

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Carmen T. Mullen, Circuit Court Judge

Civil Action No. 2008-CP-23-00529
Appellate Case No. 2012-213115

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SC Court of Appeals

Derrick Dupont Appellant

v.

Jasper County Sheriff's Office Respondent

INITIAL BRIEF OF RESPONDENT

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Statement of Issues on Appeal

- I. Did the trial court commit reversible error by charging the jury with comparative negligence when the jury found that the Sheriff's Office's deputy was not grossly negligent and did not reach the question of Dupont's comparative negligence?
- II. Did the trial court commit reversible error in allowing evidence of a subsequent car accident to be presented to the jury when Dupont alleged that he suffered a neck injury in this action and as a result of the accident, and the jury found that the Sheriff's Office's deputy was not grossly negligent?
- III. Did the trial court commit reversible error in allowing cross examination about Dupont's presence at roll call the morning of the incident when he opened the door to the testimony during direct examination?

Statement of the Case

On August 22, 2008, Appellant Derrick Dupont filed this action in the Jasper County Court of Common Pleas against Jasper County, Jasper County Sheriff's Office, and Deputy Ernest Walker, asserting causes of action for negligence, civil assault, civil battery, intentional infliction of emotional distress, and negligent use of excessive force. (Complaint.) The Complaint alleged generally that Deputy Walker injured Dupont's neck while arresting him on February 7, 2007. (Complaint.) The Defendants answered, denying liability and asserting affirmative defenses. (Answer.)

Jasper County and Deputy Walker moved to be dismissed, and the trial court granted the motion. (Motion to Dismiss; Order Granting Motion to Dismiss.) After the parties conducted discovery, the case was tried from August 27–30, 2012. (Trial Tr. p. 1.) On August 30, 2012, the jury returned a verdict for the only remaining defendant, Respondent Jasper County Sheriff's Office. (Trial Tr. p. 454, line 11–p. 455, line 3; Verdict Form.)

After the verdict, Dupont made a motion for a judgment notwithstanding the verdict, which was denied. (Trial Tr. p. 457, lines 6–22.) Neither party filed post-trial motions, and Dupont served his notice of appeal on September 26, 2012. (Notice of Appeal.)

Statement of the Facts

On February 7, 2007, Dupont attended roll call in Beaufort and then returned to his home on Chippawillow Road in Jasper County. (Trial Tr. p. 135, lines 7–12; p. 137, lines 4–10.) When he returned home that afternoon, his daughters told him that Robert Mack and Willie Newton said they wanted to have sex with them. (Trial Tr. p. 137, lines 12–16.) Dupont went outside and told Mack that if they continued to bother Dupont’s daughters, he would “box [Mack] in the mouth.” (Trial Tr. p. 137, line 23–p. 138, line 10.) Dupont’s wife then pulled up and forced him into their van. (Trial Tr. p. 138, lines 12–21.) They proceeded to drive to Bluffton to run errands. (Trial Tr. p. 140, line 18–p. 141, line 5.) They were gone for about 45 minutes. (Trial Tr. p. 141, lines 6–8.)

At some point after this initial confrontation, the Sheriff’s Office received a dispatch to report to Chippawillow Road for a fight in progress with weapons. (Trial Tr. p. 329, line 24–p. 330, line 5.) Deputy Walker arrived at the scene and spoke with Mack and Newton. (Trial Tr. p. 330, lines 7–8.) Mack told Deputy Walker that Dupont tried to run over Mack and his mini-bike with the van, but that he jumped off to keep from getting hit. (Trial Tr. p. 330, lines 8–12.) Mack and Newton said that Dupont was driving the van. (Trial Tr. p. 331, lines 13–16.) Additionally, Newton told

Deputy Walker that Dupont chased him with a butcher knife. (Trial Tr. p. 330, lines 12–13.) Several other deputies and a state trooper then arrived on scene. (Trial Tr. p. 330, lines 13–19.)

While they were still talking with Mack and Newton, Dupont and his wife turned onto Chippawillow Road. (Trial Tr. p. 332, lines 8–12.) Deputy Walker stood in the middle of the road and made hand gestures to try to stop the van. (Trial Tr. p. 332, lines 12–15.) Dupont's wife slowed down, but Dupont told her to keep going, so she sped off and parked at their home. (Trial Tr. p. 332, lines 15–19.)

Deputy Walker, another deputy, and the state trooper went to the house, and Dupont met them at the road "cussing and using profanity." (Trial Tr. p. 332, lines 19–23.) He would not cooperate and kept yelling, "Take me to jail. I know that y'all are going to do that anyway." (Trial Tr. p. 333, lines 6–13.)

After the other officers looked at the front of the van, Deputy Walker placed Dupont under arrest for failure to obey a police officer, and Deputy Walker told Dupont that there would probably be some other charges, too. (Trial Tr. p. 333, lines 15–20.) Deputy Walker then put handcuffs on Dupont and put him in the back seat of the cruiser on the driver's side. (Trial Tr. p. 333, lines 20–25.)

After putting Dupont in the cruiser, Deputy Walker talked to Mack and Newton some more and told them what they needed to do if they wanted to press charges. (Trial Tr. p. 334, lines 5–12.) While he was talking to them, Dupont's cousin, James Rivers, approached Deputy Walker. (Trial Tr. p. 104, line 19–p. 105, line 1; p. 334, lines 13–14.) While Rivers and Deputy Walker were talking, Dupont began kicking the car door and yelling, which Dupont acknowledged doing. (Trial Tr. p. 190, lines 4–17; p. 334, lines 14–18.)

Deputy Walker then opened the car door to put on Dupont's seat belt so he could be taken to jail. (Trial Tr. p. 334, lines 20–23.) Deputy Walker reached with his left hand to try to put the seat belt on, and while he was doing so, Dupont was cussing and yelling, and he spit in Deputy Walker's face. (Trial Tr. p. 334, line 23–p. 335, line 1.) Deputy Walker told Dupont not to do that again, but did not touch him at that point. (Trial Tr. p. 335, lines 1–10.) Once Deputy Walker got Dupont's seatbelt on, he spit on Deputy Walker again. (Trial Tr. p. 335, line 12.) At that point, he applied pressure points to the base of Dupont's jaw, as Deputy Walker had learned at the Criminal Justice Academy, and Dupont began moving and jerking around. (Trial Tr. p. 335, lines 12–17; p. 335, line 23–p. 336, line 17.) This tussle lasted for a couple of seconds. (Trial Tr. p. 337, lines 4–5.) Deputy

Walker then got out of the car, closed the door, and took Dupont to jail. (Trial Tr. p. 337, lines 4–14.)

After being released in March 2007, Dupont went to Beaufort Memorial Hospital, where he complained of back and neck pain. (Trial Tr. p. 151, line 16–p. 152, line 6.) From there, he was referred to Dr. Strohmeyer, where Dupont also complained of back and neck pain. (Trial Tr. p. 152, lines 7–20.)

About a month after seeing Dr. Strohmeyer, Dupont was a passenger in a car accident. (Strohmeyer Dep. 22:1–2, May 22, 2012; Trial Tr. p. 166, lines 15–19; p. 195, lines 3–7.) In that accident, another car pulled out in front of his wife’s car and she t-boned the other car. (Trial Tr. p. 166, lines 20–23.) Dupont said that they “hit the car pretty good.” (Trial Tr. p. 167, line 2.) He then went to the emergency room, where he complained of headaches, neck pain, shoulder pain, and back pain. (Trial Tr. p. 166, line 24–p. 167, line 21; p. 194, line 24–p. 196, line 4.) While there, he underwent a CT scan on his neck after reporting neck pain from the accident. (Trial Tr. p. 197, lines 6–8, 17–25.)

Two days after the accident, Dupont had another visit with Dr. Strohmeyer, who then ordered Dupont to physical therapy. (Trial Tr. p. 198, lines 14–17; p. 199, lines 6–10.) Dr. Strohmeyer also referred Dupont to Dr.

Chutkan in Augusta for neck surgery. (Trial Tr. p. 154, lines 8–19.) Dupont complained to Dr. Chutkan about muscle spasms in his neck and back, which was the same thing that Dupont complained about after the car accident, though he failed to tell Dr. Chutkan about the accident. (Trial Tr. p. 208, lines 13–21.) Dupont eventually had surgery on his neck about three years after the incident with Deputy Walker and the car accident. (Trial Tr. p. 208, lines 3–12.)

The Sheriff's Office's expert, Dr. Davis, testified that Dupont was born with congenital spinal stenosis, which means a narrow spinal canal. (Davis Dep. 25:18–25, July 31, 2012.) He also developed age-related degenerative conditions in his neck, which consists of disc bulging and bone spurs. (Davis Dep. 26:2–6.) He also developed some pressure on his spinal cord in his neck, resulting in myelomalacia, which means softening of the spinal cord. (Davis Dep. 26:9–13.) He has a chronic condition called cervical spondylotic myelopathy, which accounted for him having discomfort or pain and some mild neurological symptoms. (Davis Dep. 26:13–17.)

Dr. Davis further testified that neither the incident with Deputy Walker nor the car accident caused these conditions or made these conditions worse. (Davis Dep. 26:19–27:4.) An x-ray taken on March 7,

2007 revealed no signs of trauma, nor were there any abnormalities on the soft tissue indicating trauma. (Davis Dep. 36:25–37:6.) An MRI taken on March 21, 2007 also revealed no signs of trauma, and instead only showed the consequences of the spinal stenosis and degenerative changes. (Davis Dep. 37:6–13.)

Dr. Chutkan testified that the incident with Deputy Walker caused Dupont's injuries. (Chutkan Dep. 34:10–22, Nov. 3, 2010.) However, Dr. Chutkan acknowledged that Dupont's spinal stenosis was a congenital condition and that this condition, combined with degenerative changes, caused compression of the spinal canal. (Chutkan Dep. 16:4–17:10.) Dr. Strohmeyer did not testify that the incident with Deputy Walker caused Dupont's injuries, though Dr. Strohmeyer did testify that the car accident did not appear to have caused any new damage. (Strohmeyer Dep. 24:20–25:1.) He also acknowledged that Dupont's spinal stenosis was a congenital condition and that this condition was squeezing his spinal cord. (Strohmeyer Dep. 16:21–17:17.)

Standard of Review

In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury's findings.

Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 479, 623 S.E.2d 373, 375 (2005).

“Errors, including erroneous jury instructions, are subject to harmless error analysis.” *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). “Error is harmless where it could not reasonably have affected the trial’s outcome. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” *State v. Page*, 378 S.C. 476, 484, 663 S.E.2d 357, 360 (Ct. App. 2008).

An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court committed an abuse of discretion. An abuse of discretion occurs when the trial court’s ruling is based on an error of law or is not supported by the evidence. An erroneous jury instruction will not result in reversal unless it causes prejudice to the appealing party.

Berberich v. Jack, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011).

The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court’s ruling will not be disturbed on

appeal. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence.

Vaught, 366 S.C. at 480, 623 S.E.2d at 375.

Argument

I. Dupont cannot show that charging the jury with comparative negligence was a clear abuse of discretion and that it prejudiced him.

A. Dupont cannot show prejudice from the charge because the jury found that Deputy Walker was not grossly negligent.

The jury's defense verdict should be affirmed because Dupont cannot show any prejudice from the allegedly improper jury instruction. "An erroneous jury instruction . . . is not grounds for reversal unless the appellant can show prejudice from the erroneous instruction." *Cole v. Raut*, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008); *see also Stephens v. CSX Transp., Inc.*, 400 S.C. 503, 520, 735 S.E.2d 505, 514 (Ct. App. 2012) (holding that where the jury found that the defendants did not breach their duty of care, there was no need to consider any rulings on the jury charge that did not relate to the

defendants' breach of duty of care).

Dupont spent much of his brief arguing that the trial court erred in charging the jury with comparative negligence. (Appellant Br. 5–11.) Though this charging decision was hotly contested at trial, (Trial Tr. p. 377, line 5–p. 379, line 9; p. 381, line 12–p. 382, line 16; p. 387, line 24–p. 389, line 25; p. 394, line 20–p. 403, line 11), in the end, it did not make any difference because the jury did not get that far. The jury found that Deputy Walker did not assault or batter Dupont and that Deputy Walker was not grossly negligent. (Trial Tr. p. 454, line 11–p. 455, line 3; Verdict Form.) They did not reach the comparative negligence question. (Verdict Form.) The jury would have reached the comparative negligence question only if they first determined that Deputy Walker was grossly negligent, but because they did not, there was no negligence for the jury to compare. Accordingly, Dupont cannot show any prejudice from the contested charge and there is therefore no reversible error. *See Cole*, 378 S.C. at 405, 663 S.E.2d at 33; *Stephens*, 400 S.C. at 520, 735 S.E.2d at 514.

B. The trial court properly charged comparative negligence because it presented a fact question for the jury.

The jury's verdict should also be affirmed because the trial court's

decision to charge comparative negligence was proper. “Because [comparative negligence] is relative and dependent on the facts of a particular case, comparing the negligence of two parties is ordinarily a question of fact for the jury.” *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002).

[U]nder our comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage. By this method, each party’s relative fault in causing the plaintiff’s injury will be given due consideration. A trial court should instruct the jury on the definitions of these various terms, in addition to ordinary negligence, when so requested by a party, even if punitive damages are not at issue.

Berberich, 392 S.C. at 293–94, 709 S.E.2d at 615.

Dupont moved for a directed verdict in his favor on the entire case, but he did not move for a directed verdict on the Sheriff’s Office’s affirmative defense of comparative negligence.¹ (Trial Tr. p. 385, line 9–p.

¹ At trial, there was also some discussion about this case being analogous to a medical malpractice case, in which, according to Dupont and the trial court, a patient cannot be comparatively negligent. (Appellant Br. 7; Trial Tr. p. 399, line 24–p. 400, line 12.) However, neither Dupont nor the trial court referred to any authority to support that proposition, and the undersigned counsel’s research has also not uncovered any case law that would support that proposition. *Cf. Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997) (medical malpractice case holding that, based on the

386, line 4.) Based on the facts discussed above, there was evidence upon which a jury could have found that Dupont contributed to his injuries, and the trial court therefore properly charged the jury with comparative negligence.

II. The verdict should be affirmed based on the two-issue rule because there was evidence from which the jury could have found that Deputy Walker was not grossly negligent.

The verdict should also be affirmed based on the two-issue rule.

Under the two-issue rule, when a jury returns a general verdict in a case involving two or more issues or defenses, and the verdict is supported as to at least one issue or defense that has been presented to the jury free from error, the verdict will not be reversed. The application of the two-issue rule is separate and distinct from a prejudicial error inquiry, and operates to uphold a jury verdict that is sustained by the facts of the case. The rule is consistent with the established notion that the appellate courts in this State exercise every reasonable presumption in favor of the validity of a general verdict.

Cole, 378 S.C. at 406–07, 663 S.E.2d at 34.

timing of contributory negligence being abolished, the trial court should have only charged contributory negligence, rather than both contributory and comparative negligence); *Weaver v. Lentz*, 348 S.C. 672, 683–85, 561 S.E.2d 360, 366–67 (Ct. App. 2002) (medical malpractice case discussing a jury’s finding that the doctor and patient were each 50% negligent after a comparative negligence charge).

In *Cole*, a medical malpractice case, “the jury rendered a general defense verdict after hearing a properly submitted negligence claim and an erroneous charge on assumption of the risk.” *Id.* at 407, 663 S.E.2d at 34. The court found that there was evidence at trial from which a jury could have determined that the doctor was not negligent. *Id.* Thus, because the negligence claim was properly submitted to the jury, the court affirmed the jury’s verdict. *Id.*

Here, there was ample evidence at trial upon which a jury could have found that Deputy Walker was not grossly negligent. There was testimony, including from Dupont himself, that he was yelling and cussing when confronted by Deputy Walker, that Dupont was yelling and kicking the door after he was handcuffed and placed in the cruiser, that he spit on Deputy Walker twice while he was trying to put Dupont’s seat belt on, and that he flailed around when Deputy Walker applied pressure points to the base of Dupont’s jaw to prevent him from spitting. (Trial Tr. p. 190, lines 4–17; p. 332, lines 19–23; p. 333, lines 6–25; p. 334, line 5–p. 335, line 17; p. 335, line 23–p. 336, line 17.) This testimony provided evidence from which the jury could have found that Deputy Walker did not “fail[] to exercise slight care.” *Berberich*, 392 S.C. at 287 n.1, 709 S.E.2d at 612. Thus, because the gross negligence claim was properly submitted to the jury, the jury’s verdict

should be affirmed based on the two-issue rule.

III. Dupont cannot show that admitting evidence regarding his subsequent car accident was a clear abuse of discretion and that it prejudiced him.

A. Dupont cannot show prejudice from the admission of evidence regarding his subsequent car accident because that evidence only went to his damages.

Dupont also argues that the trial court erred in allowing the Sheriff's Office to present evidence regarding the car accident that he was in a month after the incident with Deputy Walker. Dupont cannot show any prejudice resulting from the introduction of evidence regarding the accident. *Vaught*, 366 S.C. at 480, 623 S.E.2d at 375. The effect of the car accident on his injuries only went to his damages. They did not impact the decision about whether Deputy Walker battered Dupont or whether Deputy Walker's actions were grossly negligent. Because the jury returned a verdict for the Sheriff's Office on both counts, they did not reach the issue of Dupont's damages. (Trial Tr. p. 454, line 11–p. 455, line 3; Verdict Form.) Thus, because testimony regarding the subsequent car accident was irrelevant to the jury's liability determination, it cannot be said that "there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or

excluded evidence,” and the trial court’s ruling should therefore be affirmed.

Vaught, 366 S.C. at 480, 623 S.E.2d at 375.

B. The impact of Dupont’s subsequent car accident presented a question of fact for the jury because he complained of similar injuries and the incidents occurred closely together.

Even if Dupont could show that there was a reasonable probability that the jury’s verdict on liability was influenced by evidence regarding the car accident, there is no reversible error because the effect of this accident on his neck injury presented a question of fact that was properly submitted to the jury.

Dupont complained about and was treated for pain in the same area of his body from both the incident with Deputy Walker and the car accident. A month after being released from jail, Dupont went to the hospital complaining of back and neck pain. (Trial Tr. p. 151, line 16–p. 152, line 6.) He then went to Dr. Strohmeyer and again complained of back and neck pain. (Trial Tr. p. 152, lines 7–20.) About a month later, Dupont was in the t-bone car accident, in which he “hit the car pretty good,” and when he went to the emergency room after the accident, his complaints included headaches, neck pain, shoulder pain, and back pain. (Strohmeyer Dep. 22:1–2; Trial Tr. p. 166, line 15–p. 167, line 21; p. 194, line 24–p. 195, line

7.) In the emergency room that day, he also underwent a CT scan on his neck. (Trial Tr. p. 197, lines 6–8, 17–25.) Two days later, Dr. Strohmeyer ordered Dupont to physical therapy and referred him to Dr. Chutkan for neck surgery. (Trial Tr. p. 154, lines 8–19; p. 198, lines 14–17; p. 199, lines 6–10.) Dupont complained to Dr. Chutkan about muscle spasms in his neck and back, which is also what he complained about after the car accident. (Trial Tr. p. 208, lines 13–21.) About three years after the incident with Deputy Walker and the car accident, Dupont had surgery on his neck. (Trial Tr. p. 208, lines 3–12.)

Given that these incidents happened so close together and involved injuries to the same part of his body, the trial court properly permitted the Sheriff's Office to question Dupont about the accident and his subsequent treatment. This is particularly so because he hired an attorney and received a settlement for the car accident, and as part of that settlement, he paid Dr. Strohmeyer's bill, which he also claimed as part of his damages in this case. (Trial Tr. p. 199, line 14–p. 201, line 6.) Because it cannot be said that the trial court's decision to allow this testimony was "a clear abuse of discretion amounting to an error of law," the trial court's ruling may not be disturbed. *Vaught*, 366 S.C. at 480, 623 S.E.2d at 375.

IV. Permitting the Sheriff's Office to cross examine Dupont regarding his appearance at roll call does not constitute a clear abuse of discretion.

Dupont also complains that the Sheriff's Office was permitted to cross examine him regarding his appearance at Beaufort County General Sessions roll call on the morning of the incident. Because he opened the door on this subject, the Sheriff's Office was entitled to cross examine him on it.

It is well-settled that “[w]hen a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.” *State v. Foster*, 354 S.C. 614, 623, 582 S.E.2d 426, 431 (2003). A defendant may be cross examined regarding any matter that he brought up during direct examination. *State v. Taylor*, 333 S.C. 159, 174, 508 S.E.2d 870, 878 (1998). “The cross-examination of matters which were addressed in direct-examination is not objectionable, even if the answers affect a witness’ credibility and character.” *Id.* at 174–75, 508 S.E.2d 878. “Whether a person opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial judge.” *Page*, 378 S.C. at 484, 663 S.E.2d at 360.

During Dupont’s direct examination by his own counsel, he testified,

unprompted, that he attended roll call that morning. (Trial Tr. p. 137, lines 4-8.) On cross examination, the Sheriff's Office's counsel questioned him about this testimony. (Trial Tr. p. 175, line 21-p. 176, line 16.) The following is the full extent of his cross examination testimony on this subject:

Q: Okay. On the date of the accident, you went to roll call; is that what you had said you had done that morning?

A: I went to Beaufort, yes.

Q: For roll call?

A: Yes.

Q: Roll call is where criminal defendants have to go to?

MS. ZEIDAN: Objection, Your Honor. Relevancy.

THE COURT: Overruled.

Q: What's roll call?

A: It's where you're in front of a judge, roll call.

Q: Okay. Why were you at roll call?

A: Why was I at roll call?

Q: Yeah.

A: I had a charge against me.

Q: Okay. So you were being charged with a crime?

A: Attempt to distribute.

Q: Distribute?

A: Crack cocaine.

Q: Okay. And so you'd had some incidents with the police before?

A: Once or twice.

(Trial Tr. p. 175, line 21–p. 176, line 16.)

Dupont opened the door to this testimony when he testified on direct examination that he had been at roll call. Because this was a matter that he brought up, the Sheriff's Office was entitled to cross examine him on it, even though it may have affected his credibility and character. *Taylor*, 333 S.C. at 174–75, 508 S.E.2d at 878. This is so even though the testimony may not have been admissible if the Sheriff's Office had offered it initially. *See Foster*, 354 S.C. at 623, 582 S.E.2d at 431. Furthermore, Dupont continued to open the door wider on cross examination when he answered the question of "So you were being charged with a crime?" with "Attempt to distribute," rather than simply saying "Yes," and then he further offered that it was crack cocaine that he was charged with distributing. (Trial Tr. p. 176, lines 10–13.) For these reasons, permitting this testimony was not "a clear abuse of discretion amounting to an error of law." *Vaught*, 366 S.C. at 480, 623 S.E.2d at 375.

Additionally, at trial, Dupont only objected based on relevancy, (Trial Tr. p. 176, line 2), which is governed by Rule 402, SCRE, but in his brief, he raises the argument for the first time that the testimony should have been

excluded because the probative value was substantially outweighed by the danger of unfair prejudice, (Appellant Br. 15), which is governed by Rule 403, SCRE. “For an admissibility error to be preserved, the objection must include a specific ground ‘if the specific ground was not apparent from the context.’” *State v. Byers*, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011) (citing Rule 103(a)(1), SCRE). Because Dupont did not raise a Rule 403 argument below, he may not raise it on appeal. *E.g. State v. Stone*, 376 S.C. 32, 35–36, 655 S.E.2d 487, 488–89 (2007); *Durham v. Vinson*, 360 S.C. 639, 653–54, 602 S.E.2d 760, 767 (2004).


Conclusion

For the reasons stated, this Court should affirm the jury’s verdict. The Sheriff’s Office also respectfully requests that this Court affirm for any ground appearing in the Record on Appeal pursuant to Rule 220(c), SCACR.

[SIGNATURE PAGE FOLLOWS]

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May 10, 2013
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Carmen T. Mullen, Circuit Court Judge

Civil Action No. 2008-CP-23-00529
Appellate Case No. 2012-213115

RECEIVED

MAY 13 2013

SC Court of Appeals

Derrick Dupont Appellant

v.

Jasper County Sheriff's Office Respondent

DESIGNATION OF MATTER

The Respondent proposes that the following be included in the Record
on Appeal:


1. Complaint
2. Answer
3. Motion to Dismiss
4. Order Granting Motion to Dismiss
5. Notice of Appeal
6. Trial Transcript pp. 1, 104-05, 135, 137-38, 140-41, 151-52, 154, 166-67, 175-76, 190, 194-201, 208, 329-37, 377-79, 381-82, 385-89, 394-403, 454-55, 457

7. Verdict Form
8. Dr. Chutkan Deposition pp. 16-17, 34
9. Dr. Davis Deposition pp. 25-27, 36-37
10. Dr. Strohmeyer Deposition pp. 16-17, 22, 24-25

I certify that this designation contains no matter which is irrelevant to this appeal.

GRIFFITH, SADLER & SHARP, P.A.

By: _____


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Attorneys for the Respondent

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CERTIFICATE OF SERVICE

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Attorneys for the Respondent

I am a legal assistant at Griffith, Sadler & Sharp, P.A., and on May 10, 2013, I placed a copy of the *Initial Brief of Respondent and Designation of Matter* in the US Mail, with first-class postage prepaid, and addressed as follows:

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Chautae Elmore
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