THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2025-000647
Case No. 2022CP3202339

Nancy Arellano, individually
and as parent and natural guardian
of Minor Z.A.,

Respondent,

v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant.

RESPONDENT INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court properly denied Appellant's motion for judgment notwithstanding the verdict where the evidence supported the jury's finding that Appellant failed to exercise at least slight care in supervising and protecting Z.A.

II. Whether the trial court properly refused to charge the jury on S.C. Code Ann. § 15-78-60(20) where the provision was inapplicable to the facts and circumstances of this case.

III. Whether the trial court properly denied Appellant's motions for new trial absolute and new trial nisi remittitur where the jury's verdict was supported by the evidence and not the product of passion or prejudice.

STATEMENT OF THE CASE

This case arises from a sexual assault that occurred at Cayce Elementary School on May 25, 2022, when six-year-old Z.A. was attacked by another kindergarten student during class (R I, p. 101-107). The incident involved the male student pulling down Z.A.'s pants and underwear, touching her private areas, forcibly restraining her, and kissing her with his tongue in her mouth. Following a three-day jury trial, the jury returned a verdict of $245,000 in favor of Z.A (R I, p. 1). The trial court denied all of Appellant's post-trial motions (R I, p. 2-8).

STATEMENT OF FACTS

On May 25, 2022, Z.A. was a kindergarten student at Cayce Elementary School when she was sexually assaulted by another student during class. The assault occurred while the class was watching a movie (R I, p. 101). A male classmate pulled Z.A.'s pants and underwear down, put his hand inside her underwear and touched her private areas. When Z.A. attempted to stop the assault, the male classmate pulled her by her legs, stated "don't go," and held her forcibly. The male classmate then kissed Z.A. on the mouth and stuck his tongue in her mouth.

The incident caused Z.A. significant trauma. She testified at trial and was visibly emotional, crying repeatedly during her testimony. Expert testimony established that Z.A. suffers from an adjustment disorder with symptoms of depression and anxiety as a result of the incident (R I, p 426, lines 11-19). The expert testified that Z.A. is permanently affected by the incident and continues to have panic attacks.

Following the incident, school officials conducted an investigation but initially downplayed the assault and blamed Z.A., causing her further trauma. The school's response to the incident became a significant part of Z.A.'s ongoing psychological injury.

STANDARD OF REVIEW

I. Motion For Judgment Notwithstanding The Verdict

A trial court should grant a motion for judgment notwithstanding the verdict only when the evidence is insufficient to support the verdict *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (Ct. App. 2005). In ruling on motions for directed verdict and judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (Ct. App. 2005). The motions

should be denied where either the evidence yields more than one inference or its inference is in doubt *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (Ct. App. 2005).

When reviewing a motion for directed verdict or judgment notwithstanding the verdict, an appellate court must employ the same standard as the trial court *Byrd v. McLeod Physician Assocs. II*, 427 S.C. 407, 831 S.E.2d 764 (Ct. App. 2019). A motion for judgment notwithstanding the verdict may be granted only if no reasonable jury could have reached the challenged verdict *Harbin v. Williams*, 429 S.C. 1, 837 S.E.2d 896 (2019).

II. Jury Instructions

To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 489 (2020), *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (Ct. App. 2011). However, if the trial court refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 489 (2020). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (Ct. App. 2011).

III. New Trial Motions

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate *Hassell v. City of Columbia*, 430 S.C. 620, 846 S.E.2d 365 (2020). The jury's determination of damages, however, is entitled to substantial deference *Hassell v. City of Columbia*, 430 S.C. 620, 846 S.E.2d 365 (2020). The trial court must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive 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 *Hassell v. City of Columbia*, 430 S.C. 620,

846 S.E.2d 365 (2020).

The grant or denial of a new trial motion rests within the trial court's discretion, and its decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by error of law *Rivera v. Newton*, 401 S.C. 402, 737 S.E.2d 551 (Ct. App. 2012).

ARGUMENT

A. The Trial Court Properly Denied Appellant's Motion For Judgment Notwithstanding The Verdict

1. The Evidence Supported the Jury's Finding of Gross Negligence

Under the South Carolina Tort Claims Act (SCTCA), a governmental entity is not liable for loss resulting from responsibility or duty to supervise students except when the responsibility or duty is exercised in a grossly negligent manner *Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 451 S.E.2d 885 (1994). Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do *Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 451 S.E.2d 885 (1994).

The evidence presented at trial supported the jury's finding that Appellant was grossly negligent in its supervision of Z.A. While Appellant argues that it provided adequate supervision, the jury was entitled to find that the supervision was inadequate given that a serious sexual assault occurred in the classroom during regular instruction time.

Ms. Ray testified that at the time of the incident, the students were working at their desks on an end of the year project. Ms. Long was sitting in the back of the room at her desk for students to come to for assistance. The students were not supposed to leave their desks save to go to Ms. Long for assistance with the project. Ms. Ray testified that she had just completed a circuit of the

room before sitting down at her desk. The chief defense from Ms. Ray was that she only took her eyes off the classroom for 1-2 seconds before the witness approached her (R I, p. 209, line 4).

For two reasons, the jury had ample evidence not to believe Ms. Ray's testimony that she only took her eyes off the class for 1-2 seconds: physical impossibility and Ms. Ray's poor recollection of events. First, the jury heard testimony that in order for the incident to occur the following events would have to take place within 1-2 seconds:

- Plaintiff would have to turn and call Assailant to her desk;
- Assailant would have to stand up and walk across the classroom to Plaintiff's desk;
- After an unknown amount of time at Plaintiff's desk, Assailant would then have to pull open Plaintiff's pants and place his hand between her legs;
- Eye witness would have to witness the event;
- Assailant would have to stand back up and return to his desk;
- Eye witness would have to stand up and walk to Ms. Ray's desk.

The jury clearly decided that the event had to have taken place over a longer period of time than 1-2 seconds and that therefore Ms. Ray had to have been distracted from her duty to supervise the children for much longer than she testified. There was ample evidence on the record that Ms. Ray had to have been distracted for a long enough period of time for the assault to have occurred and said distraction was long enough to reasonably be considered grossly negligent.

Second, Plaintiff introduced numerous evidence showing that Ms. Ray's memory of the events was problematic. Ms. Ray's trial testimony differed from her deposition testimony on whether the lights were dimmed in the classroom (R I, p. 271, lines 11-21). Ms. Ray's trial testimony of the initial eyewitness statement to her differed meaningfully from her deposition testimony. Ms. Ray further testified at trial that there was no significant difference between what eyewitness told her and the written statement of eyewitness, when of course her trial testimony of the eyewitness statement was very different from the actual written statement (R I, p. 273, lines 20-24). Ms. Ray testified at trial that Plaintiff and the Assailant were the same height, when Ms.

Long later corrected that in fact Assailant was a full foot taller than Plaintiff (R I, p. 487, lines 21-23). In short, Ms. Ray's memory of the event was not credible enough for a jury to believe that she had only taken her eyes off the children for 1-2 seconds.

Additionally, and lastly, the schools response to the assault once notified is evidence of gross negligence in how the Defendant and its employees responded to the incident. Ms. Ray and Ms. Prizer repeatedly testified to the jury that they never blamed Plaintiff for the assault. The jury knew this defense to be a lie because of the written form recounting their complaint to DSS. The DSS report form in evidence clearly stated "She also accused the same boy of pulling her pants away from her waist & looking down them, but she had actually pulled the pants down and asked him to look." This statement was proved to be a lie to the jury by the statements in evidence of the eyewitness and Assailant. Thus, the school's response constituted additional gross negligence in the District's duty to protect Z.A. from further harm.

The burden of establishing the limitation upon liability under the SCTCA is upon the governmental entity asserting it as an affirmative defense *Doe by Roe v. Orangeburg County Sch. Dist. No. 2*, 329 S.C. 221, 495 S.E.2d 230 (1998). Gross negligence ordinarily is a mixed question of law and fact *Doe by Roe v. Orangeburg County Sch. Dist. No. 2*, 329 S.C. 221, 495 S.E.2d 230 (1998). Here, the jury was properly instructed on the gross negligence standard and had sufficient evidence to conclude that Appellant failed to meet even the slight care standard required under the SCTCA.

B. <u>The Trial Court Properly Refused To Charge The Jury On S.C. Code Ann. § 15-78-60(20)</u>

1. **<u>The Requested Instruction Was Inapplicable Because Section 15-78-60(20)) does not apply where Gross Negligence has been established.</u>**

The trial court properly refused Appellant's requested instruction on S.C. Code Ann. § 15-78-60(20), which exempts governmental entities from liability for acts or omissions of persons other than employees, including criminal actions of third persons. The trial court correctly reasoned that a six-year-old child cannot legally commit a crime, making the criminal acts provision inapplicable.

More importantly, this case was not just about liability for the acts of Student K, but rather about Appellant's own gross negligence in failing to adequately supervise students and in responding inappropriately to the incident. The SCTCA makes governmental entities liable for their torts in the same manner and to the same extent as private individuals under like circumstances, subject to the limitations and exemptions contained therein S.C. Code Ann. § 15-78-40. The exemption in § 15-78-60(20) does not shield governmental entities from liability for their own gross negligence in supervision. *Etheredge v. Richland School Dist. 1, 330* S.C. 447, 463, 499 S.E.2d 238, 246 (Ct. App. 1998) (when an action is brought alleging gross negligence by a governmental entity pursuant to an exception contained in Section 15-78-60, all other applicable exceptions must be read in light of the exception containing the gross negligence standard), cert. granted on other grounds, April 8, 1999. *See also* Jackson v. South Carolina Dep't of Corrections, 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990).

1. **The Requested Instruction Was Inapplicable Because Section 15-78-60(20)) does not apply where the cause of action is for failure to protect or supervise.**

The Supreme Court has held that school districts may be liable for negligent supervision of students only if that duty was executed in a grossly negligent manner *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007). This liability is based on the district's own conduct, not on the acts of third parties. Therefore, the requested instruction would have been misleading

and inappropriate under the circumstances of this case.

In *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990), Martin was a patron at a rock concert was struck by a glass bottle thrown from the balcony of the city auditorium. The governmental entity sought dismissal under S.C. Code Ann. § 15-78-60(20) (1986). In affirming the trial court's refusal to dismiss, our Supreme Court stated:

> Section 15-78-60(20) provides that a governmental entity is not liable for a loss resulting from the act or omission of a person other than an employee including, but not limited to, the criminal acts of third persons. Appellant asserts the trial judge erred in failing to dismiss the action under this section because there was no evidence appellant's employees caused respondent's injuries and because such injuries were caused by the criminal acts of a third person.
> Here, respondent's complaint alleged appellant and its employees were negligent in adequately securing and maintaining the premises during the concert and this negligence created a reasonably foreseeable risk of such third party conduct. Respondent's complaint did not allege appellant was liable because of the criminal act of a third party. Consequently, Section 15-78-60(20) would not operate to exonerate appellant of liability for its own conduct.
> Appellant cannot successfully defend that respondent's injuries were caused by the wrongful criminal act of a third party, where the very basis upon which appellant is claimed to be negligent is that appellant created a reasonably foreseeable risk of such third-party conduct.
> *Greenville Memorial Auditorium v. Martin*, 301 S.C. at 246-47, 391 S.E.2d at 548-49 (1990).

In *Woodell v. Marion School Dist*. One, 307 S.C. 297, 414 S.E.2d 794 (Ct. App. 1992), Shirley Allen, as guardian ad litem for Karen Christine Woodell, a student who was assaulted at school by another student, sued the School District pursuant to the Tort Claims Act alleging the School District was grossly negligent in supervising both Woodell and her assailant. The trial court granted the School District's Rule 12(b)(6), SCRCP, motion to dismiss and held § 15-78-60(20) immunized the School District from liability for a loss caused by a third party's criminal action. The Court of Appeals reversed and remanded explaining:

> Here, the complaint does not seek to pin liability on the school district because of the alleged criminal action of the other student; rather, as we noted above, it focuses on the school district's alleged gross negligence in supervising Woodell and the

> student who allegedly attacked Woodell. Cf. Greenville Memorial Auditorium v. Martin, 301 S.C. 242, 391 S.E.2d 546 (1990)(the trial judge committed no error in not dismissing an action under section 15-78-60(20) where a patron at a rock concert was struck by a bottle thrown from a balcony of a municipal auditorium because the complaint did not allege the municipality was liable for the criminal act of a third party but alleged the municipality and its employees were negligent in securing and maintaining the premises during the concert). A governmental entity may be liable to a student for a loss when the entity's responsibility to supervise, protect, or control a student "is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25) (Supp. 1990). Whether in fact Woodell's loss resulted from the school district's alleged grossly negligent supervision of Woodell and the other student or from the alleged criminal action of the other student is not a question that the trial court should have decided on a motion to dismiss.
> Woodell, 307 S.C. at 298, 414 S.E.2d at 794-95.

In the present case, Plaintiff's cause of action against the Defendant was clearly laid out as a failure to protect and supervise. That was the substances of the Complaint as well as the charges to the jury. At no point did Plaintiff seek compensation for the direct acts of the Assailant, but merely for the Defendant's failure to protect Plaintiff from the Assailant or otherwise supervise the classroom and students.

C. The Trial Court Properly Denied Appellant's Motions For New Trial

1. The Verdict Was Supported by the Evidence

The trial court properly found that the $245,000 verdict was supported by the evidence and did not shock the conscience. The evidence established that Z.A. suffered significant psychological trauma as a result of both the assault and the school's inadequate response.

Treating therapist testimony established that Z.A. has been diagnosed with an adjustment disorder with symptoms of depression and anxiety, is permanently affected by the incident, continues to have panic attacks, and may develop post-traumatic stress disorder. The treating therapist testified that there is no way to know exactly how many treatment sessions might be required for Z.A. to recover.

In determining damages in a personal injury action, courts have held that pain and suffering, loss of enjoyment of life, and mental anguish are all separately compensable elements of damages *Parent v. Cooper*, 2023 S.C. C.P. LEXIS 645. South Carolina law has long allowed a negligence plaintiff to recover for emotional harm in cases where the plaintiff has also suffered physical harm *K.S. v. Richland Sch. Dist. Two*, 445 S.C. 111, 532 S.E.2d 263 (2020). The physical harm may consist of the physical manifestations caused by emotional distress *K.S. v. Richland Sch. Dist. Two*, 445 S.C. 111, 532 S.E.2d 263 (2020).

2. <u>The Verdict Was Not the Product of Passion or Prejudice</u>

Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge determines the jury's verdict is "contrary to the fair preponderance of the evidence." *R.C. McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (2003). The trial court's discretion to grant or deny a new trial as the thirteenth juror is very broad. "As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree . . . ." *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938). An order denying a new trial on this theory will hardly ever be reversed. As Court of Appeals stated, "'to reverse the denial of a new trial motion under [the thirteenth juror doctrine,] we must, in essence, conclude that the moving party was entitled to a directed verdict at trial.'" *Curtis v. Blake*, Op. No. 4792 (S.C. Ct. App. filed Feb. 16, 2011) (Shearouse Adv. Sh. No. 6 at 90) (quoting *Parker v. Evening Post Publ'g Co.*, 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 2001)).

A trial judge also has the power to grant a new trial absolute. However, this power may be exercised only when the verdict "is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d

758, 761 (2000).[3] A jury's determination of damages is entitled to "substantial deference." *Todd v. Joyner*, 385 S.C. 509, 517, 685 S.E.2d 613, 618 (Ct. App. 2008), aff'd, 385 S.C. 421, 685 S.E.2d 595 (2009). The decision to grant or deny a "new trial motion rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Brinkley v. S.C. Dep't of Corrs.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

If the trial court determines that the verdict is "merely excessive," the court has the power to reduce the verdict by granting a new trial nisi remittitur. "A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). Even as to a new trial nisi remittitur, the trial judge's discretion is broad. "The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." Id.; see also *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995) ("If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial nisi additur.").

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Nestler v. Fields*, 426 S.C. 34, 40, 824 S.E.2d 461, 464 (Ct. App. 2019).

"A new trial absolute should be granted only if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive." *Knoke v. S.C. Dep't of Parks, Recreation & Tourism*, 324 S.C. 136, 141, 478 S.E.2d 256, 258 (1996). In such a case,

"it becomes the duty of the trial judge and this [c]ourt to set aside the verdict absolutely." *Allstate* Ins. Co. v. Durham, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993).

"If the trial court determines that the verdict is 'merely excessive,' the court has the power to reduce the verdict by granting a new trial nisi remittitur." *Burke v. AnMed Health*, 393 S.C. 48, 56, 710 S.E.2d 84, 88 (Ct. App. 2011). The trial court must provide "compelling reasons" to warrant invading the jury's province by granting a new trial nisi. *See Curtis v. Blake*, 392 S.C. 494, 501, 709 S.E.2d 79, 82 (Ct. App. 2011) (finding the appellant's arguments did not constitute compelling reasons to justify the grant of a new trial nisi remittitur). "Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge." *Riley v. Ford Motor Co*., 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015) (*quoting Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984)). The trial court's "decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Brinkley v. S.C. Dep't of Corr*., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

When considering the trial court's ruling on motions for a new trial or new trial nisi remittitur, the court "employ[s] a highly deferential standard of review." *Burke*, 393 S.C. at 57, 710 S.E.2d at 89; *see also Rush v. Blanchard*, 310 S.C. 375, 381, 426 S.E.2d 802, 806 (1993) (acknowledging the trial court "who heard the evidence and is more familiar with the evidentiary atmosphere at trial possesses a better-informed view of the damages than this [c]ourt" and therefore the court gives "great deference" to the trial court, "**especially in the area of intangible elements of damages**"). Likewise, "[t]he jury's determination of damages is entitled to substantial deference." *Knoke*, 324 S.C. at 141, 478 S.E.2d at 258. "A verdict which may be supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the

injury and damage sustained, is not excessive." *Kunst v. Loree*, 424 S.C. 24, 46-47, 817 S.E.2d 295, 306 (Ct. App. 2018) (quoting *Young v. Warr*, 252 S.C. 179, 187, 165 S.E.2d 797, 801 (1969)).[1]

Here, the very broad latitude deferred to the trier of fact as espoused by the cases above is in support of leaving the verdict intact. The Jury Charges given by the trial court in the present action very clearly laid out that the calculation of damages for "such things as mental anguish, emotional distress, and loss of enjoyment" are "difficult to measure" and have "no yard stick." Moreover, counsel for the Plaintiff in closing encouraged a jury verdict of between $100,000 and $1,000,000. If the jury was in fact overborn with prejudice, malice or passion, then the verdict certainly would not have been in the bottom quarter of the range sought by Plaintiff. The fact that the jury gave such a low number in the requested range, is indicative of the careful passionless judgment that they rendered and therefore, the verdict should stand without a new trial or remittitur.

3. The Thirteenth Juror Doctrine Does Not Apply

Under the thirteenth juror doctrine, a trial court may grant a new trial when it finds the evidence does not justify the verdict *Rivera v. Newton*, 401 S.C. 402, 737 S.E.2d 551 (Ct. App. 2012). However, the thirteenth juror doctrine is not used when the trial judge has found the verdict was inadequate or unduly liberal and is not a vehicle to grant a new trial nisi additur Bailey v. Peacock, 318 S.C. 13. The thirteenth juror doctrine is not the proper vehicle for ordering a new trial on a singular issue such as damages *Gurwood v. GCA Servs. Grp., Inc.*, 2025 S.C. App.

[1] *See also* Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981) ("[Although] neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required.") *and* Kunst, 424 S.C. at 46-47, 817 S.E.2d at 306 ("A verdict which may be supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained, is not excessive." (quoting Young, 252 S.C. at 187, 165 S.E.2d at 801)).

Unpub. LEXIS 319 (Ct. App. 2025).

Here, the trial court properly declined to exercise its power as the thirteenth juror, finding that there was evidence in the record sufficient to support the award reached. The court found no indication that the jury improperly exceeded the proper exercise of its powers.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the judgment of the trial court. The evidence supported the jury's finding of gross negligence, the trial court properly refused the inapplicable jury instruction, and the verdict was reasonable and supported by the evidence. The trial court acted within its discretion in denying all post-trial motions.

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County, State of South Carolina, Appellant.

CERTIFICATE OF COUNSEL

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

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