveling going towards Seneca, --  
 2 A: Yes, sir.  
 3 Q: -- whether it's red, yellow or green.  
 4 A: Yes, sir.  
 5 Q: Okay. For purposes of argument of a question,  
 6 let's assume there is a question about whether the  
 7 light for Mr. Williams was green or yellow or had  
 8 just turned red as he was at or going through that  
 9 intersection, okay?  
 10 A: Okay.  
 11 Q: Now assuming that and the fact that that light  
 12 would have been the same for traffic going towards  
 13 Seneca, would that not establish that in order for  
 14 the pedestrians to get from the sidewalk by the  
 15 Sonie, they would have had to start crossing 123  
 16 when there was a green light for 123 for that  
 17 traffic going to Seneca.  
 18 A: Yes, sir.  
 19 MR. WHITE: Object to form.  
 20 BY MR. LOGAN: (Resuming)  
 21 Q: So that in and of itself was an improper movement  
 22 or action by a pedestrian; is that right?  
 23 A: Yes, sir.  
 24 MR. WHITE: Object to form.  
 25 BY MR. LOGAN: (Resuming)

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1 questions as far as lights. And I'm going to use  
 2 for directional purposes, Mr. Williams was  
 3 traveling toward Easley; is that right?  
 4 A: Yes, sir. That's correct.  
 5 Q: On 123. All right. And the opposite direction  
 6 would be coming from Easley going towards Seneca;  
 7 is that correct?  
 8 A: That is correct.  
 9 Q: On 123. Okay. And in order to get to the spot,  
 10 the area of impact, the pedestrian with the young  
 11 lady on his back would have had to first cross over  
 12 123, the section of 123 going towards Seneca; is  
 13 that right?  
 14 A: That is correct.  
 15 Q: Completely across that.  
 16 A: Yes, sir.  
 17 Q: Okay. Now as far as sequencing, when the lights,  
 18 traffic lights for travel 123 going towards Seneca  
 19 and also going toward Easley, they would have been  
 20 green or red or yellow at the same time; is that  
 21 right?  
 22 A: That is correct.  
 23 Q: Okay. So we can determine from that that Mr.  
 24 Williams, whatever the color of his light was for  
 25 him would have been the color for the light for

1 Q: Because he'd be crossing a lane of 123 that had a  
 2 green light for traffic approaching going towards  
 3 Seneca.  
 4 A: That's correct.  
 5 Q: And had they just started crossing the roadway 123;  
 6 for that lane at the time the light turned red,  
 7 there was no way they could have gotten to the  
 8 point where the impact occurred had they waited on  
 9 that light to turn; is that right?  
 10 A: That's correct.  
 11 MR. WHITE: Object to the form.  
 12 BY MR. LOGAN: (Resuming)  
 13 Q: Okay. Now again in sequencing, the intersection  
 14 had -- you acknowledge it had the stop, the walk or  
 15 the pedestrian crosswalk signs; is that right?  
 16 A: Yes, sir.  
 17 Q: Now when the light turns red for a lane of travel,  
 18 for vehicular travel, does the crossing, in a  
 19 normal sequencing event, does the pedestrian  
 20 walkway light immediately turn to Walk, or is there  
 21 a sequence that it goes through to make sure  
 22 everybody's stopped and then they can safely pass?  
 23 MR. WHITE: Object to form.  
 24 A: Typically what happens with these intersections, if  
 25 someone does not hit the actuator to walk across

26 (Pages 98 - 101)

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1 A. That is correct.

2 Q. Okay. And do you know if you were crossing at that  
3 time, and I don't know if you did, if you walked it  
4 where they were coming from, could you see the  
5 lines?

6 MR. LOGAN: Object to the form.

7 MR. GIBBON: Object to the form.

8 A. If you were walking, you could see the lines.  
9 There were, you know, just it's portrayed in this  
10 photograph. I mean they're just -- where the  
11 traffic's ran over them it's sort of worn down in  
12 these different places, so.

13 BY MR. WHITE: (Resuming)

14 Q. And again, you testified you don't know how long  
15 they've been like this?

16 A. That's correct. I have no idea.

17 Q. Now from the video, I know that one of the Clemson  
18 officers testified that he saw at the northeast  
19 corner that there was a signal that said Don't Walk  
20 or it was red. Did you watch that entire video to  
21 see if it turned when it was supposed to to a  
22 different color?

23 A. Well, I looked at it again just now, just pulling  
24 back and forth. And that light that we see remains  
25 the same. It's just -- I believe it's the street

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1 work, which is of course the opposite of what you  
2 assumed earlier, but we're going to assume that  
3 you're correct that the lights were  
4 non-operational. What are the pedestrian's, what  
5 would his responsibilities be? To yield to the  
6 traffic?

7 A. Yield to the traffic that's on the roadway. Yes,  
8 sir.

9 Q. Is there any requirement for them to -- let's say  
10 that there's no traffic coming from this side. Is  
11 there a requirement that they can't cross if  
12 there's nobody coming from this side?

13 A. I don't think it differentiates in law, but I would  
14 say if there's nothing coming on this side, you'd  
15 be safe to move to where the traffic was moving,  
16 which would be on this other side.

17 Q. To the middle.

18 A. Correct.

19 Q. And went on that traffic.

20 A. Right.

21 Q. Which is what the witnesses say they did.

22 A. Well, I didn't list all -- I mean I can't recall  
23 right off the top of my head, so.

24 Q. And assuming that this light turns red and you have  
25 people crossing some in the middle, when this light

Page 143

1 light.

2 Q. So that would indicated it's not the crosswalk  
3 light?

4 A. I don't think that it is.

5 Q. And the reason you say that is because you would  
6 have expected it to change if the light changes  
7 after a certain period of time.

8 A. At least the intensity though, because it's a light  
9 that -- it's contained within the one square  
10 rectangular box.

11 Q. Sure.

12 A. So you would see the intensity change. You'd be  
13 able to see that kind of change, but as far as like  
14 a stop light moving up and down a little tiered  
15 light thing.

16 Q. And again, and I'm sorry, I'm asking this again, you  
17 have not determined who's at fault for this  
18 accident?

19 A. No, sir.

20 Q. And as you sit here today you still don't have a  
21 determination on who was at fault?

22 A. I still do not have an opinion.

23 Q. Okay. I'm going to ask you a series of questions  
24 and these questions are designed for your opinion;  
25 okay? Assuming that the crosswalk lights do not

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1 turns red, you would assume the pedestrians would  
2 think okay, every's stopped, I can cross the rest  
3 of the way.

4 MR. LOGAN: Object to the form.

5 A. Well, assuming that, even when these witnesses that  
6 are stopped see a vehicle that they said is  
7 traveling at a high rate of speed, the pedestrians  
8 would have the best spots, you know, the view to  
9 see them. They would not only see the car coming,  
10 but they would hear the, you know, the noise of the  
11 engine as it was coming up there.

12 BY MR. WHITE: (Resuming)

13 Q. Assuming there's not a car in the turn lane.

14 A. Right.

15 Q. But we don't know if there was a car in the turn  
16 lane, correct?

17 A. I don't know.

18 Q. Do you believe that this crosswalk posed a danger  
19 to pedestrians?

20 MR. LOGAN: Object to the form.

21 A. I don't think it did as a danger, because typically  
22 the students, they may cross that intersection  
23 three or four times a day. As far as a danger, I  
24 don't think that it as of itself, is a danger,  
25 because they already know it's there. And if

37 (Pages 142 - 145)



Page 142

1 A. That is correct.  
 2 Q. Okay. And do you know if you were crossing at that  
 3 time, and I don't know if you did, if you walked it  
 4 where they were coming from, could you see the  
 5 lines?  
 6 MR. LOGAN: Object to form.  
 7 MR. GIBBON: Object to the form.  
 8 A. If you were walking, you could see the lines.  
 9 There were, you know, just it's portrayed in this  
 10 photograph. I mean they're just -- where the  
 11 traffic's ran over them it's sort of worn down in  
 12 these different places, so.  
 13 BY MR. WHITE: (Resuming)  
 14 Q. And again, you testified you don't know how long  
 15 they've been like this?  
 16 A. That's correct. I have no idea.  
 17 Q. Now from the video, I know that one of the Clemson  
 18 officers testified that he saw at the northeast  
 19 corner that there was a signal that said Don't Walk  
 20 or it was red. Did you watch that entire video to  
 21 see if it turned when it was supposed to to a  
 22 different color?  
 23 A. Well, I looked at it again just now, just pulling  
 24 back and forth. And that light that we see remains  
 25 the same. It's just -- I believe it's the street

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1 light.  
 2 Q. So that would indicated it's not the crosswalk  
 3 light?  
 4 A. I don't think that it is.  
 5 Q. And the reason you say that is because you would  
 6 have expected it to change if the light changes  
 7 after a certain period of time.  
 8 A. At least the intensity though, because it's a light  
 9 that -- it's contained within the one square  
 10 rectangular box.  
 11 Q. Sure.  
 12 A. So you would see the intensity change. You'd be  
 13 able to see that kind of change, but as far as like  
 14 a stop light moving up and down a little tiered  
 15 light thing.  
 16 Q. And again, and I'm sorry I'm asking this again, you  
 17 have not determined who's at fault for this  
 18 accident?  
 19 A. No, sir.  
 20 Q. And as you sit here today you still don't have a  
 21 determination on who was at fault?  
 22 A. I still do not have an opinion.  
 23 Q. Okay. I'm going to ask you a series of questions  
 24 and these questions are designed for your opinion.  
 25 okay? Assuming that the crosswalk lights do not

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1 work, which is of course the opposite of what you  
 2 assumed earlier, but we're going to assume that  
 3 you're correct that the lights were  
 4 non-operational. What are the pedestrian's, what  
 5 would his responsibilities be? To yield to the  
 6 traffic?  
 7 A. Yield to the traffic that's on the roadway. Yes,  
 8 sir.  
 9 Q. Is there any requirement for them to -- let's say  
 10 that there's no traffic coming from this side. Is  
 11 there a requirement that they can't cross if  
 12 there's nobody coming from this side?  
 13 A. I don't think it differentiates in law, but I would  
 14 say if there's nothing coming on this side, you'd  
 15 be safe to move to where the traffic was moving,  
 16 which would be on this other side.  
 17 Q. To the middle.  
 18 A. Correct.  
 19 Q. And went on that traffic.  
 20 A. Right.  
 21 Q. Which is what the witnesses say they did.  
 22 A. Well, I didn't list all -- I mean I can't recall  
 23 right off the top of my head, so.  
 24 Q. And assuming that this light turns red and you have  
 25 people crossing some in the middle, when this light

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1 turns red, you would assume the pedestrians would  
 2 think okay, every's stopped, I can cross the rest  
 3 of the way.  
 4 MR. LOGAN: Object to the form.  
 5 A. Well, assuming that, even when these witnesses that  
 6 are stopped see a vehicle that they said is  
 7 traveling at a high rate of speed, the pedestrians  
 8 would have the best spots, you know, the view to  
 9 see them. They would not only see the car coming,  
 10 but they would hear the, you know, the noise of the  
 11 engine as it was coming up there.  
 12 BY MR. WHITE: (Resuming)  
 13 Q. Assuming there's not a car in the turn lane.  
 14 A. Right.  
 15 Q. But we don't know if there was a car in the turn  
 16 lane, correct?  
 17 A. I don't know.  
 18 Q. Do you believe that this crosswalk posed a danger  
 19 to pedestrians?  
 20 MR. LOGAN: Object to the form.  
 21 A. I don't think it did as a danger, because typically  
 22 the students, they may cross that intersection  
 23 three or four times a day. As far as a danger, I  
 24 don't think that it as of itself, is a danger,  
 25 because they already know it's there. And if

37 (Pages 142 - 145);



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1 they've never crossed there before and you started  
2 across, you would say well, there's a problem. But  
3 if you cross there more than once, you already know  
4 that there's a lot of traffic, there's a lot of  
5 people that cross. And like I said, at all hours  
6 of the day and night they're moving back and forth  
7 across the roadway. But someone that's already  
8 crossed, I would venture to say they wouldn't see  
9 it as a danger.

10 BY MR. WHITE: (Resuming)

11 Q: Have you heard the witnesses -- some of the  
12 witnesses say that there were individuals in front  
13 of the two that were you hit that made it across  
14 safely?

15 A: I think I heard something in there about some  
16 people that had made it across. But I would have  
17 to listen to the interview to see what it says, if  
18 it was in front of or behind those two.

19 Q: Assuming that there's somebody who crosses in front  
20 of you and they make it safely and you see the  
21 light and it's red, would assume since these people  
22 made it and it's red, I'm going to go ahead and  
23 across and I'll be fine?

24 A: Well, assuming, just has an assumption, if I saw a  
25 car coming and it didn't look like it was slowing

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1 down, I would absolutely not step out.

2 Q: I understand that, but assuming there's somebody in  
3 the turn lane that blocks your vision from seeing  
4 the middle lane, and it's dark at night, obviously,  
5 assuming all those factors, and again, you see the  
6 light's red, you see the two people cross right in  
7 front of you. I think that they said they were  
8 approximately a car length apart is what I  
9 remember, and they're not getting hit by a car and  
10 you're walking behind them, would you say that it's  
11 set to cross?

12 A: I would say yes.

13 MR. MAUNEY: Objection to the form.

14 MR. LOGAN: Objection to the form.

15 MR. GIBBONS: Objection to the form.

16 BY MR. WHITE: (Resuming)

17 Q: And the Jeep, there's one witness that has it as a  
18 white Jeep. It's kind of strange. I think it's --  
19 I can't remember which one it is. It might have  
20 been Peter Cole. I can't remember. He refers to  
21 it as a white Jeep. But the Jeep was definitely a  
22 dark color?

23 A: Yes, sir. It was.

24 Q: And it was an older model Jeep?

25 A: It was.

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1 Q: And I know that you said there's some light out  
2 there. Is it ambient light or is it direct light  
3 onto the road?

4 A: It is not direct light. It's ambient light for the  
5 roadway. It's direct for the sidewalk because  
6 that's what it's designed to do, is light the  
7 sidewalk.

8 Q: And from these pictures, I think you've testified  
9 the crosswalk you would say is not sufficiently  
10 painted or sufficiently designed according to these  
11 lines.

12 MR. LOGAN: Objection.

13 MR. GIBBON: Object to the form.

14 MR. CARSON: Object to the form.

15 MR. MAUNEY: Object to the form.

16 A: In my opinion, you know, the crosswalk is probably  
17 sufficiently designed, but the marking, itself, at  
18 this time is not, in my opinion.

19 Q: And you testified earlier that the crosswalk, from  
20 the day photos, the crosswalk had a dip in it for  
21 where the crosswalk was supposed to go.

22 A: Well, that's the place where the pedestrians enter  
23 the crosswalk. Yes, sir.

24 Q: But you said supposed to be because the lines were  
25 painted, correct?

1 A: Correct.

2 Q: Would you say it's safe at this intersection  
3 knowing that there are children, or I called  
4 children, they are young adult between the ages of  
5 18 and 22. We've already established that they  
6 frequently are using alcohol. Would you say it's  
7 safe to leave the pedestrian signs off?

8 MR. LOGAN: Objection to the form.

9 MR. MAUNEY: Objection to the form.

10 A: Again, I don't know why they were off. But if they  
11 were there, they should have functioned. But  
12 again, I don't know if it was a power issue or what  
13 the deal was with that.

14 BY MR. WHITE: (Resuming)

15 Q: And again, if you're crossing from this side and  
16 there's no light, but there's these little patterns  
17 on the road, and assuming that's a little confusing  
18 on what you're supposed to do. I mean would that  
19 confuse you if there's a light that's not working,  
20 a crosswalk that's not painted correct? I mean  
21 would that confuse somebody that's trying to cross  
22 right there?

23 A: If they have never crossed --

24 MR. GIBBON: Objection.

25 MR. MAUNEY: Object to the form.

38 (Pages 146 - 149)

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1 Q. Gotcha. Other than that?  
 2 A. You've got everything.  
 3 Q. Gotcha.  
 4 A. Yes, sir.  
 5 Q. I know that there were audio statements taken and I  
 6 know there were written statements taken. As you  
 7 sit here, do you recall any inconsistencies between  
 8 any of the written statements and the audio  
 9 statements from particular witnesses?  
 10 A. I do not recall off the top of my head.  
 11 Q. Okay. Have you investigated accidents where there  
 12 was no crosswalk?  
 13 A. Yes, sir.  
 14 Q. And the roads of our state have places where there  
 15 are no crosswalks.  
 16 A. That's correct.  
 17 Q. And have no pedestrian signals.  
 18 A. That's correct.  
 19 Q. Okay. If the pedestrian signal was not working,  
 20 that night, would you have expected pedestrians to  
 21 look with their eyes to see what was on the  
 22 roadway?  
 23 A. Yes, sir.  
 24 MR. WHITE: Object to form.  
 25 BY MR. MAUNEY: (Resuming)

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1 Q. And would you expect them to do that even if the  
 2 signal was operating?  
 3 A. I would expect them to look around and see what's  
 4 happening around them. Yes, sir.  
 5 Q. Whether the signal was working or not?  
 6 A. Yes, sir.  
 7 Q. And was there any confusion or should there have  
 8 been any confusion on anybody's part when they  
 9 stood on the sidewalk at that Sonic about where  
 10 they should walk as they entered the intersection  
 11 to cross 123?  
 12 MR. WHITE: Object to form.  
 13 A. I don't know if there was. There should not have  
 14 been, but other than that, I don't know. If  
 15 they've crossed there before, they already know  
 16 where they need to cross.  
 17 BY MR. MAUNEY: (Resuming)  
 18 Q. Well, even if they hadn't crossed there before.  
 19 A. Yeah.  
 20 Q. The pavers and the change in pavement from the  
 21 pavers, --  
 22 A. Yes, sir.  
 23 Q. -- and the way the sidewalk comes down in elevation,  
 24 all would suggest to anyone, even if they're never  
 25 been there, where to enter the intersection.

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1 A. Yes.  
 2 MR. WHITE: Object to form.  
 3 BY MR. MAUNEY: (Resuming)  
 4 Q. There's no median in this intersection, right?  
 5 A. That's correct.  
 6 Q. So if somebody walks out into the middle and then  
 7 stops, there's standing in the middle of the  
 8 intersection, right?  
 9 A. They'd be standing on the yellow lines, which is  
 10 only about 12 inches. You've got four-inch yellow  
 11 lines and four inches between, so you've got about,  
 12 you know, 12 inches there to stand on.  
 13 Q. Is there raised concrete or any place where -- I  
 14 mean there are places in Greenville where I cross  
 15 halfway off and then and stand there and wait for  
 16 more cars. There was no place like that.  
 17 A. No, sir. This does not have a place like that.  
 18 Q. All right. That's all I have.  
 19 MR. LOGAN: No questions.  
 20 RE-CROSS-EXAMINATION  
 21 BY MR. GIBBON:  
 22 Q. Have you got the CAD file still up to do a  
 23 measurement?  
 24 A. Yes, sir. What have you got?  
 25 Q. Can you do the edge of the road to the area of

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1 impact?  
 2 A. Like I say, his destination would have been,  
 3 because we didn't mapped the lane going toward  
 4 Seneca. We've got the lanes mapped where the  
 5 collision occurred on the other side. I can  
 6 measure that for you.  
 7 Q. Can I get like the width of where he would, or  
 8 whoever entered the roadway, crossed those lane to  
 9 the area of impact? Can you measure that?  
 10 A. I don't have that up. We mapped the turn lane for  
 11 the lanes going towards Easley, but we didn't map  
 12 the other side of the road. I can tell you from  
 13 where his foot, the mark for his boot is. It was  
 14 about 29.23 feet to where he would have stepped  
 15 back onto the sidewalk.  
 16 Q. Say that again.  
 17 A. From where he got struck it's 29.23 feet to where  
 18 he would have stepped back onto the sidewalk.  
 19 Q. Assuming nothing had ever happened.  
 20 A. Exactly.  
 21 Q. Okay.  
 22 A. And I don't have the measurements from the other  
 23 side of the roadway.  
 24 MR. LOGAN: You're talking about you don't have  
 25 it from Sonic to where he --

41 (Pages 158 - 161)

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Page 1

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2 COUNTY OF PICKENS )

3 Kevin M. Granatino, )

4 Plaintiff, )

5 -vs- )

) C.A. No. 2016-CP-39-01223

6 Calvin Williams, Clemson )

7 University, South Carolina )

8 Department of Transportation )

9 and Thrift Development )

Corporation, )

10 Defendants, )

11

12

13

14 Deposition of WREN JOHNSON, a witness called by  
15 Counsel on behalf of the Defendants, pursuant to the  
16 applicable provisions of the South Carolina Rules of  
17 Civil Procedure, taken before Cynthia L. Weathers, a  
18 Professional Court Reporter and Notary Public in and for  
19 the State of South Carolina, on October 30, 2017 at  
20 Gallivan White & Boyd, PA, 55 Beattie Place, Suite 1200,  
21 Greenville, South Carolina, commencing at the hour  
22 of 10:30 a.m.

23

24

25

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Page 6

- 1 A: Yes, sir.  
 2 Q: How did you determine the time to put down?  
 3 A: We based it off of incoming calls on our CAD at the  
 4 time as the time it was reported.  
 5 Q: So 911 calls?  
 6 A: Yes, sir.  
 7 Q: And do you have a record of when you arrived at the  
 8 scene?  
 9 A: Yes, sir. 2158, which is 9:58 p.m., approximately  
 10 two minutes after the 911 call.  
 11 Q: Where were you when you got the call?  
 12 A: I was on Issaquena Trail in the area of Highway  
 13 123.  
 14 Q: And were you in your vehicle?  
 15 A: Yes, sir. I was.  
 16 Q: And how were you notified?  
 17 A: By radio.  
 18 Q: And what did you do in response to that call?  
 19 A: I then requested emergency response code: blue  
 20 lights and siren, from the supervisor, and I  
 21 proceeded a code 3, as we call it, let out the siren  
 22 to the scene.  
 23 Q: And that supervisor was Josh Caldwell?  
 24 A: Yes, sir.  
 25 Q: And so when you got to the scene, tell me you found.

Page 7

- 1 A: When I arrived on the scene, I observed a pedestrian  
 2 laying in the roadway in the middle of the  
 3 intersection. At that time, my main thing was to  
 4 protect him and everybody in the middle of the road.  
 5 There were several other people in the roadway, as  
 6 well, to try to block it off. That way nobody else  
 7 got hurt during the collision. I positioned my car  
 8 in a way that was protecting him as well from  
 9 oncoming. I then notified my dispatch that there  
 10 was injuries, that we did need the fire department  
 11 and things of that nature. EMS and the fire  
 12 department was already on the way. Clemson  
 13 University Fire Department responded. They're a  
 14 short distance down the road. I confirmed that he  
 15 was still, you know, alive at the time, breathing,  
 16 and so forth. If I'm not mistaken, there was a  
 17 doctor on the scene tending to him at the time. I  
 18 do not know his name or who he was. He was there  
 19 taking care of the patient and then left. Once the  
 20 scene was safe and fire and EMS was there, you know,  
 21 I turned over everything to them. They took care of  
 22 patient care and so forth.  
 23 Q: Okay. Let me stop you right there.  
 24 A: Okay.  
 25 Q: Was one of the EMSs that responded the Clemson

Page 8

- 1 University EMS?  
 2 A: Yes. Their fire department and EMS, they are all  
 3 both cross-trained.  
 4 Q: So did a fire brigade, whatever the word is, respond  
 5 in addition to EMS?  
 6 A: Yes. The collisions of this, you know, special  
 7 injuries and things of that nature, the fire  
 8 department, their First Response from Pickens County  
 9 a lot of times. And like I said, they are fire and  
 10 EMS, so they usually roll a fire engine and the EMS  
 11 personnel, because all their firemen at the  
 12 University Fire Department are either EMS or  
 13 paramedics.  
 14 Q: Would you expect the Clemson University Fire  
 15 Department and EMS to have a written report  
 16 concerning this incident?  
 17 A: They should. They should have their DHEC reports  
 18 and actual fire report that they have to do, as  
 19 well.  
 20 Q: In your experience, would there be two separate  
 21 reports, one relative and one relative to EMS?  
 22 A: I believe so. Yes, sir.  
 23 Q: And the EMS, who did they -- were you there when  
 24 they arrived?  
 25 A: I was.

Page 9

- 1 Q: And who did they first respond to?  
 2 A: They first -- Mr. Granatino, he was the most critical  
 3 at the time.  
 4 Q: So your recollection is that Clemson University EMS  
 5 initially --  
 6 A: They was first on scene as the EMS unit and they  
 7 started patient care with him. I believe Pickens  
 8 County is actually the ones that actually  
 9 transported him, if I remember correctly.  
 10 Q: So Pickens County EMS also responded.  
 11 A: Yes.  
 12 Q: What other emergency personnel responded to the  
 13 scene?  
 14 A: I believe, if I remember correctly, I believe  
 15 Med-Trans responded, which is a helicopter medical  
 16 helicopter that transported Mr. Granatino to  
 17 Greenville Memorial.  
 18 Q: Any other fire departments other than the Clemson  
 19 University Fire Department?  
 20 A: Not that I remember. No, sir.  
 21 Q: And any EMS besides Pickens County EMS and Clemson  
 22 University EMS?  
 23 A: Not to my knowledge. I can't remember if Rescue 6,  
 24 which is part of the Pickens County Rescue Squad,  
 25 they're linked in with the EMS personnel. I cannot

3 (Pages: 6 - 9)

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Page 22

1 Q. So he would have been traveling toward -  
 2 Greenville?  
 3 A. Yes, sir.  
 4 Q. -- on Tiger Boulevard.  
 5 A. Yes, sir, coming from the Seneca direction.  
 6 Q. Now what you read was he stated that he was coming  
 7 through the intersection and seen the two  
 8 pedestrians running across the intersection.  
 9 A. Yes, sir.  
 10 Q. Did he use the word running?  
 11 A. To my knowledge, yes.  
 12 Q. And Mr. Williams was not charged in the accident?  
 13 A. No, sir. He was not.  
 14 Q. Now other officers from the City of Clemson prepared  
 15 reports, narratives.  
 16 A. Yes, sir.  
 17 Q. Is that correct?  
 18 A. Yes, sir.  
 19 Q. Okay. We'll come back to that in a minute. On the  
 20 accident report there's a narrative of what -- it  
 21 says describe what happened.  
 22 A. Uh-huh.  
 23 Q. Read that into the record for me and then I want to  
 24 ask you some questions about it.  
 25 A. "Unit 1 was going east on US 76, unlawfully had

Page 23

1 entered into the intersection at SC 133. Units 2  
 2 and 3 were pedestrians running across US 76 from  
 3 north to south. Units 2 and 3 were unlawfully in  
 4 the roadway due to them not complying with the  
 5 crosswalk signals. Units 2 and 3 also failed to  
 6 yield right-of-way to traffic. Unit 1 then was  
 7 struck, or then struck Units 2 and 3."  
 8 Q. All right. And Unit 1 is Mr. Williams?  
 9 A. Yes, sir.  
 10 Q. And Units 2 and 3 are Mr. Granatino and Ms. Jones?  
 11 A. Yes, sir.  
 12 Q. Okay. Now you state the pedestrians running across  
 13 US 76 from north to south. Is that based upon what  
 14 Mr. Williams told you?  
 15 A. Not totally. It was based on also what other people  
 16 advised me, as well, or what I was advised from  
 17 statements and other things like that.  
 18 Q. So when you did this report, did you have access to  
 19 the written statements that were taken by Lieutenant  
 20 Gooch?  
 21 A. Yes, sir. I did.  
 22 Q. Those were done that night?  
 23 A. Yes, sir, to my knowledge.  
 24 Q. And when was this report completed?  
 25 A. This report was completed -- I know it was amended,

Page 24

1 on January 20th of 2015. I did complete a basic that  
 2 night but nothing -- I do not know the final date  
 3 that it was.  
 4 Q. And the fact that it took a couple of months, would  
 5 that be typical when you have the M.A.I.T. team  
 6 involved?  
 7 A. Yes, sir.  
 8 Q. And would Sergeant Caldwell have been the primary  
 9 person that M.A.I.T. communicated with in terms of  
 10 information from their investigation?  
 11 A. Yes, sir. I would say.  
 12 Q. And then the next thing you say in there is that  
 13 Granatino and Jones were unlawfully in the roadway  
 14 due to them not complying with the crosswalk  
 15 signals. Tell me about that.  
 16 A. We believe at the time that the crosswalk signals  
 17 were on telling them to not cross at the time. So  
 18 when they crossed the road, that they was in the  
 19 road unlawfully at the time.  
 20 Q. And the basis of that statement that the crosswalk  
 21 signals were showing that they should not walk, was  
 22 that the various witness statements?  
 23 A. I believe it come from the M.A.I.T. team.  
 24 Q. The M.A.I.T. team.  
 25 A. Yes, sir.

Page 25

1 Q. Okay.  
 2 A. Like I said, I never had anybody from the M.A.I.T.  
 3 team sit down and explain their finds, just from  
 4 what Sergeant Caldwell advised me.  
 5 Q. And so did Sergeant Caldwell tell you that that is  
 6 what you should say in the narrative, that they were  
 7 unlawfully in the road because they were not  
 8 complying with the crosswalk signals?  
 9 A. Yes, sir. I mean after he explained to me about the  
 10 crosswalks and things of that nature. Yes, sir.  
 11 Q. Now when you got to the scene that night, -- And let  
 12 me just ask this. There are electronic signals at  
 13 each corner of that intersection?  
 14 A. Yes, sir.  
 15 Q. Okay. And are those mounted on the post that has  
 16 the traffic lights?  
 17 A. I believe so. Yes, sir.  
 18 Q. Okay.  
 19 A. I'm trying to remember.  
 20 Q. Did you have the opportunity to observe or look at  
 21 the pedestrian signals while you were at the scene?  
 22 A. Not to my knowledge. I did not look at them that  
 23 night. I don't remember that night. No, sir.  
 24 Q. Okay. Do you recall that there were witnesses in  
 25 terms of statements taken by Lieutenant Gooch who

7 (Pages 22 - 25)

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1 believe that's what it would have shown at some  
2 points in time?  
3 A: Yes, sir.  
4 MR. WHITE: Object to form.  
5 BY MR. MAUNEY: (Resuming)  
6 Q: And then Exhibit 3 -- let me turn it the right  
7 way -- counting down 21 seconds?  
8 A: Yes, sir.  
9 Q: Okay. And would that also show it as it would have  
10 been that night assuming that the signal was  
11 working?  
12 A: Yes, sir.  
13 MR. WHITE: Object to form.  
14 BY MR. MAUNEY: (Resuming)  
15 Q: And then Number 4 is a orange hand plus 13 seconds  
16 left?  
17 A: Yes, sir.  
18 Q: And would this also have been the way the signal  
19 looked that night if in fact it was working?  
20 A: Yes, sir.  
21 MR. WHITE: Objection.  
22 BY MR. MAUNEY: (Resuming)  
23 Q: So the difference between 3 and 4 is that 3 is  
24 counting down and 4 is counting down but has a  
25 steady --

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1 A: I believe the hand should be flashing.  
2 Q: -- flashing at that.  
3 A: Yes, sir.  
4 Q: Okay. Which means don't walk.  
5 A: Don't start if you --  
6 Q: Don't start.  
7 A: Yes, sir.  
8 Q: And then #5, orange hand, don't start walking?  
9 A: Yes, sir.  
10 Q: Again, would that have been the way the signal  
11 looked that night if it was working?  
12 A: Yes, sir.  
13 MR. WHITE: Object to form.  
14 BY MR. MAUNEY: (Resuming)  
15 Q: We'll come back to these others in a minute. Let's  
16 go ahead and actually talk about some other  
17 photographs just to verify what the intersection  
18 looked like that night, if you go back to Exhibit 1.  
19 Actually, I take that back. Let's look at Exhibit 5  
20 of Trooper Brooks' deposition. And the specific  
21 photograph is Granatino 9. Do you recognize that as  
22 the intersection where this accident happened?  
23 A: Some of it. Yes, sir.  
24 Q: Okay. And on the other side of the street from  
25 where this photograph was taken, is that the Sonic?

Page 32

1 A: Yes, sir.  
2 Q: Which as I understand is no longer.  
3 A: Yes, sir. It's tore down.  
4 Q: And is it your understanding that Mr. Granatino and  
5 Ms. Jones would have been coming across 123 toward  
6 or away from the Sonic?  
7 A: Yes, sir. Sonic is on the north side and the  
8 intersection, the sidewalk there is going to be on  
9 the south side.  
10 Q: And the sidewalk configuration and the area where  
11 pedestrians enter the sidewalk, were they pretty  
12 much the same all the way around the intersection?  
13 A: To my knowledge that night, yes, sir.  
14 Q: Okay. And what I'm talking about specifically in  
15 Granatino 9 is at the bottom of the photograph  
16 you'll see some brick pavers?  
17 A: Yes, sir.  
18 Q: Okay. And then when you get to the edge, there's a  
19 different type of material. Do you see that?  
20 A: Concrete, blue. Yes, sir.  
21 Q: Okay. And also the curb cuts away there. It's like  
22 a ramp.  
23 A: Yes, sir. Yes, sir.  
24 Q: Okay. And does Exhibit 9 in terms of the pavers and  
25 the area where you step off and where the curb cuts

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1 away, does that fairly and accurately show the  
2 condition of the pedestrian walkway area at the time  
3 of the accident?  
4 MR. WHITE: Object to form.  
5 A: Yes, sir.  
6 BY MR. MAUNEY: (Resuming)  
7 Q: Go to the next one that's got a yellow sticky on it.  
8 You just skipped one. Sorry. What page is that?  
9 A: It's Granatino 14.  
10 Q: Okay. And does this also show a part of the  
11 intersection of 133 and Tiger Boulevard?  
12 A: Yes, sir.  
13 Q: In fact, across 133 is the area where Granatino and  
14 Jones would have been walking from, is that correct?  
15 They would have crossed 123 at that point?  
16 A: If they had made it this far, they would have  
17 already been across. I believe 133 is that way.  
18 Q: Oh, that's the other direction.  
19 A: Yes, sir.  
20 Q: Gotcha.  
21 A: This would be the Walgreen's --  
22 Q: That's the Walgreen's side?  
23 A: Yes, sir. That's Walgreen's side and this is the  
24 Starbucks side here where the grass is.  
25 Q: All right. So they were walking from Sonic towards

9 (Pages 30 - 33)

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Page 34

1 Starbucks.  
 2 A: Yes.  
 3 Q: Got it.  
 4 A: From left to right on this photo.  
 5 Q: But as far as this photograph goes, again, this  
 6 shows another corner of the intersection. Does it  
 7 also show the sidewalk ending or the concrete,  
 8 smooth concrete and then the pavers?  
 9 A: Yes, sir.  
 10 Q: And then across the way in that other intersection  
 11 it also shows those pavers.  
 12 A: Yes, sir.  
 13 Q: And also the curb cut.  
 14 A: I believe that's pavers.  
 15 Q: Yeah. And you can see where the curb cut is.  
 16 A: Yes, sir.  
 17 Q: Okay. Go to the next yellow sticky. And that's  
 18 Granatino 15.  
 19 A: Yes, sir.  
 20 Q: Okay. I believe this is the same intersection we  
 21 were just looking at.  
 22 A: Same direction.  
 23 Q: Same direction?  
 24 A: Just a little bit closer.  
 25 Q: Okay. And let me ask you to go back to the

Page 35

1 I through 8 for the rest of your deposition. Go to  
 2 #6, 7 and 8. Okay. Do you see #6?  
 3 A: Yes, sir.  
 4 Q: Okay. Tell me what you see in that photograph.  
 5 A: It appears to be a sidewalk with pavers along the  
 6 curbing.  
 7 Q: Okay. So if someone was walking down this sidewalk  
 8 towards the curb cut, they would be walking first on  
 9 solid, smooth concrete.  
 10 A: Yes, sir.  
 11 Q: Is that right?  
 12 A: Yes, sir.  
 13 Q: And then what's the next thing they would walk on?  
 14 A: Pavers.  
 15 Q: Okay. And when you say pavers, is that individual  
 16 bricks?  
 17 A: I believe it's like a pattern of section. I don't  
 18 know if it's individuals or not, like if they come  
 19 in like an actual pattern, and then there's, you  
 20 know, with several of the bricks. I'm not sure.  
 21 Q: So it's a different color than the concrete.  
 22 A: Yes, sir.  
 23 Q: And it has a design to it.  
 24 A: Yes, sir.  
 25 Q: Okay. And then if you were going to the curb cut,

Page 36

1 you would walk from the pavers onto some other  
 2 different kind of material.  
 3 A: Yes, sir.  
 4 Q: What is that?  
 5 A: I don't know what kind of material it is.  
 6 Q: What color is it?  
 7 A: It's like a gray-ish color.  
 8 Q: Gray?  
 9 A: Yes, sir.  
 10 Q: And that would be a different color than the pavers?  
 11 A: Yes, sir.  
 12 Q: Okay. And does it have raised knobs on it, for lack  
 13 of a better term?  
 14 A: It does. Yes, sir.  
 15 Q: Okay. And at that point the curb cut is level. In  
 16 other words the pavement is level at the area where  
 17 the pedestrian is to walk off.  
 18 A: Yes, sir.  
 19 Q: Okay. And do you believe this fairly and accurately  
 20 shows what would have been at the corners of this  
 21 intersection that night?  
 22 MR. WHITE: Object to form.  
 23 A: Yes, sir. I believe it is. I can't say it's that  
 24 intersection from this picture, but I believe it to  
 25 be accurate.

Page 37

1 Q: And then Exhibit 7 is a closer up shot of the area  
 2 where the curb is level and the pedestrians would  
 3 walk off, correct?  
 4 A: Yes, sir.  
 5 Q: And you can see those raised gray areas better in  
 6 that photograph.  
 7 A: Yes, sir.  
 8 Q: And then #8 is the same thing we've talked about.  
 9 A: Yes, sir.  
 10 Q: Okay. Do you know of any reason why the pedestrian  
 11 signals would not have been working at a certain  
 12 time that night?  
 13 A: I do not know.  
 14 MR. WHITE: Object to form.  
 15 BY MR. MAUNEY: (Resuming)  
 16 Q: So if a pedestrian was walking down the sidewalk  
 17 approaching the area where Mr. Granatino would have  
 18 walked off into the roadway...  
 19 A: Uh-huh.  
 20 Q: -- the first thing he might of encountered to tell  
 21 him he was approaching a different area would be the  
 22 pavers.  
 23 A: Yes, sir.  
 24 MR. WHITE: Object to form.  
 25 BY MR. MAUNEY: (Resuming)

10 (Pages 34 - 37)

Page 38

1 Q: And then the second thing he would have encountered.  
 2 would be the raised gray area.  
 3 A: Yes, sir.  
 4 MR. WHITE: Object to form.  
 5 BY MR. MAUNEY: (Resuming)  
 6 Q: And another thing he would have encountered would be  
 7 the absence of a curb.  
 8 A: Yes, sir.  
 9 MR. WHITE: Object to form.  
 10 BY MR. MAUNEY: (Resuming)  
 11 Q: Go back to the M.A.I.T. report, Exhibit I to Mr.  
 12 Brooks' deposition, Granatino page 135. It's the  
 13 beginning of the photograph. Okay. On both of  
 14 these photographs the words are written area of  
 15 impact.  
 16 A: Yes, sir.  
 17 Q: Were you involved in determining the area of impact?  
 18 A: No. I wasn't asked -- I mean we found the place  
 19 where we believed that it was, but just --  
 20 Q: And does this show the area that ya'll believed that  
 21 it was?  
 22 A: Yes, sir.  
 23 Q: And was there some sort of scuff on the pavement?  
 24 A: There was from what we believe to be one of Mr.  
 25 Granatino's boots.

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1 Q: And let's go to Granatino 147. The bottom  
 2 photograph on Granatino 147, that P is the same  
 3 place that you marked where the area of impact was?  
 4 A: I believe so. Yes, sir.  
 5 Q: Now do you see some white lines horizontal across  
 6 the highway there?  
 7 A: I do. Yes, sir.  
 8 Q: Okay. Is it your understanding that corresponds  
 9 with where the final crosswalk would be?  
 10 MR. WHITE: Object to form.  
 11 A: Yes, sir.  
 12 BY MR. MAUNEY: (Resuming)  
 13 Q: Okay. And for the purposes of our discussion today,  
 14 was the area of impact that you found within the  
 15 confines of those two white lines?  
 16 A: Yes, sir. I believe so from this picture.  
 17 Q: And as you stood in the highway that night in that  
 18 area, which he would have been in, correct?  
 19 A: Yes, sir.  
 20 Q: If you looked in either direction, it would have  
 21 pointed you back to the other side where the curb  
 22 cut was.  
 23 A: I believe so. Yes, sir.  
 24 MR. WHITE: Object to form.  
 25 BY MR. MAUNEY: (Resuming)

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1 Q: So that area of impact, was it in an area that you  
 2 would have expected pedestrians to be walking?  
 3 A: Yes, sir.  
 4 MR. WHITE: Object to form.  
 5 BY MR. MAUNEY: (Resuming)  
 6 Q: There's also a -- go back to Granatino 135, which is  
 7 that first photograph. At the top of the page, you  
 8 see a very wide, white line that crosses the highway  
 9 horizontally.  
 10 A: Yes, sir.  
 11 Q: Is that what's commonly referred to as the stop bar?  
 12 A: Yes, sir.  
 13 Q: Okay. And what's the stop bar?  
 14 A: That's where you're supposed to stop. If the light  
 15 was red and you were coming to a stop, you're  
 16 supposed to stop behind that bar.  
 17 Q: So that would be if Mr. Williams was coming along  
 18 there and the light was red and he wanted to stop  
 19 before entering the intersection, legally he would  
 20 need to stop before he got to that white line.  
 21 A: Yes, sir.  
 22 Q: And that stop bar, would it have been visible to  
 23 pedestrians that night?  
 24 A: Yes, sir.  
 25 MR. WHITE: Object to form.

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1 BY MR. MAUNEY: (Resuming)  
 2 Q: Do you have any experience, training, education in  
 3 the design of traffic control at intersections?  
 4 A: No, sir. I do not.  
 5 Q: What about the placement of permanent or temporary  
 6 traffic control devices in an intersection?  
 7 A: I do not.  
 8 Q: Traffic engineering?  
 9 A: No, sir.  
 10 Q: So, if I ask you about the adequacy of traffic  
 11 signals and traffic control devices and warning  
 12 signs, crosswalk markings, anything like that, would  
 13 you have the experience, training or education to  
 14 offer an opinion about what was there or not there  
 15 that night?  
 16 A: No, sir. I would not.  
 17 Q: Are you familiar with the DOT specifications for  
 18 traffic control?  
 19 A: No, sir.  
 20 Q: Have you ever reviewed any of the contract documents,  
 21 or specs and plans for the project of widening  
 22 Highway 133 and Tiger Boulevard?  
 23 A: No. I have not.  
 24 Q: You're familiar with the fact that there was a  
 25 project that had been going on.

11 (Pages 38 - 41)



Page 54

1 If you know, I don't remember that.  
 2 Q. You could have talked to witnesses yourself?  
 3 A. Yeah. I mean I could have. But like I said, I  
 4 don't remember having any detailed conversations  
 5 with anybody.  
 6 Q. Do you have any reason to doubt that statement?  
 7 A. No, I don't.  
 8 Q. Okay. If it's in Sergeant Caldwell's report,  
 9 A. Yeah.  
 10 Q. -- is it likely that you told him that?  
 11 A. Yeah. There's a good chance, also. Yes.  
 12 Q. And then "The two pedestrians had darted across the  
 13 road. The female was being carried or was  
 14 piggy-backing on the back of the male."  
 15 A. Yes, sir.  
 16 Q. Do you recall learning that somehow during your  
 17 investigation?  
 18 A. Yes, sir.  
 19 Q. And is it that your understanding of what they were  
 20 doing?  
 21 A. Yes, sir. To my knowledge, yes.  
 22 Q. Now we asked you about the point of impact or area  
 23 of impact. In that last paragraph or that last big  
 24 paragraph it says "Trooper Brooks found a dark,  
 25 tan-ish scuff mark on the pavement and that was

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1 compared to the boot Granatino had been wearing."  
 2 Do you see that?  
 3 A. Yes, sir.  
 4 Q. And that's what you told me earlier.  
 5 A. Yes, sir.  
 6 Q. The road was dry?  
 7 A. Yes, sir.  
 8 Q. The weather was clear?  
 9 A. Yes, sir.  
 10 Q. And this says that witnesses were to meet with  
 11 Lieutenant Gooch at the police department, is that  
 12 right?  
 13 A. Yes, sir.  
 14 Q. So the written statements that we have that are in  
 15 the M.A.I.T. report that were referenced by  
 16 Lieutenant Gooch, were those taken at the police  
 17 department?  
 18 A. Yes, sir. The police department is 100 yards down  
 19 the road. I'm mean it's --  
 20 Q. So they weren't taking this standing out on the  
 21 highway?  
 22 A. No, sir.  
 23 Q. I saw somewhere there was a reference to a shot  
 24 glass taken into evidence. Do you remember that?  
 25 A. I don't remember shot glass. No.

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1 Q. All right. If you would, turn to Granatino page 90.  
 2 in the M.A.I.T. report. This is an additional  
 3 narrative by Sergeant Caldwell.  
 4 A. Uh-huh.  
 5 Q. Is that a yes?  
 6 A. Yes, sir.  
 7 Q. And this is apparently his review of the DVD copy of  
 8 the camera footage. Is that the way you understand  
 9 it?  
 10 A. Yes, sir.  
 11 Q. And the video that we just reviewed a few minutes  
 12 ago, Officer Johnson, --  
 13 A. Yes, sir.  
 14 Q. -- is that the video that you think you previously  
 15 reviewed?  
 16 A. Yes, sir.  
 17 Q. As far as you know?  
 18 A. As far as I know. Yes, sir.  
 19 Q. Okay. And do you believe that to be the video that  
 20 Sergeant Caldwell is referencing in his narrative?  
 21 A. Yes, sir.  
 22 Q. And did you review the video with Sergeant Caldwell?  
 23 A. Yes. I did.  
 24 Q. He states in his statement "The crosswalk signal on  
 25 the northeast corner in the intersection that

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1 controls foot traffic across Tiger Boulevard is  
 2 observed steady red with the Don't Walk signal  
 3 displayed prior to and after the collision." Do you  
 4 see that?  
 5 A. Yes, sir.  
 6 Q. You don't remember looking at that at the scene?  
 7 A. No, sir. I do not.  
 8 Q. Okay. And did you see that in the video?  
 9 A. Yes, sir.  
 10 Q. Okay. And is that on the -- where is that  
 11 pedestrian signal located?  
 12 A. It's on the pole there.  
 13 Q. That holds the traffic lights?  
 14 A. Yes, sir.  
 15 Q. Okay. And what's the symbol for don't walk?  
 16 A. It's a hand holding up solid.  
 17 Q. So from your review of the videotape, you could see  
 18 that the crosswalk in that video was operational?  
 19 A. Yes, sir.  
 20 Q. Were there any traffic lights in any direction that  
 21 night that you observed traffic lights, not  
 22 pedestrian signals, traffic lights, traffic lights,  
 23 in any direction that you observed that were not  
 24 operating?  
 25 A. Not to my knowledge. No, sir.

15 (Pages 54 - 57)

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1 Q. That's all I've got. Thank you.  
 2 MS. BROWN: This is Katie. I don't have  
 3 anything.  
 4 RE-DIRECT EXAMINATION  
 5 BY MR. MAUNEY: (Resuming)  
 6 Q. I've got a few follow ups. Can you tell us from the  
 7 CAD then please the time that MPO Brown arrived at  
 8 the scene? Does he have a number?  
 9 A. He's 231, at the top.  
 10 Q. It looks like on Granatino, page 100; --  
 11 A. At 2217 is when he gives a sign.  
 12 MR. WHITE: It looks like 2229.  
 13 BY MR. MAUNEY: (Resuming)  
 14 Q. If you look at Granatino 100 towards the top of the  
 15 page, CPT 231, status in route?  
 16 A. Yes, and at the scene.  
 17 Q. So at 2217:30 seconds, he was in route?  
 18 A. He was in route. Yes, sir.  
 19 Q. And at 2229:35, he was at the scene?  
 20 A. Yes, sir.  
 21 Q. Let's go back to page 99. Who is 131?  
 22 A. I'm 131.  
 23 Q. Who's 122?  
 24 A. I believe at the time 122 was Adele Davis.  
 25 Q. We've got the numbers; don't we?

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1 A. Yes, sir.  
 2 Q. All right. Scratch that. That's fine.  
 3 A. On page 97 it's got them.  
 4 Q. Did you obtain any information during the course of  
 5 your investigation about where Ms. Jones and Mr.  
 6 Granatino had been just before the accident?  
 7 A. No.  
 8 Q. Did you obtain any information on where they were  
 9 going?  
 10 A. It was believed that they was going downtown the way  
 11 they was heading.  
 12 Q. Did you or the City of Clemson police take any  
 13 measurements at the scene?  
 14 A. I did not. I don't know if anybody -- I don't  
 15 believe so. I believe the M.A.I.T. team done them.  
 16 Q. Mr. White asked you some question from the Manual of  
 17 Uniform Traffic Control Devices. And I believe you  
 18 said in response to his question you generally were  
 19 not familiar with it.  
 20 A. I am not.  
 21 Q. Have you ever read it?  
 22 A. No. I've never seen it.  
 23 Q. Do you know how it defines a temporary traffic  
 24 control zone?  
 25 A. I do not.

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1 Q. Do you know how it defines a work zone?  
 2 A. I do not.  
 3 Q. At some point today there was reference some work  
 4 being done on 133, okay? It's my understanding that  
 5 the City of Clemson was responsible for that work.  
 6 Are you familiar with that?  
 7 A. I have no idea.  
 8 Q. Okay. You were also asked some questions about  
 9 persons who are intoxicated.  
 10 A. Yes, sir.  
 11 Q. What's the legal limit for driving on a highway?  
 12 A. It's entrance level .08.  
 13 Q. Okay. And what does that mean to you as an officer?  
 14 A. That's like I guess people consider it the magic  
 15 number.  
 16 Q. And the magic number at which a person would be  
 17 impaired by alcohol?  
 18 A. Yeah. I mean yes.  
 19 MR. WHITE: Object to form.  
 20 A. Yes. I mean that's what they say the legal limit  
 21 is.  
 22 BY MR. MAUNEY: (Resuming)  
 23 Q. Okay. And so it's a safety thing?  
 24 A. Yes.  
 25 Q. Okay. So we have a law about alcohol that's related

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1 to the safety of drivers in motoring public.  
 2 A. Yes, sir.  
 3 MR. WHITE: Object to form.  
 4 A. Yes, sir.  
 5 BY MR. MAUNEY: (Resuming)  
 6 Q. And the .08 as you understand it is a minimum for  
 7 when someone would most likely be impaired?  
 8 A. Yes, sir.  
 9 MR. WHITE: Object to form.  
 10 BY MR. MAUNEY: (Resuming)  
 11 Q. Have you had an opportunity in your career to  
 12 encounter individuals whether they were driving or  
 13 whether they were doing anything less than you  
 14 ultimately learned were at least a .08?  
 15 A. Yes. I mean not every person that we come in  
 16 contact with that we believe is intoxicated, we  
 17 don't get a reading off of them. We don't.  
 18 Q. I understand.  
 19 A. Yes, sir.  
 20 Q. I'm just talking about the ones that you got a  
 21 reading on.  
 22 A. Oh, yeah. Yes, sir.  
 23 Q. And has it been your experience that when someone is  
 24 at .08 or .1 that they show signs of impairment?  
 25 A. Yes, sir.

29 (Pages 110 - 113)

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Page 114

1 MR. WHITE: Object to form.  
 2 BY MR. MAUNEY: (Resuming)  
 3 Q. What kind of signs have you seen in those people?  
 4 A. Unsteady on their feet. They don't walk straight  
 5 type things.  
 6 Q. What about their thinking?  
 7 A. Thinking. Yes.  
 8 MR. WHITE: Object to form.  
 9 BY MR. MAUNEY: (Resuming)  
 10 Q. What about their thinking?  
 11 A. It's not all --  
 12 MR. WHITE: Same objection.  
 13 BY MR. MAUNEY: (Resuming)  
 14 Q. Does it affect their judgement?  
 15 A. Yes.  
 16 MR. WHITE: Object to form.  
 17 BY MR. MAUNEY: (Resuming)  
 18 Q. And is that why presumably we have laws in this  
 19 state not only about drivers under the influence of  
 20 alcohol or drugs, but pedestrians under the  
 21 influence of alcohol or drugs?  
 22 A. Yes, sir.  
 23 Q. And I'm specifically referencing Section 56-5-3270,  
 24 which says, and I'll read it, "A pedestrian who is  
 25 under the influence of alcohol or any drug to a

Page 115

1 degree which renders himself a hazzard shall not  
 2 walk or be upon a highway except a sidewalk." Are  
 3 you familiar with that statute?  
 4 A. I'm not, not off the top of my head. No, sir.  
 5 Q. Okay. But you understand what it says.  
 6 A. Yes, sir.  
 7 Q. And one of the reason that you wouldn't want someone  
 8 who is under the influence entering the highway is  
 9 their judgement might be impaired?  
 10 A. Yes, sir.  
 11 MR. WHITE: Object to form.  
 12 BY MR. MAUNEY: (Resuming)  
 13 Q. They might not be able to judge distance?  
 14 MR. WHITE: Same objection.  
 15 A. True.  
 16 BY MR. MAUNEY: (Resuming)  
 17 Q. They might not be able to judge speed?  
 18 A. True.  
 19 MR. WHITE: Same objection.  
 20 BY MR. MAUNEY: (Resuming)  
 21 Q. Are there other statutes about the duty of people  
 22 walking along a roadway?  
 23 A. Yes.  
 24 Q. Okay. 56-5-3250, it says "Every pedestrian crossing  
 25 a roadway at any point other than a marked crosswalk

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1 or within an unmarked crosswalk at an intersection  
 2 shall yield the right-of-way to all vehicles upon  
 3 the roadway." Do you understand that?  
 4 A. Yes, sir.  
 5 Q. You've seen that before?  
 6 A. I've glanced at it. Yes, sir.  
 7 Q. Okay. And I don't know how a crosswalk is defined.  
 8 Let's assume for a minute that the condition out  
 9 there that night was other than within a marked  
 10 crosswalk or an unmarked crosswalk. Let's just say  
 11 that it's determined its own mark for the purposes  
 12 Mr. Granatino's duty under law would have been to  
 13 yield the right-of-way to all vehicles.  
 14 A. Yes, sir.  
 15 MR. WHITE: Object to form.  
 16 BY MR. MAUNEY: (Resuming)  
 17 Q. And if the pedestrian signal was working, then he  
 18 would have a duty to yield the right-of-way based  
 19 upon what the signal says?  
 20 A. Yes, sir.  
 21 MR. WHITE: Object to form.  
 22 BY MR. MAUNEY: (Resuming)  
 23 Q. Generally, is it a correct statement that  
 24 pedestrians upon a roadway shall yield the  
 25 right-of-way to vehicles who are in the roadway?

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1 A. Yes, unless it's marked yield right-of-way to  
 2 pedestrians.  
 3 Q. You said that the camera that took the video, you  
 4 said -- who should we talk to about that?  
 5 A. Captain Culbreath.  
 6 Q. Captain Culbreath?  
 7 A. Yes, sir.  
 8 Q. Okay. If we wanted to know whether there's video  
 9 available at anytime prior to today, is it Captain  
 10 Culbreath that we would talk to?  
 11 A. Yes, sir. He's the one that's over controls.  
 12 Q. Do you know who obtained that video?  
 13 A. Captain Culbreath.  
 14 Q. He's the one who downloaded it?  
 15 A. Yes. He's over that, so it would have to be him. I  
 16 don't know of anybody --  
 17 Q. Was he there that night?  
 18 A. I don't know if he -- I don't believe he did. I  
 19 don't remember him coming to the scene.  
 20 Q. So to get that video at the time, somebody would  
 21 have had to ask Captain Culbreath.  
 22 A. To download it. Yes, sir.  
 23 Q. And I guess it's possible it was the M.A.I.T.  
 24 officers. I don't remember what they said. Okay.  
 25 That's all.

30 (Pages 114 - 117)

GREENVILLE HEALTH SYSTEM  
MEDICAL RECORD

NAME: GRANATINO, KEVIN M

Patient Location: 08174007BM

PATIENT MR#: 000-980-33-2874

Billing NO: 080021549983

been continued. The patient currently remains unresponsive with his eyes closed. He is moving all 4 extremities. However, he has had copious secretions from around the tracheostomy, however, the area of erythema has receded. He has had just peripheral IVs and condom catheter. All of his blood cultures have been negative. Repeat sputum done on the first day did grow *Enterobacter aerogenes* again.

PAST MEDICAL HISTORY/PAST SURGICAL HISTORY:

his past medical history/surgical history per his mother is significant for congenital heart disease with an atrial septal defect requiring initial repair as an infant and then subsequent patching at age, I believe, 10. He has had no subsequent problems with it since then. He has no other medical problems.

SOCIAL HISTORY: He is a student at Clemson University. He is originally from Massachusetts. There is no history of tobacco abuse. He does drink alcohol. He had an alcohol level of 122 on presentation to the emergency room and no urine drug screen was submitted.

FAMILY HISTORY:

Family history is reviewed and is noncontributory.

REVIEW OF SYSTEMS:

Review of systems per HPI.

PHYSICAL EXAMINATION:

GENERAL: Physical exam shows a young Caucasian male who again with eyes closed and with no purposeful movement.

VITAL SIGNS: His T max past 24 hours was at recorded 105, blood pressure 154/92, heart rate 115, O2 sat is 100%, respiratory rate is 19.

HEENT: Examination of his HEENT, his pupils appear equal and react sluggishly to light. Mucous membranes appear moist. He has a midline tracheostomy with copious clear to greenish secretions around the trache site. There is no appreciable erythema or edema.

HEART: Cardiac exam reveals a tachycardia systolic murmur.

LUNGS: Lungs are clear to auscultation anteriorly.

ABDOMEN: He has a left upper quadrant percutaneous endoscopic gastrostomy. The site is without erythema or drainage. There is no abdominal rebound or guarding.

EXTREMITIES: He is extremities show no peripheral edema. His right lower extremity is in a soft cast from right below his knee to his toes. He has peripheral IVs in place and condom catheter.

LABORATORIES/DIAGNOSTICS:

1. Laboratories today he had a CBC showing a hemoglobin of 7.6, hematocrit 23, white count of 8,800, platelet count of 238,000.

CONSULTATION

Page 2 of 3

11/19/2014  
03:02

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PAGE 26

NAME: GRANATINO, KEVIN M ROOM: 2326AM LOC: GM2C  
MR#: [REDACTED] SS#: 0000000000 ACGT#: 080021549983  
DOB: [REDACTED] AGE: 21Y SEX: M  
ATTENDING PHYS: SMITH, DANE E  
ADMITTED: 10/23/2014 DISCHARGED: 11/12/2014

\*Unless otherwise stated, the time and date are equal to collect time and date.

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10/29/14  
0910

VANCOMYCIN

5.7 ug/mL  
Effective Levels:  
Peak: 20-40  
Trough: 5-10  
Potentially Toxic:  
Peak: >50  
Trough: >25

\*\*\*\*\* TOXICOLOGY STUDIES \*\*\*\*\*

10/23/14  
2255

ALCOHOL- PLASMA

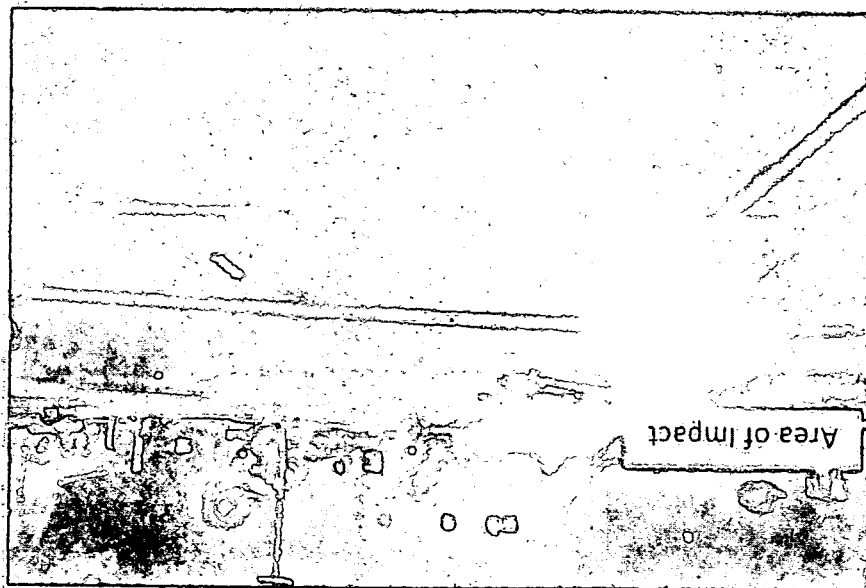
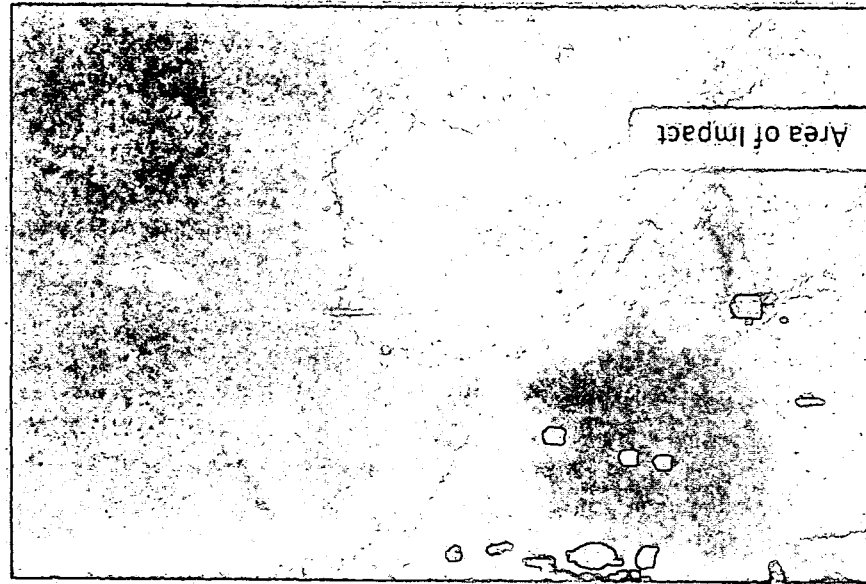
H 122 [ $\leq 10$ ] mg/dL  
RESULTS ARE FOR MEDICAL PURPOSES ONLY.

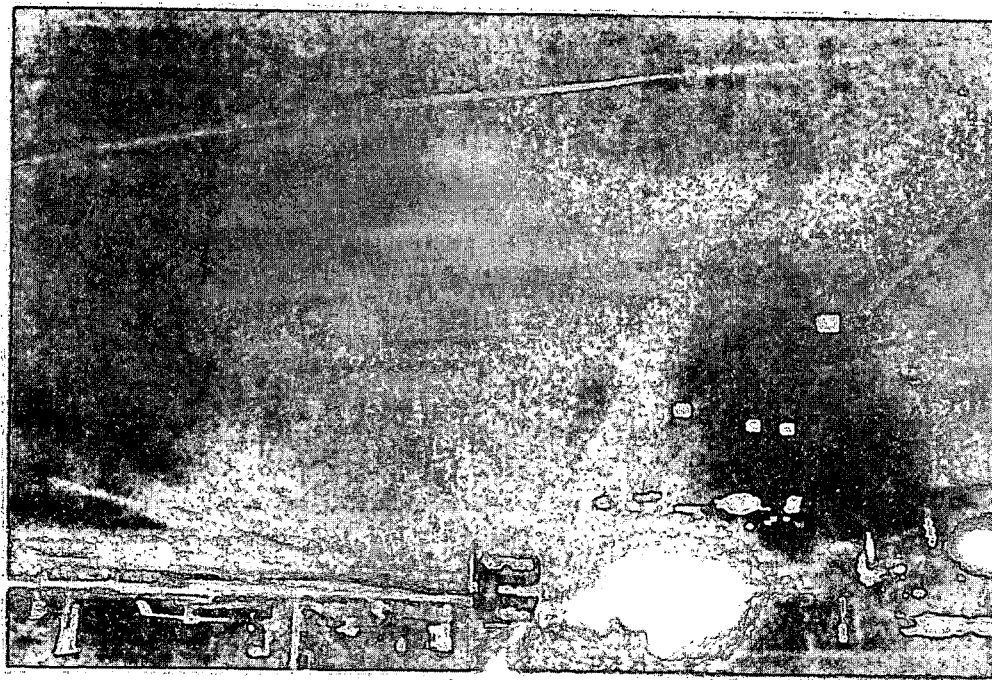
NAME: GRANATINO, KEVIN M  
11/19/2014  
03:02

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LOC: GM2C RM: 2326AM  
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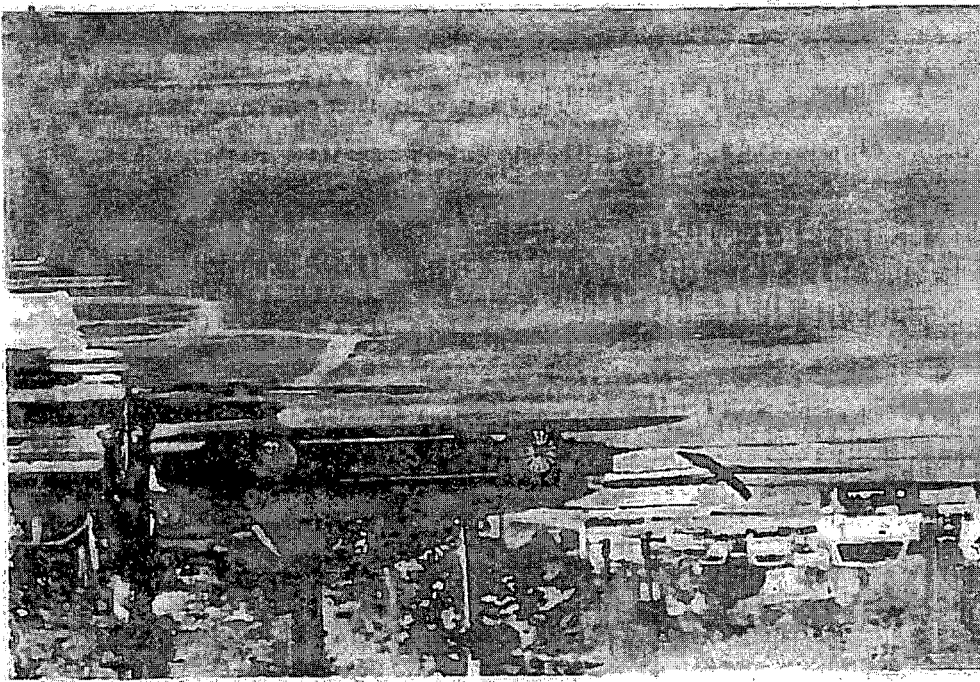
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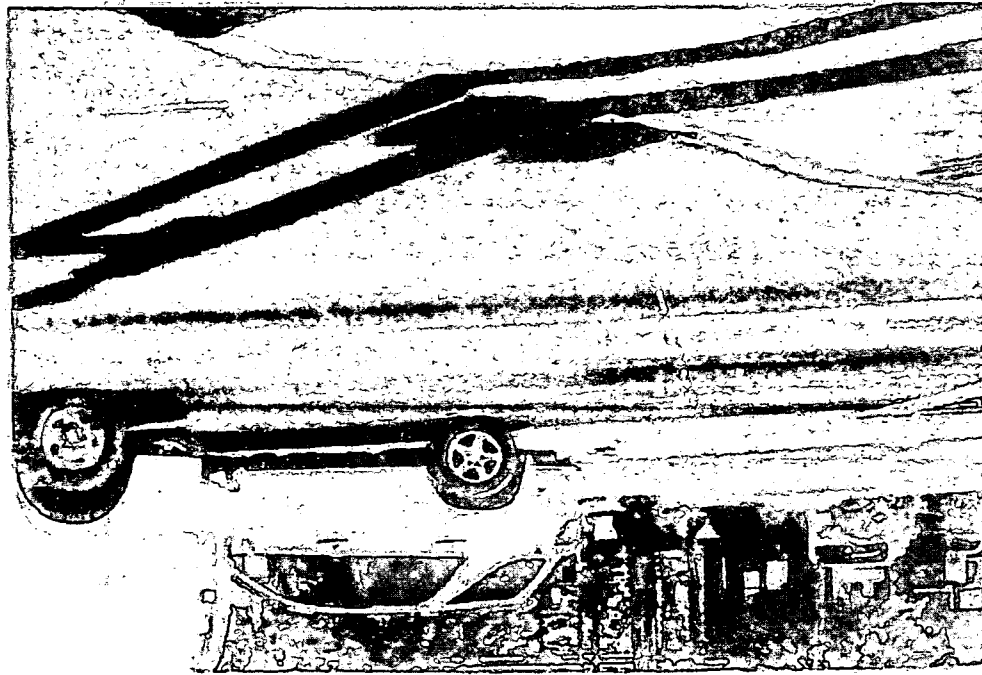


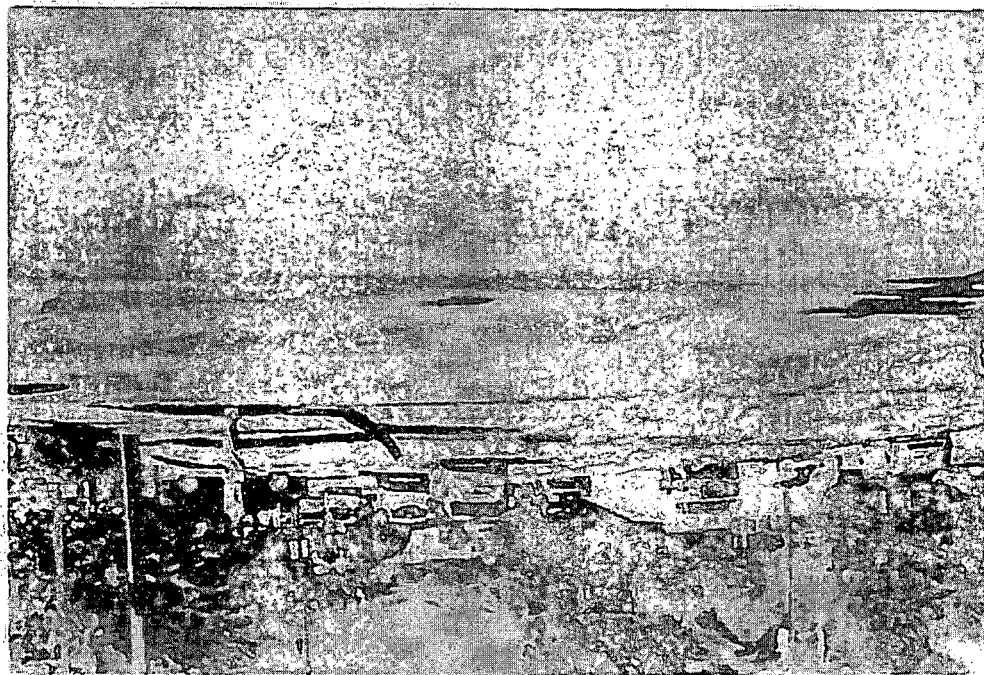




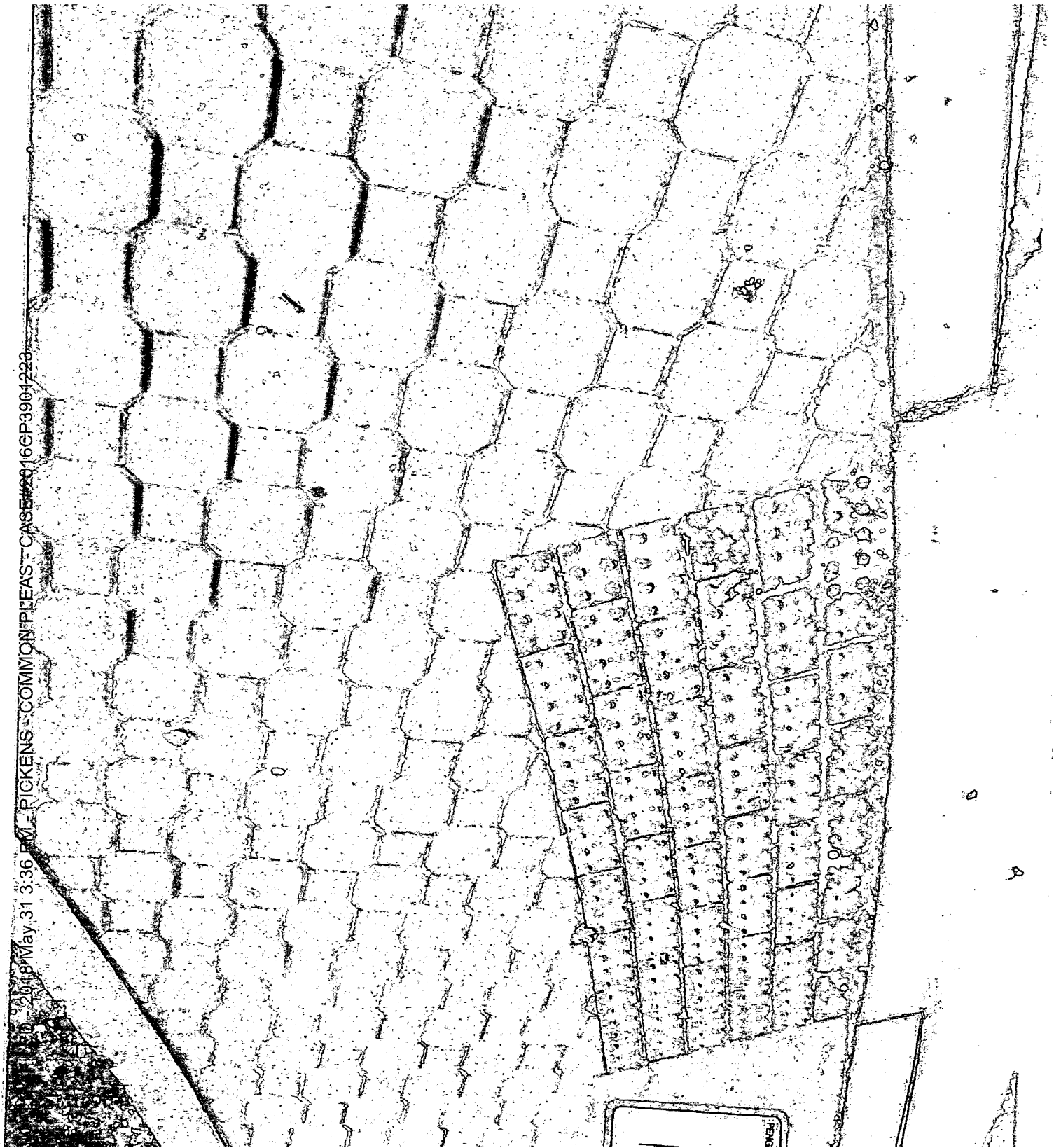


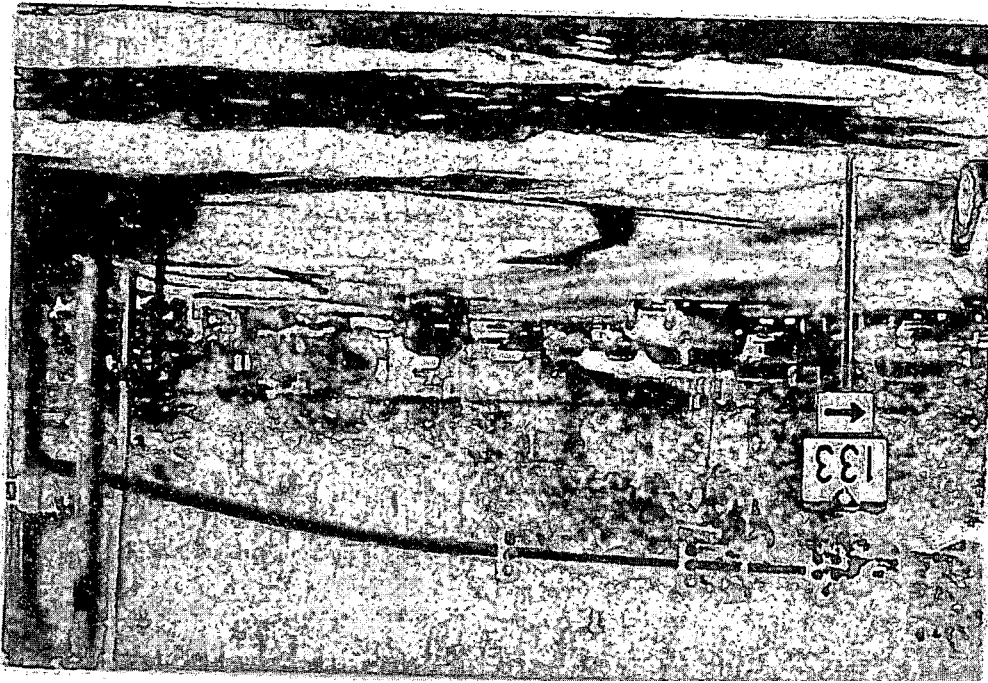






2018 May 31 3:36 PM - RICKENS - COMMON PLEAS - CASE#2016CP3904223





|                                        |   |                                      |
|----------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA                | ) | IN THE COURT OF COMMON PLEAS         |
|                                        | ) | C.A. No. 2016-CP-39-01223            |
| COUNTY OF PICKENS                      | ) |                                      |
|                                        | ) |                                      |
| Kevin Granatino,                       | ) |                                      |
|                                        | ) |                                      |
|                                        | ) | <b>PLAINTIFF'S MOTION TO ALTER</b>   |
| Plaintiff,                             | ) | <b>OR AMEND JUDGMENT</b>             |
|                                        | ) | <b>PURSUANT TO RULE 59(e), SCRPC</b> |
| vs.                                    | ) |                                      |
|                                        | ) |                                      |
| Calvin Williams, Clemson University,   | ) |                                      |
| South Carolina Department of           | ) |                                      |
| Transportation, and Thrift Development | ) |                                      |
| Corporation,                           | ) |                                      |
|                                        | ) |                                      |
| Defendants.                            | ) |                                      |

As an initial matter, the Plaintiff concedes summary judgment as to Defendant Clemson University ("Clemson") with respect to there being no duty owed to Plaintiff by Clemson was appropriate, and, therefore, Clemson should be dismissed from the case. With respect to Defendants South Carolina Department of Transportation and Thrift Development Corporation (hereafter "Defendants"), the Plaintiff believes the Court erred in granting summary judgment as to these Defendants. As to these remaining Defendants, pursuant to South Carolina Rules of Civil Procedure 59 (e), the Plaintiff, by and through his undersigned attorney, hereby moves this Court for an Order Amending its prior Order Granting Defendants' Motions for Summary Judgment filed July 19, 2018. The grounds for this motion are as follows:

**GROUND FOR MOTION TO ALTER OR AMEND**

1. The Court erred in ruling the Plaintiff was comparatively negligent more than 50 percent as a matter of law, specifically:

a) In basing its decision almost entirely on the Plaintiff's deposition testimony. Reliance on the Plaintiff's testimony was error because it is undisputed the Plaintiff suffered a traumatic brain injury as a result of being struck by a vehicle at the intersection at issue, and, therefore, a reasonable inference exists that the Plaintiff's testimony is unreliable due to memory deficits caused by the brain injury. At trial, the Plaintiff's deposition testimony would be subject to impeachment, but at the time of the granting of Defendants' Motion for Summary Judgment, no deposition of the Plaintiff's treating physicians had been taken and therefore, this Court did not have the benefit of medical testimony relating to the reliability/unreliability of the Plaintiff's testimony. As such, significant reliance on Plaintiff's testimony as a basis for granting summary judgment is error; and,

b) Reliance upon the Plaintiff's testimony is error if, as the Defendants' argue, and the Court ruled, Kevin Granatino was intoxicated at the time the incident occurred. Intoxication has a detrimental effect on a person's ability to remember events while intoxicated, and therefore, reliance on the Plaintiff's testimony as a basis for granting summary judgment is error.

2. There are numerous other facts which raise genuine issues of materiality relating to the Plaintiff's degree of negligence which should be submitted to the jury and not decided at the summary judgment stage. Those facts are as follows:

a) The roads at and/or adjacent to the intersection were not properly fitted with lighting;

b) Working pedestrian signs and/or warning signs and the crosswalk lights in the intersection were under repair;

c) There were no warning signs, cones, saw horses, jersey barriers, or other visible signs to warn pedestrians that the intersection was not in repair;

d) Lieutenant Gooch of the Clemson City Police Department, interviewed several witnesses who stated:

e) When Plaintiff crossed the street, the motorist traffic lights were red; and,

f) When Plaintiff crossed the street, the pedestrian lights were not operational.

(See Depo. of Corp. T.J. Brooks dated June 29, 2017, Ex. 1, pp. 113, 114, and 117).

g) Corporal Brooks, the officer in charge of the MAIT Team testified that when he arrived at the scene approximately one hour after the incident occurred, the pedestrian electronic crossing lights were inoperative, which raises a reasonable inference that they were inoperative at the time the incident occurred. (Corp. Brooks Depo., p. 22).

All of these facts and circumstances require this case to be submitted to the trier of fact. In light thereof, the Court erred in holding that “no reasonable jury could find the Defendants’ negligence equaled or was greater than, the Plaintiff’s negligence,” and that “any factual issues which might exist as to Defendants’ fault cannot alter the ‘inescapable conclusion,’ that as a matter of law, Plaintiff’s fault exceeded 50%.” (Court’s Order, p. 4).

3. The Court erred in ruling the Affidavit submitted by the Plaintiff was a “sham,” since the Affidavit itself raises a reasonable inference that it is another indication of the effects of the Plaintiff’s traumatic brain injury. Clearly, the Plaintiff’s sworn deposition testimony and Affidavit testimony are subject to cross examination and impeachment by the Defendants, but it was error to rule the Affidavit was a “sham” Affidavit simply because it is inconsistent with his sworn deposition testimony.



4. The Court erred in finding the Plaintiff's legal intoxication is evidence that he was more than 50 percent comparatively negligent based on testimony from Officer Brooks and Officer Craig, from MAIT Team. These officers testified that, in general, a .122 blood alcohol level can cause impairment. Officers Brooks' and Craig's statements were general statements and not specific to the Plaintiff. There is no evidence at this stage of the proceedings that the Plaintiff was in any way perceptively affected by his consumption of alcohol. There is no evidence that his speech was slurred, eyes were glassy, that he was unsteady on his feet, or that there was a strong odor of alcohol on his breath. Although Officer Brooks' and Officer Craig's testimony may be admissible at trial to show generally how persons under the influence of alcohol are affected, there is no direct evidence of how Kevin Granatino was affected. Therefore, there are clearly genuine issues of material fact for the jury to decide regarding the level of impairment of Mr. Granatino at the time of the incident, and how the alcohol affected his judgment, balance, etc.

5. The Court erred in holding "The Defendants are entitled to judgment as a matter of law because the Plaintiff has not presented any expert testimony that they deviated from a professional standard of care." This holding fails to take into account the sequence of events relating to Plaintiff's failure to obtain an expert. Those events are as follows:

- a) Plaintiff's former counsel entered into a Consent Scheduling Order requiring experts to be identified by January 1, 2018;
- b) No expert was identified by January 1, 2018;
- c) Plaintiff's former counsel filed a Motion to Withdraw as Attorney on January 12, 2018;

- d) The Defendants filed Motions for Summary Judgment on January 18, 2018 and January 19, 2018;
- e) The Order Relieving Counsel was filed January 25, 2018;
- f) Moreover, the Plaintiff's father-in-law, George Marlette, contacted several firms in South Carolina but was unable to secure a replacement attorney;
- g) Mr. Marlette contacted Judge Stilwell on February 5, 2018;
- h) Judge Stilwell rescheduled the motions for Summary Judgment;
- i) Mr. Marlette began the process of being admitted Pro Hac Vice (application dated February 7, 2018);
- j) Attorney Lewis completed the sponsorship portion of the application on February 27, 2018;
- k) The completed application filed with South Carolina Supreme Court on March 1, 2018;
- l) Mr. Lewis filed a Notice of Appearance on April 23, 2018;
- m) March 25, 2018 e-mail exchange between Stuart Mauney, attorney for Defendant Thrift, and George Marlette to all parties, as well as Judge Stilwell, that any scheduling order deadlines following prior counsel's withdrawal would be suspended pending Mr. Marlette's admission Pro Hac Vice; and,
- n) Mr. Marlette was admitted *Pro Hac Vice* on May 5, 2018.

As this sequence of events clearly shows, there are extenuating circumstances which make it inequitable for the Court to base its granting of Summary Judgment on the failure of Plaintiff to obtain an expert. The granting of Summary Judgment on this basis is in error for the following reasons:

(a) The Plaintiff should not be punished because his prior counsel failed to obtain an expert;

b) The Plaintiff's current counsel was not admitted Pro Hac Vice until very shortly before Summary Judgment motions were heard;

c) Plaintiff's current counsel had no official involvement in the case until after the deadline for naming experts had expired;

d) Plaintiff's counsel is now ready to move forward with any discovery issues, as well as obtaining an expert and there would be no prejudice to the Defendants in allowing Plaintiff's counsel time to do so; and,

e) It would be inequitable to deny a brain injured Plaintiff the opportunity to conduct minimal discovery to present a more fully developed record to this Court to attempt to establish the elements of his case.

For the forgoing reasons, Plaintiff respectfully requests this Court Alter or Amend its prior Order to Deny the Defendants' Motions for Summary Judgment and further requests a hearing on this Motion.

Respectfully submitted,

s/Stephen R.H. Lewis

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Attorneys for Plaintiff

July 27, 2018  
Greenville, South Carolina

|                                            |   |                                         |
|--------------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) |                                         |
|                                            | ) | IN THE COURT OF COMMON PLEAS            |
| COUNTY OF PICKENS                          | ) |                                         |
|                                            | ) |                                         |
| Kevin M. Granatino,                        | ) | <b>DEFENDANTS, SOUTH CAROLINA</b>       |
|                                            | ) | <b>DEPARTMENT OF TRANSPORTATION</b>     |
| Plaintiff                                  | ) | <b>AND THRIFT DEVELOPMENT</b>           |
|                                            | ) | <b>CORPORATION'S MEMORANDUM IN</b>      |
| v.                                         | ) | <b>OPPOSITION TO PLAINTIFF'S MOTION</b> |
|                                            | ) | <b>TO ALTER OR AMEND</b>                |
| Calvin Williams, Clemson University, South | ) |                                         |
| Carolina Department of Transportation and  | ) | C.A. NO.: 2016-CP-39-01223              |
| Thrift Development Corporation,            | ) |                                         |
|                                            | ) |                                         |
| Defendants.                                | ) |                                         |

This matter is before the Court on the Plaintiff's Motion to Alter or Amend. The Defendants, South Carolina Department of Transportation ("DOT") and Thrift Development Corporation ("Thrift"), submit that the Court properly granted summary judgment to them and accordingly, the Motion should be dismissed. Further, the Plaintiff has raised issues that were not preserved for consideration under Rule 59, and should not be considered by the Court. The Defendants further submit that the Plaintiff ignores his own argument that the Defendant, Calvin Williams, ran the red light, the implication for which is that the Defendants cannot be liable to the Plaintiff. Finally, while the Plaintiff argues that it's not equitable to grant the Motion based upon their failure to name an expert, the Plaintiff has had more than enough time to conduct discovery and develop its case, and any delay was caused by the Plaintiff's failure to timely respond to the Defendants' discovery requests.

The Court's Order is a thorough review of the issues raised in the Motions for Summary Judgment and materials submitted to the Court, along with oral argument. The Court considered all of the materials submitted by the parties and made the proper ruling in granting the Motion

for Summary Judgment. Accordingly, the Defendants request that the Court deny the Plaintiff's Motion to Alter or Amend.

The purpose of a motion to alter or amend is "to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

Under South Carolina law, a Rule 59(e) motion is only appropriate when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue and when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). That said, "a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *see Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017) (finding that issues were not preserved for appeal when first raised in a motion for reconsideration under Rule 59(e)).

Under South Carolina law, a party cannot use Rule 59(e) to present evidence absent from the record to the court for consideration. *Mozingo ex rel. Estate of Stewart v. Ford Motor Co.*, No. 2009-UP-282, 2009 S.C. App. Unpub. LEXIS 285 (Ct. App. June 4, 2009) (citing *Brailsford v. Brailsford*, 380 S.C. 443, 448, 669 S.E.2d 342, 345 (Ct. App. 2008)).

In *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court of South Carolina noted that 59(e) in the FRCP is "practically identical" to the South Carolina Rule. *Elam* at 602. As a result, South Carolina courts have

relied on federal case law in construing 59(e). Federal Courts have recognized that one of the purposes of 59(e) is to “account for new evidence not available at trial” meaning not available prior to the judgment. *See Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005). The party wishing to supplement the record must therefore demonstrate that the evidence was unavailable at the time the trial court entered the judgment. *Id.*

Further, in *Mozingo*, the Court of Appeals of South Carolina held that evidence mentioned during a summary judgment hearing but not entered into the record could not later be entered through a 59(e) motion for reconsideration. *See Morzingo* at \*2. In that case, the court granted summary judgment in favor of Defendant in a wrongful death action. *Id.* at \*1. Subsequently, Plaintiff filed a Rule 59(e) motion for reconsideration and attached documentation that was mentioned but not presented to the trial court prior to the hearing. *Id.* The court held that, although the documents were attached as an exhibit as “new evidence,” a party may not use the Rule 59(e) motion as a vehicle to present the same to the court. *Id.* at \*2. Therefore, Plaintiff’s motion for reconsideration was denied and the ruling of the lower court was affirmed. *Id.*

The Plaintiff has raised a number of issues not previously brought to the attention of the Court, and accordingly, those matters cannot now be considered by the Court. The Plaintiff argues his deposition testimony is not reliable to the extent he had suffered a traumatic brain injury, and therefore cannot support a finding that he was negligent as a matter of law. However, the Plaintiff has had the opportunity to raise this issue in the case and has failed to do so. If there was a concern about his state of mind or ability to respond to deposition testimony, his attorney at the time of the deposition had the opportunity to raise that issue on the record, and either before or after the deposition. Further, the Plaintiff had the opportunity to have a

guardian appointed on his behalf to the extent he could not reliably provide information for his case. However, that was not done.

Likewise, the Plaintiff argues that his intoxication would have impaired his ability to remember events and therefore his testimony would not be reliable. Again, this is being raised for the first time in the Plaintiff's Motion to Alter or Amend.

The Plaintiff has also argued that the Court ruling on the sham affidavit was in error. However, this was not raised previously and the law cited by the Court in its Order supports a ruling that the affidavit was a sham affidavit.

The Plaintiff further argues that the Court erred in finding Plaintiff's legal intoxication as evidence that he was negligent as a matter of law. Once again this has not previously been raised and should not be considered by the Court. However, the testimony relied upon the Court in reaching this finding was credible, including the testimony referred to in the Court's Order and the medical records.

The Plaintiff has also ignored the Defendant's argument that if one assumes that the light for traffic on Highway 123 was red at the time of the accident, as the Plaintiff claimed in his Memorandum in Opposition to the Motion and in oral argument, then the Defendant, Calvin Williams, disregarded the red light and his conduct alone was the sole cause of the accident. The Plaintiff's own theory of the case, as argued in his memorandum and at oral argument, absolves the Defendants of any liability in this case.

Finally, the Plaintiff argues that the Court erred in holding that the Plaintiff failed to present expert testimony on any deviation from the standards of care, arguing that the Court failed to take into account the sequence of events. The Plaintiff argues that there are extenuating circumstances which make it inequitable for the Court to grant summary judgment based upon

the failure of the Plaintiff to obtain expert testimony. However, Plaintiff's original counsel consented to a Scheduling Order which required the disclosure of Plaintiff's experts on or before January 1, 2018. Counsel never asked for consent to extend the deadline and never moved the Court for such relief. As of the date of this memorandum, Plaintiff still has not disclosed the name of any proposed expert witness. The fact remains that the Plaintiff and his counsel had every opportunity to comply with the Scheduling Order. Indeed, both the Plaintiff's mother and stepfather are practicing attorneys in the State of Massachusetts. They both attended various depositions in the case.

The Defendants request that the Court deny the Plaintiff's Motion to Alter or Amend.

s/C. Stuart Mauney

---

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 August 10, 2018



THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS

Perry H. Gravely, Circuit Court Judge

Case No. 2016-CP-39-01223

Kevin M. Granatino ..... Plaintiff/Appellant

V.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation ..... Defendants

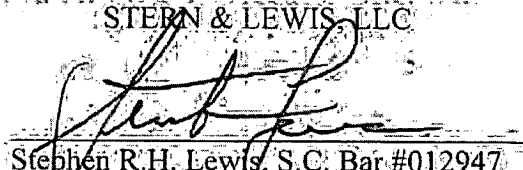
Of whom:

South Carolina Department of Transportation and Thrift Development  
Corporation ..... Respondents

NOTICE OF APPEAL

Appellant appeals the Order of The Honorable Perry H. Gravely dated July 19, 2018 only  
as to Defendants South Carolina Department of Transportation and Thrift Development  
Corporation as well as the subsequent Order dated November 20, 2018.

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2018-002166  
Trial Court Case No. 2016-CP-39-01223

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Kevin M. Granatino, ..... Appellant,

vs.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation, ..... Defendants,

Of which South Carolina Department of Transportation and  
Thrift Development Corporation are ..... Respondents.

---

**FINAL OPENING BRIEF OF APPELLANT**

---

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### STATEMENT OF THE ISSUES ON APPEAL

1. Did the circuit court commit reversible error in granting Respondents' motions for summary judgment against Appellant's negligence claim in its entirety on the basis that Appellant, as a matter of law, bore the preponderance of fault for causing his substantial, lifelong, debilitating injuries?
2. Did the circuit court also commit reversible error in granting Respondents' motions for summary judgment against Appellant's negligence claim in its entirety even though there were unrequited, genuine disputes as to material facts that were ultimately adjudicated by the court to Appellant's detriment?
3. Did the circuit court also commit reversible error in granting Respondents' motions for summary judgment against Appellant's negligence claim in its entirety on the basis that Appellant, at the dispositive motion stage, had failed to procure expert testimony in support of propositions for which expert testimony is not required?

### STATEMENT OF THE CASE

This appeal arises from an improvident grant of summary judgment against the entirety of Appellant's personal injury claim. On October 23, 2014, Appellant was a pedestrian at a certain traffic intersection located within the City of Clemson. As Appellant was crossing the intersection, he was struck by a vehicle owned and operated by Calvin Williams. As a consequence of the impact, Appellant nearly died. Since then, Appellant has made substantial progress in his path toward healing, though he continues to suffer from debilitating mental, physical, and emotional wounds, and will do so for the rest of his life.

Appellant commenced the underlying personal injury claim on February 15, 2017. Initially, there were four Defendants, all sued under various negligence theories. The first Defendant was Calvin Williams. However, Defendant Williams reached a settlement agreement with Appellant prior to the procedural events giving rise to this appeal, and therefore, is not a Respondent to these proceedings.

The second, third, and fourth Defendants are, respectively, Clemson University ("Clemson"), the South Carolina Department of Transportation ("SCDOT"), and Thrift Development Corporation ("Thrift"). Consistent with the allegations of the Complaint, SCDOT and Thrift were named because Appellant was struck by a vehicle at an intersection which was under construction by SCDOT, that work had been subcontracted to Thrift, and SCDOT and/or Thrift had failed to install mechanisms that were likely to protect the safety of pedestrians. Clemson had been named a Defendant because, it was then believed, that the intersection in question was subject to Clemson's control.



At various times during the fall of 2017, Clemson, SCDOT, and Thrift each filed motions for summary judgment. The motions were consolidated, and were heard all at once before the Honorable Perry H. Gravely on June 1, 2018. By decision filed July 19, 2018, the circuit court granted the motions for summary judgment of Clemson, SCDOT, and Thrift in their entirety.

Appellant subsequently filed a timely motion under Rule 59, SCRCP, which sought to alter or amend the underlying judgment only as to SCDOT and Thrift; it did not address Clemson's dismissal. Consequently, Clemson is not a Respondent to these proceedings. In any event, a hearing on Appellant's Rule 59 motion was held on October 25, 2018. By decision dated November 20, 2018, the motion was denied. Appellant subsequently filed a timely notice of appeal as to the summary judgment decisions affecting SCDOT and Thrift.

Through this appeal, Appellant respectfully requests the Court of Appeals to reverse the circuit court's decision to grant summary judgment in favor of SCDOT and Thrift, and to remand the case to the circuit court to resume proceedings from the point at which they were improvidently terminated.

The primary issue for the Court's consideration is whether the circuit court applied the law appropriately in granting judgment as a matter of law in favor of SCDOT and Thrift. As explained in the pages that follow, and as evidenced in the decision granting summary judgment, the circuit court misapplied the calculus by which a claimant's contributory negligence may be wielded as a complete bar to his relief. Under the law, contributory negligence prohibits a claimant's recovery only if the claimant's negligence exceeds the proportion of negligence attributable to all contributing tortfeasors. By

contrast, the circuit court granted summary judgment by examining whether Appellant's negligence was greater than that of Clemson, SCDOT, and Thrift. This was error. The court was required to evaluate Appellant's negligence against all contributing causes of injuries, including the contribution of Defendant Calvin Williams.

The secondary issue for the Court's consideration is whether the factual record before the circuit court allowed summary judgment at the dispositive stage, at all.

The third and final issue for the Court is whether expert testimony was required as to each and every theory of relief advanced by Appellant, or if it was error for the circuit court to so hold.

For the foregoing reasons, and for any other reason that may be apparent to the Court based on the record below, Appellant would respectfully request that the circuit court's decision granting summary judgment in favor of SCDOT and Thrift be reversed, and that the case be remanded for further proceedings.

### STATEMENT OF FACTS

At approximately 10pm on Thursday, October 23, 2014, Appellant took a step that literally changed the course and direction of his life forever. Appellant had awoken that morning as a senior at Clemson University. (R. 168.) He would finish the day fighting for his life.

The events of this case take place, in the most substantial part, around a particular intersection in the City of Clemson. It is the intersection of South Carolina Highway 123—also known as Tiger Boulevard—and College Avenue. Tiger Boulevard is among the main commercial arteries of Clemson; it is flanked by fast-food restaurants, retail stores, and apartment complexes, (R. 170)—all the standard accoutrements of a true college town. College Avenue, for its part, is also heavily trafficked. Heading south from Tiger Boulevard, College Avenue leads first to Downtown Clemson, then to the University's main campus. It is therefore not a stretch of truth or imagination to say that the intersection of Tiger Boulevard and College Avenue ("**the Intersection**") is busy every hour of every day.

In the weeks during and around fall 2014, the Intersection was undergoing construction. (R. 170.) Because Tiger Boulevard is a state highway, design and construction efforts at the Intersection were conducted under the auspices of the South Carolina Department of Transportation ("**SCDOT**"). SCDOT, in turn, had subcontracted a substantial portion of the work to Thrift Development Corporation ("**Thrift**").

Appellant was no stranger to the Intersection. Appellant started Clemson during Fall 2011. (R. 168.) Many times over the following three years, Appellant had frequented

Starbucks, Walgreens, restaurants, churches, and other businesses, all located in the immediate vicinity of the Intersection. (R. 170.)

Earlier in the evening of October 23, 2014, Appellant had crossed the Intersection by foot, specifically, from the southern side of Tiger Boulevard—the Clemson University side—to the northern side. (R. 170.) He was going to visit some friends at their home. (R. 170.) Later that evening, just shy of 10pm, it was decided that the group of friends would walk Downtown. (R. 203 at 11:13-19.) This would require them to cross over the Intersection at the exact place that Appellant had done so earlier; Appellant was essentially retracing his steps. (R. 170.)

What happened next is both tragic and unclear. (R. 205-06 at 20:22-25:22.) Appellant approached the northern side of the Intersection with his friends. He hoisted a friend of his—Lindsay Jones—onto his back, giving her a piggy-back ride. Appellant then looked both ways and entered into the Intersection. There is a dispute about what color the lights on Tiger Boulevard were when Appellant left the curb—green or yellow. Regardless, Appellant made it safely to the midway point of Tiger Boulevard before stopping again to check traffic. At this point, the light controlling traffic on Tiger Boulevard was either yellow or red. Appellant perceived that traffic was coming to a halt at the stop-bar, and so he took his fateful step into the Intersection.

It so happens that, at the exact same moment, Defendant Calvin Williams was in his SUV, heading eastbound on Tiger Boulevard, approaching the Intersection as Appellant crossed. It is not clear whether Williams had the right-of-way, or whether he accelerated to beat a yellow light, or whether he intended to run a red light. What is clear, however, is that Williams' vehicle violently struck Appellant, nearly killing him.

This is no exaggeration. Appellant was rendered unconscious at the scene of the accident, and was bleeding profusely. He was evacuated by air to Greenville Memorial Hospital where he was diagnosed with having sustained a traumatic brain injury, (R. 168), in addition to many broken bones and teeth, as well as significant internal bleeding, (R. 168). Appellant slipped into a comatose state, where he stayed for weeks. (R. 168.)

By the grace of God, as well as the miracles of modern medicine, Appellant survived. But he was not the same young man that he was before the accident. Appellant had to re-learn every aspect of essential daily living, including walking and talking. (R. 169.) Though there are some wounds that will never heal. Appellant still suffers from his traumatic brain injury. (R. 169.) He suffers from memory loss, confusion, nightmares, and poor sleep. (R. 169.) His brain processing and physical movements are slow. (R. 169.) For the rest of his life, Appellant will have an enhanced risk of suffering seizures, strokes, and blood clots. (R. 169.)

Perhaps the greatest mercy given to Appellant is that he has little-to-no recollection of having suffered his catastrophic injury. He recalls events from earlier that evening. Specifically, Appellant remembers that, when he crossed Tiger Boulevard at the Intersection earlier in the evening of October 23, there was no crosswalk, just chalk lines indicating where the crosswalk should be. (R. 170.) There were also no pedestrian crossing lights, signs, barriers, or road cones. (R. 170.) Lighting was also poor. (R. 170.)

The last recollection that Appellant has of the events of October 23 relate to the seconds just before his injury. Appellant remembers standing in the midpoint of Tiger Boulevard, waiting to cross. (R. 170.) He believes the light was red when he started to cross the second half, (R. 170), but it could have been yellow, (R. 205-06 at 21:16-22:10).

From that point on, Appellant knows nothing, and remembers nothing, about the events of October 23 until the time that he recovered from his coma, other than what he has been told. (R. 168-69.)

## ARGUMENT

### **I. THE CIRCUIT COURT COMMITTED REVERSIBLE ERROR BY DISMISSING THE ENTIRETY OF APPELLANT'S PERSONAL INJURY CLAIM UNDER THE DOCTRINE OF CONTRIBUTORY NEGLIGENCE.**

#### **A. The Circuit Court's Decision**

In the Order Granting Defendants' Motions for Summary Judgment, and in relevant part, the Court summarized the law regarding comparative negligence as allowing recovery only if claimant's negligence is "not greater than that of Defendant." (R. 12.) The Court then considered the application of this principle under the decision of Bloom v. Ravoir, 339 S.C. 417, 429 S.E.2d 710 (2000), which involved a single plaintiff against a single defendant in the context of a personal injury action. (R. 13.) The trial court in Bloom granted summary judgment in defendant's favor on the basis that the undisputed facts established, as a matter of law, plaintiff's contribution to his injury to have been the preponderant cause of his damages. Thus, plaintiff's ability to recover against defendant was prohibited by the doctrine of contributory negligence. The decision was affirmed on appeal.

In the instant case, the circuit court's decision applied Bloom directly to the circumstances of Appellant's case. "As in Bloom, [Appellant] was clearly negligent in excess of 50%, and accordingly, summary judgment is the proper remedy. Even if Defendants were negligent, no reasonable jury could find that their negligence equaled, or was greater than, [Appellant's] negligence." (R. 14.) To support this conclusion, the court then offered a statement of facts regarding the circumstances that ostensibly established Appellant's preponderant negligence. (R. 14-18.)

Finally, the court held that, as a matter of law, neither SCDOT nor Thrift was a cause of Appellant's injuries. (R. 18.) "Even if one assumes that the light for traffic on [Tiger Boulevard] was red at the time of this accident, as [Appellant] now claims in his Affidavit, then Defendant Calvin Williams ("Williams") disregarded the red light and his conduct alone was the sole cause of this accident. Based upon [Appellant's] own testimony, he knew when he could lawfully enter the intersection and where he could lawfully cross at the intersection and, therefore, under [Appellant's] own new theory, there could be no liability on the part of the remaining Defendants. Such knowledge on the part of [Appellant] completely absolves Thrift, DOT, and Clemson of any liability in this case. Accordingly, [Appellant's] claims against these remaining Defendants are barred as a matter of law." (R. 18.)

**B. The Error / Standard of Law**

The foregoing excerpts of the court's Order Granting Summary Judgment demonstrate two legal errors. The first error is based on the court's conclusion that Appellant was preponderantly negligent, even though, in arriving at that conclusion, the court did not consider the proportion of negligence contributed by Defendant Calvin Williams. The second error arises from the court's assertion that the proportion of negligence contributed by Appellant and Defendant Calvin Williams totals 100%; that, as a matter of law, Respondents' proportion of negligence is 0%. Each of these errors is considered in turn.

1. Appellant's Preponderant Negligence

As stated above, the circuit court's first legal error arises from the court's conclusion that Appellant was preponderantly negligent in causing his injuries, despite the



fact that the court did not consider the contributions of all tortfeasors, specifically Defendant Williams. It is true, as the court held, that as between one plaintiff and one defendant, the plaintiff may recover damages in tort only if his own negligence is not greater than that of the defendant. The standard of law applicable is slightly different when it is alleged that one plaintiff's injuries were caused by multiple tortfeasors. In that circumstance, "the plaintiff's negligence shall be compared to the combined negligence of all defendants." Nelson v. Concrete Supply Co., 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991) (citation omitted).

As it is used in the foregoing sentence, the word "defendants" means more than just parties who are named as defendants and present in the case at the time of disposition. It means all parties who are contributing tortfeasors. See Roddey v. Wal-Mart Stores E., LP, 400 S.C. 59, 67, 732 S.E.2d 635, 639 (Ct. App. 2012) ("In many cases involving multiple tortfeasors, the negligence of a tortfeasor absent from the case could affect the relative fault of the plaintiff."). This would include parties who were initially named as defendants but have settled out prior to disposition, as well as parties who were never named as defendants.

And therein lies the problem with the circuit court's analysis. In one section of the opinion, the court concludes that the entirety of Appellant's injury was caused by Appellant's negligence plus the negligence of Defendant Calvin Williams. (R. 18.) Stated in the form of an equation:

$$\text{Appellant's Negligence} + \text{Defendant's Negligence} = 100\%$$

However, the court never apportioned percentages of fault to either party. Nor could it have properly done so. See, e.g., Bloom, 339 S.C. 417, 429 S.E.2d 710 (holding that the apportionment of relative fault is generally a question of fact for the jury to decide).

Then, in another section of its opinion, the court concludes that Appellant's contribution of negligence was greater than the relative contributions of Clemson, Thrift, and SCDOT. (R. 14-18.) As an equation:

$$\text{Appellant's Negligence} > \begin{array}{l} \text{Clemson's Negligence} \\ \text{Thrift's Negligence} \\ \text{SCDOT's Negligence} \end{array}$$

The error with this analysis is apparent. The circuit court never factored Defendant Calvin Williams' negligence into the combined negligence of all defendants, so that it could be weighed against Appellant's contribution. This is the analysis that the court was obliged to undertake, see Nelson, 303 S.C. at 245, 399 S.E.2d at 784; Roddey, 400 S.C. at 67, 732 S.E.2d at 639, and which it failed to do.

## 2. Respondents' Absence of Negligence

Respondents will almost certainly contend that the circuit court's failure to consider Defendant Williams' negligence as a portion of Defendants' combined negligence is harmless error. After all, the court quite clearly held that the negligence contributions of Clemson, Thrift, and SCDOT were 0%. (R. 18.) But this, too, is error.

As the Court is well-aware, summary judgment is appropriate only if there is no genuine issue as to any material fact and, upon those undisputed facts, the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP.

With regard to the circuit court's order granting summary judgment, there is absolutely no clarity as to what facts the court was relying upon to conclude that, as a

matter of law, neither Respondent bore any responsibility for Appellant's injuries. The substantive portions of the court's decision regarding liability focus almost exclusively on the reasons why Appellant was negligent. (R. 14-18.) By contrast, there is no discussion whatsoever as to why neither Respondent bears any liability, let alone an identification of undisputed facts that support the conclusion of their lack of responsibility.

Certainly, the circuit court was under no obligation to make findings of fact or conclusions of law in disposing of the motions for summary judgment. Rule 52(a), SCRCP. But the provisions of Rule 52 do not absolve the court of its obligation to ensure that a grant of summary judgment is predicated on anything less than undisputed facts.

In the instant case, the Complaint asserts that Thrift and SCDOT are liable for Appellant's injuries due to their failure to create a safe environment for pedestrians at the Intersection. (R. 42-43 at ¶ 35.) The undisputed facts—which were presented to the circuit court—were that “there were no pedestrian crossing lights,” signs, or barriers at the Intersection, nor was there a crosswalk; just a rudimentary chalk line where a crosswalk should have been. (R. 170 at ¶ 12; see also R. 204 at 15:22-17:5.) This is consistent with the testimony of Lance Corporal Craig, who affirmed that there is no crosswalk at the Intersection, (R. 225 at 36:15-19), and Corporal Brooks, who testified that, when he responded to the accident scene, the pedestrian signals were not operational because they had no power, (R. 232 at 22:6-15.) In light of these undisputed facts, which indisputably touch upon the reasonable probability that liability could be imputed to SCDOT and Thrift, it was improper for the circuit court to grant summary judgment in Respondents' favor.

**C. Standard of Review**

On appeal, the standard of review applicable to the grant of a motion for summary judgment motion is the same as the standard applied by the circuit court pursuant to Rule 56(c), SCRCP. See, e.g., Woodson v. DLI Props., LLC, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014). Summary judgment is properly granted when, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; Woodson, 406 S.C. at 528, 753 S.E.2d at 434. In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party, who is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-S. Mgmt., 381 S.C. 326, 329-31, 673 S.E.2d 801, 802-03 (2009).

**D. Recommended Disposition**

The circuit court should have denied Respondents' motions for summary judgment on the basis that Appellant's comparative fault could not, as a matter of law, be adjudicated the preponderant cause of his injuries, thereby paving the way for the doctrine of contributory negligence to bar any further recovery in Plaintiff's favor. In light of the circuit court's error, the Court of Appeals is respectfully requested to reverse the decision of the circuit court, and remand the case for further proceedings.

**II. THE CIRCUIT COURT COMMITTED REVERSIBLE ERROR IN BASING SUMMARY JUDGMENT ON MATERIAL FACTS THAT WERE IN DISPUTE.**

**A. The Court's Decision**

As explained in the preceding section, the circuit court held that Appellant's conduct was the preponderant cause of his own injuries. This conclusion was ostensibly based solely on the following facts:

- (1) Appellant "raced" into the busiest intersection in the City of Clemson, (R. 14);
- (2) Because of alcohol consumption, Appellant was impaired, (R. 16-17);
- (3) At the time of the accident, Appellant was carrying a friend "piggy-back style," (R. 14-15); and,
- (4) Appellant stepped into oncoming traffic while the light was yellow, (R. 16), at which time he was struck by Defendant Williams' vehicle.

**B. The Error / Standard of Law**

It is axiomatic that summary judgment be predicated on material facts which are not in dispute. Rule 56(c), SCRPC. However, of the four facts laid out above, which were all used to bar Appellant's recovery under contributory negligence, three are absolutely in dispute, and were directly in dispute at the time of the hearing on the motions for summary judgment. The only fact not in dispute is that Appellant was carrying a friend on his back at the time of the accident, though neither Respondents nor the court has ever undertaken any serious effort to connect that circumstance to Appellant's injury as a contributing cause.

At the outset of this discussion, it should be noted that the circuit court's decision granting Respondents' motions for summary judgment is nearly identical to Thrift's memorandum in support of its motion. Therefore, to examine what facts of record were available to the court so that it could reach its conclusions, this Court need look no further than Thrift's memorandum and the documents cited in connection therewith, if any.

As noted above, the circuit court found as a matter of fact that Appellant "raced" into the Intersection. (R. 14.) The language used by the court mirrors—word for word—the language found in Thrift's memorandum. (R. 193.) For its part, Thrift's memorandum gives no citation to any admissible evidence to support this assertion. The deposition testimony submitted to the court for consideration of the motions for summary judgment—by Thrift, no less—states just the opposite. Appellant was asked whether he was walking, running, or trotting through the Intersection. His response: "I think like a brisk walk, walking as fast as I could while carrying somebody." (R. 206 at 25:14-17.) For the purposes of summary judgment, the "fact" that Appellant was racing into the Intersection was nothing more than a figment of Respondent's imagination.

The next figment conjured up by Respondents is that Appellant was intoxicated at the time of the accident, to the point of impairment. (R. 16-17.) Here again, the language of the court's decision tracks the language of Thrift's memorandum. (R. 195-96.) Respondents' "evidence" that Appellant was impaired at the time of the accident comes from two sources: (1) Appellant's blood-alcohol content as reflected in the records of Greenville Hospital following Appellant's admission; and (2) the testimony of a MAIT officer who reconstructed the scene of the accident, and who generally opined about his

experience of blood-alcohol content causing impairment. Neither of these sources constitutes admissible evidence of Appellant's actual impairment at the time of his injury.

The best evidence that Respondents could possibly offer would be eye-witness testimony from someone who was present at the time of the accident, who could testify to their observations of Appellant's impairment. But Respondents have no such testimony. And no such testimony was ever presented to the court. From an evidentiary standpoint, Respondents' assertion that Appellant's intoxication contributed to the accident is pure fiction.

Third, and finally, the court held that Appellant stepped into the path of Defendant Williams' vehicle while the traffic light was yellow, and therefore, while Defendant Williams still had the right-of-way. (R. 16.) On this point, at least, Thrift presented the court with deposition testimony from Appellant, though the portions cited do not address whether the traffic light was yellow or red at the time that Appellant was struck.

Other portions of Appellant's deposition testimony cited by Thrift—and provided to the court—undermine the “undisputed fact” that Appellant entered into oncoming traffic. On Page 5 of Thrift's Memorandum, Respondent cites to the following passage of Appellant's deposition testimony:

Q: Did the light turn yellow before you attempted—started to attempt to cross 123?

A: I think so.

Q: And then you attempt to cross 123, and this is where I'm unclear, okay. Did you stop again before the accident happened?

A: Yeah, because when we made it from the Sonic side to the middle, we stopped again.

Q: Okay.

A: And then the car closest to the middle stopped. The light turned yellow, so the car stopped. We were like, all right. It came to a complete stop. We started to cross again, didn't see the car in the next lane that hit me.

Q: Okay. So you see the light turn yellow. Why did you start across? What prompted you to start across with Lindsay on your back?

A: Well, the car in the closest lane came to a complete stop.

(R. 213 at 121:1-19.)

To be candid, there are certainly sections of Appellant's testimony where he seems clearer about the color of the light being yellow at the moment immediately prior to impact; there are also sections where he remains unsure. For example:

Q: Okay. So tell me what you remember as you got to the—as you approached that intersection.

A: I just remember we crossed, we made it to the middle like of the intersection, and then the lights turned yellow, the car closest to us stopped, and then we started to cross, and then I got hit.

Q: And let's back up to when you first stepped off the sidewalk to cross, okay. What do you remember doing? Did you stop?

A: We stopped, and then the car in the first lane came to a complete stop, so we started across.



Q: And the stopping of that vehicle, is that what signaled to you that it was appropriate to go into the intersection?

A: Yeah. And well, the light was yellow, turning red, the first car stopped, so we thought we were good to cross.

(R. 205-06 at 21:16-22:10.)

To be clear, there is nothing nefarious about Appellant's inability to recall the color of the traffic light at the time of his accident to any degree of precision. The fact of the matter is—and this is undisputed—Appellant suffered severe cognitive impairment as a consequence of this very accident which has permanently diminished his capacity for recollection. (R. 96:12-14.) This is a critical point. The only witness whose testimony was presented to the court about the color of the light at the time of impact was Appellant. And Appellant is not sure whether the light was yellow or red.

Appellant attempted to clarify his testimony through an affidavit, (R. 187 at ¶¶ 14 & 16), which was presented to the court at the time of the hearing on the motions for summary judgment. However, the court disregarded portions of Appellant's affidavit as a "sham." (R. 16) This is particularly disappointing, as Appellant offered the affidavit to explain the severity of his physical, emotional, and cognitive impairments arising from the accident, (R. 186 at ¶¶ 8-10), all of which informs the creditability of his testimony as to the color of the light at issue.

That is not an insubstantial point. The adjudication of the color of the light at the time of impact—whether Defendant Williams had the right-of-way, or whether he was attempting to run a traffic light—bears directly on whether and to what extent Appellant contributed to his own injuries. That, in turn, has a direct and substantial effect on whether

Appellant is, or is not, barred from recovering under the doctrine of contributory negligence.

Ultimately, the material facts on which the court relied to grant summary judgment in Respondents' favor were very much in dispute. By resolving those facts against Appellant, the court improperly invaded upon the exclusive province of the jury.

**C. Standard of Review**

Appellant incorporates the standard of review set forth in Section I.C, supra.

**D. Recommended Disposition**

The circuit court should have denied Respondents' motions for summary judgment on the basis that genuine issues of material fact remained on the questions of proportional liability. In light of the circuit court's error, the Court of Appeals is respectfully requested to reverse the decision of the circuit court, and remand the case for further proceedings.

**III. THE CIRCUIT COURT COMMITTED REVERSIBLE ERROR IN HOLDING THAT APPELLANT HAD FAILED TO PROCURE EXPERT TESTIMONY IN SUPPORT OF PROPOSITIONS FOR WHICH EXPERT TESTIMONY IS NOT REQUIRED.**

**A. The Circuit Court's Decision**

The circuit court's order characterized the claims against Thrift and SCDOT as arising in connection with "construction services and management," including "compliance with industry standards." (R. 19.) The court went on to conclude that expert testimony was necessary to support the entirety of Appellant's tort claims against Thrift and SCDOT. (R. 19-20.) Finally, the court held that Appellant's lack of procuring expert testimony as to the negligence of Thrift and SCDOT required the direction of summary judgment in their favor. (R. 20.)

**B. The Error / Standard of Law**

The allegations of the Complaint regarding the liability of Thrift and SCDOT are, admittedly, broadly drafted. (R.42-43 at ¶ 35.) However, at the hearing on the motions for summary judgment, the theories of their liability as presented were much narrower. (R. 80-93 at 15:18-23:10.) Essentially, it was argued that Thrift and SCDOT were liable for undertaking construction at the Intersection without installing mechanisms to facilitate the safe passage of pedestrians. The mechanisms at issue were exceedingly basic, and pertained to whether lighting, signage, a crosswalk, and working pedestrian signals were present.

The circuit court ostensibly adopted the position of Respondents wholesale, which was that expert testimony is necessary, as a matter of law, to establish every aspect of pedestrian safety in a construction zone. In arriving at this conclusion, the court relied in substantial part on City of York v. Turner-Murphy Co., 317 S.C. 194, 452 S.E.2d 615 (Ct. App. 1994). Excerpts of City of York were cobbled together to create the impression that claims of negligence against a general construction contractor require expert testimony for their survival. But that is not the case. It is not the holding of City of York, and more broadly, it is not the law in this State.

City of York was a professional negligence claim against a company who was engaged specifically to supervise the construction of a wastewater treatment plant for compliance with certain contract documents. It failed to do so. And at trial, a verdict was returned in plaintiff's favor. The company appealed, taking the position that the sufficiency of its professional supervisory services required expert testimony as to the pertinent industry standard by which to measure its alleged negligence. The Court of Appeals

agreed. “Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional’s deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional’s conduct.” Id., 317 S.C. at 195, 452 S.E.2d at 617 (citation omitted).

Before going any further, it is important to note that the case presently before the Court is not a professional negligence claim. The professions subject to “professional negligence claims” are identified specifically within our body of law at South Carolina Code § 15-36-100(G). Twenty-two professions are enumerated. “General construction contractor” is not among them.

As the Court doubtless knows, to bring an action against any of the twenty-two professions identified under § 15-36-100(G), the complainant must provide expert testimony as to the standard of care—and its breach—contemporaneously with the filing of the complaint. In that regard, and only as to those professions, expert testimony is necessary as a matter of law for claims alleging negligence to survive. In every other context, and as to every other occupation, the need for expert testimony depends on the particular facts of the case.

Despite the fact that City of York was a professional negligence case, it is nonetheless instructive as to when—even in an ordinary negligence case—expert testimony is needed for the survival of a claim at a dispositive stage, and perhaps more importantly, when expert testimony is not needed. As a general proposition, expert testimony is necessary only when the subject matter of the testimony cannot be understood by a person of ordinary intellect without the assistance of special knowledge, skill,

education, training, or experience. See, e.g., City of York, 317 S.C. at 196, 452 S.E.2d at 617. By contrast, expert testimony is unnecessary when the subject matter is within the common knowledge and experience of an ordinary person. Id.

Consequently, not everything requires the testimony of an expert to survive a dispositive motion. In fact, as this very Court acknowledged in City of York, there are some types of cases that would seem to require expert testimony, but don't. One example given was where an architect designed a building without waterproofing, even though the building was constructed two feet below the high-water-mark of a prior flood. See Seiler v. Levitz Furniture Co. of the Eastern Region, Inc., 367 A.2d 999 (Del. 1976). Another example is from a case where an architectural firm was hired to compare shop drawings of a proposed structure with the as-designed specifications. Jaeger v. Henningson, Durham & Richardson, Inc., 714 F.2d 773 (8th Cir. 1983). The firm failed to notice a discrepancy in the gauge of steel required, which resulted in the structural failure of the entire building. Neither of these cases, cited with approval by this very Court, required expert testimony for their survival.

The theories of liability presented by Appellant's case are in substance no different than these examples. In Thrift's Memorandum in Support of its Motion for Summary Judgment, it describes the Intersection as "the busiest" in the City of Clemson. (R. 194.) Is expert testimony really necessary to establish the proposition that, at the busiest intersection in the college town of Clemson, some measures be deployed during construction to promote the safe passage of pedestrians?

This is actually a sharper analytical question than may appear at first blush. And it may be helpful to more carefully identify what Appellant's contention is and is not. It is

Appellant's contention that the absence of lighting, signage, crosswalks, and functioning pedestrian lights—whose implementation were the responsibility of Thrift and SCDOT—were contributing causes to the injuries he sustained. It is not Appellant's contention that there were some safety measures which were inadequate under the circumstances. More simply stated, it is the difference between whether Respondents' safety measures were good enough, or whether there were any at all. The latter option is absolutely within the ambit of the ordinary person's knowledge and experience, and therefore, did not require expert testimony for its survival.

**C. Standard of Review**

Appellant incorporates the standard of review set forth in Section I.C, supra.

**D. Recommended Disposition**

The circuit court should have denied Respondents' motions for summary judgment on the basis that expert testimony was unnecessary for Appellant to establish at least one viable theory of recovery on its negligence claims. In light of the circuit court's error, the Court of Appeals is respectfully requested to reverse the decision of the circuit court, and remand the case for further proceedings.

### CONCLUDING STATEMENT

Although not raised as a discrete ground of appeal, there is a final matter worth discussing, and it would seem this concluding statement is the best place for doing so. As a general proposition, there is no such thing as a “normal” case. Each has its own particular challenges—be they factual, legal, procedural, or otherwise. This case is no different.

Perhaps the Court has gained a sense that, at the time of the hearing on the underlying motions for summary judgment, there was still a significant amount of work to be done in furtherance of Appellant’s case. This was the consequence of some procedural difficulties. When the lawsuit was commenced, Appellant was represented by an attorney who is no longer involved in this case. That attorney entered into a consent scheduling order which required Appellant to disclose the identity of any testifying experts on or before January 1, 2018. (R. 1.) However, by late 2017, the attorney/client relationship had become strained, and on January 12, 2018, Appellant’s initial counsel filed a motion to withdraw. (R. 127.) Barely a week later, Respondents’ motions for summary judgment were filed. (R. 129-30.)

Appellant subsequently engaged Mr. Lewis and Mr. Marlette as his attorneys. Because Mr. Marlette is licensed only in Massachusetts, it was necessary for him to obtain permission to practice pro hac vice within our State. In an email exchange with the Honorable Robin B. Stilwell, who at that time was the chief judge for administrative purposes for the Thirteenth Judicial Circuit, Mr. Marlette explained the procedural status and the challenges associated with representing Appellant without formal admission to practice. (R. 134.) In response, by email dated March 25, 2018, Judge Stilwell said that any scheduling order deadlines following the withdrawal of Appellant’s prior counsel

would be suspended pending Mr. Marlette's admission to practice. (R. 149.) No one objected.

Mr. Marlette's pro hac vice application was approved by order dated May 5, 2018. (R. 4.) The hearing on Respondents' motions for summary judgment occurred less than a month later—June 1, 2018. At that time, Mr. Marlette respectfully requested more time from the circuit court to conduct discovery. (R. 83-84 at 18:4-19:23.) No such latitude was given. Regrettably, Defendants' counsel threw their weight into the dogpile, bemoaning the prejudice their clients would sustain if even a brief window of additional discovery were allowed. (See R. 93, 94 & 96-97 at 28:13-15, 29:7-9 & 31:23-32:3.)

Defendants would not have sustained any prejudice—much less their legal counsel—had a brief window been allowed for Mr. Marlette to round out discovery. Especially when there was general agreement among counsel and court that all deadlines would be stayed pending Mr. Marlette's admission to practice. There seems something inequitable about shooting Mr. Marlette out of the saddle before he has even had a chance to sit down, particularly when the one who suffers is Kevin Granatino. To quote Mr. Marlette's closing plea to the circuit court:

All I know is he's a good kid who ended up with a very, very serious, permanent brain injury, and he lives with that every single day, and all he wants is his opportunity to tell his story. So please, please afford him that opportunity.

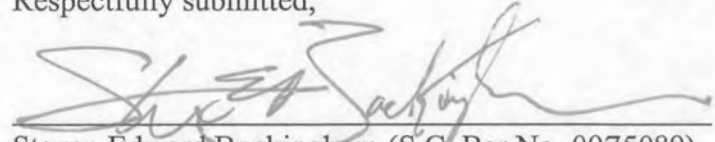
(R. 93 at 28:6-10.)

For the foregoing reasons, and on any other basis that may appear to the Court upon a review of the record on appeal, Appellant respectfully requests an order which reverses the decision of the circuit court granting summary judgment to SCDOT and Thrift, remands



the case for further proceedings, and provides for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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December 20, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

---

Appellate Case No. 2018-002166  
Trial Court Case No. 2016-CP-39-01223

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RECEIVED  
DEC 27 2019  
SC Court of Appeals

Kevin M. Granatino, ..... Appellant,

vs.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation, ..... Defendants,

Of which South Carolina Department of Transportation and  
Thrift Development Corporation are ..... Respondents.

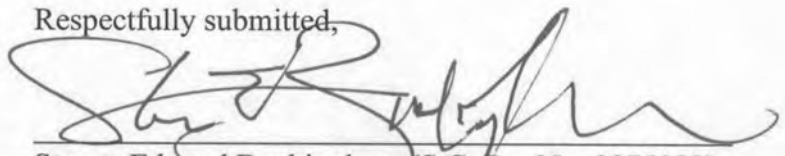
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**CERTIFICATE OF COUNSEL**

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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December 20, 2019

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY  
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Perry H. Gravely, Circuit Court Judge

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**RECEIVED**

DEC 27 2019

**SC Court of Appeals**

Kevin M. Granatino.....Appellant

v.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation.....Defendants

Of Which:

South Carolina Department of Transportation and  
Thrift Development Corporation.....Respondents.

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### **QUESTIONS PRESENTED**

- I. Did the circuit court err in granting summary judgment where Appellant stipulated expert testimony was necessary to establish his claims against Respondents, but failed to designate any expert witnesses within the time limits imposed by a consent scheduling order?
- II. Did the circuit court err when it determined as a matter of law that Appellant was greater than 50% responsible for his injuries where, at the time of the collision, Appellant was attempting to cross a multi-lane highway at night when carrying someone on his back, while legally intoxicated?
- III. Did the circuit court err in granting summary judgment, where it analyzed the two competing factual scenarios presented by Appellant and determined that neither scenario would result in liability being imposed on Respondents?

### **STATEMENT OF THE CASE**

This appeal arises out of the circuit court's granting of summary judgment in favor of Respondents, Thrift Development Corp. ("Thrift") and the South Carolina Department of Transportation ("SCDOT"). (R. pp. 11-34). The action arises out of an October 23, 2014, pedestrian-vehicle collision at an intersection which had been under construction. (R. pp. 35-47). Appellant filed his initial Summons and Complaint on October 21, 2016, in which he named as defendants Calvin Williams (the driver of the vehicle involved in the accident), Clemson University, SCDOT, and "ABC Corporation" (identified as "an unidentified corporation conducting business in Pickens County, South Carolina"), the company performing construction at the intersection. Appellant subsequently amended his Complaint on February 15, 2017, identifying Thrift as that entity and removing "ABC Corporation." (R. pp. 35-47). On October



25, 2017, a “Consent Scheduling Order” was entered into by all parties which, in part, required Appellant to “file and serve a document identifying by full name, address, and telephone number each person whom Plaintiff expects to call as an expert at trial by January 1, 2018.” (R. pp. 1-3).

Appellant failed to identify any expert witnesses by the deadline imposed by the scheduling order, and did not seek to expand the time to identify any experts. (R. pp. 66-126). Appellant’s attorneys filed a motion to be relieved as counsel on January 12, 2018. (R. pp. 127-128). That request was granted on January 25, 2018. (R. pp. 4-6). On January 19, 2018, Respondents filed motions for summary judgment premised upon 1) the lack of expert testimony and 2) Appellant was greater than 50% liable for his injuries. (R. pp. 129-131). Clemson also filed a motion for summary judgment<sup>1</sup>.

These motions were heard on June 1, 2018, and the circuit court entered an order granting summary judgment in favor of Respondents and Clemson University on July 19, 2018. (R. pp. 11-25). On July 27, 2018, Appellant filed a motion to alter or amend pursuant to Rule 59(e), SCRCF, as to the summary judgment in favor of Respondents, but not as to Clemson. (R. pp. 263-268). That motion was heard on October 25, 2018, and in an order filed November 20, 2018, the circuit court denied Appellant’s 59(e) motion. (R. pp. 26-34). Appellant filed his Notice of Intent to Appeal on December 7, 2018. (R. pp. 274-275).

### **STATEMENT OF THE FACTS**

On October 23, 2014, Appellant, a student at Clemson University, was attempting to cross Highway 123 at College Avenue in Clemson at approximately 9:56 pm when a car being driven by Calvin Williams struck Appellant. (R. p. 36; R. p. 232). The impact occurred in the middle eastbound lane of Highway 123, after Appellant had successfully crossed the westbound

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<sup>1</sup> Mr. Williams has settled with Appellant.

lanes of traffic. (R. p. 233). At the time of the accident, Appellant was carrying a friend on his back. (R. pp. 204-205). A blood test taken at the hospital that night revealed Appellant's blood alcohol level was .122. (R. p. 254). The intersection where the accident occurred had been under construction prior to the accident, but was not an active construction zone. (R. p. 49).

In his Amended Complaint, Appellant alleges Respondents violated "industry standards" relating to the "construction area." Appellant's Amended Complaint also alleges Respondents:

- a. Negligently created and/or constructed the intersection;
- b. Negligently allowed a dangerous condition to exist at the intersection;
- c. Failed to eliminate known dangerous conditions at the intersection;
- d. Failed to properly and adequately maintain a construction zone at the intersection;
- e. Failed to warn of dangerous conditions; and
- f. Otherwise negligently maintained, inspected, and/or repaired the intersection and/or the area surrounding the intersection during construction.

(R. pp. 42-43).

During his deposition, Appellant repeatedly testified, without prompting by opposing counsel, that the light turned yellow when he reached the middle of the highway:

Q: So tell me what you remember as you got to the – as you approached that intersection.

A: I just remember we crossed, we made it to the middle like of the intersection, and the lights turned yellow, the car closest to us stopped, and then we started to cross, and then I got hit.

Q: And let's back up to when you first stepped off the sidewalk to cross, okay. What do you remember doing? Did you stop?

A: We stopped, and then the car in the first lane came to a complete stop, so we started across.

Q: And the stopped of that vehicle, is that what signaled to you that it was appropriate to go into the intersection?

A: Yeah. And well, the light was yellow, turning red, the first car stopped, so we thought we were good to cross.

(R. pp. 205-206)

\*\*\*

Q: What happened – after you got to the middle what's the next thing you remember?

A; The car in the lane closest to us, when the light turned yellow that car stopped, and so we started across...

(R. p. 209)

As indicated by the above excerpts from Appellant's deposition, once Appellant saw the light turn to yellow, the car in the left-hand turn lane slowed, and Appellant then proceeded across the eastbound lanes of traffic when he was struck by Mr. Williams. (R. pp. 205-206, 209). Contrary to the assertion in Appellant's brief, witnesses to the accident described Mr. Granatino being involved in "horse play" and running across the intersection just before impact. (R. p. 230; R. p. 246). For his part, Appellant characterized his speed crossing the street as "a brisk walk, walking as fast as I could while carrying somebody." (R. p. 206).

Appellant testified that he was familiar with the intersection. (R. p. 208). Lindsey Jones, the friend Appellant was piggybacking across the intersection, does not remember the accident or the moments leading up to it. (R. p. 223).

Appellant has not identified any witness(es) who are competent to testify regarding Respondents' respective duties, how those duties were breached, or how this accident would not have occurred but for those breaches.

### **STANDARD OF REVIEW**

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) and Rule 56, SCRPC). The purpose of summary judgment is to expedite the disposition of cases that do

not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion “must come forward with specific facts showing there is a genuine issue for trial.” *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. “Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Grimsley v. S.C. Law Enforcement Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (internal quotations omitted). “Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 11 (2006).

### **ARGUMENT**

**I. This Court should affirm the circuit court’s decision based on the grounds appearing in the Record of Appeal.**

For the reasons outlined below and pursuant to SCACR Rule 220(c), the circuit court’s order was proper and should be affirmed.

**II. Appellant’s failure to secure expert testimony is fatal to Appellant’s claims against Respondents.**

**a. Appellant has stipulated that expert testimony is required.**

In attacking the final prong of the circuit court’s Order granting summary judgment to Respondents, Appellant argues that expert testimony is not necessary to establish that

Respondents breached a duty of care to Appellant. However, at the hearing on Respondents' motions for summary judgment, Appellant's counsel stipulated that expert testimony *was* necessary to establish the claims against Respondents: "Now, I think they're right. I mean the problem is that [it] does get in the realm of experts" (R. p. 90). Appellant's counsel reiterated this concession during the following exchange with the Court at the hearing on Appellant's motion to reconsider:

The Court: Well regardless of whether you have a scheduling order in place, this is a 2016 case. I mean, it seems like to me before, especially making claims against...the construction company, Thrift and I don't know, the Department of Transportation. I mean, it seems like that would be – the expert he would have got before he filed the lawsuit.

Appellant's counsel: I can't disagree with that, Your Honor.

(R. p. 113).

"A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. **Stipulations are, of course, binding upon those who make them.**" *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) (Internal citations omitted) (Emphasis added). Furthermore, an issue conceded in the trial court cannot be argued on appeal. *State v. Bryant*, 372 S.C. 305, 314, 642 S.E.2d 582, 587 (2007) (Appellant could not assert violation of right to fair trial where he conceded trial court's ruling was not prejudicial). Because Appellant has conceded an expert witness is necessary to establish his case against Respondents, he is barred from now asserting otherwise.

Even assuming *arguendo* that Appellant is not bound by the repeated concessions of counsel at the two hearings related to Respondents' summary judgment motions, expert testimony is necessary to establish the elements of negligence against Respondents. Where an area of testimony is beyond the realm of ordinary lay knowledge, expert testimony usually will be required to establish both the standard of care and the defendant's departure therefrom,

because “juries must be informed of the criteria upon which a defendant’s conduct is to be judged.” *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50 (1979). Appellant’s Amended Complaint alleges Respondents violated unspecified “industry standards” relating to the “construction area” and contains a litany of alleged negligent acts or omissions. Therefore, in order to establish Respondents owed a duty to Appellant and then committed a breach, Appellant would need to establish the actual industry standards applicable to Respondents and how those standards were not met under the facts of this case. Those areas of discussion conceivably would entail testimony premised upon the appropriate markings, safety signage, and traffic control devices, as well as the frequency of inspections to ensure these devices remain in place. In light of Appellant’s allegations against them, the **only** way Respondents’ conduct can be judged is through expert testimony. Without it, Appellant’s claims fail.

Moreover, in positing that expert testimony is unnecessary, Appellant is effectively seeking permission to present the fact that an accident occurred to establish liability. Not only is this plainly a *res ipsa loquitor* argument, but it is also an invitation to this Court to apply a strict liability standard to Respondents without any precedent for doing so. Accordingly, the Court should reject Appellant’s arguments and affirm the circuit court’s decision.

**b. Appellant’s failure to identify an expert to address the alleged negligence of Respondents required the circuit court to grant summary judgment to Respondents.**

As noted above, Appellant’s failure to establish, after nearly two years of discovery, the specific standard(s) of care owed by Respondents and acts demonstrating breach(es) is fatal to Appellant’s case. Without testimony to establish the existence of a duty and a breach, Appellant’s claim fails as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (“A

complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.”)

Because Appellant failed to identify an expert witness within the period imposed by the consent scheduling order entered in this case, there is no testimony or evidence establishing Respondents' standard(s) of care, or that a breach occurred. Correspondingly, there is no testimony that but for any such breach, the subject accident would not have occurred. The record is devoid of any evidence to establish these essential elements of Appellant's claims against Respondents.

Additionally, this Court should reject Appellant's argument that equity requires reversal of summary judgment due to alleged difficulties with prior counsel. As is evident from his appearance *pro hac vice*, Appellant's stepfather is a licensed attorney in Massachusetts who has been involved in this matter at every juncture. Moreover, “a scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.” *Jorden v. E.I. du Pont de Nemours & Co.*, 867 F. Supp. 1238 (D.S.C. Sept. 30, 1994). After filing suit nearly two years after the accident occurred, Appellant had an additional fourteen months to locate and identify appropriate expert witnesses to address the standards of care imposed on Respondents. The **consent** scheduling order was filed October 25, 2017, over two months before Appellant's deadline to identify experts. As should be readily apparent, this deadline did not sneak up on anyone. Equity aids the vigilant and diligent. *See Collins v. Sigmon*, 299 S.C. 464, 385 S.E.2d 835 (1989). Therefore, even under an equitable analysis, the circuit court correctly determined that summary judgment was appropriate.

Moreover, Appellant specifically requests that this Court “reverse the circuit court's decision to grant summary judgment...and to remand the case to the circuit court to resume

proceedings from the point at which they were improvidently terminated.” (Appellant’s brief, p. 3). Even if this Court were to reverse the grant of summary judgment, Appellant still does not have an expert witness, and Appellant has not moved to enlarge the time to designate expert witnesses. Appellant would therefore remain unable to establish his claims and summary judgment would be appropriate once again. Therefore, even if this Court does what Appellant asks it to do, Appellant cannot rectify his failure to provide expert testimony to establish liability against Respondents.

**III. The circuit court correctly determined Respondents could not be found liable to Appellant.**

**a. The circuit court’s apportionment of liability was not appealed as to Clemson and therefore is the law of the case as to Respondents.**

In its Order granting summary judgment as to Respondents and Clemson, the circuit Court determined that summary judgment was appropriate because Appellant’s negligence was greater than 50%. Appellant has not appealed that ruling as to Clemson. (R. pp. 274-275). An unappealed ruling is the law of the case. *M-L Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997). A plaintiff is barred from asserting a claim if his negligence is greater than 50% when compared to that of those from which he seeks to recover. S.C. Code Ann. §15-1-300. Practically speaking, that means if a plaintiff is deemed to be greater than 50% liable in a case involving multiple defendants, then recovery is barred against **each** defendant. In this case, Clemson University was granted summary judgment on multiple grounds, including that Appellant was greater than 50% negligent in causing his own injuries. That finding as to Clemson was not appealed, and therefore it is the law of the case. *See Ralph v. McLaughlin*, No. 5681, 2019 S.C. App. LEXIS 76, 834 S.E.2d 213 (2019) (Finding the circuit court erred in failing to apply the specific rulings and findings of fact factual determinations



from a previous grant of summary judgment to a third-party defendant as the law of the case) (*cert pending*). Necessarily, that means Appellant is greater than 50% liable for his injuries, not only to Clemson, but to Respondents as well. Consequently, Appellant's claims are barred, and the circuit court's ruling on this issue (which is the law of the case) may not be disturbed.

**b. Appellant failed to raise the purportedly improper liability apportionment to the circuit court, and therefore the issue is not preserved for appellate review.**

Appellant takes great pains in his memo to demonstrate that the circuit court misapplied the "formula" for apportioning fault among Appellant, Respondents, and other Defendants. As discussed in more detail below, Appellant's argument is based on a misinterpretation of the circuit court's order. More importantly, however, this was neither raised to nor ruled on by the circuit court, and therefore it is not preserved for appellate review. *S.C. Dept. of Transp. v. First Carolina Corp of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007). Therefore, this Court should not consider Appellant's arguments on this point.

It was incumbent upon Appellant to bring two issues to the circuit court's attention in order to present this issue on appeal. Neither was raised. First, because the order granting summary judgment never explicitly states Mr. Williams' potential fault is excluded from the circuit court's analysis, Appellant was required to seek clarification on that issue. Second, Appellant was obligated to contest the circuit court's findings on liability apportionment, on the basis that the circuit court failed to consider the combined fault of all four defendants.

Appellant's sole concern in his motion to alter or amend on this issue was that the circuit court relied too heavily upon the allegedly unreliable testimony of Appellant. He never mentioned any issue with what he now contends was a misapplied fault formula. Therefore, in

accordance with longstanding error preservation requirements in this state, Appellant's argument on this issue is unpreserved for review.

**c. Based upon established precedent, the circuit court correctly determined that Respondents could not be liable to Appellant under either factual scenario presented by Appellant.**

Appellant asserts that the circuit court misapplied the law relating to comparative fault, and therefore committed an error of law in finding Appellant was greater than 50% at fault as a matter of law. In support of his position, Appellant contends that the circuit court failed to consider the fault of Mr. Williams when evaluating the comparative fault of Appellant and Defendants. He also contends that the circuit court's alternative finding, based upon a factual scenario first presented by Appellant mere days before the summary judgment motion hearing, demonstrates the fallacy of the circuit court's determination. Appellant's argument is based upon a basic misreading of the circuit court's order. The circuit court never excluded Mr. Williams from its discussion of comparative fault, and it is completely speculative of Appellant to argue it did.

Furthermore, Appellant misunderstands the circuit court's order regarding its analysis of comparative fault. The circuit court plainly conducted an alternative analysis of fault in direct response to Appellant's conflicting accounts. As previously mentioned, Appellant repeatedly and freely testified in his deposition that the light turned yellow when he reached the middle of the intersection (implying that he began to cross the street when the light was green and therefore was illegally in the intersection). By contrast, in the affidavit submitted two days before the hearing on the motion for summary judgment, Appellant stated that the light turned red before he entered the intersection and remained red as he attempted to cross. Despite finding the affidavit to be a "sham," the circuit court nevertheless explored the alternative scenarios independently of

one another, ultimately determining that under either scenario, Respondents could not be liable to Appellant.

Under the “red light scenario” presented by Appellant, he waited until the light turned red before entering the intersection and made his way halfway across the intersection before being struck by Mr. Williams. Under these facts, Mr. Williams would have been guilty of running a red light that had been red for a significant amount of time. Based upon this realization, the circuit court concluded that Mr. Williams would be completely at fault for the accident as a matter of law under this scenario, a perfectly logical determination. Contrary to Appellant’s criticism of the circuit court on this issue, it does not require a great deal of discussion to explain why a driver who completely disregards a traffic signal instructing him to stop is solely at fault for whatever injuries occur as a result of the driver’s failure to heed that signal.

On the other hand, in examining whether Appellant would be greater than 50% responsible based upon the “yellow light scenario,” the circuit court relied upon *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000), in which the Supreme Court reinstated the circuit court’s grant of summary judgment to the driver of a vehicle who struck a pedestrian. In *Bloom*, the Supreme Court determined as a matter of law that no reasonable jury could find that the driver’s negligence was greater than the pedestrian’s own negligence. The Supreme Court based its decision on several considerations, including that the pedestrian quickly entered the roadway, that he stepped out into the road between two parked cars in the middle of a block, and that he was dressed in dark clothing. Based upon these facts, the Supreme Court reasoned:

Here, the undisputed facts establish that [pedestrian] attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to [driver’s] fault in this accident cannot alter the inescapable conclusion that, as a matter of law, [pedestrian’s] fault exceeded fifty percent. Where evidence of the plaintiff’s *greater* negligence is overwhelming, evidence of slight

negligence on the part of the defendant is simply not enough for a case to go to the jury.

*Bloom*, 339 S.C. at 424, 529 S.E.2d at 714 (emphasis in original).

The facts in this case are significantly consistent with those in *Bloom* and require the same result being reached. Appellant testified that a car was in the left-hand turn lane, meaning he was obscured from the view of motorists traveling in the other lanes, just as the at-fault pedestrian in *Bloom*. Witnesses testified Appellant was engaged in “horse play” and was running across the intersection; Appellant testified he was moving “as fast as [he] could while carrying somebody.” (R. pp. 206, 230, 246). The *Bloom* at-fault pedestrian quickly entered the roadway as well. Both collisions also occurred at night. Additional facts in the case at bar further support the circuit court’s finding, including 1) Appellant had a blood alcohol level of .122 (R. p. 254); 2) Appellant was carrying someone piggyback across the intersection (R. p. 204), and 3) Appellant committed multiple statutory violations<sup>2</sup>, including S.C. Code Ann. §56-5-3110 (Pedestrians shall obey the instructions of any official traffic control device); S.C. Code Ann. §56-5-3130 (No pedestrian shall suddenly leave a curb or other place of safety to walk or run into the path of a vehicle which is so close as to constitute an immediate hazard); S.C. Code Ann. §56-5-3150 (Pedestrians shall yield the right of way upon the roadway); S.C. Code Ann. §56-5-3160 (Any pedestrian upon a roadway shall yield a right of way to all vehicles upon the roadway); and S.C. Code Ann. §56-5-3270 (A pedestrian who is under the influence of alcohol to a degree which renders himself a hazard shall not walk or be upon a highway except a sidewalk) (R. pp. 14, 17-18). Even when viewed in the light most favorable to Appellant, the facts establish that Appellant was struck when he attempted to carry someone across an intersection, while

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<sup>2</sup> Appellant has not challenged the trial court finding Appellant committed these statutory violations, and therefore it is the law of the case.

jaywalking at night, and in a legally-intoxicated state. He cannot reasonably argue that he failed to cross the street in a safe, reasonable manner, and therefore his fault exceeded 50%.

Appellant incorrectly states that Appellant's blood alcohol level and inferences drawn therefrom are inadmissible and should not have been considered by the circuit court. The Supreme Court has explicitly found an individual's blood alcohol level to be admissible in civil trials. *Hartfield v. Getaway Lounge & Grill, Inc.*, 388 S.C. 407, 417-18, 697 S.E.2d 558, 563 (2010) ("Appellants' contention that S.C. Code Ann. §56-5-2950 (Supp. 2009) forbids entrance of Helton's BAC is misplaced...So long as a sufficient chain of custody exists to authenticate the evidence in a civil case, this type of evidence is admissible"). Moreover, courts are permitted to charge the jury on the permissive inference of intoxication pursuant to S.C. Code Ann. §56-5-2950. *Id.* at 417, 697 S.E.2d at 563. Accordingly, both the level of intoxication and the inference which may be drawn from that intoxication level are admissible and were therefore appropriately considered by the circuit court.

Furthermore, none of these facts, even if in dispute, relate to any alleged negligence on the part of these Respondents. The only basis upon which Appellant asserts Respondents could be liable to Appellant is an allegedly-malfunctioning pedestrian signal and the lack of a painted crosswalk. Setting aside the fact that Appellant has no testimony to establish either constitutes a breach of any duty owed, neither amounts to a genuine issue of **material** fact. First, whether the crosswalk was painted is irrelevant to Appellant's actions, because he was crossing where the crosswalk would have been and he was familiar with the intersection, having crossed through on at least a weekly basis (R. p. 208). Second, the status of the pedestrian signal is a red herring. Initially, it must be noted that there is nothing in the record to establish the pedestrian crosswalk signal was within the control of either Respondent. Therefore, assuming it was not operable,

Appellant has no evidence that either Respondent was responsible for ensuring it worked. Moreover, if it had been operable, the signal would merely have been complementary to the traffic signals, which were undisputedly working. If, as Appellant testified in his deposition, the light turned yellow when Appellant reached the middle of the road, then the pedestrian signal would have been indicating “don’t walk” when Appellant began to cross the road. Therefore, Appellant would have been ignoring that instruction, just as he ignored the green light. If Appellant’s subsequent “red light scenario” is accurate, then the pedestrian signal would have indicated it was safe to cross, a fact that would have remained true up until the point in time when Mr. Williams ran the red light and struck Appellant.

Under either scenario, there is nothing in the record to suggest that the presence of a painted crosswalk or an operable pedestrian signal would have resulted in a different outcome for Appellant. Appellant has not presented any testimony or evidence that a finished crosswalk or pedestrian signal would have provided any additional warning to Mr. Williams and prevented Mr. Williams from hitting Appellant. There is no testimony or evidence that but for the absence of either item, this accident would not have occurred. Therefore, these alleged failings are not disputes of material facts regarding the negligence of Respondents, and do not allow Appellant to survive summary judgment.

Although not directly consequential to the appeal, the circuit court was properly skeptical of Appellant’s affidavit. Submitted two days before the hearing on Respondents’ motions for summary judgment, it directly contradicts Appellant’s prior sworn deposition testimony, contains numerous instances of inadmissible hearsay and unsupported opinions, references a mid-deposition conversations with his counsel in violation of Rule 30, SCRCP, and is not notarized. (R. pp. 168-172). Moreover, Appellant submitted the affidavit in an effort to have the circuit

court disregard sworn testimony from Appellant, premised entirely on the basis that Appellant is unable to provide reliable testimony, based solely upon a representation by the same person who is claiming to be unreliable. (R. pp. 168-172). This assertion, which properly should come from a medical doctor or other person qualified to offer an appropriate diagnosis and opinion, is further betrayed by a release made by Appellant in this matter related to the withdrawal of his prior counsel. (R. pp. 132-133). That release was relied upon by the circuit court in relieving Appellant's prior counsel and certifies Appellant's knowledge, consent, and understanding of the ramifications of his prior counsel's withdrawal, and was executed one month after Appellant provided deposition testimony in this case<sup>3</sup>. (R. pp. 4, 132-133). In short, the affidavit is improper in its form, insufficient in its substance, and questionable in its veracity.

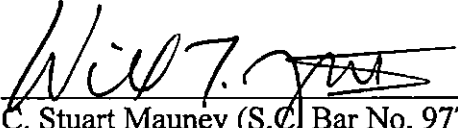
### CONCLUSION

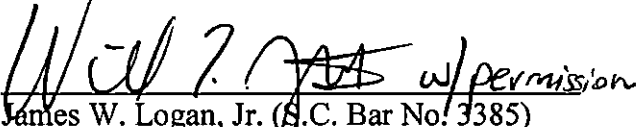
For the reasons discussed hereinabove, the circuit court correctly determined that summary judgment should be granted to Respondents. While this is undoubtedly a tragic situation, the law only allows recovery against those who are liable for injuries. Appellant has failed at every turn to establish any right of recovery against Respondents. Therefore, this Court should affirm the circuit court's order.

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<sup>3</sup> In addition, although not part of the Record, Appellant represented himself in a collection action brought against him by Greenville Health System in 2016 (two years after the accident and a year before his deposition) relating to unpaid hospital bills. *See Greenville Health System v. Kevin M. Granatino*, C.A. No. 2016-CP-39-398.

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2018-002166  
Trial Court Case No. 2016-CP-39-01223

**RECEIVED**  
DEC 27 2019  
SC Court of Appeals

Kevin M. Granatino.....Appellant

v.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation.....Defendants

Of Which:

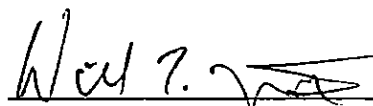
South Carolina Department of Transportation and  
Thrift Development Corporation.....Respondents.

**CERTIFICATE OF COMPLIANCE WITH RULE 211(b)**

The undersigned counsel hereby certifies that Respondent's Final Brief complies with the provisions of Rule 211(b), SCACR.

**I SO CERTIFY,**

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December 23, 2019  
Greenville, South Carolina

Attorneys for Respondent South Carolina  
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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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**RECEIVED**  
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Kevin M. Granatino, ..... Appellant,

vs.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation, ..... Defendants,

Of which South Carolina Department of Transportation and  
Thrift Development Corporation are ..... Respondents.

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## RESPONSIVE ARGUMENT

**I. THE DOCTRINE OF CONTRIBUTORY NEGLIGENCE WAS IMPROPERLY APPLIED BY THE LOWER COURT WHICH MERITS REVERSAL, DESPITE RESPONDENTS' ASSERTIONS TO THE CONTRARY.**

**A. Recap of Appellant's Argument**

The initial argument raised in Appellant's Opening Brief is that the circuit court committed reversible error by dismissing the entirety of Appellant's claim under the doctrine of contributory negligence. (Appellant's Op. Br. 10-12.) On the one hand, the court failed to consider each potential tortfeasors' relative contributions to the cause of Appellant's injuries, as it was required to do. See, e.g., Nelson v. Concrete Supply Co., 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991); Roddey v. Wal-Mart Stores E., LP, 400 S.C. 59, 67, 732 S.E.2d 635, 639 (Ct. App. 2012). On the other hand, the court based its decision to grant summary judgment to Respondents on material facts which were—and are—very much in dispute, in derogation of Rule 56(c), SCRCP.

**B. Respondents' First Counterargument: The doctrine of law of the case prohibits this Court from reviewing the determination that Appellant was the preponderant cause of his injuries.**

At Pages 9 & 10 of their opening brief, Respondents contend that this Court cannot review the lower court's conclusion that Appellant was the preponderant cause of his injuries because "Appellant has not appealed that ruling as to Clemson." (Respondents' Op. Br. 10.) Respondents would be well-served to review the more recent decisions of this Court regarding the law of the case doctrine.

In Flexon v. PHC-Jasper, Inc., this Court engaged in an extended discussion regarding the law of the case doctrine and its jurisprudential underpinnings. 413 S.C. 561, 776 S.E.2d 397 (Ct. App. 2015). At Note 6 of that opinion, the Court quoted the following

statement from Wright & Miller with approval: “So long as the same case remains alive, there is power to alter or revoke earlier rulings.” 413 S.C. at 572, 776 S.E.2d at 403. Respondents do not explain—nor offer any authority for—the proposition that an unappealed grant of summary judgment against one defendant prohibits judicial review as to the appealed grant of summary judgment as to any of its other co-defendants. Presumably, if such authority exists, whether in South Carolina or out, Respondents would have brought it to the Court’s attention. The absence of such authority is telling.

But this is not where Flexon’s lessons end. Of particular importance, Flexon explains what kinds of decisions are capable of forming the law of the case. It is not every decision that a lower court makes. Instead, “[t]he law of the case applies both to those issues explicitly decided to those issues that were necessarily decided.” Flexon, 413 S.C. at 572, 776 S.E.2d at 403. Somewhat restated, “[t]he doctrine applies to all issues decided expressly or by necessary implication.” Id. (quoting In re Grossinger’s Assocs., 184 B.R. 429, 434 (Bankr. S.D.N.Y. 1995)). “However, the prior adjudication does not preclude consideration on a subsequent appeal of questions expressly left open or reserved by the court.” Flexon, 413 S.C. at 572, 776 S.E.2d at 403 (internal quotation and citation omitted).

These statements of law lead to a question that Respondents have not tried to answer: In granting summary judgment against Appellant, and with regard to Clemson, what did the lower court explicitly and necessarily decide? We need not wonder. The court explicitly held that “Clemson owed no duty to [Appellant.]” (R. 20.) And in the absence of a duty to Appellant, Clemson could not be liable for Appellant’s injuries as a matter of law. (R. 20-24.) Simply stated, Clemson’s contribution to Appellant’s injury is 0%.



Somewhat creatively, Respondents have taken the position that the lower court's determination of Clemson's non-liability means that, as a matter of law, Appellant must have been preponderantly negligent, and that this determination is beyond the scope of the Court's review. Appellant fails to understand this leap in logic, and on the back of the principles described above, believes that Respondents' contention is legally indefensible.

What is defensible—and what compels a reversal of the lower court's decision—is the law regarding contributory negligence. Just as Respondents' silence on the citation to authority regarding the law of the case was telling, it is just as telling that Respondents have mocked Appellant's formulation of the contributory negligence calculus without explaining how it's wrong. (Respondents' Op. Br. 10.) Appellant did not make the formula up out of thin air. Instead, relying on the Supreme Court's decision in Nelson and this Court's decision in Roddy, Appellant simply observed that the contributory negligence calculation requires the trial court to weigh the complainant's negligence contribution with that of all identified tortfeasors, whether they are named as party-defendants or otherwise. (Appellant's Op. Br. 11-12.)

As applied to this case:

|                        |   |                                                                                                     |
|------------------------|---|-----------------------------------------------------------------------------------------------------|
| Appellant's Negligence | > | Clemson's Negligence<br>Thrift's Negligence<br>SCDOT's Negligence<br>Defendant Williams' Negligence |
|------------------------|---|-----------------------------------------------------------------------------------------------------|

Clemson's negligence contribution is 0%. The lower court never attempted to determine what, if any, negligence contribution Williams made, or how that contribution stacked with the contributions of Thrift and SCDOT. Without making those determinations, and having facts to substantiate its conclusions, it is truly impossible for the court to decide, as a matter of law, that Appellant was the preponderant cause of his injuries.

But that is exactly what the lower court did. And that is exactly why the grant of summary judgment against Appellant must be reversed and remanded.

**C. Respondents' Second Counterargument: Failure in issue preservation.**

At Pages 10 & 11 of Respondents' Opening Brief, the argument is made that Appellant failed to preserve the lower court's misapplication of the contributory negligence regime for appellate review. Before addressing this argument, Appellant would like to draw attention to the argument that Respondents are not making. They are not making the argument that Appellant is wrong; that the contributory negligence formula laid out in Appellant's Opening Brief and in the foregoing section is an incorrect statement of law. They're just saying that the Court cannot reach the question of whether it was error for the lower court to misapply the correct standard. It is probably a rare respondent who has ever found any appellate issue properly preserved.

In any event, Appellant raised his concerns regarding a proper calculation of contributory negligence in writing on at least occasions:

1. In Appellant's Memorandum in Opposition to Respondents' Motions for Summary Judgment, at pages 3-5, (R. 157-59. & 177-77); and,
2. In Appellant's Rule 59(e) Motion, at pages 1-3, (R. 263-65), which was in direct response to the lower court's Order Granting Summary Judgment, at pages 2-8, (R. 12-18).

(See also Appellant's Not. of Appeal, R. 274 (appealing the Orders Granting Summary Judgment and denying Appellant's Rule 59(e) Motion).)

Accordingly, Respondents' issue-preservation argument is without merit.

**D. Respondents' Third Counterargument: Respondents' absence of negligence as a matter of law.**

The touchstone of evaluating whether any party is entitled to judgment as a matter of law is, and always must be, whether there is any genuine issue as to any material fact. Rule 56(c), SCRPC. In evaluating a motion for summary judgment, the lower court may rely only on evidence that would be admissible at trial. Rule 56(e); see also Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

In his Opening Brief, Appellant took care to identify—according to the lower court's order granting summary judgment—what “facts” the court relied upon to establish Respondents' absence of negligence as a matter of law. (Appellant's Op. Br. 15.) This was done, in part, as a direct challenge to Respondents to explain how these “facts” were undisputed for purposes of the summary judgment motion. Respondents did not rise to the occasion. (Respondents' Br. 11-16.)

To be candid, it seems that the parties agree on very little, besides the fact that Appellant was seriously injured at the Intersection on October 23, 2014. Perhaps the closest the parties come to any factual agreement is that, at the time of the accident, Appellant was carrying a friend “piggy-back style.” But even this is somewhat open for debate. Respondents want to characterize this as uncontrolled “horseplay,” (Respondents' Br. 13);<sup>1</sup> Appellant testified that he was trying to be a gentleman to a young lady whose feet were hurting, (R. 205 at 21:4-10; R. 213 at 119:16-120:20.)

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<sup>1</sup> Respondents have supported this proposition with three cites to deposition testimony, none of which are helpful. The “Craig” reference is to Lance Corporal Craig, a Highway Patrol Officer who was not at the Intersection at the time of the accident, and whose testimony about events at the time of the accident is based off witness interviews. (R. 230

From there, the factual disagreements become more pronounced, and Respondents' evidentiary support for their narrative becomes less credible. Respondents keep saying that Appellant was "running" through the Intersection. (Respondents' Br. 4 & 13.) They have offered not a single item of evidence to substantiate this assertion. Respondents were successful in having the lower court describe Appellant as "racing" into the Intersection. (R. 14.) There is likewise no evidentiary support for that assertion. And it is directly contradicted by Appellant's testimony. (R. 206 at 25:14-17.)

Respondents have argued that Appellant was intoxicated to the point of impairment at the time of the accident. (Respondents' Br. 13.) This was also in the lower court's order. (R. 16-17.) Yet the only "evidence" of this proposition is from Appellant's unauthenticated (read: inadmissible) medical records taken some time after the accident. There are no eyewitnesses who have testified that Appellant was intoxicated, let alone impaired, at the time of the accident.

Perhaps the most significant "fact" in dispute is whether the light for oncoming traffic was red or yellow at the time of the accident. To be clear, no one knows. Not even Respondents. (Respondents' Br. 12-13.) But this doesn't faze them. Respondents would have this Court believe that the color of the light is irrelevant. And that is preposterous.

Surely, Respondents must concede that—if the light were red at the time of the accident—this would reduce the proportion of negligence attributable to Appellant, which would in turn affect the contributory negligence calculation. In response, Respondents

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at 103:3-18.) The "Johnson" reference is to Officer Johnson of the Clemson City Police Department. She was not at the Intersection at the time of the accident, and her testimony is based off witness interviews. (R. 246 at 22:25-23:17.) This is textbook inadmissible hearsay. The "Granatino" reference is to Appellant. He never uses the phrase "horseplay."

may contend that—if the light were red—this means that Defendant Williams would be substantially liable for Appellant’s injuries. *Maybe*. This leads to other questions of fact that no one has provided the answer to. Those questions, which only Defendant Williams can answer, include: (1) Did you see Appellant at the Intersection prior to the accident; (2) If not, did the absence of lighting at the Intersection impair your ability to see pedestrians; (3) Do you believe you would have been more cautious in approaching the Intersection if it had pedestrian lighting; (4) Would you have been more cautious in approaching the Intersection if it had been more clearly marked as a crosswalk. The pertinent questions are endless, and their answer would have a material, substantial impact on each and every potential tortfeasors’ contribution of liability to Appellant’s injuries. And the fact of the matter is no one has asked Defendant Williams these questions, and certainly, no court has ever been presented with Defendant Williams’ answers.

How is it possible, then, that any court could determine as a matter of law what any potential tortfeasors’ relative contribution to Appellant’s injuries was? The answer is simple: no court can.

In sum, the material “facts” which Respondents have characterized as undisputed, and on which the lower court relied in granting summary judgment, are hotly contested. And consequently, the decisions of the lower court must be reversed.

**II. THE LOWER COURT’S DETERMINATIONS REGARDING THE NECESSITY OF EXPERT TESTIMONY WAS NOT ONLY CONTRARY TO LAW, BUT ALSO INEQUITABLE, AND ALSO MERITS REVERSAL.**

**A. Recap of Appellant’s Argument**

Simply stated, Appellant’s argument is that, while some theories of recovery under the causes of action brought against Respondents may require expert testimony, expert

testimony is not necessary to prevail on every theory asserted in connection with such actions. (Appellant's Op. Br. 20-24.) Consequently, it was reversible error for the lower court to direct judgment as a matter of law in favor of Respondents on the basis that, at the time of the summary judgment hearing, Appellant had not procured expert testimony.

**B. Respondents' First Counterargument: Appellant stipulated that expert testimony was necessary.**

At Pages 6-8 of their brief, Respondents have taken the position that Appellant—through his legal counsel—stipulated to the proposition that expert testimony was necessary to support all of Appellant's claims against Respondents. As a practical matter, it appears that Respondents have confused a “stipulation” with a “tactical retreat under withering judicial fire.” There is not a trial lawyer alive who has not been in a similar position.

As a legal matter, Appellant's dialogue with the lower court does not establish a stipulation. This is somewhat amusing, since this Court has previously decided a case involving SCDOT and the legal definition of a “stipulation.” To quote the Court:

Our supreme court has defined a stipulation as an agreement, admission, or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations, of course, are binding upon those who make them. A stipulation is an agreement, an understanding. The court must construe it like a contract, i.e., interpret it in a manner consistent with the parties' intentions. See Porter v. South Carolina Pub. Serv. Comm'n, 333 S.C. 12, 29-30, 507 S.E.2d 328, 337 (1998) (internal citations and quotations omitted); see also State v. Anderson, 318 S.C. 395, 399-400, 458 S.E.2d 56, 58 (Ct. App. 1995) (“Generally, a stipulation is an agreement between the parties to which there must be mutual assent.” (quoting State v. Parra, 122 Wash. 2d 590, 859 P.2d 1231, 1238 (1993))); Black's Law Dictionary 1415 (6th ed. 1990) (defining a stipulation as a “[v]oluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate need for proof or to narrow range of litigable issues”).

South Carolina Dep't of Transp. v. Richardson, 335 S.C. 278, 283-84, 516 S.E.2d 3, 3

(App. 1999).

**B. Respondents' Second Counterargument: Expert testimony was necessary to sustain any viable cause of action against Respondents.**

At Pages 8 of their brief, Respondents have offered—what appears to be—a half-hearted effort to defend the lower court's conclusion that expert testimony was necessary to render any of Appellant's causes of action against Respondents viable. Not a single South Carolina case was cited in support of the argument.

Perhaps more importantly, Respondents made no effort whatsoever to rehabilitate City of York v. Turner-Murphy Co., 317 S.C. 194, 452 S.E.2d 615 (Ct. App. 1994)—which was relied upon so heavily in the lower court's order—as dispositive of Appellant's case. Likewise, Respondents made no effort to distinguish Seiler v. Levitz Furniture Co. of the Eastern Region, Inc., 367 A.2d 999 (Del. 1976) or Jaeger v. Henningson, Durham & Richardson, Inc., 714 F.2d 773 (8th Cir. 1983)—both of which were cited with approval by this very Court in City of York for the proposition that expert testimony may be unnecessary in cases that may otherwise appear to require such testimony—from the circumstances of Appellant's case. One has to wonder whether Respondents' silence on such a salient point is a concession of the field.

**C. Respondents' Third Counterargument: The Court should disregard equitable considerations with regard to Appellant's request for additional time to designate an expert.**

Although Respondents did not break this argument out as a separate section, Pages 8-9 of their brief advance a strange position: Respondents want this Court to ignore equitable considerations as they pertain to Appellant's request to the lower court for additional time to procure expert testimony. This issue was presented in Appellant's Opening Brief as part of the Concluding Statement. (Appellant's Op. Br. 25-26.) But now

that Respondents' have seen fit to promote the matter to the argument section, it seems only fitting and proper that Appellant should respond in kind.

Item 5 of Appellant's Rule 59(e) Motion establishes the relevant timeline for the equitable considerations that should have militated in favor of an extension for Appellant to engage in limited additional discovery, including the procurement of expert testimony.

In relevant part:

- i. During October 2017, the parties entered into a consent scheduling order which required the disclosure of expert witnesses by January 1, 2018, (R. 1-2).
- ii. Appellant's former counsel—prior to the appearance of Mr. Lewis and Mr. Marlette—filed a motion to withdraw as attorney on January 12, 2018, (R. 127-28).
- iii. Respondents filed motions for summary judgment on January 18 & 19, 2018, (R. 129-31).
- iv. The lower court granted the motion of Appellant's former counsel to withdraw on January 25, 2018, (R. 4-6).
- v. Mr. Marlette contacted the chief administrative judge of the lower court, as well as opposing counsel, on or about February 5, 2018, to advise everyone of his intent to appear on behalf of Appellant, (R. 141-42).
- vi. On or about February 7, 2018, Mr. Marlette began the process to be admitted pro hac vice in South Carolina., (R.134-37).
- vii. On or about February 8, 2018, Defendants' counsel responded via email to say that they had no objections to Mr. Marlette's appearance, (R. 146-47).



- viii. On or about February 27, 2018, Mr. Lewis completed the sponsorship portion of Mr. Marlette's pro hac vice application, (R. 138).
- ix. On or about March 1, 2018, Mr. Marlette filed his pro hac vice application with the South Carolina Supreme Court, (R. 149).
- x. On March 1, 2018, counsel for Respondent Thrift sent an email to Mr. Marlette which states as follows: "We have a scheduling order, but this is to confirm with you and the court, that any deadlines under that order after [former counsel's] withdrawal are suspended pending your obtaining counsel," (R. 148).
- xi. On March 5, 2018, Mr. Marlette responded to Thrift's counsel to confirm the understanding that all scheduling order deadlines were stayed, (R. 149).
- xii. Mr. Marlette's application to appear pro hac vice was approved on May 5, 2018, (R. 7-10).
- xiii. The lower court's hearing on Respondents' motions for summary judgment was held on June 1, 2018.

As this timeline hopefully demonstrates, at no point was Appellant's substitute counsel unreasonably dilatory in gaining admission to practice in the courts of this State. Moreover, this timeline demonstrates the understanding of the parties and the court that all deadlines under the scheduling order had been stayed as a consequence of the withdrawal of Appellant's former counsel.

Granted, the deadline for expert designations expired eleven days before Appellant's former counsel filed his motion to withdraw. But, as the Court may appreciate, a strain in the attorney/client relationship generally develops over time, and it does not take

a stretch of imagine to presume that Appellant's former counsel had been considering withdrawal for awhile prior to the time that he actually filed the motion.

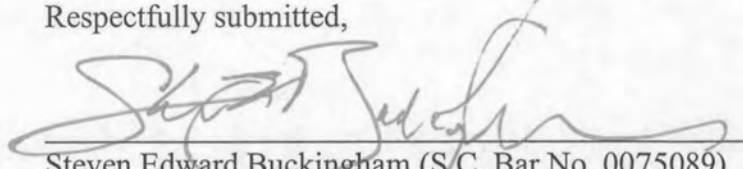
Regardless, as a practical matter, to the extent that expert testimony is necessary to sustain Appellant's claims against Respondents, the hardship of being prohibited from having the effective assistance of counsel in procuring such testimony falls squarely on no one else but Appellant.

To be certain, Respondents have articulated no meaningful prejudice whatsoever—even now—that would arise from an extension of time for Appellant and his new counsel to prepare their case. For these reasons, if the Court is so inclined, Appellant would respectfully request a decision from this Court which holds that the lower court's refusal to extend the deadlines imposed by the consent scheduling order to accommodate new counsel, and to protect the interests of a young man who has suffered a significant personal injury, was an abuse of discretion which requires reversal.

#### **CONCLUDING STATEMENT**

For the foregoing reasons, and for those set out in the Opening Brief, Appellant respectfully requests a decision from this Court that reverses the lower court's grant of summary judgment in favor of Respondents, remands the case for further proceedings not inconsistent with such decision, and provides for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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*Attorneys for Appellant*

December 20, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2018-002166  
Trial Court Case No. 2016-CP-39-01223

**RECEIVED**  
DEC 27 2019  
SC Court of Appeals

Kevin M. Granatino, ..... Appellant,

vs.

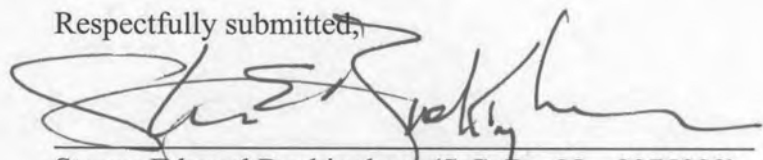
Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation, ..... Defendants,

Of which South Carolina Department of Transportation and  
Thrift Development Corporation are ..... Respondents.

**CERTIFICATE OF COUNSEL**

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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December 20, 2019

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

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Kevin M. Granatino, Appellant,

v.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation and Thrift Development  
Corporation, Defendants,

Of which South Carolina Department of Transportation  
and Thrift Development Corporation are the  
Respondents.

Appellate Case No. 2018-002166

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Appeal From Pickens County  
Perry H. Gravely, Circuit Court Judge

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Unpublished Opinion No. 2022-UP-003  
Heard November 10, 2021 – Filed January 5, 2022

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**AFFIRMED**

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Steven Edward Buckingham, of The Law Office of  
Steven Edward Buckingham, LLC, of Greenville;  
Stephen R.H. Lewis, of Patrick, Lewis & Watts, P.A., of  
Greenville; and George L. Marlette, III, of Norwell,  
Massachusetts, all for Appellant.

James W. Logan, Jr., of Logan Jolly & Smith, LLP, of Anderson, for Respondent South Carolina Department of Transportation.

Charles Stuart Mauney, of Gallivan, White & Boyd, PA, of Greenville; William Thomas Young, III, of Ryan Montgomery Attorney at Law, LLC, of Greenville; and Robert Daniel Corney, of The Derrick Law Firm, of Conway, all for Respondent Thrift Development Corporation.

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**PER CURIAM:** This is an appeal of a summary judgment against the plaintiff, Kevin Granatino, in a personal injury case. The circuit court ruled in favor of the South Carolina Department of Transportation (SCDOT) and a construction firm—Thrift Development (Thrift). The court found Granatino was more than 50% at fault as a matter of law and that the case could not proceed because Granatino had not retained an expert. We affirm based on our finding that the expert issue precludes this case from moving forward.

## **FACTS**

When Granatino was a senior at Clemson University, a car hit him near campus as he was crossing a busy intersection by foot at night. This intersection was also the site of a construction project. SCDOT led the project and subcontracted with Thrift to do much of the work.

Granatino sued the at-fault driver, SCDOT, Thrift, and Clemson for negligently causing his severe injuries. This appeal concerns only SCDOT and Thrift.

In October 2017, the parties entered into a consent scheduling order that called for Granatino to name an expert by January 1, 2018. Granatino did not name an expert by that deadline. Shortly thereafter, on January 12, Granatino's lawyers requested permission to withdraw as counsel, citing a fundamental disagreement on the proper course of action in the case. Granatino consented to the request, and the circuit court granted the motion to withdraw.

Both SCDOT and Thrift moved for summary judgment days after Granatino's lawyers asked to withdraw as counsel. Granatino's stepfather, George Marlette, subsequently applied for admission *pro hac vice*, which the circuit court granted.

The circuit court held the summary judgment hearing a little less than a month after Marlette's admission.

SCDOT and Thrift argued summary judgment was proper because Granatino needed expert testimony to prove his case, he had not disclosed an expert, and he could not disclose an expert because the deadline for him to do so had expired. They further argued Granatino was the preponderant cause of his injuries and was therefore barred from recovery under South Carolina's version of modified comparative negligence. *See Nelson v. Concrete Supply Co.*, 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991) ("[A] plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant.").

Granatino made an oral request to the circuit court for additional time to disclose an expert. He explained he had not acquired substitute counsel until after the deadline for disclosing experts passed, but as described above, the deadline had already passed by the time Granatino's former lawyers sought leave to withdraw from the case. He also argued there was evidence suggesting SCDOT and Thrift were negligent and that his negligence relative to everyone else involved in the incident was a question of fact for a jury to decide.

The circuit court refused to extend the deadline, found SCDOT and Thrift bore no fault and were not proximate causes of Granatino's injuries, and granted the motions for summary judgment. Granatino filed a Rule 59(e), SCRCP, motion to alter or amend, which the circuit court denied. Granatino now appeals the circuit court's order granting summary judgment.

## ISSUES

1. Did the circuit court err in determining Granatino's case required expert testimony and in refusing Granatino additional time to find an expert?
2. Did the circuit court err in determining Granatino was more than 50% at fault as a matter of law?
3. Did the summary judgment order erroneously adjudicate genuine disputes of material facts?

## STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56(c), SCRCP." *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). "Rule 56(c) of the South



Carolina Rules of Civil Procedure provides that a [circuit] court may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009).

## ANALYSIS

Expert testimony is generally necessary in professional negligence cases; however, it is not necessary if the professional's negligence or lack thereof can be evaluated using common knowledge. *See City of York v. Turner-Murphy Co.*, 317 S.C. 194, 196, 452 S.E.2d 615, 617 (Ct. App. 1994) ("Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct."); *see also Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 176-78, 758 S.E.2d 501, 504 (2014) (an example of an "ordinary negligence" case against a professional that did not require expert testimony).

On appeal, Granatino argues expert testimony was not necessary to prove his case. Yet, the record reflects Granatino never argued to the circuit court that expert testimony was not required. The only expert-related argument Granatino made at the summary judgment hearing was that he should receive additional time to procure an expert, which we address below. An appellant must raise an issue to the circuit court in order to preserve it for appellate review. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007). For that reason, we are bound by the circuit court's holding that Granatino's claim requires expert testimony.

Granatino argues he should have had more time to procure expert testimony because his current counsel arrived in the case late, after the time for disclosing expert witnesses set by the scheduling order passed. He requests we find the circuit court abused its discretion by refusing to extend the deadlines. We cannot grant this request.

Neither Marlette nor local counsel filed a formal motion to extend the deadline as soon as they could. "An abuse of discretion occurs when the judge's ruling is based upon an error of law, . . . is without evidentiary support[,]. . . reveals no discretion was exercised[,], or . . . does not fall within the range of permissible decisions applicable in a particular case." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 5, 630 S.E.2d 464, 467 (2006)); *see also Rish v. Rish*, 296, S.C. 14, 15, 370 S.E.2d 102, 103 (Ct. App. 1988) ("When an appellate court is in agreement with a discretionary ruling or is only mildly in disagreement, it says that the [circuit court] did not abuse [its] discretion."). Granatino never made a formal motion to extend the scheduling order or the expert deadline, and, as already noted, the deadline came and went before Granatino's original counsel moved to withdraw. During the summary judgment hearing, the circuit court expressed surprise that the plaintiff still did not have an expert and was asking for more time when the case was nearly two years old. To his credit, Granatino's counsel candidly agreed the court's surprise was understandable. We cannot say the court abused its discretion by honoring the deadline in the scheduling order.

Because the expert issue is dispositive, we need not reach the remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court does not need to review remaining issues when its determination of a prior issue is dispositive).

**AFFIRMED.**

**KONDUROS, HILL, and HEWITT, JJ., concur.**

**RECEIVED**

**Jan 19 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2018-002166

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Kevin M. Granatino, ..... Appellant,

vs.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation, ..... Defendants,

Of which South Carolina Department of Transportation and  
Thrift Development Corporation are ..... Respondents.

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**APPELLANT’S PETITION FOR REHEARING,  
MEMORANDUM IN SUPPORT THEREOF, AND  
SUGGESTION FOR REHEARING EN BANC**

---

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*Attorneys for Appellant*

Pursuant to Rule 221, SCACR, Appellant Kevin M. Granatino, by and through his undersigned counsel, respectfully petitions the Court of Appeals for rehearing of the matter decided by Opinion No. 2022-UP-003, which was filed by the Court of Appeals on January 5, 2022 (referred to hereinafter as “**the Opinion**”). To quote the Opinion, “[t]his is an appeal of a summary judgment against [Appellant] in a personal injury case. . . . The [circuit] court found . . . that the case could not proceed because [Appellant] had not retained an expert. We affirm based on our finding that the expert issue precludes the case from going forward.” This, of course, places the focus of the present analysis on what is meant by “expert issue.”

The “expert issue” to which the Court made reference is not the fact that Appellant failed to retain an expert. That is a merits-based conclusion which the Court did not reach. Instead, the Opinion makes clear that the trial court order from which appeal was taken was affirmed on issue-preservation grounds. To restate the Opinion, because of its conclusion that Appellant failed to preserve his arguments regarding the necessity of expert testimony for appellate review, the Court held that it was bound by the trial court’s decision that expert testimony was, in fact, necessary in order to sustain any viable claim for relief to which Appellant may have been entitled. In arriving at this conclusion, and with all due respect to the Court of Appeals, this decision constitutes a misapprehension, or overlooking, of pertinent decisions regarding issue preservation, appellate review, and the necessity of expert testimony.

For the reasons set out below, Appellant respectfully requests that the Court of Appeals withdraw the Opinion, and that it grant a rehearing of the matters decided therein.

Also, pursuant to Rule 219(b), SCACR, this Petition is joined by a suggestion, offered by Appellant, for a rehearing en banc.

**I. THE OPINION REPRESENTS A MISAPPREHENSION, OR OVERLOOKING, OF THE COURT’S AUTHORITY TO CONSIDER WHETHER SUMMARY JUDGMENT HAD BEEN PROPERLY GRANTED AGAINST THE ENTIRETY OF APPELLANT’S PERSONAL INJURY ACTION FOR LACK OF EXPERT TESTIMONY.**

Rule 56(c), SCRCR, provides that summary judgment shall be rendered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Both conditions must be met.

With respect to these proceedings, and as to this specific issue, the only “material fact” is whether Appellant had engaged an expert, which he did not. This, however, leads directly to the question that is central to this appeal: *Under the facts and circumstances of this case, was it necessary for Appellant to have expert testimony in order to sustain the viability of each and every theory of recovery pursued against Respondents?*

The trial court order from which appeal was taken held that there was no viable cause of action through which Appellant could prevail in his personal injury action against either Respondent in the absence of expert testimony. In short, expert testimony was both necessary and essential. This resulted in the entry of summary judgment against the entirety of Appellant’s claim. But this is contrary to law.

Consistent with the laws of this State and the decisions of the appellate courts, there are some negligence claims involving professionals where expert testimony is required, and some where it is not. The types of professional liability cases where expert testimony is required are those specifically addressed by statute, to the extent the claim against the professional arises from or relates to his or her professional services, see, e.g., S.C. Code § 15-36-100(G), or where expert testimony is necessary to aid the trier of fact’s

determination of fault, particularly regarding the elements of “duty” or “causation,” see, e.g., Dawkins v. Union Hosp. Dist., 408 S.C. 171, 758 S.E.2d 501 (2014). Otherwise, expert testimony is generally not necessary to sustain a negligence cause of action, even against a licensed professional.

The Court of Appeals did not misapprehend or overlook these principles. In fact, they are expressly acknowledged in the Opinion. Where the Court’s analysis went awry, however, is with respect to the Court’s perception of its authority to examine the trial court’s decision on summary judgment.

It has never been contended in this case—not in appellate proceedings, nor in proceedings below—that expert testimony is statutorily required in order to prosecute personal injury claims against either Respondent. Therefore, to the extent that expert testimony is required in order to sustain a personal injury action against either Respondent, that must arise because of the fact-specific complexity of the case. In other words, there is no black-letter rule that requires expert testimony to be proffered against general participants in the construction industry in order to sustain a legally cognizable personal injury action against them; that type of rule does not exist. And, as set out in Appellant’s briefs to this Court, Appellant’s personal injury claim against Respondents was not addressed merely to the sufficiency of pedestrian safety measures; his claim was based on the contention that there were no pedestrian safety measures, at all. It is these very circumstances which led Appellant to posit the rhetorical question: *Is expert testimony really necessary to establish the proposition that, at the busiest intersection in the college town of Clemson, some measures be deployed during construction to promote the safe passage of pedestrians?* This would seem to be the very type of information that is within

the common knowledge and experience of the ordinary person, such that expert testimony is unnecessary.

In fairness, the Court of Appeals did not squarely address this aspect of the trial court's error in the Opinion. Instead, the issue was skillfully avoided on issue-preservation grounds (which will be addressed in the following section). But this, too, was error.

When Respondents filed their motions for summary judgment, Appellant responded with a broad-based denial that summary judgment was appropriate, on both factual and legal grounds. After the trial court's order granting summary judgment was entered, Appellant filed a motion pursuant to Rule 59(e), SCRCP, which asserted both general and specific reasons—both factual and legal—as to why summary judgment had been improvidently granted.

The issue presented to the Court of Appeals in these proceedings, then, is whether it was appropriate for the trial court to grant summary judgment in the first place; that is to say, whether Respondents—as the parties moving for summary judgment in the underlying proceedings—had met their burden of demonstrating that the undisputed material facts compelled judgment as a matter of law in their favor. To that end, the Court of Appeals had (and presently has) the authority to examine that question. And, because there are essentially no material facts in dispute on this, the “expert issue,” the focus of the Court's review in these appellate proceedings is on the narrow question of whether the lack of expert testimony on behalf of Appellant was fatal to each and every of Appellant's avenues of relief against Respondents.

The Court's consideration of this question is purely legal. Consequently, in these appellate proceedings, this Court's examination of the trial court's analysis should have



been reviewed according to the de novo standard, free from any particular deference. The trial court was either correct, or incorrect, that, as a matter of law, Appellant's claim against Respondents required expert testimony. If the trial court's decision on the "expert issue" was error—that at least some of Appellant's claim against either Respondent could survive summary judgment even without expert testimony—then the trial court's order granting summary judgment must be reversed, and the case must be remanded, certainly to the extent that any aspect of Appellant's claim against either Respondent may proceed without expert testimony.

Accordingly, the Court is respectfully requested to grant this petition for rehearing, so that it may squarely address the narrow legal question decided first at the trial court, and now in the Opinion, as to whether each and every aspect of Appellant's claim against either Respondent requires expert testimony to survive summary judgment.

**II. THE OPINION MISAPPREHENDED, OR OVERLOOKED, THE CIRCUMSTANCES WHICH MILITATE IN FAVOR OF FINDING THAT THE "EXPERT ISSUE" HAS BEEN PRESERVED FOR APPELLATE REVIEW.**

As explained in the preceding section, it is Appellant's position that he has broadly contested the propriety of granting summary judgment in Respondents' favor at all stages of these proceedings. Appellant has done so with due regard for the standard imposed by Rule 56, SCRCR, which requires the party moving for summary judgment to demonstrate that there are no material issues in dispute, and that, in light of the undisputed facts, the moving party is entitled to judgment as a matter of law in its favor.

The latter part of this standard is immediately relevant to these proceedings. When Respondents filed their motion for summary judgment, it became Respondents' burden to demonstrate that Respondents were entitled to judgment as a matter of law in their favor

on all claims presented and as to all theories of recovery alleged. Appellant denied that summary judgment was appropriate on both factual and legal bases. After the trial court entered summary judgment in Respondents' favor, Appellant filed a motion pursuant to Rule 59(e), which again broadly contested the factual and legal bases on which summary judgment was entered.

Appellant does not dispute that, with respect to the "expert issue," a great deal of argument in the proceedings below was dedicated to seeking leave to engage an expert so that the deficiency complained of by Respondents—and ultimately seized upon by the trial court—could be resolved. But Appellant does not concede that it failed to preserve the "expert issue" for appellate review.

For the reasons already addressed, the "expert issue" is inextricably intertwined with Respondents' motions for summary judgment and the proceedings that followed. Specifically, when Respondents filed their motion for summary judgment, arguing in part that summary judgment was appropriate because Appellant had not engaged an expert, Appellant broadly denied that Respondents had met their burden of demonstrating that the facts and law compel judgment as a matter of law in their favor. Later, in Appellant's motion pursuant to Rule 59(e), Appellant directly requested reconsideration of the portion of the trial court's order holding that Respondents "are entitled to judgment as a matter of law because [Appellant] has not presented any expert testimony that they deviated from a professional standard of care." (R. 266.) Certainly, Appellant then proceeded to discuss the challenges he faced with engaging an expert in the proceedings below. But he nonetheless sought reconsideration of the portion of the trial court's order holding that

expert testimony was necessary to sustain each and every avenue of relief against Respondents.

In light of these circumstances, Appellant would respectfully request the Court to re-examine whether the “expert issue” has been sufficiently preserved. In furtherance of this request, Appellant would direct the Court’s attention to Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012), which addressed issue preservation in some detail. In the main body of the opinion, the Supreme Court observed that “it may be good practice for us to reach the merits of an issue when error preservation is doubtful, [but that] we should follow our longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved.” Id., 398 S.C. at 330, 730 S.E.2d at 285 (emphasis added).

This line, while perhaps dicta, was a direct response to a separate opinion given in the same case by then-Chief Justice Toal: “I believe that, where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation. When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear. However, the silence of an adversary should serve as an indicator to the court of the obscurity of the purported procedural flaw.” Id., 398 S.C. at 333, 730 S.E.2d at 288.

Appellant would invite the Court to consider these principles when evaluating whether the “expert issue” has been preserved. As discussed previously, Appellant has consistently denied that Respondents are entitled to any form of summary judgment, which includes entitlement to judgment as a matter of law based on the absence of expert

testimony. In that connection, Appellant would contend that the “expert issue” cannot be fairly characterized as “clearly unpreserved.”

Moreover, Respondents have never suggested that Appellant has failed to preserve the “expert issue” for review. It is not because Respondents were unaware that this was a procedural option available to them. Section III(b) of Respondents’ brief is entitled: “Appellant failed to raise the purportedly improper liability apportionment to the circuit court, and therefore this issue is not preserved for appellate review.” This is the only issue preservation argument raised by Respondents. Their silence—particularly when they have spoken on other preservation objections—should be considered.

For these reasons, Appellant would respectfully request the Court to re-examine the portion of the Opinion which holds that Appellant did not sufficiently preserve arguments relating to the “expert issue” for appellate review.

#### **CONCLUDING STATEMENT**

For the reasons set out in this Petition, Appellant would respectfully request that the Court of Appeals withdraw its previously issued opinion in this matter, undertake a rehearing of all matters presented in Appellant’s briefs, and provide such other and further relief as the Court deems just and proper.

#### **SUGGESTION FOR REHEARING EN BANC**

Pursuant to Rule 219(b), SCACR, Appellant respectfully suggests that the rehearing be entertained en banc.

***[Signature Page Follows]***

Respectfully submitted,

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January 19, 2022

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2018-002166

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Kevin M. Granatino, ..... Appellant,

vs.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation, and Thrift Development Corporation, ..... Defendants,

Of which South Carolina Department of Transportation and  
Thrift Development Corporation are ..... Respondents.

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**PROOF OF SERVICE**

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The undersigned counsel for Appellant hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

**Document(s):** (1) Appellant's Petition for Rehearing, Memorandum in Support Thereof, and Suggestion for Rehearing En Banc

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**Date:** January 19, 2022

Respectfully,

*s/ Steven Edward Buckingham*

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# The South Carolina Court of Appeals

Kevin M. Granatino, Appellant,

v.

Calvin Williams, Clemson University, South Carolina  
Department of Transportation and Thrift Development  
Corporation, Defendants,

Of which South Carolina Department of Transportation  
and Thrift Development Corporation are the  
Respondents.

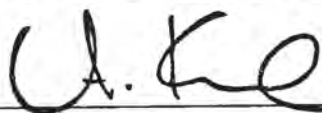
Appellate Case No. 2018-002166

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

**FILED**  
**Feb 25 2022**



cc:

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