THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

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Case No. 02-CP-40-5305

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LINDA GAIL MARCUM, as Personal Representative of the Estate of JUSTIN MICHAEL PARKS, .....Appellant,

v.

DONALD MAYON BOWDEN, GLORIA J. BOWDEN, and UTILITY SERVICE AGENCY, INC.,.....Respondents.

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# APPELLANT'S FINAL REPLY BRIEF

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## REPLY ARGUMENTS

The defendants attempt to imply that they did not provide liquor to their guests at the party and that the minor (apparently) was sneaking the liquor that he drank: "A liquor cabinet in the kitchen was unlocked, but the liquor was not set out on the counter." (Init. Resp. Br. 4). Defendant Bowden, however, admitted in his deposition that: (1) he was drinking whiskey at the party; and (2) guests were expected to make their own liquor drinks. (R.213-214). Defendant Bowden purchased over $100 worth of liquor for the party the day before the party and was reimbursed by his employer. (R.299a-300).

The defendants assert they never saw the minor drinking tequila. (Init. Resp. Br. 5, 6). There is evidence, however, that at least one of them had a tequila shot with the minor. (R.273). The defendants also assert they know how and when the minor left the party (Init. Resp. Br. 7) but, again, there is contrary evidence. (R.309).

The defendants, like the trial court, expend much effort in painting the minor as an experienced drinker. (E.g., Init. Resp. Br. 10-12). And like the trial court's findings, this only serves to highlight the reason for the General Assembly's public policy decision that persons under 21 are not competent to make decisions regarding alcohol consumption.

The defendants attempt to dismiss the significance of this Court's decision in *Whitlaw* as being only a third-party action. The minor plaintiff, there, however was not suing for injuries caused by someone to whom the defendant had provided alcohol. Rather, the minor plaintiff's estate sued the defendant for the death of the minor plaintiff, which resulted from an accident in which the minor plaintiff was driving, after becoming intoxicated on beer that the defendant had sold to another minor while the minor plaintiff was with him.

The defendants attack the minor's public policy argument with the analogy that an unlicensed driver is not incompetent to make decisions about whether or not he should drive despite the existence of a statute making it illegal. (Init. Resp. Br. 13). They miss the point. If an adult provided a car to a person that was incapable of being licensed, i.e., a person under the age of sixteen, then they would be liable for his resulting injuries. That is the appropriate analogy here, because the defendants provided alcohol to a minor that the General Assembly has decided was incapable of drinking legally.

The defendants contend this Court should adopt the Georgia rule on actions by minors provided alcohol by others. The position of the Georgia courts is simply irrelevant here and relies largely on the courts' interpretation of "underage child" as used by the Georgia legislature. The South Carolina General Assembly, however, has made it clear that the term "minor" in South Carolina includes persons under 21 with respect to alcohol.

Finally, like the trial court, the defendants assert throughout their brief that this Court should apply the standards developed in "adult" cases to this case. The General Assembly, however, has decided as a matter of public policy that persons under 21 are not adults with respect to alcohol. This public policy decision is within the General Assembly's province under the South Carolina Constitution and is controlling on the question presented here.

## CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the Brief of Appellant, the appealed order should be reversed and the case remanded for trial.

Respectfully Submitted,

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Columbia, SC
February 17, 2005

**CERTIFICATE OF COUNSEL**

The undersigned certified that this Final Reply Brief of Appellant complies with Rule 211(b) SCACR.

Robert L. Widener

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