IN THE COURT OF APPEALS
STATE OF GEORGIA

LANEA SCOTT, Individually, and as Administrator of the Estate of ALEXANDER SCOTT, Deceased, Appellant, v. EVANS DELIVERY COMPANY, INC. and MARVIN COLBERT, Appellees.	APPEAL NO.: A26A0421 *Fulton State Court* *Civil Action No. 22EV005672*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Regulations

I. INTRODUCTION

Leaving a truck parked on the travelled portion of a highway is dangerous. Leaving a trailer jutting two feet into a lane of travel, overnight, and without proper warning lights or devices, is unconscionable. But that is exactly what Appellees/Defendants **Marvin Colbert and Evans Delivery Company** did. They could have maintained their tractor-trailer in line with industry standards; they could have safely moved the failing vehicle completely off the lanes of travel when it first failed; they could have removed the disabled vehicle from Interstate 16 entirely, within a few hours; and they could have properly warned approaching motorists with lights and devices positioned as required by law—all of these measures ultimately aimed, of course, at preventing the creation of a hazard in the roadway. But none of these things happened.

Instead, Evans' driver, Colbert, after halfheartedly addressing the very real fact that his trailer was disabled **in the lane of an interstate**, retreated to the sleeper berth and called it a night. Appellant's decedent, **Alex Scott**, was the unfortunate casualty of Appellees' wanton misconduct, when his own tractor-trailer collided

with the Evans trailer. This case is, then, about the relative fault as to Evans/Colbert (for a host of failings) and Scott (whom a jury could certainly find at partial fault).

The trial court saw it differently, biting on the affirmative defense of "avoidance of consequences," O.C.G.A. § 51-11-7, but committing several errors along the way. For one, the court seemed to believe that the mere fact that a video of the accident existed gave it license to conclusively decree what the video showed, notwithstanding the video's poor quality, lack of clarity, and elements that actually undercut the court's "as a matter of law" findings.. Second, the court usurped another classic jury role in determining what constitutes "reasonable care" under a given set of circumstances. Those issues are almost always properly reserved for a jury, and this case is no different. Finally, even assuming the avoidance doctrine was in play, the trial court erred in concluding—again, as a matter of law—that the exception to that doctrine for "willful and wanton" conduct could not be applied.

This Court should reverse and remand, and allow this years-old case to proceed to trial.

II. JURISDICTIONAL STATEMENT

This direct appeal was properly filed in this Court after the trial court granted summary judgment, which disposed of the case below. O.C.G.A. §§ 5-6-34(a)(1); 9-11-56(h). Jurisdiction lies in this Court pursuant to Article VI, Section V, Paragraph 3 of the Georgia Constitution of 1983 since this matter is not reserved for the Supreme Court. Ga. Const. of 1983, Art. VI, § VI; O.C.G.A. § 15-3-3.1.

This appeal is timely. The trial court entered its Order on June 27, 2025, V10-6436, and Appellant filed her Notice of Appeal less than 30 days later, on July 23, 2025. V2-1. *See* O.C.G.A. § 5-6-38(a).

III. ENUMERATION OF ERRORS

(1) The trial court erred in granting summary judgment under the avoidable consequences doctrine.

(a) The court improperly afforded conclusive weight to the dashcam video footage in assessing Scott's possible negligence; and

(b) Questions of fact exist about when Scott could or should have apprehended the hazard.

(2) The trial erred in granting summary judgment because there is abundant evidence that the conduct of both Evans and Colbert, which culminated to create the hazard that killed Scott, was wanton.

IV. STATEMENT OF THE CASE

A. The Defendants: Evans and its Driver, Colbert.

Evans is a licensed commercial motor carrier authorized under the Federal Motor Carrier Safety Administration to transport shipments on the nation's interstate highways. V4-1329. As such, Evans and those driving vehicles on its behalf are bound by strict federal safety standards imposed by FMCSA regulations ("FMCSRs"). *See* 49 C.F.R. § 390.3; Ga. Comp. R. & Reg. 515-16-4-.01 (adopting FMCSR Parts 350, 382, 383, and 390 through 397).

The tractor-trailer Colbert was operating was owned by Colbert's company, Lizard Licc, LLC. V10-5943–44. On behalf of Lizard, Colbert had purchased the tractor-trailer, sight unseen and without inspection, through an online auction. V10-5912. Lizard then entered into a lease agreement with Evans, enabling Colbert to drive the vehicle on Evans' behalf. V10-5946–56. Before Colbert took the vehicle on the road, a superficial "inspection" was undertaken that basically amounted to a

visual scan and an assurance the engine would actually crank. V4-2387–88; V10-5919–20. Otherwise, no meaningful signoffs, such as to the functioning of the fuel system, were included. V4-1365-66.

Colbert put the vehicle onto the roadways; the September 14, 2022, trip was just Colbert's second as a driver for Evans. V10-5938. During that trip, the vehicle suddenly lost power due to a disconnect in the fuel system that a reasonable inspection would have revealed and reasonable maintenance would have prevented. V4-1045–46; V4-2223–25, 2387–88.

Flummoxed, Colbert guided his tractor-trailer from the lefthand lane to the emergency lane of I-16 and parked just feet from the exit, with his cabin in the emergency lane and his trailer sticking two feet over the fog line and into the rightmost lane of travel. V4-1007, 1614, 1629, 1640–41. This, despite the fact that Colbert would have had almost two full minutes to guide the tractor-trailer to safer environs. V4-1614. Given that he was travelling at highway speeds when the engine started sputtering, Colbert would have had enough momentum to reach the nearby exit ramp for Allentown—located mere feet from where he ultimately parked—and enough room to, alternatively, park

his trailer fully in the emergency lane or on the adjoining flat and grassy shoulder. V4-1614–15; 1658.

He didn't do that. Instead, having apparently realized his predicament late, Colbert made a spiritless attempt to get the rig into the right emergency lane of I-16. Colbert did not get all of the tractor trailer off the highway, though; he finally stalled with the trailer sticking out a full two feet into the right lane of the Interstate.

From there, Colbert had several courses of action available. He did properly at least **try** to embrace some of those options, all of them completely ineffectual.[1] He turned on his hazards – that is, the flashing lights that are supposed to serve as a visual "draw" to other motorists. The problem there is that because the tractor and trailer were so sketchy, the hazards did not flash in uniform fashion – instead, they appeared on one side of the tractor, then the other, exactly like a turn signal would look. *See* V13 at 4:56:18–4:56:27; V9-344. That malfunction had "an impeding, a deleterious effect on a driver, knowing

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[1] The FMCSRs require drivers of commercial motor vehicles "stopped upon the traveled portion of a highway or the shoulder of a highway" to engage their flashing "hazard" lights and deploy certain "warning devices," including "bidirectional emergency reflective triangles." 49 C.F.R. §§ 392.22, 393.95(f).

that it could be some other type of directional type signal and not the presence of a tractor-trailer." V9-5628.

Colbert also attempted to place retroreflective orange triangles behind the trailer. The governing regulations require that the triangles be placed quite particularly, to maximize the likelihood that an oncoming motorist will not only see the triangles, generally, but also better gauge the distance to a potential hazard. The driver must place these warning devices at certain distances from the stopped truck and "in the center of the lane or shoulder occupied by the commercial motor vehicle." 49 C.F.R. § 392.22(b)(1), (b)(2)(v). Colbert testified that he placed these devices along a line running from "the middle of [his] trailer," V4-967, meaning approximately "on the white fog line." V10-6413. Unfortunately, he did not space out the triangles appropriately, which was visually misleading to approaching drivers. V9-5585–86, 5589.

Colbert also could have called a wrecker service to tow his vehicle; telephone records indicate he never did so, despite a healthy **thirty-nine** such service providers being located nearby. V4-1855, 2043–44. To be fair, after speaking with his business partner, Willie Johnson,

Colbert assumed that Johnson was taking lead on summoning a tow. V4-1017, 1055–56. Johnson claims to have been unable to reach any mechanic or tow service, although he could recall making just a single call to a "mobile mechanic"—hardly a comprehensive inventory. V4-1213–14.

Colbert's efforts exhausted – at least in his mind – he climbed into the sleeper berth of the cab, and turned in for the evening. V4-932–33.

B. The Accident

Just before 5:00 a.m. on September 14, 2022, some nine hours after Colbert's tractor-trailer became disabled, Alex Scott was driving his tractor-trailer eastbound on I-16 when he collided with the portion of Colbert's trailer that was invading the lane of travel. Scott's truck exploded into flames. Scott managed to escape the cab through the passenger side; he staggered across two lanes of traffic, aflame, before he collapsed and died. V10-5870.

A morning-of photo paints the picture:

V10-5827; V9-5684 (depicting the area of impact to the Evans trailer "parked beyond [the] fog line.").

Scott's excruciating death was entirely unnecessary and avoidable, but for the dereliction of the Defendants at virtually every level: Colbert in operating his tractor-trailer and responding to its malfunctioning; Evans in hiring and training Colbert, failing to obtain a proper inspection to ensure the vehicle's safe operability, and failing to implement systems to assist drivers in managing vehicle breakdowns.

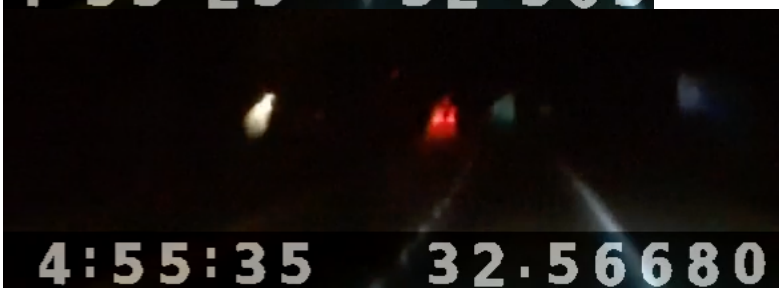
C. The Dashcam Video

Scott cannot, obviously, testify as to what happened; no one will ever really know what he perceived, when he realized whatever it was that he realized, or what his thoughts were.

There is some evidence to assist, but what might've been a source of significant clarification is anything but. Scott's tractor had a Garmin dashboard camera mounted somewhere in his cab; no one knows where, the angle, or any other pertinent detail. The camera captured almost two minutes of footage before and including the impact, ending with a chilling recordation of the crash and the fires from the collision, growing larger and larger.

The video itself, V13, is largely grainy and somewhat disjointed, likely the product of the camera being dislodged by the impact and ultimately discovered in the ensuing debris field. Though generally difficult to discern, the footage appears to show as follows:

4:54:45–4:55:25 Driving in the right-hand lane, Scott follows a vehicle whose taillights appear as two red dots (i.e., "running lights") directly in front of him.



4:55:25–4:55:35 As the highway curves slightly to the left, the taillights appear to move into the left-most lane and a road sign appears to sit directly ahead of Scott.

4:55:35–4:55:45

Continuing along the curve, Scott passes the road sign.

4:55:45–4:55:50

The curve ends, and the taillights again appear directly in front of Scott. The vehicle ahead of Scott has not merged into the left-hand lane. A yellow reflector marks the beginning of a guardrail.

4:55:50–4:56:07

The taillights remain directly in front of Scott. Their appearance remains unchanged.

4:56:09

A yellow light begins flashing, appearing to overlap with and amplify the left taillight of the vehicle directly ahead of Scott.

4:56:09–4:56:15

The yellow light continues flashing with the cadence and appearance of a left-hand turn signal.

4:56:17–4:56:18

A red light appears within the halo of the previously observed taillights, then appears with greater definition.

4:56:18–4:56:21

The red light appears as two distinct blinking lights. The lane directly ahead of Scott appears to contain two separate sets of taillights flashing at different intervals.

4:56:21–4:56:23

The set of lights on the left gradually move higher against the horizon than the set on the right, indicating for the first time that the two sets are not, in fact, the same distance away from Scott.

4:56:23–4:56:27

Slowly at first and then all at once, the set of lights on the right sink below those on the left and grow larger. The relative position of the fog line now indicates that the closer lights sit mostly in the emergency lane.

4:56:27

The closer set of lights continue flashing out of time, such that the right-hand side of the set appears bright when the left-hand light is faint – perhaps a right-hand turn signal at an exit ramp

4:56:29

As the set of lights grow closer, three distinct lights and the reflective tape marking the edges of the Evans trailer are barely visible, despite the illumination of oncoming headlights.

4:56:31

Now only a few feet away, the silhouette of the Evans trailer appears against the dark. Almost instantaneously afterwards, Scott strikes its rear left corner.

V13 (thumb drive containing dash camera video). The frame-by-frame breakdown, of course, is not remotely what Scott saw the night he died, in real time – he did not have the luxury of watching, rewinding, watching, and so on.

D. Evans' Training and Policies as to Vehicle Breakdowns

Long before the impact, Evans had a chance to lessen the likelihood of any such breakdown, bewildered response, or unnecessary collision. The possibility of a disabled tractor-trailer prompting a collision has been well known since, basically, tractor trailers began operating on the highways. Accordingly, motor carriers train – or are

supposed to train – drivers as to what to do if a vehicle becomes disabled, in terms of mitigating the hazard by moving to a safe location, and of warning other motorists of the potential danger. 49 C.F.R. §§ 391.11(b)(3) (training and experience requirement), 392.22(a), (b) (substantive requirements for disabled vehicles and drivers); V4-1337–42 (opining on industry standard of removing commercial vehicles from highways).

Here, the evidence is that Colbert received no training whatsoever, V4-1368–69; V10-5989, 5994 (only two persons who would've provided a skimpy 45-minute, telephonic "training" disclaimed doing so), and Evans did not offer any training at all, let alone delivered to Colbert, about how to respond to breakdown scenarios. V4-1375–78.

E. Proceedings Below

Given the nature of Scott's demise, litigation followed. So did extensive discovery, including almost two dozen experts between the various parties.

The Defendants filed a comprehensive Motion for Summary Judgment, raising almost a dozen issues. After full briefing and a hearing, the trial court granted summary judgment on a single issue –

the avoidance doctrine. Of particular import to the trial court was its own viewing and interpretation of the dash cam footage. V10-6427–30 This appeal followed.

V. ARGUMENT AND CITATION TO AUTHORITY

A. Standard of Review

"Summary judgments enjoy no presumption of correctness on appeal, and an appellate court must satisfy itself de novo that the requirements of O.C.G.A § 9-11-56(c) have been met." *Chandler v. City of Lafayette*, 370 Ga. App. 46, 46 (2023) (quoting *Giddens v. Metropower, Inc.*, 366 Ga. App. 15, 16 (2022)). In reviewing the grant of a motion for summary judgment, this Court "must view the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the nonmovant." *Chandler*, 370 Ga. App. at 46 (quoting *Giddens*, 366 Ga. App. at 16).

B. Granting summary judgment under the avoidance doctrine was error, as fact questions exist about when Scott could or should have apprehended the actual hazard at issue.

1. The Avoidable Consequences/Avoidance Doctrine

Under O.C.G.A § 51-11-7,

> If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.

Encompassed in this Code section are two affirmative defenses. *See Garrett v. NationsBank*, 228 Ga. App. 114, 117 (1997). The statute's first sentence codifies "the doctrine of avoidable consequences," a complete bar to recovery if a plaintiff "by ordinary care could have avoided the consequences to himself caused by the defendant's negligence." *Chandler*, 370 Ga. App. at 51; *Reed v. Carolina Cas. Ins. Co.*, 327 Ga. App. 130, 136 (2014). The second sentence memorializes the common law comparative negligence doctrine, buttressed in recent decades by Georgia's apportionment statute, O.C.G.A. § 51-12-33. *See Whelan v. Moone*, 242 Ga. App. 795, 796 (2000).

Both of these defenses stem from the decedent's duty of care for his own safety, but each relates to an alleged omission on his part at different points in time. "Comparative negligence by the [decedent] is that negligence which **joins with** the negligence of the defendant in proximately causing [his] injuries." *Garrett*, 228 Ga. App. at 118 (emphasis added)). By contrast, "[a]voidance of the consequences

involves the failure to take action to overcome the defendant's negligence **after** it is actually discovered by [the decedent] or might have been discovered by [the decedent's] exercise of ordinary care." *Newman v. Collins*, 186 Ga. App. 595, 596 (1988) (emphasis added).

In other words, "[t]he [avoidance] rule which requires one to avoid the consequences of another's negligence does not apply **until he sees the danger or has reason to apprehend it.**" *Newman*, 186 Ga. App. at 596–97 (emphasis added). And in addition, "after discovery or a reasonable time within which discovery of the negligence should have been made," the decedent must "have [had] an **opportunity** to avoid the negligence of the defendant." *Garrett*, 228 Ga. App. at 118 (emphasis in original). Under those atypical circumstances, the decedent is barred altogether from recovery because his own negligence is viewed as superseding that of the defendant and thus "constitute[s] the **sole** proximate cause of his injuries." *McCray v. FedEx Ground Package Sys.*, 291 Ga. App. 317, 319–20 (2008) (emphasis added; quoting *Atl. Coast Line R.R. Co. v. Coxwell*, 93 Ga. App. 159, 165 (1955)).

In motor vehicle collision cases, the negligence of an approaching driver is rarely found to be the sole proximate cause of the resulting impact—the issue is usually one of comparative negligence and apportionment, instead.[2] Several reasons.

First, what constitutes "reasonable care" for one's own safety is – given the nuances of human perception, reaction, and gradients of caution – almost always for a jury.

In resolving this question, we must start with the accepted standard of law that issues of negligence and diligence, including related issues of lack of ordinary care for one's safety or lack of ordinary care in failing to foresee or observe the negligence of another, are ordinarily not susceptible of summary adjudication, and unless **only one conclusion** is permissible the issue should be resolved by the jury.

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[2] *See, e.g.*, *Reed v. Carolina Cas. Ins. Co.*, 327 Ga. App. 130, 136–37 (2014); *Chandler v. City of Lafayette*, 370 Ga. App. 46, 51–52 (2023); *Roberts v. Mulkey*, 343 Ga. App. 685, 690–91 (2017); *Wang v. Dukes*, 368 Ga. App. 661, 664 (2023); *Ga. Dep't of Transp. v. Owens*, 330 Ga. App. 123, 131–32 (2014); *Newsome v. LinkAmerica Express, Inc.*, 336 Ga. App. 800, 802–03 (2016); *Brown v. Tucker*, 337 Ga. App. 704, 723 (2016); *Mayor & Aldermen of Savannah v. Herrera*, 343 Ga. App. 424, 434–35 (2017); *Smith v. Com. Transp., Inc.*, 220 Ga. App. 866, 867–68 (1996); *Beadles v. Smith*, 106 Ga. App. 31, 33–34 (1962); *Pittman v. Staples*, 95 Ga. App. 187, 191–92 (1957).

Hester v. Baker, 180 Ga. App. 627, 630 (1986) (avoidance case; collecting decades-old precedent) (emphasis added).

And the "nuance" part is important - juries are charged with determining what was reasonable, on a given set of facts and circumstances, at a particular time - and a trial court should err on the side of having a trial **even when the facts are undisputed:**

> A trial court can conclude as a matter of law that a given set of facts do or do not show negligence on the part of a defendant or plaintiff **only** where the evidence is plain, palpable and undisputable. **Even where there is no dispute** as to the facts, it is however, usually for the jury to say whether the conduct in question met the standard of the reasonable man.

Cowart v. Five Star Mobile Homes, Inc., 161 Ga. App. 278, 279 (1982) (cleaned up; emphasis added).

Second, the "cause" of a given collision is rarely an open-and-shut determination, especially when arguments as to each driver's conduct are subject to evaluation. "If reasonable minds can differ on the cause of the injury, the case is not plain, palpable, and indisputable and it should go to the jury." *Reed*, 327 Ga. App. at 130 (avoidance case; reversing grant of summary judgment). Here, a reasonable jury might conclude that the collision was solely Colbert's fault, as a precipitating cause; solely Scott's fault, because he could perceive the hazard yet

acted unreasonably thereafter; or that **both** parties' negligence combined to cause the collision. That is a classic jury scenario, warranting instructions on both comparative negligence and the avoidance doctrine.

Given those ground rules, the trial court got this one wrong.

2. The trial court erred in affording conclusive weight to the dashcam video footage in assessing Scott's possible negligence.

As a threshold matter, the trial court committed reversible error by apparently assuming that the mere existence of the dashcam video—regardless of its poor quality—*a fortiori* operated to remove many disputes of fact. V11-6425–26 (trial court, finding that the video "**establishes conclusively**" what and when Scott could have seen the hazards/triangles, without mentioning expert evidence to the contrary).

It is true that video evidence that clearly and unequivocally depicts an event may conclusively trump other evidence "blatantly contradict[ing]" what is shown in the video, thereby eliminating a factual dispute. *Scott v. Harris*, 550 U.S. 372, 380 (2007). But that is not the case where, as here, the video is grainy and subject to varying interpretations:

> *Scott* [*v. Harris*] did not create a new rule or treat video footage as a distinct type of evidence that is not subject to the normal summary judgment strictures. Instead, like any piece of evidence filtered through the prism of summary judgment, videos that establish a fact "with confidence" and "beyond reasonable question" may eliminate factual disputes. But like any other evidence, videos that are "**unclear**, incomplete, and **fairly open to varying interpretations**" cannot resolve evidentiary matters short of trial.
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> The point is rather simple: **there is nothing special about video evidence.** [I]t can resolve a genuine dispute at summary judgment only if it offers "**irrefutable evidence**" that "utterly discredits" countervailing factual assertions.

Pam v. City of Evansville, No. 24-2286, 2025 LX 477557, at *6–7 (7th Cir. Sep. 26, 2025) (cleaned up; emphasis added); *accord Baker v. City of Madison*, 67 F.4th 1268, 1277 2448 (11th Cir. 2023) ("at times, videos do not paint the entire picture and may contain ambiguities that are subject to interpretation. . . . When that is true, courts must construe all ambiguities in the video footage in favor of the plaintiff."); *Shaw v. City of Selma*, 884 F.3d 1093, 1097 n.1 (11th Cir. 2018) ("[W]here the recording does not clearly depict an event or action, and there is evidence going both ways on it, we take the [**nonmovant's**] version of what happened."); *Skelly v. Okaloosa Cty. Bd. of Cty. Comm'rs*, 415 F. App'x 153, 155 (11th Cir. 2011) (in absence of "definitive" video proof, differing accounts should be reconciled by a jury).

Obviously, there are situations where video evidence allows only one conclusion (*i.e.*, as in *Scott*, that a criminal suspect was not "cautious and controlled" when he ran multiple red lights, swerved around dozens of cars, forced innumerable vehicles off the road, all at speeds that were "shockingly fast"). But where video evidence does not offer such clarity, a court should not be so hasty to adopt its interpretation of a video's content, especially when issues of human nuance are squarely in play. *See, e.g.*, *Albright v. Terminal Inv. Corp.*, 373 Ga. App. 798, 804 (2024) ("[G]iven the witnesses' testimony and evidence in this case, it appears that any discrepancies between the witnesses' testimony and the flash drive video evidence would be for a jury to resolve.") (Hodges, J., authoring); *Giddens v. Metropower, Inc.*, 366 Ga. App. 15, 19 (2022) (reversing summary judgment on care for one's own safety defense; video was subject to more than one interpretation and trial court was not free to substitute judgment on fact issues) (Hodges, J., authoring; Barnes, P.J., joining); *Porter v. Massarelli*, 303 Ga. App. 91, 95 (2010) (video might remove disputes of fact, but only if evidence shows one litigant's claims are "a visible fiction"); *Hager v. Royal Caribbean Cruises, Ltd.*, No. 21-CV-20802-

HUCK/Becerra, 2022 U.S. Dist. LEXIS 94102, 2022 WL 1658830, *6 (S.D. Fla. May 25, 2022) (denying summary judgment; "the video is not clear or close enough to show the intricacies" of what a plaintiff could see at the time of the incident that injured her).

In short, where the interpretation of a video is up for debate—as is the case here, even among the experts—it is not for the court to make the call. *E.g.*, *Gavilanes v. Walmart, Inc.*, No. 9:20-cv-80896-Reinhart, 2021 U.S. Dist. LEXIS 259991, 2021 WL 8825393, *8, 10 (S.D. Fla. Nov. 1, 2021) ("The video's lack of clarity creates a question of fact. . . . [T]he parties' dispute over **what** the video depicts is sufficient to preclude summary judgment.") (emphasis added); *Love v. Reynolds*, No. 24-cv-0200-bhl, 2025 U.S. Dist. LEXIS 60081, 2025 WL 958466, *1 n.1 (E.D. Wis. Mar. 31, 2025) ("[V]ideo evidence can eviscerate a factual dispute only when the video is so definitive that there could be no reasonable disagreement about **what the video depicts**.") (emphasis added).

Here, the trial court decided what the video "showed" as a supposed matter of law, ignoring expert testimony as to why bright-line declarations as to the video content were impossible. *See* V9-5628 (malfunctioning hazard lights would have confused Scott into thinking

the vehicle was moving, and not disabled); V9-5585–89 (misplaced reflective triangles would have also given an improper picture of how close the hazard was). Along the way, the court made several findings that are, if not categorically at odds with what the video depicts, at least are the subject of reasonable debate.

As but one example, the court concluded that, after a car in front of Scott moved into the left lane, Scott would have had at least ten to fourteen seconds to avoid the collision. V10-6426.

This is a screen grab precisely **fourteen** seconds before impact:

V13 at 4:56:17. There is no indication, of, well, anything jutting into the roadway. At all. It is not even clear another vehicle, let alone a

tractor-trailer, is by the roadside. This is an awfully far cry from undisputed evidence that, at fourteen seconds out, Scott both saw the hazard and **appreciated the danger** it posed. *See Garrett*, 228 Ga. App. at 119 ("Knowledge of the **existence** of a hazardous condition does not ordinarily equal actual knowledge of the **danger** inherent in such condition." (emphasis in original)).

As another example, the trial court concluded that a little more than thirty seconds before the collision (4:55:30) the car in front of Scott that served to obscure his forward visual path moved into the left lane, opening up the field of view. V10-6427. That's not right. Not at all.

In reality, both vehicles (front car, Scott following) actually enter into a curve that changes the angle of view, but the forward car remains in front of Scott for many more of the crucial seconds involved. *Cf.* V13 (Video) at 4:55:50–4:56:07 (taillights remain directly in front of Scott, appearance unchanged).

The upshot is that the trial court, to put it bluntly, had no business making conclusive factual determinations based on the grainy and disjointed dashcam video. The mere existence of video evidence—regardless of its quality or content—does not give a trial court license to

substitute its judgment as to what the video depicts for that of a jury. The trial court here apparently believed it had such license. It was wrong, and that error on its own is sufficient to justify reversal.

3. Whether Scott knew or should have known that Colbert's trailer encroached into Scott's lane of travel in time to avoid the collision cannot be decided as a matter of law on this record.

Under the avoidance doctrine, the threshold question is whether Scott knew or should have known of the potential hazard in time to avoid it. The affirmative defense of avoidable consequences applies only if Scott "could in fact have discovered that [he] was on a collision course with [Colbert's] vehicle . . . [and if] it was possible, under the existing circumstances, for [Scott] to have avoided the impending collision." *Moore v. Price*, 158 Ga. App. 566, 569 (1981); *accord Reed*, 327 Ga. App. at 136.

Obviously, to perceive and avoid an obstacle in the road, an approaching driver must be able to literally see the potential hazard, process that perceptual input, identify the existence of any such danger, and react in a timely fashion. Both physical obstructions and the darkness of night can prevent drivers from perceiving vehicles stopped on or alongside the road. *See, e.g.*, *Reed*, 327 Ga. App. at 131–32, 136

(finding "no evidence" that a drunk driver who collided with a parked tractor-trailer around 3:00 A.M. "was or should have been aware that a tractor-trailer was illegally parked in the emergency lane . . . such that he could have avoided the consequences of the truck driver's decision to camp overnight in that spot"); *Beadles*, 106 Ga. App. at 31, 33–34 (holding avoidable consequences properly a jury question, despite some evidence of the "visibility of the truck to one who might approach it as [decedent] was doing," where defendants had left tractor-trailer "parked in an unlighted condition" on a highway at 2:45 A.M.); *Roberts v. Mulkey*, 343 Ga. App. 685, 690–91 (2017) (whether plaintiff was negligent in failing to see and avoid track hoe with which she collided was a jury question where "trees shad[ed] the roadway," there were no signs indicating road work ahead, "the track hoe was parked partially on and partially off the road, and between the track hoe and an eastbound driver [such as the plaintiff], . . . was a pile of dirt.").[3]

In addition, the approaching driver must also be able to perceive the other vehicle's position and trajectory, lest there not even be a

[3] *Roberts* involved a broad-daylight collision of a driver on a rural road with a giant, bright-yellow earthmover. Her potential negligence, this Court held, was a jury issue.

danger, or it be one that will dissipate before a reaction is required. *See, e.g.*, *Moore*, 158 Ga. App. at 569 (avoidable consequences inapplicable to plaintiff who observed vehicle approaching from other direction "run[] into a ditch on his own side of the road" because there was no evidence that plaintiff was or should have been aware that vehicle would return to roadway and careen into plaintiff's lane of travel); *Rios*, 266 Ga. App. at 469, 471 (although driver of tractor-trailer "testified that he was aware there was a vehicle behind him in his lane of traffic," he neither knew nor should have known that said vehicle would "attempt to pass in the no pass zone" in time to prevent resulting collision); *Chandler*, 370 Ga. App. at 47, 51–52 (reversing summary judgment under avoidance doctrine; jury issues when plaintiff collided with firetruck, which allegedly failed to wait at an intersection before proceeding through a red light, even though firetruck had its "lights and siren activated" and plaintiff "should have been able to see" firetruck from distance of 570 feet).

To avoid colliding with a disabled vehicle, an approaching driver must be able both to see the vehicle in front of him and to appreciate that it—unlike every other vehicle cruising down the highway—has

come to a standstill. *See Pittman v. Staples*, 95 Ga. App. 187, 192 (1957). In *Pittman*, the plaintiff's decedent was killed when the car in which he was a passenger collided with a flatbed tractor-trailer that had been abandoned in the right-hand lane of a Georgia highway in the late afternoon. 95 Ga. App. at 188–89. While noting that the flatbed had been visible from "about 100 yards" away, this Court declined to find the decedent driver to be the sole proximate cause of the collision because he did not perceive the risk of collision until he realized that the flatbed was stationary, by which time the collision had become unavoidable. *Id.* at 189, 192.

Similarly, in *First Tennessee Bank, N.A. v. Wilson Freight Lines*, a driver and his daughter were killed when their automobile slammed into the rear of a tractor-trailer parked in the emergency lane of a Georgia interstate. 907 F.2d 1122, 1123 (11th Cir. 1990). The district court granted summary judgment, finding that the decedent driver was the sole proximate cause of the collision despite the truck driver's failure to operate his emergency lights or display reflective triangles, emphasizing that the tractor-trailer was "a large vehicle clearly visible with certain lights operating." *Id.* at 1125. The Eleventh Circuit

reversed, noting that the issue was not simply whether the decedent driver could **see** the tractor-trailer but whether he could **appreciate the danger** that it posed. The appropriate use of properly functioning emergency signals would have enabled approaching motorists "not merely to **view** the stalled truck, but to **appreciate** the abnormality of its position." *Id.* 1125 (emphasis in original).

Those lessons are all the more apt when, as here, the stopped vehicle extends from the emergency lane into the travelled portion of the highway. Unless an approaching driver knows or should know that the stalled vehicle encroaches on his lane of travel, he cannot clearly apprehend the risk of colliding with that vehicle as he proceeds down the lane.[4] And when, as here, the evidence is unclear and conflicting about what the decedent driver saw—and what he understood about what he saw—issues of avoidance and comparative negligence are questions for a jury. *See Brown v. Tucker*, 337 Ga. App. 704, 723 (2016) (holding that evidence did not demand a finding that an approaching driver's failure to avoid collision with a stalled tractor-trailer was the

[4] It is hardly unusual for a tractor trailer to be parked by the side of the interstate, flashers on and triangles out, without partially encroaching on the lane of travel.

sole proximate cause where "the trailer was sticking somewhere between a few inches to two feet into the road," and the operator had not "activated the tractor-trailer's hazard lights or set up cones to warn oncoming traffic").

Similarly, although the evidence in this case indicates that Scott was able to see the asynchronous hazard lights of the Evans trailer from some distance, it does not demand a finding that Scott knew or should have known of the imminent collision in time to avoid it. In concluding otherwise, the trial court erroneously conflated the visibility of the trailer's lights with the obviousness of the danger it posed. As the video footage shows, the Evans trailer itself was all but invisible in the darkness of the early morning, and only a set of inscrutable lights and reflections indicated its presence at all (in the emergency lane, or in the lane of travel).

Based on the video, the trial court found that "the flashing lights [of the Evans trailer] were visible [to Scott] approximately 14 seconds before impact," meaning the moment when a new light appeared within the halo of the taillights directly in front of Scott:

The trial court thus held, as a matter of law, that this light should have apprised Scott of the trailer's presence, the fact that it was "parked," and the fact that it "encroached into his lane of traffic." V10-6431. Those analytical leaps are not supported by the video, and are questions for the jury, regardless.

The trial court's conclusion also ignores the effect of Defendants' negligence on Scott's ability to perceive the abnormal position of their trailer. Pretermitting whether Colbert's improperly placed reflective triangles provided adequate warning to approaching drivers, the dysfunction of his flashing hazard lights negated their efficacy as a signal that the Evans vehicle was stopped. Although the trial court's order did not even **acknowledge** the evidence that Plaintiff submitted on this point, the video footage plainly shows the hazard lights blinking independently and out of sync. According to one of Plaintiff's experts, this asynchrony "would have an impeding, deleterious effect on [an

approaching] driver," who may mistake the lights for "some other directional type signal and not the presence of a tractor-trailer." V9-5628; *see also* V9-5607 ("[E]ven though the hazards are flashing, he's not certain that that's a stationary vehicle.").[5] If a jury agreed that the lights on Defendants' truck resembled a turn signal, it may also conclude that this supposed "warning" was ineffective or even counterproductive. The appearance of "a large vehicle clearly visible with certain lights operating and one preparing to [exit or] re-enter the highway" would do little to "enable approaching motorists to . . . appreciate the abnormality of its position." *Wilson Freight Lines*, 907 F.2d at 1125.

Nor did these lights or Colbert's reflective triangles warn Scott that the Evans trailer protruded into his lane of travel. Without much reasoning, the trial court concluded from the visibility of "flashing lights" and the presence of warning triangles that "Scott should have learned that Colbert's trailer encroached into his lane of traffic." V10-

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[5] A layperson watching the same footage might reach the same conclusion by comparing the appearance of left-hand turn signal on the car preceding Scott, visible from 4:56:09 to 4:56:15, with the initial appearance of the lights on the Evans trailer, visible from 4:56:18 to 4:56:27.

6431. It is entirely unclear how the trial court got there, nor is it apparent from its order precisely **at what point** this protrusion should have become apparent.

As this Court has noted:

> The principle is too well settled to require a citation of authorities to support it, that mere knowledge of the danger of doing a certain act, without a full appreciation of the risk involved, is not sufficient to preclude a plaintiff from recovery, even though there may be added to the knowledge of danger a comprehension of some risk. It is still in most cases a question of fact whether, taking into account all the circumstances, including the knowledge and appreciation as well as every other material condition, the plaintiff is guilty of such negligence as to preclude recovery.

Scott v. Rich's, Inc., 47 Ga. App. 548, 551 (1933). Questions about a plaintiff's negligence and its place in the chain of causation are not subject to summary adjudication "[e]xcept in plain, palpable and undisputed cases where reasonable minds cannot differ as to the conclusions to be reached." *Wade v. Mitchell*, 206 Ga. App. 265, 268 (1992). This case is not even close to such a "plain, palpable and undisputed" case. The applicability of the avoidance doctrine here is a question for a jury.

C. The trial erred in granting summary judgment because there is evidence that the conduct of both Evans and Colbert, which culminated to create the hazard that killed Scott, was wanton.

Even if, as the trial court found, Scott failed to exercise reasonable care to apprehend and avoid the protruding trailer, such negligence would not bar recovery if Appellees' conduct was not just negligent, but willful and wanton. *See Chandler*, 370 Ga. App. at 51 (negligence in failing to avoid consequences of another's negligence bars recovery unless defendant "willfully and wantonly" inflicted injuries); *Reed*, 327 Ga. App. at 137 (same). Such a characterization is warranted where the defendant's conduct exhibits either "an intention to do harm or inflict injury," or, more saliently here, such "reckless[ness] or . . . indifference to the consequences as to be the equivalent in spirit to actual intent." *Weston v. Dun Transp. & Stringer, Inc.*, 304 Ga. App. 84, 89 (2010).

The seeds for this type of devastating collision were planted well before Colbert pulled into the emergency lane on that evening in September 2022.

First, there was the tractor-trailer itself—in suboptimal condition, and never properly inspected according to federal standards. Colbert purchased the vehicle in October 2021—through an online

auction, inoperable and without any prior inspection. V10-5912. The vehicle had to be towed to a repair shop for significant repairs before it could even begin to be operated. V10-5914–17.

After the truck passed a $49.99 inspection at a Love's Truck Stop, V10-5919–21, Colbert contracted to drive it for Evans. V10-5946–56. Although the parties' Equipment and Hauling Agreement required the vehicle to be made available for "a full DOT inspection pursuant to 49 C.F.R § 396.17," V10-5952, **Evans never had the truck inspected**. V10-5962–63. The Love's inspection did not evaluate, among other things, engine performance or fuel system operation. V4-2387–88, 2410–11; V10-5919–21 (Love's inspection report: no mention of engine, and fuel system assessed only for leaks and whether filter cap present and fuel tank securely attached).

The need for a comprehensive inspection was all the more critical—and required under industry standards—in light of the vehicle's age and known state of recent disrepair. V10-6045. If the Defendants had bothered, such an inspection would have revealed that the vehicle's engine was not properly drawing fuel from the second of its

fuel tanks and thus prompted a repair of the problem before the vehicle took to the highways. *Id.*

Second, there was Evans' failure to provide training to Colbert to ensure that he was able to safely operate his vehicle. There is no documentation that Colbert ever even completed Evans' standard driver "orientation," which consisted of a 45-minute over-the-phone session in which "they discuss different points and have access to ask questions." V10-5989, 5994; V4-1368–69, 1375–78. Even more alarming, according to Plaintiff's trucking regulations compliance and safety expert, Colbert—a "high risk" driver given his lack of documented driving experience—lacked the requisite documented training and experience to be qualified to drive under the FMCSRs **at all**. V10-6030–33, 6040–42.

In fact, Evans knew when it hired Colbert that his application had omitted relevant employment history as well as a previous commercial vehicle accident. V10-6033–34; *compare* V10-6014–15 (Colbert application, disclosing only a single 2018 accident in a non-commercial vehicle), *with* V10-6019 (PSP report listing 2020 accident while Colbert driving for Dart Transit Company). Despite these red flags, Evans

welcomed Colbert to its team and let him loose on the highway without so much as even a telephonic training session.

Third, Evans had no protocol for a vehicle's breakdown on the interstate—and thus offered no training to its dispatchers or drivers on how to handle such situations. As a licensed motor carrier, Evans was required to have such a policy and to train its personnel in that regard. V4-2202–04; *see also* V10-6044–45. As admitted by its corporate representative, Evans offered no such training. V4-1375–78; *see also* V10-6044–45 ("Evans had no effective systems in place for vehicle inspection and condition or with respect to vehicle break down.").

The seeds thus planted, Colbert embarked on his September 14, 2022 trip. Just as Evans had failed in its most basic of safety-oriented responsibilities in the lead-up to September 14, Colbert's conduct on that day exhibited a willful blindness to safety-related concerns.

First, although required by the FMCSRs to conduct a pre-trip vehicle inspection to ensure its safe operating condition, *see* 49 C.F.R. § 396.13, Colbert either failed to do so at all or failed to do so effectively; had he done so, he would have discovered that fuel was being drawn from only one of the fuel tanks. V10-6045.

Second, during the trip, Colbert either ignored or failed to appreciate indications from the truck's onboard electronic control module (ECM) that the truck was not operating properly—indications that should have been obvious to any driver well before the time and place Colbert claims the vehicle suddenly lost power. V10-5924–25 (mechanical defect expert: "[T]hat truck was not running properly beforehand. And then when the truck died it didn't die all at once, it took a little while.").

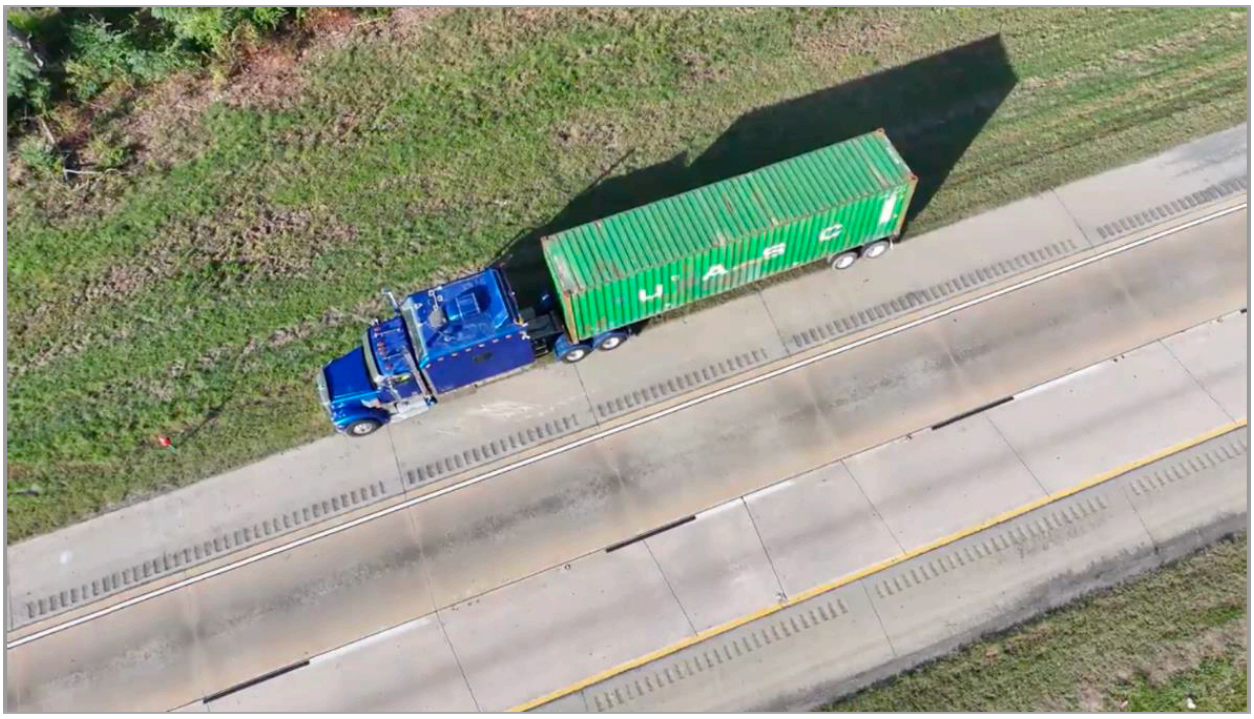
Third, once the vehicle lost engine power, Colbert chose to stop in the emergency lane, with the trailer protruding out into the right travel lane, despite the availability of other, much safer, options. According to Plaintiff's expert accident reconstructionists who conducted a "reenactment" of the event based on information from the vehicle's "black box," there were at least three alternatives that would have been much safer than Colbert's chosen landing spot. V4-1738–39.

According to these experts, even at the time Colbert claims to have "suddenly" lost power (inaccurate testimony, at the very best), Colbert had sufficient time and space to safely pull well off the shoulder of the interstate; in fact, he could have made it to the Allentown exit,

which was just feet from where he stopped, and exited the interstate altogether. V4-1614–15 ("Well, he's ridden it for a minute 45 seconds, so if he rides it a little more and he's right at the Allentown exit, which he's got sight distance because his lights are working, so you can see that that [sic] exit sign . . . . If he hadn't ridden the brakes he could have gotten past that hundred feet and gotten off."); V4-1754.

V10-5839. Short of that, Colbert could have parked on the exit ramp shoulder, where the traffic would have been sparser and slower, V4-

1753–54; another alternative was in the grass next to the shoulder, offering a much wider buffer from oncoming traffic. V4-1658.



V10-5840.

But instead, Colbert elected to park on the shoulder, atop the fog line, the trailer's left rear jutting two feet into the roadway. V4-1937; V4-1620–21. And then, having activated his malfunctioning hazard lights, V9-5628, haphazardly placing his retroreflective triangles, V4-967; V9-5585–86, and apparently leaving the job of attempting to summon a wrecker service to his business partner, V4-1017, 1055–56, Colbert retired to his sleeper berth for the night. V4-932–33.

The amalgamation of Evans' brazen noncompliance with its federally-mandated duties under the FMCSRs and employment of an unqualified driver known to have falsified his accident history, together with Evans' multiple derelictions in inspecting his vehicle, detecting its malfunction in a timely manner, and responding appropriately once it was disabled, clearly amounts to that level of "reckless[ness] or . . . indifference to the consequences" that is "the equivalent in spirit to actual intent." *Weston*, 304 Ga. App. at 89*; see Fowler v. Smith*, 237 Ga. App. 841, 844 (1999) (evidence that tractor-trailer driver violated FMCSRs by stopping in interstate's center lane without placing reflective triangles and failing to turn on lights when it became dark was sufficient to create jury issue as to whether his conduct

"demonstrated that entire want of care which would raise the presumption of conscious indifference to consequences"); *Glenn McClendon Trucking Co. v. Williams*, 183 Ga. App. 508, 510–11 (1987) (evidence was sufficient for jury to find "wanton disregard of the rights of others" where trucking company knew that necessary repair was performed by mechanics that lacked a tool needed to successfully make the repair, and, after repair was, truck was driven by driver who ignored warning signs of malfunction caused by improper repair).

Thus, even accepting as true that Scott failed to exercise reasonable care to both apprehend and avoid the hazard created by Defendants' misconduct, because a jury could find that Defendants acted willfully and wantonly in creating that hazard, Plaintiff's claims are not barred.

VI. CONCLUSION

For the foregoing reasons, the trial court erred in granting Defendants' Motion for Summary Judgment. Reversal is warranted.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted, this 6th day of October, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day filed a PDF copy of the foregoing via filing on the Court's eFast system, making it available to the Court, Clerk, and all counsel or parties registered with that platform. In addition, I have served via email PDF copies of the foregoing to the following counsel of record at the noted e-mail addresses, given the prior existence of an agreement to utilize that method of service:

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