

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000534
Civil Action No. 2017-CP-10-5824

John Mayers

Appellant

v.

Konan Henthorn

Respondent

SUPPLEMENTAL RECORD ON APPEAL

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5824

JOHN MAYERS,

Plaintiff,

v.

KONAN HENTHORN,

Defendant.

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR JNOV AND NEW
TRIAL ABSOLUTE**

TO: THIS HONORABLE COURT AND ALL COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE, the Plaintiff, John Mayers, by and through his undersigned counsel, respectfully moves before this Honorable Court pursuant to South Carolina Rules of Civil Procedure 50 & 59 at such time, date and place as counsel may be heard, on the tenth day after service hereof, seeking an Order granting Plaintiff’s Motion for Judgment Notwithstanding the Verdict, or in the alternative, ordering a New Trial. This motion is made on the following grounds:

1. “Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict.” Rule 50(b), SCRPC
2. In deciding a motion for judgment notwithstanding the verdict, or JNOV motion, the Court is required to view the evidence and inferences that reasonably can be

- drawn therefrom in the light most favorable to the non-moving party. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002).
3. Conversely, the appellate courts will reverse the lower court's ruling when there is no evidence to support the ruling or when the ruling is controlled by an error of law. *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).
 4. Under the "thirteenth juror" doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the fact. *See, Gastineau v. Murphy*, 323 S.C. 168, 181, 473 S.E.2d 819, 827 (Ct. App. 1996); *S.C. Highway Dept. v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975).
 5. The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984).
 6. Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983). *See also, Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct.App.1995) (under "thirteenth juror doctrine," trial court may grant new trial if judge believes verdict is unsupported by evidence and, similarly, new trial may be granted if verdict is inconsistent and reflects jury's confusion).
 7. The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate so as to shock the conscience of the court and clearly indicates the figure

reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *See, Cock-n-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *McCourt by and Through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995); *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993); *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993).

8. Plaintiff filed an action against Defendant for injuries sustained in an automobile collision on May 17, 2016 in Charleston County, South Carolina.
9. Plaintiff alleged, *inter alia*, that Defendant rear-ended his bicycle on Ashley River Road and, as a result, Plaintiff was gravely injured.
10. Trial was held in this matter on February 19 and 20, 2020.
11. During the course of trial, Defendant admitted to rear-ending the Plaintiff.
12. During the course of trial, Defendant never challenged the following elements of negligence: duty, causation and damages.
13. During the course of trial, over Plaintiff's objection, Defendant was allowed to cross examine the Plaintiff with improper statements contained in his medical records.
14. During the course of trial, over Plaintiff's objection, Defendant was allowed to enter into evidence two (2) photographs of unopened beer cans near the scene of the collision, and cross examine Plaintiff regarding the same.
15. At the close of Defendant's case, Plaintiff moved for a directed verdict on the elements of duty, causation and damages.