THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Judge

Court of Common Pleas Case No. 2021-CP-04-00234
Appellate Case No. 2025-000047

Robert William Goodwin and Marian Charlene Goodwin,

Appellants,

v.

April Desiree Chappell, individually and as agent for Swift Transportation Company of Arizona, LLC, and Swift Transportation Company of Arizona, LLC,

Respondents.

RESPONDENTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1) **Did the Circuit Court abuse its discretion in excluding certain backing-related evidence according to Rules 401, 402, and 403 of the South Carolina Rules of Evidence?**

2) **Did the Circuit Court abuse its discretion in determining that the principles of law from *Matthews v. Porter*, 239 S.C. 620, 124 S.E.2d 321 (1962) did not apply to the evidence developed in this case and, thereby, refusing to charge a "duty to warn" arising from *Matthews*?**

3) **Did the Circuit Court abuse its discretion in using the term "direct cause" in defining "proximate cause" in its jury instructions?**

INTRODUCTION

This case was tried to a jury over the course of six days. Plaintiffs do not like the outcome. Plaintiffs asked the Circuit Court, through the Thirteenth Juror Doctrine, to replace its judgment for that of the jury. The Circuit Court declined to do so. Now, Plaintiffs ask *this* Court to replace its judgment for that of the jury. A survey of recent South Carolina appellate decisions demonstrates our appellate courts are loathe to take such action. *Click Properties, LLC v. Thomas SC Properties, LLC*, 445 S.C. 468, 491, 914 S.E.2d 488, 500 (Ct. App. 2025) ("The jury's verdict must be upheld unless no evidence supports the jury's findings."); *Hamilton v. Regional Medical Center*, 440 S.C. 605, 638, 891 S.E.2d 682, 700 (Ct. App. 2023) (refusing to grant a new trial because the jury verdict did not shock the conscience nor was it the result of an improper motive); *Glenn v. 3M Company*, 440 S.C. 34, 51, 890 S.E.2d 569, 578 (Ct. App. 2023) (declining to grant new trial in keeping with principle that "a jury verdict should be upheld when it is possible to do so and carry into effect the jury's clear intention."); *Encore Technology Group, LLC v. Trask*, 436, S.C. 289, 304, 871 S.E.2d 608, 617 (Ct. App. 2021) (Determining that "this court does not sit to determine whether it agrees with the jury verdict or to decide whether it agrees with the circuit

court's decision to let the jury's verdict stand."). For the reasons explained below, the Court should affirm the jury's verdict.

STATEMENT OF THE CASE

On February 5, 2021, Robert William Goodwin and Marian Charlene Goodwin ("Plaintiffs" or sometimes only Mr. Goodwin) brought this action against Varkey Joseph and the "Swift Defendants" made up of Swift Transportation Company of Arizona, LLC, April Desiree Chappell ("Ms. Chappell"), individually, and as an agent for Swift Transportation Company of Arizona, LLC in the Anderson County Court of Common Pleas. (Swift Defendants and Ms. Chappell are collectively the "Respondents"). (Complaint; R. 18-24). The Plaintiffs alleged negligence, gross negligence, recklessness, vicarious liability, negligent hiring and supervision, and loss of consortium. (*Id*.) Varkey Joseph and the Swift Defendants filed timely Answers. (Answers; R. 27-36).

On December 8, 2023, Varkey Joseph was dismissed from the lawsuit following a settlement with the Plaintiffs. (Order dismissing Defendant Joseph; R. 1-4). The same day, the Circuit Court denied the Swift Defendants Motion for Summary Judgment. (Order denying summary judgment; R. 5).

On October 28, 2024, trial in the Court of Common Pleas of Anderson County began against Respondents. Trial concluded on November 4, 2024. The jury determined that Ms. Chappell was negligent in hitting a stationary guyed wire which protruded from a power pole to the ground, but answered "No" to the jury verdict form question, "Was Defendants' negligence a proximate cause of the Plaintiff's injuries?" (Verdict; R. 11-13). The jury also found for the Swift Defendants on the "claim for negligent hiring or retention" and for Respondents on the Plaintiffs' loss of consortium claim. (*Id*.)

On November 14, 2024, Plaintiffs filed a Motion for a New Trial according to the "thirteenth juror doctrine". (Plaintiffs' Thirteenth Juror Motion; R. 37-44). The Motion was denied by the Circuit Court on December 12, 2024. (Order denying Plaintiffs' Motion based on Thirteenth Juror Doctrine; R. 8-10). On January 8, 2025, the Plaintiffs filed a Notice of Appeal. (Notice of Appeal; R. 152-154).

STANDARD OF REVIEW

The "thirteenth juror doctrine allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict." *Trivelas v. S.C. Dep't of Transp*., 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct. App. 2004). The doctrine arms the trial court with "the veto power to the Nth degree." *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313, 195 S.E. 638, 641 (1938). Appellate courts "must uphold a trial court's thirteenth juror decision unless it is wholly unsupported by the evidence." *Ex Parter Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019) (citing *Worrell*, 186 S.C. at 314, 195 S.E. at 641). To reverse the denial of a new trial motion under the Thirteenth Juror Doctrine, an appellate court must, in essence, conclude that the moving party was entitled to a directed verdict at trial. *Parker v. Evening Post Publ'g Co.*, 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 2001). The Thirteenth Juror Doctrine is the purported basis of the Plaintiffs' post-trial motion as noted below, however, the issues as presented are not preserved as detailed below.

As the issues are cast in the brief, the Court may also need to consider the following other standards. "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice. *State v. Commander,* 396 S.C. 254, 262-63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369

S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006)). "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). "Determining whether prejudice exists 'depends on the circumstances' and 'the materiality and prejudicial character of the error must be determined from its relationship to the entire case.'" *Burke v. Republic Parking System, Inc.*, 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017) (quoting *State v. Taylor*, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998).

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Id.* When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues. *Id.* While it is "error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge," there is no requirement that a trial court "instruct the jury on a principle of law that is irrelevant to the case as proved." *Id.* at 390, 529 S.E.2d at 539 (2000). Even if the trial court erred in failing to give a requested instruction, the requesting party also must show that the error was prejudicial to warrant reversal on appeal." *Id*.

FACTS

This case involves two separate incident scenes. The first was at the scene where Swift's driver hit a guyed wire. No one was injured. The second was where Mr. Goodwin inserted himself into traffic control and was hit by Varkey Joseph .22 miles from where the Swift truck struck the

guyed wire. Mr. Goodwin and Mr. Joseph were responsible for the second scene, which was not proximately caused by the Swift Defendants. The jury agreed.

On December 2, 2020, at 7:17pm, Ms. Chappell made a right turn off of Highway 86 onto Wren Drive while driving her tractor-trailer and working for Swift Transportation Company of Arizona, LLC. (Tr. 578:20-579:8; 609:16-20; 905:7-9. R. 96-97; 119; 132). During the turn, the rear end of her trailer struck a guyed wire which was connected to a power pole. (Tr. 578:20-579:8; R. 96). Lines which were connected to that pole fell across Highway 86 at the intersection of Wren Drive and Highway 86. (598:25-599:8; R. 116-117).

No one was injured in the incident and Mr. Goodwin was not involved in the incident. (582:5-22; R. 100). The Wren Fire Department responded and blocked Highway 86 at the intersection with Wren Drive using a firetruck with operational flashing lights. (582:5-22; R. 100).

Thereafter, Mr. Goodwin left his property which abuts Highway 86 at Wren Drive and asked if he could help the Wren Fire Department direct traffic. (Tr. 395:9-396:18; R. 66-67). Mr. Goodwin was given permission to do so by the Wren Fire Department. (395:9-396:18; R.66-67). Mr. Goodwin moved his pickup truck .22 miles down Highway 86 away from Wren Drive to a different intersection: Major Road and Highway 86. (Tr. 397:15-398:4; 527:17-20; 904:23-905:17. R. 67-69; 85; 131-132). The two intersections are not visible from each other due to distance, a hill, and a curve. Mr. Goodwin then got out of his truck and began directing traffic. (Tr. 400:6-12; 683:22-684:1 R. 71; 123-124).

At 7:38pm, Mr. Goodwin was struck and injured by a Toyota Tacoma being driven by Varkey Joseph at the intersection of Major Road and South Carolina Highway 86 in Anderson County, SC while he was standing in the roadway directing traffic. (739:6-7; 905:10-11; 739:14-

740:21; R. 128-129; 132). Mr. Joseph testified that he never saw Mr. Goodwin standing in the road prior to striking him. (740:19-21; R.129).

These two separate incident scenes can best be shown by Defendants' Court Exhibit 11. (Tr. 904:23-905:17; R. 131-132, 150).

This exhibit shows that there are two separate accident scenes, *Id*., separated by .22 miles and over 20 minutes in time (R. 150).

Prior to driving for Swift Transportation, Ms. Chappell prepared for and passed both a road test and written test needed to obtain a Commercial Driver's License. (569:18-23; R. 87). Thereafter Ms. Chappell participated in 200 additional hours of training with Swift Transportation, she passed an additional road test covering all material aspects of driving, and it was determined by her mentor and trial witness Erin Williams that she was able to be released to drive a tractor-

trailer on solo trips, having shown proficiency prior to being released. (573:2-6; 575:21-24; R. 91; 93).

ARGUMENT

1. Plaintiffs have failed to preserve any issue for appeal.

As stated just above, the only ground for the Plaintiffs' post-trial motion was the Thirteenth Juror Doctrine. The motion was filed on November 14, 2025, within the ten days of the end of trial, per the Circuit Court's order (Tr. 1104:15-20; R. 148). The Plaintiffs then filed their notice of appeal on January 8, 2025, 27 days following the denial of their post-trial motion and 65 days following the end of trial on November 4, 2024. This argument would not have been raised had Plaintiffs also filed their post-trial motion based on Rule 59, for example, but Rule 59 is nowhere cited in the Plaintiffs' post-trial motion.

Under South Carolina law, the "Thirteenth Juror Doctrine" allows, in certain limited circumstances, the judge to step in as a fact-finder, hang the jury, dissolve the outcome of the jury's decision, and order a new trial. The Thirteenth Juror Doctrine, however, is not the vehicle by which errors of law are appealed and has no application to jury charges or questions of evidence exclusion. No cases address the Thirteenth Juror Doctrine in those contexts. Instead, all the cases involving the Thirteenth Juror Doctrine - when the motion is granted - are cases involving the judge's view of the evidence that came in at trial, that the jury considered, and that the judge agreed required a new trial in response. *Norton v. Norfolk Southern Railway Company*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002); *Youmans ex rel. Elmore v. South Carolina Dept. of Transp.*, 380 S.C. 263, 272, 670 S.E.2d 1, 5 (Ct. App. 2008).

Here, the Plaintiffs failed to preserve their objections to the excluded evidence and the jury charges by not 1) filing a post-trial motion raising these issues in a timely fashion under the correct Rule to toll the time to appeal or 2) appealing from the jury verdict within 30 days of the discharge

of the jury. By waiting until the ruling on the Thirteenth Juror Doctrine motion, and because it does not apply to the concepts Plaintiffs attempted to raise, nothing is preserved. The issues raised in the Plaintiff's brief were required to be appealed within 30 days of the discharge of the jury or to have been the subject of a proper post-trial motion which tolled the time to appeal. The appeal should, therefore, be summarily dismissed.

Despite the above contention, and in view of the possibility that this Court disagrees with the Defendants' above-contention, the remaining sections of this brief address the merits of the Plaintiffs' appellate arguments and raise distinct preservation issues.

2. The Circuit Court appropriately excluded irrelevant evidence related to backing of tractor-trailers because this case does not involve the backing of tractor-trailers.

The trial court "is charged with the duty of determining issues of law. As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law." *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 174 (2010).

In discharging its gatekeeper duties, the Circuit Court properly excluded the backing portion of Court Exhibit 6 (Plaintiffs Trial Exhibit 14) (R. 151; 149) because the redacted information is irrelevant to the Plaintiffs' claims. The information that was redacted is irrelevant because this case did not, in any way, involve or touch upon the backing of tractor-trailers. Information related to Ms. Chappell's training in backing of tractor-trailers does not, in any way, foreshadow the event that brought this case before the Circuit Court. No evidence was ever presented in discovery or at the trial of this matter indicating that any "backing" had or should have occurred. Rather, Ms. Chappell consistently admitted she was turning right and proceeding forward onto Wren Drive from SC-86 when she struck the guyed wire with her trailer (Tr. 579:1-8; R. 97)

At trial, the Circuit Court charged the jury on the law related to negligent training and supervision. In considering supervisory claims such as those in this case, the jury's role is to determine whether prior conduct has a "sufficient nexus" to the ultimate harm. *Doe v. ATC, Inc.*, 367 S.C. 199, 207 624 S.E.2d 447, 451 (Ct. App. 2005). "Such cases generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties." *Id.* "From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, *and the nexus or similarity* between the prior acts and the ultimate harm caused." *Id.*

The Circuit Court was right to bar the backing evidence in this case because backing is irrelevant to the harm suffered by Mr. Goodwin. The supervisory claims – which were rejected by the jury – could only be related to Swift's knowledge about Ms. Chappell's ability (or lack thereof) to engage in the negligent conduct: in this case, to make a tight right turn. Documentation related to Ms. Chappell's right turn and tight turn capabilities *was* admitted into evidence and the jury concluded even still, that the Swift Defendants were not the proximate cause of the Plaintiffs injuries. Information related to Ms. Chappell's backing skills — set off by a prompt inquiring into performance related to backing specifically — is flatly irrelevant to the Plaintiffs' claims.

The Circuit Court exercised thoughtful discretion on this issue with respect to Court Exhibit 6 (Plaintiffs Trial Exhibit 14) (R. 151; 149). The court allowed and the jury saw and considered evidence that at the one-hundred-hour mark with her driver mentor, it was determined by the mentor that "[Chappell] needs to grasp the width of a tight turn and setup properly before turning / No hitting curbs. Getting better! Still needs to pay attention to tight turns." (Court Exhibit 6 (Plaintiffs Trial Exhibit 14; R. 151; 149). Redacting text provided by the mentor in response to a separate, later and easily distinguishable prompt ("provide feedback of any additional backing

development needed") is an appropriate decision which is not an abuse of discretion. Further, the admission of relevant evidence related to tight right turns eradicates any argument that Plaintiffs were prejudiced by the exclusion of irrelevant backing evidence.

Even if this Court disagrees that the evidence related to backing is irrelevant, the trial Court was correct to exclude the evidence according to Rule 403 of the Rules of Civil Procedure. Rule 403 permits the exclusion of relevant evidence if its probative value will be outweighed by confusion to the jury. In this matter, the Plaintiffs' supervisory claims are grounded in whether Ms. Chappell's prior conduct gave notice that a similar accident could occur. The case was not related to backing, and the risk of confusing a jury by introducing evidence related to backing (evidence which uses specific trucking-industry terms related to backing) outweighed the probative value of the redacted portion of Court Exhibit 6 (Plaintiffs Trial Exhibit 14) (R. 151; 149).

3. Because the principles of law set forth in *Matthews v. Porter* do not apply to the evidence developed in this case, the Circuit Court properly refused to charge the jury with a "duty to warn" as proposed by Plaintiffs.

"[T]he trial court is not required to instruct the jury on a principle of law that is irrelevant to the case as proved." *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). "The court is only required to charge on the law framed by the issues raised in the pleadings and developed by the evidence in support of those issues." *Greenville Housing Authority of City of Greenville by Carlton v. Massey*, 281 S.C. 618, 622, 316 S.E.2d 722, 724 (1984).

In *Greenville Housing*, the Court of Appeals affirmed the trial court's decision that it was proper for the lower magistrate court to refuse to charge the jury with law from a federal regulation setting forth that a housing agency can only terminate a resident's lease if the resident's actions amount to a material breach or constituted other good cause for termination. 281 S.C. 618, 618, 316 S.E.2d 722, 722 (Ct. App. 1984). This Court determined that the regulation was irrelevant to

the issues raised by the resident at the trial of the matter because the resident did not allege in the trial that the lease violated the regulation. *Id.* at 622, 316 S.E.2d at 724. Therefore, the trial court did not err when it affirmed the refusal of the magistrate judge to instruct the jury on a charge gleaned from the federal regulation. *Id.*

The same outcome is appropriate in this instance. Here, the Plaintiffs argue that a "duty to warn," gleaned from *Matthews v. Porter*, 239 S.C. 620, 124 S.E.2d 321(1962), should have been charged to the jury. The facts of *Matthews v. Porter*, however, involved only one accident scene.

In *Matthews v. Porter*, an automobile accident led to the blockage of a lane of a highway. 239 S.C. 620, 622, 124 S.E.2d 321, 322 (1962). After the collision—*and at the scene of that collision*—both a passerby and a physician stopped to render aid to those involved in the collision. *Id.* Thereafter, an oncoming car struck the passerby who was rendering aid *at the scene of the collision*, leading to injuries. *Id.* The driver that struck the passerby at the scene of the original collision testified that it was the lack of warning about the collision scene which caused him to strike the passerby at the scene of the collision. *Id*. at 623, 124 S.E.2d at 323.

Here, Mr. Goodwin testified at trial that after obtaining permission from the Wren Fire Department at the original powerline scene at Wren Drive and SC-86, he "took his truck to Major Road." (Tr. 398:2-4; R. 69). The intersection of Major Rd and SC-86 is .22 miles away from the intersection of Wren Drive and SC-86 and the intersections are not visible from one another. Tr. 397:15-398:4; 527:17-20; 904:23-905:17. R. 68-69; 85; 131-132). It was at the intersection of Major Road and SC-86, not at the intersection of Wren Drive and SC-86, where Mr. Goodwin was struck and injured. Therefore, the factual scenario which led to a duty to warn in *Matthews v. Porter* is wholly different than the factual scenario set forth in the trial of this matter because in *Matthews* the "good Samaritan" was injured at the same scene of the original collision, not at a

scene down the road and created by the decisions of the injured person and the individual who struck him.

Despite the factual differences between this matter and *Matthews v. Porter,* Plaintiffs asserted at trial that a duty to warn should be charged to the jury. The Circuit Court denied the request, indicating at trial, "I think in this case, we have different occurrences, separate…And where she [Chappell] was, whether or not she [Chappell] alerted anybody at the juncture [Wren Drive and 86] compared to two events or whatever that happened down the road [at Major Road and 86], doesn't have any relevance to that at all." (Tr. 963:13-20; R. 135). The Circuit Court continued: "the duty to warn or notice is back up to where her truck is on the side of the road [near Wren Drive and 86], not two tenths of a mile down." (Tr. 964:10-13; R. 136). In response, the Plaintiffs indicate, "I agree. I agree. I mean, that's our point. She [Chappell] had a duty to do something there [at Wren Drive] before the fire truck got there. (Tr. 964:14; R. 136).

Ultimately, the Circuit Court decided, "Okay, I'm not charging that. And the reason being…even if she had [warned at Wren Drive], it wouldn't have prevented that [Goodwin's accident at Major Road]. So I'm not going to charge that, and I think its confusing to the jury and I'm just not going to." (Tr. 965:7-11; R. 137).

Just as in *Greenville Housing*, the trial court properly declined to provide a jury charge that was irrelevant to the case. *Matthews v. Porter* does not stand for the proposition, nor does it ensconce in law, a "duty to warn" about blocked lanes which are over two tenths of a mile away. Mr. Goodwin, unlike the individual who was injured while at the scene of the accident in *Matthews v. Porter*, was not injured at the corner of Wren Drive and SC-86 at all, much less due to a "failure to warn" by Ms. Chappell. Further, the lanes of travel were *not blocked* by any actions of the Swift Defendants at Major Road and SC-86 where Mr. Goodwin was injured. Unlike in *Matthews v.*

Porter where the oncoming car ran up onto an accident scene the driver could not see, there was no accident scene at the corner of Major Road and SC-86 where Mr. Goodwin was injured.

Additionally, as set forth above, even Plaintiffs agreed that they were asking the Circuit Court to charge a duty to warn because, in the Plaintiffs' view, Ms. Chappell should have taken steps to warn about the Wren Drive scene. But a warning at the Wren Drive scene is inapplicable to this case because no one was injured at Wren Dr. and SC-86.

Finally, the warning espoused in *Matthews v. Porter* is inapposite to the issue of whether Ms. Chappell should have provided warning at the corner of Wren Dr. and SC-86 about the powerlines prior to or after the firetrucks arrived at the corner of Wren Drive and SC-86. No one was injured at the corner of Wren Drive and SC-86. Therefore, whether a duty was breached by Ms. Chappell at the corner of Wren Drive and SC-86 does not relate to the evidence adduced in this case or the facts of *Matthews v. Porter* because no injury ever occurred at Wren Drive (*i.e.*, the scene of the powerline incident).

"The trial court is not required to instruct the jury on a principle of law that is irrelevant to the case as proved." *Cantrell*, 339 S.C. at 390, 529 S.E.2d at 539. As proved, a jury instruction derived from *Matthews v. Porter* regarding warning of blocked lanes at the scene of an accident would be irrelevant to the case and confusing to the jury. Mr. Goodwin was not injured at the scene of an accident but instead was injured .22 miles away from the scene of an accident where no one was injured, making *Matthews v. Porter* wholly irrelevant.

4. Because the Circuit Court's proximate cause jury charge was the current and correct law of South Carolina, and because Plaintiffs failed to preserve the issue for appellate review, reversal is not warranted.

The Plaintiffs next argue that the use of the term "the direct cause" in explaining the meaning of proximate cause confused the jury and is grounds for a new trial. In order for the Plaintiffs to prevail on this argument, the issue must have been properly preserved for appellate

review via a "contemporaneous objection that is ruled upon by the trial court," *State v. Sweet*, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007), and the jury charge must fail to, as a whole, "charge the current and correct law." *Stephens v. CSX Transp. Inc.*, 415 S.C. 197-198, 781 S.E.2d 534, 542 (2015). The issue was not preserved for appeal nor was it an incorrect statement of current South Carolina law.

A. The issue is not preserved for appellate review.

"In order for an issue to be preserved for appellate review, '[t]he issue must have been (1) raised to and ruled upon by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity.'" *State v. Rosenbaum*, 438 S.C. 91, 108, 882 S.E.2d 180, 189 (Ct. App. 2022) (quoting *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). "It is axiomatic that an issue cannot be raised for the first time on appeal[.]" *Wilder Corp v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Id*.

Rule 51 of the South Carolina Rules of Civil Procedure states in relevant part: "no party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict."

At the charge conference, Plaintiffs requested additional verbiage from the Circuit Court on the definition of proximate cause.[1] The Circuit Court accepted the request. (Tr. 962:4-5; R. 134). No objection was raised as it related to the word "direct" in the proximate cause charge. On the final day of trial, just prior to the bringing in of the jury and the trial court's charging of the law, the Circuit Court asked the parties whether anything needed to be addressed outside the

[1] Plaintiffs also requested the "duty to warn" charge, briefed in Section 3 of this brief.

presence of the jury. No concerns were raised by Plaintiffs as to the use of the word "direct" in the definition of proximate cause. (Tr. 1057:14; R. 139).

Thereafter, the Circuit Court charged the jury with the law. In relevant part, the Circuit Court charged:

> Proximate cause, ladies and gentlemen means this: It is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury…Proximate cause, ladies and gentlemen does not mean the only cause. The defendants' act can be a proximate cause of the plaintiff's injuries if it was at least one of the direct, concurring causes of the injury.

(*Id*.)

A few moments later, when explaining the verdict form to the jury, the Circuit Court stated in relevant part: "Question two asks you this: Was Defendants' negligence the proximate cause of plaintiff's injuries." (Tr. 1088:13-15; R. 142). No objection was raised as it related to the term "direct" in the proximate cause jury charge, but Plaintiffs asserted at that time that the Circuit Court should have used the term "a proximate cause" instead of "the proximate cause" when discussing the verdict form. (Tr. 1094:10-16; R. 143). The Circuit Court did not change or re-charge on the issue of proximate cause and the jury was ultimately sent out to deliberate.

At 11:52am, the jury requested that it be able to hear the charge on proximate cause a second time. The Circuit Court proposed the following:

> What I would propose to charge is the last element: the plaintiffs proof by a preponderance or greater weight of the evidence of damages proximate cause by defendant's breach of duty. Then go through the charge of proximate cause, which includes the cause of fact. Legal cause. Doesn't mean the only cause. Then plaintiff's requested charge number four on concurrent cause.

(Tr. 1097).[2]

[2] In preparing this final brief, undersigned noticed that page 1097 of the trial transcript was mistakenly omitted from the Record on Appeal. Undersigned will supplement the Record with this page. Pages 1098-99 were included in the Record.

The Plaintiffs agreed with that proposal and counsel stated, "I don't object." (Tr. 1097).

The Circuit Court then clarified again that it planned to re-read the proximate cause jury charge, to which the Plaintiffs agreed again. (Tr. 1098:7-13; R. 144). Thereafter, the Circuit Court re-read the proximate cause charge to the jury. (Tr. 1098:20-1100:24; R.144-146). The jury was then sent out of the room and at this time, for the first time, Plaintiffs' counsel stated: "I don't like the word 'direct,' but I think that's straight out of case law. And so I just enter the objection for the record, but, otherwise, I'm okay. Thank you." (Tr. 1101:10-13; R. 147). No ruling from the Circuit Court followed counsel's statement.

Thus, in summary: 1) Plaintiffs proposed an addendum to the proximate cause charge, which was accepted by the Circuit Court; 2) Plaintiffs voiced no objection on the day of the jury charges to the use of the term "direct cause" in the proximate cause jury charge; 3) Plaintiffs again agreed with the Circuit Court's plan and verbiage as it relates to the term "direct cause" in the middle of the jury's deliberations; 4) Following the re-reading of a jury charge to which no objection had been raised, Plaintiffs stated an objection to the term "direct cause" but did not obtain a ruling on the issue. Now, at the appellate stage, the Plaintiffs argue that their objection to "the proximate cause" is the same as an objection to the use of the term "the direct cause" and that the use of the latter phrase was confusing to the jury. The Circuit Court plainly did not rule on this newly raised concept.

South Carolina caselaw and Rule 51 of the South Carolina Rules of Civil Procedure is insistent that the order and timing of objections matter greatly in the determination of whether a jury charge objection is properly preserved for appeal. *See Keaton ex rel. Foster v. Greenville Hosp. System*, 334 S.C. 488, 494, 514 S.E.2d 570, 573 (1999); *Dixon v. Ford*, 362 S.C. 614, 625, 608 S.E.2d 279, 885 (Ct. App. 2005).

In *Keaton*, the Supreme Court set forth that a jury charge contested on the record prior to the jury beginning deliberations is preserved even if the jury charge is not objected to a second time following the reading of the charge to the jury. 334 S.C. at 494-495, 514 S.E.2d at 573. In that case, the jury charge was not contested in the pre-charge conference. *Id*. at 491, 514 S.E.2d at 572. After charging the jury, the judge sent the jury out of the courtroom *but instructed them not to deliberate*. Thereafter, it was recognized that a specific charge had not been read to the jury and one of the parties requested that it be read. *Id.* The judge agreed and overruled a first-time objection to the charge raised by the later-appellant. *Id.* The judge then read the charge and sent the jury out again, this time to deliberate. *Id.* at 493, 514 S.E.2d at 572. The Appellant objected prior to the jury beginning deliberations and received a ruling. *Id.* at 494, 514 S.E.2d at 573. The Supreme Court held that the sequence of events displayed issue preservation.

In *Dixon v. Ford*, the Court of Appeals determined that where a jury charge is objected to after the jury was charged, *but prior to the jury beginning its deliberations*, the party had appropriately reserved the issue for appeal. 362 S.C 614, 608 S.E.2d 879 (Ct. App. 2005). This is consistent with Rule 51 of the South Carolina Rules of Civil Procedure.

In this case, the Plaintiffs *agreed* with the Circuit Court's proposal to read the proximate cause jury charge and then add the verbiage requested by the Plaintiffs prior to the charge being read to the jury. No objection to the term "the direct cause" was raised. It was only after the jury had begun deliberating and requested that the instruction be re-read and after the Circuit Court obliged and did re-read the jury charge, that Plaintiffs raised an objection to the wording "direct cause." Because the Plaintiffs did not object to the charge prior to jury deliberations beginning, the issue is not preserved for appeal according to Rule 51, SCRCP, *Keaton,* and *Dixon.* The

Plaintiffs also did not obtain a ruling on the issue they now purport to raise which makes it doubly unpreserved under our appellate jurisprudence.

In their brief, the Plaintiffs by necessity argue they did object to the proximate cause language in the jury charge prior to deliberations. But the Plaintiffs raise a different issue in their post-deliberation objection and the present appeal by focusing on the term "direct cause" rather than the term "the proximate cause" to which they loosely objected prior to deliberation. Arguing now that these are the same issue further belies the fact that, in any case, Plaintiffs' objection lacked the appropriate specificity and ruling as required by South Carolina case law to preserve an issue for appellate review.

B. Even if Plaintiffs did preserve the issue for appeal, the Circuit Court's jury charge was a current and correct statement of law.

If this Court determines that the issue of the definition of "proximate cause" as "the direct cause" of an injury was preserved for appellate review, the Court should nonetheless affirm the Circuit Court for two reasons. First, the use of the term "the direct cause" in the definition of proximate cause is a current and correct statement of law. Second, when in conjunction with the whole explanation of "proximate cause" charged by the Circuit Court, the charge is not misleading and is therefore not reversible error.

When an appellate court reviews an alleged error in a jury charge, it must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error. This holistic approach to jury instructions is linked to the principle of appellate procedure that "an error not shown to be prejudicial does not constitute grounds for reversal." *Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 197-198, 781 S.E.2d 534, 542 (2015)

(citing *Keaton*, 415 S.C. at 497, 781 S.E.2d at 534 (1999); *Adis v. Sessions*, 383 S.C. 528, 532, 682 S.E.2d 249, 250 (2009))

As Plaintiffs rightly point out, *Small v. Pioneer Mach, Inc.* defines proximate cause as "*the* efficient or direct cause of an injury." 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997) (emphasis added). Thus, the Circuit Court cited the definition of proximate cause from a current and correct statement of law.

Including the term "the direct cause" within a definition of proximate cause is not only a current and correct statement of law, it is not confusing to the jury and is abutted by further explanation of proximate cause; it does not exist on an island. The Plaintiffs argue that the term "the direct cause" implies a singular cause. Even if this is true, which Respondents deny, the Circuit Court specifically guarded against the possibility that the jury may believe "direct cause" means "singular cause" by stating a few sentences later:

> Proximate cause, ladies and gentleman, does not mean the only cause. The defendants' act can be a proximate cause of the plaintiff's injuries if it was at least one of the direct, concurring causes of the injury. Ladies and gentlemen, the law recognizes that there may be several proximate causes to an event, and anyone who is guilty of an act which contributes as a proximate cause and with that which the injury would not have occurred is responsible under the doctrine of proximate cause. There may be more than one proximate cause of an injury and more than one person may be held responsible for the plaintiff's injuries.

(Tr. 1072:4-17; R. 140).

The Plaintiffs cite to language from *State v. Dantonio*, 376 S.C. 594, 658 S.E.2d 337 (2008) as the correct law to charge on the issue of proximate cause, but this case does not provide the support they need. Plaintiffs cite only to the portion of *Dantonio* where the Court of Appeals cites approvingly to a proximate cause jury charge from a different case, *State v. Burton. Dantonio*, 376 S.C. at 594, 658 S.E.2d at 345 (citing *State v. Burton*, 302 S.C. 494, 496-497, 397 S.E.2d 90, 91 (1990)). However, it is crucial to recognize the Court of Appeals ultimate holding in *Dantonio,*

where it determined that the *actual* jury charge used by the trial court, "substantially follows the jury charge on proximate cause articulated in *Burton*" (and quoted by Plaintiffs) and therefore that the jury was properly instructed on the current and correct law. *Dantonio*, 376 S.C. 594, 609, 658 S.E.2d 337, 345. As in this case, the actual jury charge provided by the trial court in *Dantonio* begins with the now-objected-to phrase "the direct cause":

> *Proximate cause is the direct cause*, the immediate cause, the efficient cause, the cause without which the death would not have resulted. Now, there may be more than one proximate cause. The acts of two or more persons may combine together to be a proximate cause of the death of a person. The Defendant's act may be regarded as the proximate cause if it is the direct cause to the death of the victim. The fact that other causes also contribute to the death of the victim does not relieve the Defendant from responsibility. The Defendant's act need not be the sole cause of death, but it has to be the direct cause, without which the death of the victim would not have resulted, and this has to be proved to you by the State of South Carolina beyond a reasonable doubt.

Id. at 601, 658 S.E.2d 337, 341 (2008) (emphasis added).

Thus, the language cited by Plaintiffs from *Dantonio* is actually language from *Burton* and was used to *affirm* the trial court's actual proximate cause instruction which uses the term to which Plaintiffs now object. Any distinctions in the language from *Dantonio*, *Burton*, and the language used by the trial court in this case are distinctions without differences. The trial court is not constrained to use the language from *Burton*. Rather, it is constrained to provide the jury with current and correct law, which it did in this case.

CONCLUSION

Because the Circuit Court: did not abuse its discretion in refusing to admit one portion of evidence related to "backing" of tractor trailers; appropriately determined that the duty to warn from *Matthews v. Porter* should not be charged based on the evidence developed in this case; and stated current and correct law in defining proximate cause, Respondents respectfully request that the Circuit Court be affirmed.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Judge

Court of Common Pleas Case No. 2021-CP-04-00234
Appellate Case No. 2025-000047

Robert William Goodwin and Marian Charlene Goodwin,

Appellants,

v.

April Desiree Chappell, individually and as agent for Swift Transportation Company of Arizona, LLC, and Swift Transportation Company of Arizona, LLC,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondents' Final Brief complies with Rule 211(b), SCACR.

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