IN THE CIRCUIT COURT FOR CLARK COUNTY, ALABAMA

JOHN DOE and AB&C TRUCKING, LLC,	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION NO. CV-2015-900109**
X-Y TRUCKING, LLC, BILLINGHAM Harell et al.,	)	**ORAL ARGUMENT REQUESTED**
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs John Doe(hereinafter referred to as "Doe") and AB&C Trucking, LLC (hereinafter "AB&C Trucking"), submit this Memorandum in Opposition to Defendants X-Y Trucking, LLC ("X-Y Trucking"), and Billingham Harell("Harell")'s Motion for Partial Summary Judgment and, for the reasons stated herein, Plaintiffs respectfully request this Court to deny Defendants' Motion and to allow Plaintiffs' wantonness claim to proceed to a full and fair trial on the merits.

STATEMENT OF FACTS PURSUANT TO RULE 56(c)(1)

Doe was injured in an accident that occurred on May 12, 2015 on County Road 15 where it intersects with County Road 2. On the day of the accident, Harell was driving a Peterbilt trailer pulling a flat-bed trailer loaded with a roller, a piece of heavy construction equipment. (Harell Dep. 33:6-9, 38:21-23.) Harell was attempting to deliver the roller to a bridge construction job site located near the intersection of County Roads 15 and 2 where the accident occurred. (Harell Dep. 34:10-12, 39:1-5.) To get to the bridge job site and the point where he was instructed to unload the roller, Harell had to turn his tractor-trailer around and approach on the other side of the road. (Harell Dep. 45:16 to 46:2.) Harell was instructed by the foremen at the job site to "go down, turn around and come back up" to unload the equipment, which involved making a u-turn at the intersection of County Roads 2 and 15. (Harell Dep. 45:21-23, 106:8-13.) Prior to May 12, 2015, Harell had been to that job site approximately 10 times as part of his job. (Harell Dep. 36:12 to 37:15.) He had previously hauled heavy equipment

to the job site using the same tractor and flatbed trailer and had made the same u-turn to deliver the equipment to the job site. (Harell Dep. 37:6-15, 41:1-42:4.)

On May 12, 2015, Harell attempted to make the u-turn at the intersection of County Roads 2 and 15. Prior to making the u-turn, Harell was aware that he would be blocking all four lanes of traffic in making the u-turn, both lanes of County Road 15 and both lanes of County Road 2. (Harell Dep. 123:5-9). Harell signaled and saw a dump truck in the oncoming lanes of traffic. (Harell Dep. 54:19 to 55:9.) The driver of the dump truck, Ray Moffitt Beard("Beard") acknowledged Harell and stopped his dump truck in his lane. (Harell Dep. 54:19 to 55:9.) Harell then attempted to make the u-turn and was struck by another dump truck, driven by Doe, which approached in the other lane. (Harell Dep. 55:8-9.) Harell stated that he did not see Doe's dump truck until after the wreck occurred. (Harell Dep. 58:20-22.)

Doe was driving a dump truck with a load of gravel dirt that he was bringing to the same bridge job site. (Doe Dep. 42:11-20.) He was traveling north on County Road 15. (Doe Dep. 45:21-46:8.) The scene of the accident and the stretch

of County Road 15 leading up to it were in the construction zone for the bridge construction site, and there were signs indicating the road work. (Doe Dep. 45:15-21, 47:12-14.) The speed limit for the area, although normally 35 mph, had been lowered to 25 mph due to the construction, and the speed limit was posted accordingly.[1] (Doe Dep. 4:15-18, 48:8-11.) Doe was driving approximately 20 mph in the 25-mph zone where the accident occurred. (Doe Dep. 48:22 to 49:7.)

The intersection of County Roads 2 and 15, where the accident occurred, is part of a blind curve in the road. (Cupford Dep. 25:6-22.) Officer Rodney Cupford, the investigating police officer on the scene who wrote the police report, described the curve as a "blind curve" because "you cannot see around" it due to the angle of the curve and the vegetation growth. (Cupford Dep. 25:7-15.)

[1]Officer Cupford testified in his deposition that the speed limit where the accident occurred was 25 mph, although he wrote in his report that the speed limit was 45, the default county road speed limit. (Cupford Dep. 35:1-20.) Officer Cupford acknowledged that the correct speed limit was 25 mph because the area was in the construction zone for the bridge job site and 25 mph speed limit signs had been erected. (Cupford Dep. 35:18-20.) Officer Cupford

Officer Cupford described the curve as "very dangerous." (Cupford Dep. 26:23.) Officer Cupford further stated that when traveling northward as Doe was, a driver does not come out of the blind curve until after the scene of the accident. (Cupford Dep. 62:16-20.) The curve is also on a hill, such that northward traveling vehicles, such as Doe's, are descending the hill and rounding the curve as they approach the intersection of County Roads 2 and 15. (Cupford Dep. 31:19-21.)

Doe drove around that curve, a downgrade for him, at approximately 20 mph and then saw Beard's dump truck stopped in the same lane of traffic in which Doe was traveling. (Doe Dep. 60:22 to 61:2.) Doe "turned to try to miss" Beard's dump truck and applied his brakes. (Doe Dep. 61:2 to 63:5.) Doe had already engaged his "Jake brake" as he went around the downhill curve and continued to brake and engage the foot brake as he swerved to avoid Beard's dump truck. (Doe Dep. 62:1-63:5.) Doe was able to swerve and avoid Beard's dump truck, but then collided with Harell's tractor-trailer, which was blocking all four lanes

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acknowledged that he needs to amend his report to state the

of traffic. (Doe Dep. 63:4-10.) Doe estimated that he was traveling between 15 and 20 mph when the front of his truck came into contact with Harell's tractor trailer. (Doe Dep. 69:14-17.)

As police were responding to the scene but before they could secure the scene, another vehicle, a loaded dump trailer, came around the curve and, according to Officer Cupford, who was on the scene, "almost wipe[d] everybody out." (Cupford Dep. 14:11-12, 139:6-10.) Specifically, the blue dump trailer "came around the curve, dodged the ones that was in the road, [and] went in the ditch." (Cupford Dep. 16:16-23.) Officer Cupford thought that the dump trailer had hit the officer who responded first and was standing in the road at the time. (Cupford Dep. 16:19-23.) That dump trailer had to avoid Walker's dump truck, as Doe did, and went off the shoulder of the road and came to a stop just past Doe's truck in trying to do so. (Cupford Dep. 41:12-18.) Officer Cupford estimated that the dump trailer was going approximately 20 to 25 mph and that he thought that it was going to roll over once it went off the

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correct speed limit. (Cupford Dep. 35:12.)

side of the road, but it did not. (Cupford Dep. 137:23 to 138:21.)

After the accident, Officer Cupford informed Harell that it was illegal for him to make the u-turn he did without having flaggers. (Cupford Dep. 27:1-3.) Officer Cupford also indicated that the u-turn was illegal in the Alabama Uniform Traffic Crash Report. In his deposition, Cupford testified that the cause of the wreck was the illegal u-turn made by Harell. (Cupford Dep. 30:21 to 31:10.) Officer Cupford further testified that Doe's speed did not, in his opinion, contribute in any way to the wreck. (Cupford Dep. 37:18 to 38:9.) Regarding Harell's u-turn, Officer Cupford testified that it was "unsafe," "reckless," and "a danger to the traveling public." (Cupford Dep. 58:3-14.) Furthermore, Officer Cupford testified that the u-turn was illegal, and that to make it legal, there would need to be "flagmen or officers or someone there to block traffic on either side" and there would need to a road closure. (Cupford Dep. 61:1-10.) Because of the downhill slope of the road and the blind curve that does not end until after the scene of the wreck,

the road would need to be closed before the blind curve for the u-turn to be executed safely and legally. (Cupford Dep. 61:14-62:2.)

LEGAL STANDARD

Pursuant to Rule 56(b), Ala. R. Civ. P., a party against whom a claim is asserted may bring a motion for summary judgment where the pleadings, affidavits, depositions, interrogatories, and other evidence show no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Bible Baptist Church v. Stone, 55 Ala. App. 411, 316 So. 2d 340 (1975). When determining a motion for summary judgment, the trial court must view the evidence presented in a light most favorable to the nonmoving party and must resolve all reasonable doubts in favor of the nonmoving party. Ex parte Kraatz, 775 So. 2d 801 (Ala. 2000).

Once the moving party has made a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmoving party to present substantial evidence of a genuine dispute of material fact. Substantial evidence is "evidence of such quality and weight that reasonable and fair-minded persons in the exercise of impartial judgment might reach different conclusions as to

the existence of the fact sought to be proven." § 12-21-12, Ala. Code 1975.

ARGUMENT

The parties agree that wantonness is "the conscious doing of some act or omission of some duty while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result." Ex parte Thomas Wade Essary, 992 So. 2d 5, 9 (Ala. 2007) (emphasis in original). However, "to prove wantonness, a plaintiff need not prove the defendant "entertained a specific design or intent to injure the plaintiff." Lambert v. First Fed. Mortg., 47 F. Supp. 3d 1310, 1322 (N.D. Ala. 2014) (internal quotation marks omitted); see also Wal-Mart Stores, Inc. v. Thompson, 726 So. 2d 651, 654 (Ala. 1998) ("[T]o prove 'wantonness,' one need not prove intentional conduct.").

While wantonness requires more than mere inadvertence, a defendant's knowledge "may be proved by showing circumstances from which the fact of knowledge is a reasonable inference; it need not be proved by direct evidence." Scott v. Villegas, 723 So. 2d 642, 643 (Ala. 1998); see also Hicks v. Dunn, 819 So. 2d 22, 24 (Ala. 2001). Specifically with regard to automobile collisions,

the Alabama Supreme Court has held that "a wanton collision does not require a positive intent to bring it about." Daniel v. Motes, 228 Ala. 454, 455, 153 So. 727, 728 (1934) (citing First Nat'l Bank of Dothan v. Sanders, 337 Ala. 313, 149 So. 848 (1933)). If there is "any evidence from which a jury can reasonably infer wantonness, the issue should be presented to the jury." Coleman v. Smith, 901 So. 2d 729, 732 (Ala. Civ. App. 2004).

Summarizing the basic principles of wantonness, the Alabama Supreme Court has stated:

> Although proof of wanton misconduct requires a showing of Defendant's "conscious doing of some act," "wantonness" does not require any intent to injure another. The test for whether the conduct rises above simple negligence to the level of wantonness is a fact question to be submitted to the jury, unless there is a total lack of any evidence from which the jury could reasonably infer the higher degree of culpability.
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> "'Wantonness" is the conscious doing of some act or the omission of some duty under the knowledge of the existing conditions, and conscious that from the doing of such act or omission of such duty, injury will likely or probably result....' Kilcrease v. Harris, 288 Ala. 245, 251, 259 So.2d 797, 801 (1972); Culpepper & Stone Plumbing & Heating Co. v. Turner, 276 Ala. 359, 162 So.2d 455 (1964). One may be guilty of wanton misconduct without actual intent to injure anyone. Birmingham Railway, Light & Power Co. v. Murphy, 2 Ala.App. 588, 56 So. 817 (1911). In this

> sense, '. . . A willful or intentional act is not involved in wantonness. . . .' Atlantic Coast Line R. Co. v. Brackin, 248 Ala. 459, 461, 28 So.2d 193, 194 (1946). '. . . [W]antonness may arise where the defendant has knowledge that persons, though not seen, are likely to be in a position of danger and with conscious disregard of known conditions of danger. . . .' Crocker v. Lee, 261 Ala. 439, 444, 74 So.2d 429, 434 (1954). The knowledge requirement of wantonness 'need not be shown by direct proof, but may be shown by adducing facts from which knowledge is a legitimate inference.' Kilcrease v. Harris, supra (288 Ala. at 252, 259 So.2d at 802)." Dixie Electric Co. v. Maggio, 294 Ala. 411, 414, 318 So.2d 274, 276 (1975).

Burns v. Moore, 494 So. 2d 4, 5-6 (1986).

I. THERE ARE MATERIAL FACTS IN DISPUTE AS TO WHETHER DEFENDANT HARRELL ACTED WANTONLY

In the present case, multiple factors support a claim for wantonness. Harell was driving a loaded tractor-trailer rig and he knew that the maneuver he was attempting would block all four lanes of traffic. He could see the blind curve and grade in the road, and he knew that although Beard's dump truck had stopped to allow him to turn, one lane of the incoming traffic was not blocked in any way. The u-turn Harell was attempting was illegal, and Harell

was violating provisions of the Commercial Driver License ("CDL") Manual as well.

A. Harell Acted Consciously In Attempting To Execute The U-Turn

The first step of the wantonness analysis is a determination of whether the defendant acted consciously in undertaking the conduct at issue. See Monroe v. Brown, 307 F. Supp. 2d 1268, 1272 (M.D. Ala. 2004). In this case, there is evidence that Harell made the conscious decision to execute or to attempt to execute the u-turn at the intersection despite the presence of the curve and hill that obscured the visibility of oncoming drivers. Harell testified that he was aware that, in making the u-turn, he would block all four lanes of traffic. (Harell Dep. 123:5-9.) Harell also acknowledged that there was a hill and a curve on the road. (Harell Dep. 77:2-19).

Harell's decision is analogous to the decision of the defendant driver in Monroe, who the court concluded made a "conscious decision to accelerate through the intersection before the light changed." 307 F. Supp. 2d at 1272. In Monroe, the court concluded that the driver decided to make the dangerous driving maneuver, and thus he acted consciously such that there was evidence to support the wantonness claim. Likewise, in this case, Harell made the

decision to attempt to execute the u-turn; his actions were not merely a reaction to an emergency situation but rather were an affirmative decision.

In this case, Defendants rely heavily on the facts that Harell was instructed by Brownleaf employees to make the u-turn and that he had been instructed to make the same u-turn on previous visits to the job site. (Harell Dep. 39-41.) However, those facts do not support the conclusion that Harell did not act wantonly on the date in question. In Valley Building & Supply, Inc. v. Lombus, 590 So. 2d 142 (Ala. 1991), the court addressed the issue of whether a company employee acted wantonly in instructing trucks to back onto a busy highway without properly stopping traffic. Although the employee testified that he had backed trucks onto the highway in the same manner on several occasions in the past "and had never encountered any difficulty," the court concluded that "that evidence fails to prove, as a matter of law, that he did not act wantonly on the occasion of the subject accident." Id. at 144. Similarly, in this case, the fact that Harell had completed the u-turn in the past at the instruction of Brownleaf employees fails to

prove that his conduct was not wanton on the date in question.

B. Harell Was Conscious That Injury Would Likely Or Probably Result From His Action

The second element of wantonness is that the defendant must have acted "while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result." Alfa Mut. Ins. Co. v. Roush, 723 So. 2d 1250, 1256 (Ala. 1998); Monroe, 307 F. Supp. 2d at 1273. In Monroe, the court found that "two Alabama statutory rules of the road inform the court in its assessment of whether Brown acted with this consciousness" and evaluated those laws. Id.

Similarly, in this case, whether Harell acted with consciousness that injury would result is informed by the relevant laws and regulations. Alabama Code § 32-5A-131, entitled "Turning on curve or crest of grade prohibited," informs the court's analysis and states that

> (a) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

> (b) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

§ 32-5A-131, Ala. Code 1975.

Thus, this statute prohibits certain types of u-turns outright in section (b), and allows others only if they can be done under two conditions--"in safety and without interfering with other traffic." Therefore, this statute imposes a duty upon drivers such as Harell to refrain from executing u-turns if the turns would interfere with other traffic or could not be done "in safety." Furthermore, all turns upon curves or near crests are prohibited if the turning vehicle cannot be seen by the drivers of approaching vehicles from within 500 feet in either direction. The evidence definitively shows that Harell's turn interfered with other traffic because Walker's dump truck remained stopped in the middle of the road so that Harell could attempt his turn. (Harell Dep. 74:8 to 75:25.) By causing another vehicle to stop in the middle of the road, probably in violation of § 32-5A-136 prohibiting

stopping in roadways itself, Harell's u-turn interfered with traffic.

Harell's turn was also illegal because the evidence shows that it could not be done "in safety." Safety is defined as "the condition of being safe from undergoing or causing hurt, injury, or loss." Safety, Merriam Webster. The evidence shows that Harell's u-turn was not done in safety, because Harell was at risk of getting hit by another car and because other cars were at risk of hitting him. Specifically, the blind, graded curve in the road obscured the vision of oncoming drivers such that there was an increased risk of collision as the drivers rounded the curve and happened upon Harell blocking all four lanes of traffic. The fact that the u-turn would block all four lanes of traffic alone shows that it could not be done "in safety" and without interfering with other traffic. The fact that, within minutes of the accident, a dump trailer rounded the curve and was forced to drive off the road to avoid Harell's vehicle that was blocking all four lanes of the road is further proof that the u-turn could not be done in safety. (Cupford Dep. 16:16-23, 137:23 to138:21).

Officer Cupford noted that the u-turn was illegal on the Alabama Uniform Traffic Crash Report, told Harell as much at the scene, and testified in more detail as to the illegality of the u-turn. (Cupford Dep. 27:1-3.) Cupford testified that Harell's u-turn interfered with traffic because it blocked all four lanes of traffic and that it could not be made in safety without there being traffic control, such as "flagmen or safety control officers." (Cupford Dep. 68:11 to 69:23.) Buford Bonheim, Plaintiffs' accident reconstruction expert, also testified that Harell violated Alabama Code § 32-5A-1319(a) by making the u-turn, and "potentially" Alabama Code § 32-5A-131(b), "depend[ing] on the foliage and where the actual sight distance or potential sight distance would be." (Bonheim Dep. 71:18 to 72:4.) Defendants' own expert witness, Gary Johnson, concluded that Harell's u-turn was "dangerous . . . because of the speed of trucks coming down that hill." (Johnson Dep. 99:9-15.)

Regarding subsection (b), there is evidence showing that the u-turn was illegal because it was executed in a blind, graded curve where other drivers could not see

Harell from within 500 feet. Officer Cupford testified that Harell made the maneuver both on a curve and on the approach or near to the crest of a grade, where he could not be seen by the driver of any other vehicle approaching from either direction within 500 feet. (Cupford Dep. 70:1 to 71:2.) Thus, Officer Cupford concluded that Harell violated both sections (a) and (b) of the statute. (Cupford Dep. 70:23 to 71:2.) At a minimum, there are genuine issues of material fact as to this issue that are sufficient to overcome summary judgment.

There is also evidence that Harell's maneuver was in violation of the regulations contained in the Alabama Commercial Driver License Manual. Section 2.4 states that "[t]o be a safe driver you need to know what's going on all around your vehicle. Not looking properly is a major cause of accidents." Specifically, Section 2.4 discusses the importance of looking far enough ahead, noting that "[y]ou need to look ahead to make sure you have room to make these moves safely." Section 2.7.6 discusses turning and states that [i]If you must cross into the oncoming lane to make a turn, watch out for vehicles coming toward you. Give them

enough room to go by or to stop." And Section 2.7.7 discusses the space needed to cross or enter traffic and states that "[b]efore you start across a road, make sure you can get all the way across before traffic reaches you." Lastly, Section 2.8.4 instructs drivers to always have a plan:

> You should always be looking for hazards. Continue to learn to see hazards on the road. However, don't forget why you are looking for the hazards--they may turn into emergencies. You look for the hazards in order to have time to plan a way out of any emergency. When you see a hazard, think about the emergencies that could develop and figure out what you would do. Always be prepared to take action based on your plans. In this way, you will be a prepared, defensive driver who will improve your own safety as well as the safety of all road users.

The evidence shows that Harell did not comply with these regulations. Harell attempted to make the u-turn in a spot where he could not see far enough ahead of his vehicle to ensure that the maneuver could be completed safely. Because of the hill and curve, Harell could not possibly "know what's going around him" or look far enough ahead of his vehicle to make sure he could complete the u-turn safely. Furthermore, he could not "watch out for vehicles coming toward" him and "give them enough room to . . .

stop" as the regulations regarding turning require. From the intersection where Harell executed the turn, it was impossible for him to look out for vehicles coming toward him or to "make sure [he] can get all the way across before traffic reaches [him]" because of the hill and curve in the road.

Additionally, the evidence does not show that Harell thought "about the emergencies that could develop and figure[d] out what [he] would do" if a car descended the hill and curve while he was blocking all four lanes of traffic. Harell testified that he made the u-turn because he was instructed to so by the foremen at the job site and that he did not think it was illegal, because there was no sign posted prohibiting u-turns. (Harell Dep. 134:1 to 135:11, 124:6-15.) There is no evidence that Harell used his independent judgment to determine if the maneuver was safe and to develop a plan in case of emergency.

In addition to the duties created and dangers implied by statutes and regulations, the court in Monroe, considered two factors that made it more likely that the driver's action would result in injury and noted that the

driver knew of both of the factors. One of the factors was that "tractor-trailer trucks need a long distance to slow down and stop" and that the driver knew of this. 307 F. Supp. 2d at 1275. Similarly, in this case, the loaded tractor-trailer that Harell was driving needed a lot of room and time to make the u-turn Harell was attempting, and Harell knew this. He testified that he knew he would be blocking all four lanes of travel in executing the u-turn. (Harell Dep. 122:22 to 123:22.)

The other factor, of which Harell was aware, that made it more likely that the u-turn would result in injury was the presence of the hill and curve in County Road 15 that reduces the ability of drivers of oncoming traffic to see what is happening at the intersection and to react to it in a timely manner. The evidence shows that Harell knew that there was a hill and a curve in the road. (Harell Dep. 77:2-19). A curve in the road was a factor that made injury more likely relevant to the wantonness analysis in Sellers v. Sexton, 576 So.2d 172 (Ala. 1991), as did a hillcrest in Clark v. Black, 630 So. 2d 1012, 1016 (Ala. 1993), modified on denial of reh'g (Jan. 7, 1994), and Williams v. Werner

Enterprises, No. 1:11-CV-3671-VEH, 2013 WL 6665385, (N.D. Ala. Dec. 17, 2013).

III. RELEVANT AUTHORITY

A. The Case Cited By Defendants Is Not Applicable To This Case

The single case cited by Defendants in their Motion for Partial Summary Judgment, Ex Parte Essary, 992 So. 2d 5 (Ala. 2007), a split decision, is factually distinguishable from this case and thus not instructive. Essary involved a collision between two passenger vehicles caused when Essary came to a "rolling stop" before accelerating through the intersection, hitting another vehicle. Essary was required to yield the right-of-way to oncoming traffic but failed to do so. Essary testified that as he was making a "rolling stop," he looked both ways before entering the intersection and did not see the oncoming vehicle. The driver of the oncoming vehicle testified that she thought that Essary was trying to "shoot through the gap" between her vehicle and the vehicle in front of her. Id. at 9. The lower court granted summary judgment in favor of Essary, the intermediate court reversed, and the Supreme Court reversed the intermediate court, holding that summary judgment was proper. The Supreme Court concluded:

> The facts here presented do not establish any basis from which to conclude that Essary was not possessed of his normal faculties, such as from voluntary intoxication, rendering him indifferent to the risk of injury to himself when crossing the intersection if he collided with another vehicle. Nor is the act as described by Burrell so inherently reckless that we might otherwise impute to Essary a depravity consistent with disregard of instincts of safety and self-preservation. We therefore conclude that, as a matter of law, the plaintiffs failed to offer substantial evidence indicating that Essary was conscious that injury would likely or probably result from his actions.

Id. at 12. In reaching this conclusion, the court in Essary acknowledged that "separate from evidence that a driver lacks normal mental capacities, certain actions, taken while driving, may be so inherently dangerous that Alabama's self-destructive behavior presumption is inapplicable or overcome." Williams, 2013 WL 6665385, at *4. The Court in Essary also expressly acknowledged that "[t]he determination whether a defendant's acts constitute wanton conduct depends on the facts in each particular case." 992 So. 2d at 10.

The facts in the case before the Court today differ significantly from those in Essary. Unlike in Essary, where the driver was driving an ordinary passenger vehicle, Harell was driving a commercial truck pulling a flatbed

trailer carrying a large piece of heavy construction equipment, a roller. (Harell 33, 38.) Distinctions such as this one are more than "mere trivia" and can constitute the factor that elevates conduct from mere carelessness to wantonness. See McCutchen v. Valley Home, Inc., 100 F. Supp. 3d 1235, 1240 (N.D. Ala. 2015).

In McCutchen, as in Essary, the defendant was trying to "beat the traffic" in making a turn before oncoming traffic reached him. However, the critical difference was that the defendant in McCutchen was driving a "loaded tractor-trailer rig weighing approximately 74,000 pounds." Id. The court concluded that "[b]ecause of the truck's weight and size, [the driver's] attempt to 'beat the traffic' created a greater risk than the defendant's attempt in Essary" and held that a "reasonable jury could determine that [the driver's] attempt to ‘beat the traffic' in his 18–wheeler involved a conscious disregard for the risk of injury he was creating, and therefore was wanton. Summary judgment is therefore due to be denied on McCutchen's claim for wantonness." Id.

Other cases in which courts found that summary judgment on the wantonness issue was inappropriate based in part because the vehicle at issue was a tractor-trailer, which are heavier and take longer to stop and maneuver than passenger vehicles, include Williams, 2013 WL 6665385, Monroe, 307 F. Supp. 2d 1268, and Hornady Truck Line, Inc. v. Meadows, 847 So. 2d 908, 916 (Ala. 2002).

Therefore, it is clear that Defendants' reliance on Essary is misplaced and unpersuasive. Essary involved an ordinary passenger vehicle; however, when a court applying Alabama law was faced with a substantially similar situation involving a loaded tractor-trailer rig, the court determined that there was a jury question as to wantonness because the size and weight of the tractor-trailer made the maneuver more dangerous. Likewise, in this case, the fact that Harell was driving a tractor-trailer rig carrying a piece of heavy construction equipment differentiates this case from Essary and makes it more similar to McCutchen, where summary judgment on the wantonness claim was improper.

B. Relevant Authority Demonstrates That Harell's Conduct Was Wanton

The case of Williams discussed wantonness in the context of a tractor-trailer driver maneuvering near a hillcrest causing obstructed views. The defendant had pulled his tractor trailer over onto the right shoulder of the road about two and one-half "truck lengths" after the road crested a hill. The plaintiff was driving his tractor trailer in the right lane, and as he crested the hill, he observed the defendant's tractor trailer in the shoulder. The plaintiff then saw the defendant beginning to enter the roadway, and he tried to stop his vehicle to prevent a collision but was unable to do so before colliding with the defendant's vehicle. The defendant denied that he was pulling into the road from the shoulder and alleged that he was simply traveling in the right lane when he was struck. Witnesses reported seeing the defendant's truck start to move and gain speed and abruptly move to the travel lane, and they did not recall seeing any turn signals used.

The defendants in Williams moved for partial summary judgment on wantonness count. The court distinguished Ex Parte Essary and several other cases cited by the defendant

as being inapposite and concluded that there was no comparable authority addressing a situation factually similar to the one before the court. The court concluded that

> viewing the evidence in the light most favorable to [the plaintiff] . . . there is substantial evidence from which the jury could find that [the defendant] acted with a reckless or conscious disregard of the rights or safety of others by consciously abruptly pulling into the right-hand lane of the interstate at an unsafe speed in the vicinity of a hillcrest and without properly using any flashers or turn signals before proceeding to enter such lane and knowing under such circumstances that, injury would likely or probably result.

Id. at *6 (citations omitted). Thus, the court denied summary judgment on the wantonness issue.

As in Williams, there is no comparable authority addressing a situation in which a driver of a loaded tractor-trailer makes a u-turn, blocking all four lanes, in the shadow of a curve and hill which block the visibility of oncoming drivers. Furthermore, Plaintiffs have presented substantial evidence of wantonness such that summary judgment should not be granted.

In Clark, 630 So. 2d 1012, 1016 (Ala. 1993), as modified on denial of reh'g (Jan. 7, 1994), the Alabama

Supreme Court held that the lower court erred in directing a jury verdict on the plaintiff's wantonness claim. The defendant was familiar with the intersection where the accident occurred. There was a hillcrest near the intersection that hindered the view of drivers entering the intersection from Watermelon Road. The defendant was traveling on Union Chapel Road, where there was a stop sign at the intersection with Watermelon Road. The plaintiff was traveling on Watermelon Road, the road with the hillcrest, and where there was no stop sign. There was evidence that the defendant ignored the stop sign "or otherwise wantonly entered the intersection" at a high rate of speed and collided with the plaintiff, who was coming down the hill on Watermelon Road and who did not have a stop sign. Id. at 1017. The court found that the evidence

> if believed by the jury, would provide clear and convincing evidence that [the defendant], who was familiar with the intersection, and, consequently, the dangers posed to traffic traveling south on Watermelon Road by the 'hillcrest' in that road, ignored the stop sign, or, otherwise wantonly entered the intersection.

Id.

Like in Clark, Harell in this case was familiar with the intersection of County Roads 2 and 15 where he attempted to make the u-turn. He testified that he had delivered materials to the bridge jobsite approximately 10 times before and that, each time, he had made a u-turn at this intersection. (Harell Dep. 36:12-22, 41:1-25.) Harell acknowledged that there was both a hill and a curve on Route 15 as it approached Route 2 from the other direction, the direction from which Doe and the other dump trucks were traveling. (Harell Dep. 77:2-19.) Therefore, there is evidence that Harell was familiar with the intersection and the dangers posed by the hill and curve.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Partial Summary Judgment should be denied, and an order should be entered directing the action to proceed upon a trial of the merits.

Respectfully submitted,

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