

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
In The Circuit Court

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

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Appellate Case No.: 2011-202049

Jonathan Coleman and Frances Coleman.....Appellants.

v.

James Edward Singleton.....Respondent.

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**INITIAL BRIEF OF APPELLANT**

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SEP 12 2013

**SC Court of Appeals**

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## ISSUES ON APPEAL

- I. DID THE COURT ERR IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE PHOTOGRAPH OF THE PROPERTY DAMAGE BECAUSE DEFENDANTS DID NOT HAVE EXPERT TESTIMONY ABOUT BIOMECHANICS AND THE INFERENCES AND ARGUMENTS DEFENDANT MADE REGARDING PROPERTY DAMAGE VERSUS PERSONAL INJURY HAD NO PROPER FOUNDATION
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  - b. DID THE COURT ERR IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE PHOTOGRAPH OF THE PROPERTY DAMAGE BECAUSE THE PHOTOGRAPH DID NOT ACCURATELY DEPICT THE DAMAGE TO THE VEHICLE
  
- II. DID THE COURT ERR IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF PRIOR ACCIDENTS AND PRIOR MEDICAL TREATMENT RELATING THERETO WHEN SUCH WAS OVER A DECADE BEFORE THE ACCIDENT AT ISSUE AND THERE WAS NO CONTINUING COURSE OF TREATMENT OR ONGOING RELATED COMPLAINTS?
  - a. DID THE COURT ERR IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE UNRELATED PRIOR MOTOR VEHICLE ACCIDENTS BECAUSE THEY WERE NOT RELEVANT AND/OR WERE MORE PREJUDICIAL THAN PROBATIVE AND SHOULD HAVE BEEN EXCLUDED UNDER SCRE 403
  - b. DID THE COURT ERR IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE UNRELATED MEDICAL RECORDS BECAUSE THEY WERE NOT RELEVANT AND/OR WERE MORE PREJUDICIAL THAN PROBATIVE AND SHOULD HAVE BEEN EXCLUDED UNDER SCRE 403

## STATEMENT OF THE CASE

This matter involved an automobile accident which occurred in August 2007 in Anderson County. The parties were in the parking lot of a local Credit Union. (Tr. pp. 50-54, 234) Respondent, James Edward Singleton, was driving a long bed, Dodge Ram diesel truck with a trailer hitch mounted on the back of the truck. (Tr. pp. 234-235)

Plaintiff, Jonathan Coleman, was sitting in his legally parked vehicle looking over some notes. Singleton was backing out of his parking space when he back into Coleman's vehicle. Singleton's trailer hitch "impaled" Coleman's bumper. (Tr. p. 206). Singleton stopped "suddenly" and then pulled forward approximately six inches, suddenly removing the previously impaled hitch from Coleman's bumper. (Tr. pp. 235-236). Coleman was looking down when the collision occurred. The collision was loud and surprising to Coleman, who believes he may have grabbed the steering wheel after what he describes as a "jerking" and "jolting" of the vehicle that occurred as a result of the accident. (Tr. pp. 50-54).

Singleton admitted negligence in causing the accident and acknowledged he was 100% responsible for the accident. (Tr. pp. 211, 242, 244). Singleton also admitted that he should be responsible for all related medical bills. (Tr. p. 245)

Coleman suffered stiffness and headaches at the scene and the responding South Carolina Highway Patrol Trooper called an ambulance for Coleman, who was thereafter transported to the local emergency room. (*Id.*) Coleman presented with a headache, neck pain and stiffness to the EMS (Tr. p. 57; Ex. 1) and to the Emergency Room (Tr. pp. 59-60; Ex. 2). Coleman incurred medical bills at the ER (Tr. p. 78) and for the EMS (Tr. p. 95) and over the course of his treatment amassed medical bills of \$18,723.44. (Tr. p. 101; Ex. 11). Prior to the accident at

issue, Coleman suffered no swelling, numbing or tingling in the affected areas. (Tr. pp. 73, 111-112, 114) and throughout the trial, Singleton produced NO evidence that Coleman had ever suffered swelling, numbing or tingling in the affected areas prior to the accident. Coleman testified that the physical problems he experienced were directly and solely related to this accident. (Tr. p. 79). Likewise, Plaintiff's treating physician related the medical problems Coleman experienced to this accident (Baxley depo). Coleman's wife also related the physical problems her husband suffered as related to the accident and how those affected his relationship with their two small children and his ability to assist her around the house. (Tr. pp. 156-165)

On the first day of this multi-day trial, Coleman made a motion *in limine* to exclude prior medical records from two accidents which occurred approximately a decade prior to this accident (Tr. pp. 25-26) in light of no course of continuing treatment as a result of those accidents or ANY evidence that the pain or problems from those accidents persisted after 1998. (Tr. pp. 55-56). Coleman's motion was denied, but the Circuit Judge stated Coleman was "protected for the record." (Tr. p. 26).

Coleman also made a motion *in limine* to exclude photographs of the property damage to his vehicle since 1) liability was admitted, 2) property damage was not at issue and 3) Singleton did not intend to have a biomechanics expert to testify about how this kind of impact would affect Coleman's body movements inside the vehicle. However, the trial Court allowed the picture and allowed Defendant's counsel make argument in opening (Tr. pp. 42-43) as well as closing that Coleman's injuries couldn't have resulted from this kind of damage to the vehicle. (Tr. pp. 287-288, 291-292).

Mr. Singleton refused to cover Mr. Coleman's EMS transport bill of or the Emergency Room visit. As a result, Mr. Coleman sued and Mrs. Coleman sought loss of consortium damages. The jury returned a verdict for Mr. Singleton without awarding any money to Plaintiffs. (Verdict). Plaintiff filed post-trial motions for judgment notwithstanding the verdict, but the same were denied by the trial court (Post Trial Motions and Order). This appeal followed.

### ARGUMENTS

**I. THE COURT ERRED IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE PHOTOGRAPH OF THE PROPERTY DAMAGE BECAUSE DEFENDANTS DID NOT HAVE EXPERT TESTIMONY ABOUT BIOMECHANICS AND THE INFERENCES AND ARGUMENTS DEFENDANT MADE REGARDING PROPERTY DAMAGE VERSUS PERSONAL INJURY HAD NO PROPER FOUNDATION**

The Colemans made a motion *in limine* to exclude photographs of the property damage to Coleman's vehicle since 1) liability was admitted, 2) property damage was not at issue and 3) Singleton did not intend to have a biomechanics expert to testify about how this kind of impact would affect Coleman's body movements inside the vehicle. However, the trial Court allowed the picture to be admitted and allowed Defendant's counsel make argument in opening (Tr. pp. 42-43) as well as closing that Coleman's injuries couldn't have resulted from this kind of damage to the vehicle. (Tr. pp. 287-288, 291-292).

“ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE; *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991). However, not all relevant evidence is admissible. Rule 403, SCRE provides a safeguard that “[a]lthough relevant, evidence may be excluded if its probative value is

substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

In order to reverse the trial court’s admission of evidence this Court must find (1) an abuse of discretion on the part of the trial judge; and (2) likely prejudice. *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004).

Generally, a photo may be relevant if it corroborates testimony of a witness. See *State v. Weik*, 356 S.C. 76, 84, 587 S.E.2d 683, 687 (2002) (finding photos depicting the location and severity of shotgun wounds relevant as illustrative of testimony received as to the same); *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 608 (Ct. App. 2008) (finding photos to be relevant in a prosecution for child abuse because the photos corroborated the testimony of a doctor as to severity of the child’s injuries based on discolorations, bruising, and internal trauma).

However, although relevant to corroborate testimony, as a matter of course, the photos must depict that which was testified to, as well as be demonstrative of a fact of consequence.

Accordingly, the first inquiry is whether the trial court abused its discretion in allowing the admission of the photograph. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); *State v. Funderburk*, 367 S.C. 236, 239, 625 S.E.2d 248, 249-50 (Ct. App. 2006).

- a. WITHOUT A PROPER FOUNDATION, THE COURT ERRED IN FAILING TO GRANT THE PLAINTIFF’S MOTION IN LIMINE ON ADMISSION OF THE PHOTOGRAPH OF THE PROPERTY DAMAGE BECAUSE THE PHOTOGRAPH WAS MORE PREJUDICIAL THAN PROBATIVE AND SHOULD HAVE BEEN EXCLUDED UNDER SCRE**

In this case, the damage to the vehicle and the negligence of Singleton was admitted. (Tr. p. 193). There was no question of “how” the accident occurred or whether the vehicles actually came into contact. (Tr. pp. 235-236). Though Singleton had previously named a biomechanics expert in his discovery, he did not call the expert at trial for unknown reasons. (Tr. p. 21).

Instead, Singleton chose to admit this photo and make improper correlations between property damage and lack of injury, for which there was no appropriate foundation. The Court even expressed its concern that “that’s a correlation that I’m afraid [the jury will] make anyway but I’ll allow you to argue it.” (*Id.*) In finding for Singleton and awarding the Colemans zero damages (including not even awarding costs for the ambulance transport or Emergency room visit) the jury made that exact improper correlation.

An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions. *Carson v. CSX Transportation, Inc.*, 400 S.C. 221, 229 (2012).

Accordingly, the probative value of the picture of the property damage was substantially outweighed by the danger of unfair prejudice and misleading the jury and should have been excluded. Since it was not excluded and admitted and Singleton was permitted to improperly argue its relation to the personal injuries (or lack thereof) of Mr. Coleman without proper factual foundation, this was in error and prejudiced the Colemans. Therefore, the matter should be remanded for a new trial.

**b. WITHOUT A PROPER FOUNDATION, THE COURT ERRED IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE PHOTOGRAPH OF THE PROPERTY DAMAGE BECAUSE THE PHOTOGRAPH DID NOT ACCURATELY DEPICT THE DAMAGE TO THE VEHICLE BY FAILING TO SHOW THE DAMAGE TO THE SHOCK ABSORBER UNDERNEATH THE BUMPER**

Generally, a photo may be relevant if it corroborates testimony of a witness. See *State v. Weik*, 356 S.C. 76, 84, 587 S.E.2d 683, 687 (2002) (finding photos depicting the location and severity of shotgun wounds relevant as illustrative of testimony received as to the same); *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 608 (Ct. App. 2008) (finding photos to be relevant in a prosecution for child abuse because the photos corroborated the testimony of a doctor as to severity of the child's injuries based on discolorations, bruising, and internal trauma).

However, although relevant to corroborate testimony, as a matter of course, the photos must depict that which was testified to, as well as be demonstrative of a fact of consequence, and the photograph must accurately depict the conditions then and there present.

In this case, both Mr. and Mrs. Coleman testified that the picture did NOT depict all of the damage to the vehicle and, instead, testified that there was additional damage that the picture did not disclose because the trailer hitch impaled the bumper so far and forcefully that it damaged an internal shock absorber on the bumper. (Tr. pp. 121, 158).

As such, because the photograph did not accurately represent the extent of damage to the vehicle, even if it should not have been excluded because of the improper conclusions Singleton was allowed to infer therefrom, it should have been excluded because there was not a proper foundation laid for it in that it did not accurately depict ALL of the damage to the vehicle.

**II. THE COURT ERRED IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF PRIOR ACCIDENTS AND PRIOR MEDICAL TREATMENT RELATING THERETO WHEN SUCH WAS OVER A DECADE BEFORE THE ACCIDENT AT ISSUE AND THERE WAS NO EVIDENCE OF A CONTINUING COURSE OF TREATMENT OR ONGOING RELATED COMPLAINTS**

A “defendant is permitted to place before the jury any evidence which tends to prove the true condition of [a party’s] state of health just before the [c]ollision.” *Young v. Martin*, 254 S.C. 50, 57 (1970). In the case at bar, the accident occurred in August 2007. The trial occurred April 18-20, 2011. The prior accidents Singleton was allowed to question the Colemans about occurred in 1996 and 1998. (Tr. pp. 105, 107, 110-112). Singleton failed to put forth one shred of evidence that any medical problems from those two accidents continued after 1998. However Coleman’s *motion in limine* was denied and Singleton was permitted to question the Colemans about these unrelated accidents and unrelated medical problems and make improper inferences to the Jury. Such line of questioning was highly prejudicial to the Colemans. First, Singleton failed to adduce any nexus between those prior accidents and Mr. Coleman’s current complaints of burning, swelling, numbing and tingling. (Tr. pp. 111-112, 114).

**a. THE COURT ERRED IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE UNRELATED PRIOR MOTOR VEHICLE ACCIDENTS BECAUSE THEY WERE MORE PREJUDICIAL THAN PROBATIVE AND SHOULD HAVE BEEN EXCLUDED UNDER SCRE 403**

“ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. SCRE 401. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991); *State v. Schmidt*, 288 S.C. 301, 342 S.E.2d 401 (1986).

In the case at bar, Colemans' motion *in limine* regarding unrelated motor vehicle accidents from nearly a decade before were not relevant. Singleton showed NO nexus between the accidents in 1996 and 1998 and the accident in 2007. Defendant could not even show any medical evidence showing a course of continuing treatment or in fact ANY treatment by Coleman for injuries suffered relating to those two accidents after 1998.

Furthermore, even if these two distant accidents were in any way relevant, the probative value of the questioning regarding them was substantially outweighed by the danger of unfair prejudice and misleading the jury. Accordingly, the Colemans' Motion *in limine* should have been granted. Since it was not excluded and admitted and Singleton was permitted to improperly argue its relation to the current personal injuries of Mr. Coleman, this was in error and prejudiced the Colemans. Therefore, the matter should be remanded for a new trial.

**b. THE COURT ERRED IN FAILING TO GRANT THE PLAINTIFF'S MOTION IN LIMINE ON ADMISSION OF THE UNRELATED MEDICAL RECORDS BECAUSE THEY WERE MORE PREJUDICIAL THAN PROBATIVE AND SHOULD HAVE BEEN EXCLUDED UNDER SCRE 403**

“ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. SCRE 401. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991); *State v. Schmidt*, 288 S.C. 301, 342 S.E.2d 401 (1986).

In the case at bar, Colemans' motion *in limine* regarding treatment back in 1996 and 1998 from two unrelated motor vehicle accidents was not relevant. Singleton showed NO nexus between the medical treatment from motor vehicle accidents in 1996 and 1998 and the treatment, pain and suffering Coleman suffered since the accident in 2007. Defendant failed to show any medical evidence showing a course of continuing treatment or in fact ANY treatment by

Coleman for injuries suffered relating to those two accidents after 1998. (Tr. pp. 105-114)  
Specifically, Mr. Coleman did not suffer any continuing headaches, neckaches, numbing,  
tingling, burning or stinging. (Tr. pp. 112)

Furthermore, even if this treatment from eight years before the accident *sub judice* were  
in any way relevant, the probative value of the questioning regarding it was substantially  
outweighed by the danger of unfair prejudice and misleading the jury. Accordingly, the  
Colemans' Motion *in limine* should have been granted. Since it was not excluded and admitted  
and Singleton was permitted to improperly argue its relation to the current personal injuries of  
Mr. Coleman, this was in error and prejudiced the Colemans. Therefore, the matter should be  
remanded for a new trial.

#### CONCLUSION

The Colemans' Motion in Limine should have been granted by the trial court. The  
cumulative effect of the errors in admitting the photograph of Coleman's bumper, the admission  
of evidence regarding Coleman's two previous traffic accidents from 1996 and 1998 respectively  
combined with eight year old medical records when there was no course of continuing treatment  
and the current injuries and complaints were different prejudiced Coleman. Accordingly, a new  
trial should be granted.



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August 30, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr. Circuit Court Judge

Appellate Case No.: 2011-202049

Jonathan Coleman and Frances Coleman ..... Appellants,

v.

James Edward Singleton. .... Respondent.

**APPELLANT'S DESIGNATION OF MATTERS**

Appellant hereby designate the following matters to be included in the Record on Appeal:

- 1) Tr. pp. 21, 25-26, 42-43, 50-56, 57, 59-60, 73, 78-79, 95, 101, 105-114, 121, 156-165, 193, 206, 211, 234-236, 242, 244-245, 287-288, 291-292
- 2) Exhibits 1-2, 11
- 3) Verdict
- 4) Post-trial motions and Order

**IN ACCORDANCE WITH THE SOUTH CAROLINA RULES OF APPELLATE PROCEDURE, COUNSEL FOR APPELLANT AFFIRMS THAT THESE DESIGNATIONS ONLY CONTAIN NECESSARY MATERIALS.**

  
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August 30, 2013

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
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Appellate Case No.: 2011-202049

Jonathan Coleman and Frances Coleman.....Appellants.

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James Edward Singleton.....Respondent.

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**PROOF OF SERVICE**

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I certify that I have served the Initial Brief of Appellant on Respondent James Edward Singleton, by depositing a copy of it in an envelope via the United States Mail, Certified Mail, Return Receipt Requested, with proper postage affixed thereto, on August 30, 2013 addressed to his attorneys of record:

Phillip E. Reeves, Esq., and Nicholas A. Farr, Esq.  
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and have filed the same with the Court of Appeals by placing one of it in an envelope via the United States Mail, Certified Mail, Return Receipt Requested, with proper postage affixed thereto, on August 30, 2013 addressed to:

✓ The Honorable Jenny Abbott Kitchings  
P.O. Box 11629  
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**SC Court of Appeals**



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