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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

James Dustin Lucas .....Plaintiff/Appellant,

v.

Andre Knox .....Defendant/Respondent.

Appellate Case No. 2025-001491

INITIAL BRIEF OF APPELLANT

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s/Joshua Hawkins
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March 30, 2026
Greenville, SC

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STATEMENT OF THE CASE

Dustin Lucas was injured when Andre Knox exceeded the speed limit and crashed into Dustin's car while Dustin rode as a passenger. (Complaint). Dustin filed suit against Knox and Meghan Seely, who drove Dustin's car at the time of the wreck, in the Greenville County Court of Common Pleas on June 7, 2020. Dustin then settled his claim against Meghan Seely.

Knox went into default, where he remained for over three months before his counsel asked for him to be let out of default. Dustin's counsel agreed, on the condition that Knox's counsel would attend a mediation where it would negotiate between State Farm's reserve and the policy limit. Once out of default, State Farm appeared at the mediation without Knox in violation of the ADR rules. It further violated its agreement with Lucas by offering less than its reserve at mediation.[1]

Because of State Farm's conduct and its violation of the agreement related to lifting default, Dustin's claim against Knox was tried before the Honorable Perry H. Gravely. After a verdict was returned for the defense, Dustin requested 10 days to make post-trial motions. (Verdict Form). The court denied that motion. Dustin then moved for a new trial and JNOV based on the Thirteenth Juror Doctrine, overwhelming evidence that Knox's speed was a but-for cause of the wreck, and the significant prejudice, unfairness, and one-sidedness throughout the trial. These motions were also denied. Dustin timely filed a motion seeking clarification of the Court's rulings, amendment,

[1] State Farm's offer of $1,000.00 is stated herein because it is directly relevant to this appeal. State Farm later caused an offer of judgment to be filed for $2,500.00. That offer of judgment amount, coupled with the fact that the Respondent refused to provide any information or assurance as to its reserve amount, shows that State Farm simply advanced a falsehood and acted in bad faith to escape default for its insured.

and alteration through a SCRCP 59(e), SCRCP motion, which the court also denied. (59(e)motion, Order). This appeal follows.

STATEMENT OF FACTS

On June 17, 2017, Dustin was a passenger in his own vehicle, driven by his then girlfriend, Meghan Seely, on Tappan Drive in Greenville, South Carolina. As Seely prepared to turn left into a Wal-Mart parking lot, she stopped to allow two vehicles, both traveling at a normal speed for the 25 mile per hour zone, to pass. (Tr. 276:11-21). Knox was traveling toward her in an F-250 pulling a 24 foot, double-axle trailer. Because he exceeded the posted speed limit, he made up the distance between his vehicle and Seely's too rapidly for Seely to complete her turn. Dustin testified that Knox appeared to be going "twice as fast" as the other two vehicles and traveling at approximately 50 miles per hour. (Tr. 285:6-14). The collision was so severe that Knox's F-250, Dustin's car, and the car into which Knox pushed Dustin's car were all totaled. Dustin's vehicle was forced approximately 20 feet away from the point of impact. (Tr. 285:19-286:1). Dustin sustained significant injuries in the collision, including a concussion with loss of consciousness and a large laceration that required many stitches to close. (Complaint). That injury resulted in permanent scarring that left Dustin, in his own words, "deformed for the rest of my life." (Tr. 290:13-14).

STANDARD OF REVIEW

Questions of law are reviewed *de novo*. *Fields v. J. Haynes Waters Buildings*, 376 S.C. 552, 567, 658 S.E.2d 80 (2008) citing *Catawba Indian Tribe v. State,* 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); *Town of Summerville v. City of North Charleston*, 662 S.E.2d 40 (2008). "On appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury's finding." *Wright*

v. Craft, 372 S.C. 13, 18, 640 S.E. 2d 486 (Ct. App. 2006) citing *Erickson v. Jones Street Publishers, L.L.C.,* 368 S.C. 444, 464, 629 S.E.2d 653, 663-64 (2006); *R & G. Const. Inc., v. Lowcountry Reg'l Transp. Auth.,* 343 S.C. 424, 431, 540 S.E.2d 113, 117 (Ct.App.2000) *cert. dismissed* (July 22, 2002) *rehearing denied* (Aug 21, 2002); *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). A trial court abuses its discretion when its "ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 375, 389, 529 S.E.2d 528 (2000) citing *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 656 (1987).

An appellate court reviewing a motion for a new trial "must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party" and "deny the motions where either the evidence yields more than one inference or its inference is in doubt." *Welch v. Epstein*, 341 S.C. 279, 290, 536 S.E.2d 408 (Ct. App. 2000) citing *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) and *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998) and *Creech v. Wildlife and Marine Resources*, 328 S.C. 24, 29, 491 S.E.2d 571 (1997) citing *Strange v. South Carolina Dep't of Hwys. & Pub. Transp.*, 314 S.C. 417., 429-30, 445 S.E.2d 439, 440 (1994).

ARGUMENT

I. The Appellant was denied his constitutional right to a fair trial.

The trial court's open and obvious favoritism of the defense during trial denied Dustin the right to a fair trial as guaranteed to him by Art. I, Sec. 14 of the South Carolina Constitution, the

Seventh Amendment of the United States Constitution[2], and by the right to Due Process guaranteed by both constitutions. When judicial conduct and comment render a trial not merely imperfect, but unfair, a violation of the right to due process and a fair trial is present. *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984). In this case, the trial judge repeatedly admonished Dustin's counsel, unlawfully limited his evidence, and made prejudicial statements in the jury's presence aimed to help the other side and which did not conform to the evidence. In closing, the trial judge even seemed to join in opposing counsel's objections.

a. The trial court repeatedly and unjustifiably admonished Appellant's counsel in front of the jury, prevented him from introducing important and probative evidence, and openly favored the defense.

It is well settled that a "trial judge must act with absolute impartiality in the performance of judicial duties." *State v. Pace,* 316 S.C. 71, 447 S.E.2d 186 (1994). A trial judge is not permitted "to mislead" or make "one-sided" comments or "deductions and theories not warranted by the evidence." *Quercia v. United States*, 289 U.S. 466, 470 (1933) citing *Starr v. United States*, 153 U.S. 614 (1894). Throughout trial, the court consistently demonstrated a preference for the Respondent and expressed frustration and contempt toward the Appellant. The court allowed Respondent's counsel to make speaking objections but prevented Appellant's counsel from fully responding to those same objections before issuing its ruling:

> Q. Have you ever had -- when Knox was working for you, have you ever had any issues with Knox not showing up to work?
> MS. TANKERSLEY: Objection, your Honor.
> MR. HAWKINS: Your Honor, this goes directly to credibility. If he says he's going to be at working today,

[2] Although *Pelphry v. Bank of Greer*, 244 S.E.2d 315 (1978) discussed that the Seventh Amendment had not been fully incorporated against the States, its guarantees exist nonetheless, and Dustin was entitled to the federally guaranteed right at the time his case was tried.

it doesn't show up.
THE COURT: We're not going to be editorializing when she's made an objection, okay?
MR. HAWKINS: Yes, your Honor.
THE COURT: So all I'd like to hear your objection.
MS. TANKERSLEY: I don't understand the relevance of him coming to work at any given day. It's not the accident.
THE COURT: Yeah, this is -- I mean, this --
MR. HAWKINS: That's what I was trying to give.
THE COURT: I -- but it's all right. Now I'm going to sustain the objection case. I think 404B and it's not -- I -- I sustained the objection.

(Tr. 111:13-112:5)

The court's criticism of Appellant's counsel starkly contrasted with its treatment of Respondent's counsel, who often was allowed to "editorialize" in front of the jury:

Q. So can we agree that at a minimum, even if we take your number, which is 30, you violated the law and company policy when you went 30 miles per hour in a 25 mile per hour zone?
MS. TANKERSLEY: Objection, your Honor. His testimony hasn't been that his speed was exactly 30. It's been that he -- he thinks it was about 30, maybe around it.
MR. HAWKINS: He -- he -- we can read it back. He agreed that he violated the posted speed limit. I made sure to ask that question.
THE COURT: Well, I mean, but rephrase your question then, based on that.

(Tr. 167:5-15).

In this instance, Respondent's counsel not only gave a lengthy speaking objection but also mischaracterized the evidence already in the record. (*See* Tr. 148:12-149:11).

The trial court consistently prevented the Appellant from asking appropriate and relevant questions. When Appellant's counsel questioned Cody Miller, the Respondent's boss and the owner of the vehicle that he was driving at the time of the collision, the court sustained objections related to: whether Miller personally observed any evidence of the use of brakes at the scene (Tr. 110:17-25); whether Miller expected employees to use appropriate care when traveling around

turns and curves in roadways (Tr. 114:12-19); whether Miller's personal experience driving the vehicle caused him to believe that it was dangerous to drive that vehicle in excess of the speed limit (Tr. 121:11-21); and whether Miller expected employees to follow basic traffic laws while operating company vehicles (Tr. 112:25-113:9). These rulings prevented the Appellant from eliciting testimony concerning internal policy violations, which are evidence of gross negligence. *Jinks v. Richland County*, 585 S.E.2d 281 (2003); *Caldwell v. K-Mart Corp*., 410 S.E.2d 21 (Ct. App. 1991).

Sustained objections also prevented Appellant's counsel from asking if the company had any data related to text messages between Miller and Knox during that time period. (Tr. 102:21-103:1). The question was relevant because an issue at trial was whether the Respondent was texting while driving. By sustaining this objection, the court prejudicially limited questioning without requiring the Respondent to even provide a basis for the objection. (Tr. 106:5-15). In this instance, the court went beyond simply ruling and instead advocated on the record for the Respondent's position, implying that Appellant's counsel was accusing Miller of hiding evidence. (Tr. 104:1-105:1).

The Appellant was similarly prevented from asking appropriate and relevant questions of the Respondent, including questions related to basic mathematical calculations. Because issues of speed and rate of feet per second were related to central issues of the case, such questions were appropriate pursuant to *China v. Parrott*, 162 S.E.2d 276 (1968). ("It is a fact of mathematical determination that an automobile at 50 miles per hour is moving about 73 feet per second and that at 35 miles per hour about 51 feet per second. It is common knowledge that there is a time interval (reaction time) required for a motorist to react after perceiving danger."). (*See* Tr. 154: 19-157:18). In sustaining the Respondent's objection to this line of questioning, the court said, in the presence

of the jury, "Yeah. That's not – that a total mischaracterization of our whole discussion here in my ruling, the way I feel like." (Tr. 157:16-18). That remark constituted inappropriate and prejudicial commentary "made with all the persuasiveness of judicial utterance." *Quercia v. United States*, 289 U.S. 466, 470 (1933). The Court also prejudicially commented on Appellant's demonstration of the distance of 30 feet with measuring tape. The Respondent objected to this exercise without providing a basis for the objection, and the trial court sustained it before providing the basis itself, ruling that the use of measuring tape "calls for speculation." (Tr. 161:10-24).

Appellant's counsel was prevented from fully questioning the Respondent about using his smartphone in the absence of hands-free technology (Tr. 173:5-18), any evidence that he applied his brakes at the time of the collision (Tr. 173:24-174:22), and whether Seely should have yielded the right of way (Tr. 181:20-182:1). When the Respondent testified that the Appellant did not check on him following the collision, the court prevented Appellant's counsel from asking whether an incapacitated person could check on anyone, even though the Respondent had testified that he saw paramedics put two occupants of the Appellant's car into an ambulance. (Tr. 176:7-22). Appellant's counsel was also unable to ask the Respondent if he agreed that the only dispute was whether he contributed to the collision. (Tr. 181:20-182:2).

The trial court treated virtually every question that could be answered with a "yes" or "no" as a leading question. "A leading question is one which suggests to the witness the desired answer." *State v. Tyner*, 273 S.C. 646, 258 S.E.2d 559 (1979) citing *State v. Cook*, 204 S.C. 295, 28 S.E. 2d 842 (1944) and Wigmore, Evidence, Vol. III, § 769, p. 122 (1940).[3] If a question is not suggestive of an answer, it is not leading. *Ibid*. The trial court sustained objections on the grounds of leading

[3] The question considered in *Tyner* was "Q. Did you ever have any difficulty communicating with Mr. Tyner or he with you?" Our Supreme Court determined it was not a leading question.

to the following questions: "when she got ready to turn, did she come to a stop?" (Tr. 275:21-25); "did Meghan have any issues with either two of those cars?" (Tr. 276:22-277:4); and "when did you first see Knox?" (Tr. 277:12-20). In improperly sustaining these objections, the trial court prevented the Appellant from asking relevant and probative questions that he needed to satisfy his burden of proof.

What is not captured by the transcript is the harshness of the court's tone when addressing Appellant's counsel in the presence of the jury. Such disdain can be read, however, in the recorded admonishments of Appellant's counsel that occurred throughout the trial. Shortly after the exchange above, the court sternly stated, "let's refrain from making faces, please when I rule." (Tr. 112:13-14). Later, during the Respondent's closing argument, the court again accused Appellant's counsel of unprofessional behavior: "please do not be making faces, Mr. Hawkins, while she's doing a closing argument." (Tr. 500:11-12). Each of these statements were made in the presence of the jury, and each left Appellant's counsel, who did not engage in such conduct, confused and self-conscious.

The court also clearly expressed its frustration with Appellant's counsel when it stated, "Did you just – oh my God, just come up with every circumstance. She [Respondent's counsel] said there's no evidence. So, I'm going to sustain the objection," in response to an objection. (Tr. 168:3-21). This comment, made in the presence of the jury, demonstrated not only the court's displeasure with Appellant's counsel but also its willingness to adopt Respondent's counsel's interpretation of the evidence, endorsing the Respondent's position on the evidence in front of the jury.

b. The Court's bias was especially noticeable during closing arguments.

During the Appellant's closing argument, Respondent's counsel repeatedly interrupted to make unfounded and baseless objections, most of which the trial court sustained. These objections interrupted Appellant counsel's argument and prevented counsel from fully presenting his case to the jury. Through sustained objections, Appellant's counsel was prevented from telling the jury that jurors must follow the law and should let the court know if anyone does not want to follow the law (Tr. 452:6-15); that jurors are appraisers of damages (Tr. 456:20-22); and that part of the purpose of punitive damages is to punish and to deter (Tr. 4 68:4-8). The Appellant was also prevented from showing the facial scar that resulted from the collision to the jury and which Appellant had testified about in detail. (Tr. 517:9-25). Respondent's counsel's interruptions were so frequent that she objected to something as innocuous as a reference to a Bojangle's restaurant located near the collision site (Tr. 448:5-21) and the truthful statement that she drew on evidence during the trial. (Tr. 520:11-23).

The multiple sustained objections during the Appellant's closing argument prevented the jury from fully considering the issues before it, including whether to award punitive damages. The Respondent objected when Appellant's counsel mentioned dangerous conduct. The trial court sustained the objection and told Appellant's counsel, "you're talking about actual damages here," even though the Appellant had to address the punitive charge and deterrence of dangerous conduct is an important aspect of punitive damages. (Tr. 461:19-462:6). The court's comments directly contradict the longstanding rule in *Clark v. Cantrell*, 529 S.E.2d 528 (2000), holding "[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future."

The trial court similarly prevented the Appellant from discussing the impact of the collision on the Appellant's mental health, which Respondent's counsel explored on cross-examination. (Tr.

460:12-25). Appellant's counsel was also unable to tell the jury that this was Dustin's one opportunity to recover damages and that he could not come back at a later time for another damages award. (Tr. 463:8-18). The trial court did not simply sustain the objection in this instance, but stated that counsel's comments were "totally improper" and instructed the jury not to consider them. (Tr. 463-17-18).

During the Respondent's closing argument, the trial court was much more permissive. The court allowed Respondent's counsel to talk to the jury about sending a message, punishment, and deterrence. (Tr. 501:3-502:2). Most significantly, the court allowed Respondent's counsel to argue on multiple occasions that the Respondent himself would be responsible for the judgment: "Andre shouldn't be punished for someone else's negligence" (Tr. 494:19-20); "Andre is responsible for paying the bill" (Tr. 496:7-9); "Andre should not be responsible" (Tr. 499:24-500:1); "there's absolutely no need to punish Andre" (Tr. 501:19-20); and, "Plaintiff is trying to convince you to make my client pay three plus million dollars…for damages that are not [the defendant's] responsibility." (Tr. 505:12-15).

Appellant's counsel had anticipated such remarks and moved *in limine* before trial to exclude any reference to the financial consequences to the Respondent of a judgment or payment of a judgment and, if such comments were made, to be allowed to discuss insurance. (Tr. 29-20-30:4). The court did not rule on the issue, instead stating, "I'll just have to see how that plays out." (Tr. 30:16-17). When that exact situation arose and Appellant's counsel stated that the Respondent was arguing that he "is going to pull his wallet out," the court sustained the Respondent's objection before sending the jury out of the room before, and among other remarks, admonishing Appellant's

counsel for using the word "they" when referring to the defense. (Tr. 506:9-19; Tr. 509:23-510:13).[4]

The trial court allowed Respondent's counsel to argue to the jury that the Appellant failed to bring the other two occupants of his car to trial but did not allow Appellant's counsel to explain the reason for their absence, with one occupant residing outside of South Carolina and outside of the court's subpoena power and the other being deceased. (Tr. 510:19-511:13). Appellant's counsel pointed out that Respondent's counsel simply brought up the occupants even though she failed to elicit any testimony about them and argued, "if she brings it up and I can't respond to it, it hamstrings me, Judge, and I've got the burden." (Tr. 511:16-24). The trial court rejected this argument and refused to allow Appellant's counsel to respond to the Respondent's allegations. (Tr. 511:25-512:2)

The most egregious example of the trial court's bias against the Appellant occurred when the court interrupted Respondent's counsel's closing argument and told Appellant's counsel, "please do not be making faces, Mr. Hawkins, while she's doing a closing argument." (Tr. 500:11-12). Appellant's counsel raised this issue with the court outside the presence of the jury, explaining the effect that such statement had on the jury:

> MR. HAWKINS: Your honor, with all due respect and deference to the Court, this has been the most prejudicial experience I have ever had in a closing argument. I was sitting here at my table minding my own business, going over what my reply was going to be, and the Court sua sponte indicated that I was making faces. There were -- I looked up and surprised I wasn't even looking at the jury. So that's number one. That prejudiced me in front of the jury and prejudiced my client in front of the jury.
> The second thing is, she got up here and said that

[4] During a sidebar discussion, the court also indicated that Appellant's counsel should not use the word "claim." This was a confusing statement to Appellant's counsel, as the issue before the jury was the Appellant's claim for negligence against the Respondent.

> Andre Knox is going to have to pay this and it's going to be against him. And he wanted my client to pay. She didn't have to say any of that. And I didn't say anything about insurance. I'm inclined to say, did y'all hear how many times she said that. And that's exactly what I said. I didn't say insurance. I didn't say he's not the one that's going to pay the judgment.
> And I -- and I'm -- I'm -- your Honor, I -- I respect the Court and I -- I don't seem disrespectful, but this is it -- this is very prejudicial to his case, very prejudicial. I've tried to operate within the confines of the Court's rulings, and I've dealt with objection after objection after objection over stuff that is part of argument. I'm trying to advocate for my client.
> THE COURT: Well, let me go back to -- to -- in addition to the comments. I mean, at one point you went -- you looked at him, you and you went just like that.
> MR. HAWKINS: Right. Because I'm trying to come up with how to respond.
> THE COURT: But that's not -- but -- but what I'm saying is that's just not appropriate to do that when someone else is arguing in front of the jury sitting right there. And -- and making faces. That's just -- I mean, you know, she didn't do that in yours. I think it's just -- I mean, that's just not appropriate conduct. I think what she said was there -- I mean, I'm not sure exactly what was said, but I mean, I don't know where you were going, but it sounded like you were going down the insurance route.
> 11 MR. HAWKINS: Your Honor, I'm not going to mention insurance. I know better than that. I -- I think it -- I don't like the rule, but I know better than to say insurance in closing argument.
>
> (Tr. 506:23-507:14).

At the time that the court accused Appellant's counsel of "making faces," he was listening to the Respondent's closing argument and thinking of what he would say on reply. Counsel's associate attorney, Sulaiman Ahmad, and paralegal, Candie Edwards, were present and testified in sworn affidavits about their observations at trial and the accusations made by the court in the presence of the jury. The court made its comments with force, and the unfounded, inappropriate commentary

was not only personally offensive to Appellant's counsel, but almost certainly prejudiced the Appellant in front of the jury and irreparably impacted his right to a fair trial.

"In commenting upon testimony [the trial judge] may not assume the role of a witness." *Quercia v. United States*, 289 U.S. 466 (1933). The court repeatedly violated the rule from *Quercia* which forbids a trial judge from "mislead[ing]" or making "one-sided" comments or "deductions and theories not warranted by the evidence." In *Ellis v. Procter and Gamble Distributing Company*, 433 S.E.2d 856 (1993), our Supreme Court examined a case where a judge did not recuse himself where there was evidence of bias. While this is not a case that involves failure to recuse, judicial bias was certainly present and is evident throughout the trial transcript. The pervasive judicial bias in this trial from start to finish warrants a new trial.

II. The trial court erred in preventing the Appellant from impeaching witnesses.

a. The trial court improperly prevented the Appellant from impeaching the Respondent concerning speed.

The trial court improperly prevented the Appellant from impeaching the Respondent over inconsistent statements concerning his speed, the central issue of this case. At trial, the Respondent testified that he knows that he was traveling at approximately the speed limit at the time of the collision because that is how he normally drives:

> Q. Okay. Do you have a general idea as to how fast you think you were going at the time?
> A. Approximately the speed limit.
> Q. Okay. Why do you think that?
> It's just normally how I drive, you know, especially in other people's cars. And to – this day, I drive other people's cars on a daily basis, so it's just part of – it's been part of work for the last 10 years for me.
>
> (Tr. 216:2-9)

Following this testimony, the Appellant approached the bench and presented the court with evidence of the Respondent's prior convictions for traffic offenses, including multiple convictions for traveling in excess of 15 miles above the posted speed limit in the last ten years. These convictions directly contradict the Respondent's assertion that he, as a general rule, obeyed traffic laws, including posted speed limits. As Appellant's counsel argued to the court, "if he says, I'm generally a good driver, and I follow the speed limit, but he's got two convictions that impeach that, I'm entitled to impeach [him]." (Tr. 236:14-16).

The court refused to allow the Appellant to introduce this evidence, reasoning that he – the trial judge – would similarly claim to drive the speed limit even though he had received citations for speeding: "I mean if somebody asked me if I drive the speed limit, I would say yes. And under your theory I'd be lying because I've had speeding tickets." (Tr. 242:23-243:1). Importantly, the Appellant did not ask the Respondent whether he typically drove the speed limit but instead asked the Respondent how he knew that he was not speeding at the time of the collision. Rather than stating that he looked at the speedometer or knew that traffic was moving more slowly than usual, the Respondent simply said that he usually drives the speed limit. The trial court allowed the jury to accept the Respondent's demonstrably untrue claim without allowing the Appellant to present substantive evidence that this statement was false. Appellant's counsel explicitly asked for clarification on the court's ruling, stating:

> I just want to make
> sure it's clear on the -- on the record that even though he
> said he follows the speed limit, he's a good driver and
> that's how he drives. And that was not truthful and just
> used the words from case you decided. Even though that was
> not truthful.
> And he testified under oath, we can't show the jury
> through impeachment that it's not truthful because he's been
> cited three times for speeding and driving too fast for
> condition. I just want to make sure that that's on the

> record. So even though we can show that he was not truthful about that, we don't [get] to impeach him –

The trial court then interrupted Appellant's counsel to confirm his ruling, stating, "right." (Tr. 240:18-241:5). Impeachment on this issue was critical to the Appellant's case, especially considering that the Respondent's testimony directly contradicted his deposition testimony, in which he confirmed that he was going "much, much faster than 25 miles per hour." (Tr. 159:5-16).

b. The trial court improperly allowed the Respondent to discuss speed while denying the Appellant the opportunity to do the same.

Under South Carolina law, collision reports are generally inadmissible at trial. S.C. Code § 56-5-1290. Before trial began, the court granted Appellant's counsel motion *in limine* to exclude any discussion of the collision report or the investigating officer's opinions on fault. (Tr. 15:22-16:23). Nevertheless, during her examination of Trooper Morton, Respondent's counsel asked, "when you investigated the accident, did you see any evidence at the accident scene that my client was speeding?" (Tr. 267:1-3). Morton answered, "I did not see anything that showed that he was going drastically over the speed limit." (Tr. 267:4-5). By eliciting this testimony, Respondent's counsel opened the door to the Appellant's introduction of information contained in the collision report and authored by Trooper Morton for impeachment purposes.

A party "…open[s] the door to what would be otherwise improper evidence through his own introduction of evidence or witness examination." *State v. Culbreth*, 659 S.E.2d 268 (Ct. App. 2008). When Respondent's counsel elicited the testimony in violation of the court's order, she opened the door to the contents of the collision report and the fact that Morton recorded the defendant traveling 10 miles over the posted speed limit. When Appellant's counsel attempted to impeach Morton with a statement in his collision report, the court prevented him from doing so:

REDIRECT EXAMINATION BY MR. HAWKINS:
Q. You testified a minute ago you didn't see any evidence of the red truck speeding when you got there.
A. Yes.
Q. You gave that opinion?
A. Yes.
Q. Is the speed limit 25?
A. Yes.
Q. Your estimated speed for knots [*sic*] was 35 --
MS. TANKERSLEY: Objection, your Honor.
THE COURT: Sustained
MR. HAWKINS: Your Honor, she just asked him about evidence of --
THE COURT: I've already ruled on that.

(Tr. 268:20-269:8)

The court also did not allow Appellant's counsel to re-examine Morton on the testimony elicited by Respondent's counsel during cross-examination:

Q. Okay. Let me ask you about this then. You said that -- you gave an opinion specifically about an oncoming car and a car who's sitting, waiting to make a turn about their duty to yield. Is the car waiting to turn, have the duty to yield if the -- the oncoming car is far enough away where they can make the turn safely?
MS. TANKERSLEY: Objection, your Honor. These are the same questions that he was asking.
MR. HAWKINS: **She asked about this**.
MS. TANKERSLEY: We have already discussed.
THE COURT: Well, you didn't object.
MR. HAWKINS: I know because I'm asking the question.
THE COURT: Again. Sustained. I got to follow the rules when they are objected to.

(Tr. 269:9-23)

At another point during Morton's testimony, the Court loudly admonished Appellant's counsel in front of the jury:

Okay. Can we agree that from what you saw, where the cars were, that -- let me make sure I have this correct. Okay. I've asked you some questions previously about Knox's of speed and all that kind of stuff. Do you recall that? Or

what evidence you -- you witnessed related to speed when you got to the collision. Do you recall?
MS. TANKERSLEY: Objection. He's trying to publish deposition testimony.
THE COURT: Right.
MR. HAWKINS: No, I'm not. No, I'm not. I'm -- I'm asking about the fact that I have asked him questions previously about a topic.
THE COURT: Well, then if you're going to use the deposition, you ask him a question, then you can use it to -- to change it. But show where you're headed for how you're doing this.
BY MR. HAWKINS:
Q. Is it -- can we agree that one of the factors in the collision as far as the evidence you witnessed was Knox's speed?
MS. TANKERSLEY: Objection.
THE COURT: Sustained.
MR. HAWKINS: Your Honor. He -- I -- I -- that was -- no, sustained.
MR. HAWKINS: Can we approach.
THE COURT: Yeah.
(OFF THE RECORD)
THE COURT: Sustained.

(Tr. 263:1-264:3)

In the last part of the exchange, below "(OFF THE RECORD)," the parties were at side bar. While Appellant's counsel was pleading his case about Morton's previous testimony about evidence of the defendant's speed, the court glared at counsel, cut him off mid-sentence and barked "sustained" so loudly that it was transcribed over the white noise. Not only was the Court's conduct appalling, but it also contrasted starkly with what would happen on the exact same issue (Morton's observations of evidence related to speed) when Respondent's counsel cross-examined Morton. If the Court allowed Respondent to ask whether Morton saw any evidence of speeding after preventing Appellant from asking the same thing, then Appellant should have had the right to impeach Morton with a document that Morton drafted directly contradicting his testimony.

By preventing the Appellant from using the collision report for impeachment purposes, the court left the jury with the false impression that Morton did not observe evidence of speeding because the Respondent elicited that misleading testimony in violation of the court's ruling on a motion *in limine* on the issue. Respondent's counsel took advantage of this inequity, returning to the issue of speed during her closing argument and telling the jury that "…based on his observations at the scene as a trained investigating officer…he didn't see any evidence of excessive speed…he didn't see any evidence of excessive speed." (Tr. 485:12-20).

The trial court's bias was obvious and palpable both when the jury was present and when the jury had been sent out:

> MR. HAWKINS: Your Honor, It was out of the bag. He said, I saw no evidence of speeding. I had to impeach him with his prior inconsistent statement.
> THE COURT: I made a motion --
> MR. HAWKINS: I don't know what else -- I don't know what else was to say. She brought that --
> THE COURT: Well, but I made -- I had a ruling. You -- the least you could have done is come up here and asked me. Because I'd already ruled specifically on, that no evidence of the amount of speed.
> MR. HAWKINS: Your Honor, if --
> THE COURT: I've ruled, I mean, I -- I mean I ruled beforehand and you just went right in there.
> MR. HAWKINS: I didn't think she was going to say evidence of speeding when we -- it was a motion in limine that he can't offer opinions about whose fault this was.
>
> (Tr. 271:8-20, 272:4-12)

The court did not seem to care at all that the Respondent willfully violated the court's ruling on the motion *in limine* and even directed anger toward Appellant's counsel for using basic impeachment techniques instead toward Respondent's counsel for violating the court's order.

> Q. Did Knox -- did that truck, when you saw him in that brief period of time, did he appear to be going faster than the two cars?

A. Twice as fast.
Q. Okay. So would that be about 50 miles per hour?
MS. TANKERSLEY: Objection.
THE WITNESS [*sic*]: Sustained. **He does not know how fast these people are going. He has to testify that -- he's not an expert and he was not going the same -- so sustained. Mr. Hawkins?**[5]
MR. HAWKINS: Yes, your Honor. The witness testified that the other two cars were going about 25 --
MS. TANKERSLEY: Your Honor, he's arguing --
THE COURT: I'm going to -- okay, I'm going -- I'm going to send the jury. Jury, if you will, please, step out and don't discuss your case.
THE BAILIFF: You are clear, sir.
THE COURT: First of all, when I make a ruling is not the opportunity for you to continue arguing Mr. Hawkins. That's all -- we had all that yesterday and I'm not going to allow it again today. Okay. You make your ruling; you've got your objection. This guy has testified what he -- his opinion -- he cannot give opinion on the speed of people going.
MR. HAWKINS: Your Honor, can I be heard?
THE COURT: Yes.
MR. HAWKINS: Your Honor, I -- I think the Court knows me well enough to know that what I'm about to say, does -- does not come without thoughtfulness.
THE COURT: No, I know. I'm don't take it personal.
MR. HAWKINS: And I'm just being forthright and I -- **I want this to be on the record and maybe I'm completely wrong, but I feel like we have -- this has been one sided and we have been hamstrung this entire case.** He testified and -- and the jury's not in here, so I'm just going to tell you --
THE COURT: Yeah.
MR. HAWKINS: -- what -- the point I was trying to convey. He testified that the cars were going a normal speed from his observation in the 25 mile per hour zone. He then said that truck was going twice as fast.
THE COURT: All right. Let me stop you there. That's no speed. That's the normal speed. You -- you can -- first of all, he can't testify. Now if he was going the same direction and he knew how fast he was going and a car was going next to -- but he can't estimate the speed of another

[5] Not only is this state wrong under *Livingston v. Oakman*, 164 S.E.2d 758 (1968), it was "made with all the persuasiveness of judicial utterance…[and] was not withdrawn." *Quercia v. United States*, 289 U.S. 466, 470 (1933).

vehicle.
MR. HAWKINS: Your Honor, I'd like to hand up this case law that says he can.
THE COURT: Okay. And -- and I'm sorry that you -- I mean I think that this, you know -- I've ruled against you. I've ruled against her. The whole thing yesterday I know that's a -- that was a beef. I mean, I've told you from the beginning that the speed -- that the officer cannot testify about this speed. I don't -- I don't believe that these changed my mind as to -- based on what the testimony is, that he can estimate the speed. When he said he saw him 10 seconds.
MR. HAWKINS: He said -- he said 10 feet.
THE COURT: Well, I said 10 --
MR. HAWKINS: It says it -- Livingston -- the **Livingston case, that's a 251 South Carolina 611**. It says, admissibility of the defendant's speed estimate, which was based not only on the -- her belief observation, the plaintiff's car, but also the nature of the extent of the impact. So that's a -- that's a brief observation. And he -- he saw the car. I mean he saw the first two cars. He testified about their speed. He saw his car, he --
THE COURT: He didn't testify about their speed.
MR. HAWKINS: He did. He said they were going to normal speed for the 25 mile per hour zone.
THE COURT: That's not telling you how fast they're going.
MR. HAWKINS: Normal for the 25 mile per hour zone.
THE COURT: No. That's not saying that the speed. No, 10 I'm sorry. I just don't -- that's not even the same thing.
MR. HAWKINS: Well, I mean -- and -- and I don't, you know --
THE COURT: And then you're just saying twice as fast.
MR. HAWKINS: I mean, Judge, I don't know. Does the Court want me to say how fast were they going? Because then she --
THE COURT: No, I don't think -- I don't -- again, I'm going to look at this case. I don't think that she -- he can testify how fast they're going.
MR. HAWKINS: Well, I mean -- I mean these cases say that he can testify. He doesn't have to be an expert. He can testify about observations of speed.
THE COURT: All right. I'm going to -- I'm going to take a break and look at these cases.

(Tr. 278:11-281:24)

During the break, the court reviewed *Livingston v. Oakman*, 164 S.E.2d 758 (1968), which held that a witness's estimate of a vehicle's speed at the time of a wreck has probative value. Although the court later acknowledged its error to counsel, it denied the Appellant's request to tell the jury that Appellant's counsel had not been "out of line" because his position had been correct. (Tr. 283:18-22).

The trial court similarly prevented the Appellant from impeaching Seely with prior testimony from her deposition. During Seely's deposition, she testified that she believed the Respondent was more than fifty percent responsible for the collision because he was traveling at a high rate of speed. (Seely Depo, 56:6-19). When Respondent's counsel elicited testimony to the opposite of that while cross-examining Seely, Appellant's counsel began basic impeachment with Seely's deposition. The trial court sustained the Respondent's objection because Appellant's counsel asked leading questions during the deposition. This ruling was in error because, at the time Seely was deposed, she was a witness adverse to the Appellant and leading was proper pursuant to SCRE 611(c). ("When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions." *SCRE* 611(c)). Further, extrinsic evidence of a prior inconsistent statement is admissible pursuant to *SCRE* 613(b). (See also *State v. Fossick*, 508 S.E.2d 32 (1998)).

III. The trial court erred in refusing to grant a directed verdict or a JNOV.

At the close of evidence, the Appellant moved for a directed verdict on liability because it was uncontested that the Respondent exceeded the speed limit at the time of the collision and that the collision caused the Appellant's injuries. (Tr. 402:2-17). The trial court denied the motion, even though the Respondent did not rebut this evidence or put up any evidence of his own.

After the jury returned a defense verdict, the Appellant requested 10 days to make post-trial motions, which the court promptly denied. (Tr. 547:19-21). Counsel then stated to the court that based on overwhelming evidence, including mathematical proof that the defendant's speed was a but-for cause of the wreck, and the unfair and prejudicial nature of the proceedings, that a new trial or JNOV should be granted. (Tr. 547:22-548:5). Counsel requested the new trial based on the Thirteenth Juror Doctrine and JNOV.[6] Appellant explained that the basis of the request for a new trial or JNOV was "the prejudice to the plaintiff from the – objections, the ruling on the objections, and the way transcript we think will show the trial was borne out, we move for undue prejudice and – and a new trial based on that…as well." (Tr. 548:15-22) The court then responded by stating, unsolicited, that the court had no connection with defense counsel and that the court was not biased. (Tr. 549:2-5)

IV. The Respondent willfully violated ADR requirements prior to trial.

The Respondent's insurance company, State Farm, refused to have the Respondent present at mediation as required by the ADR rules. Appellant's counsel raised this issue with the court several times through litigation and again in pre-trial motions. (Tr. 58:14-18). The documents related to the refusal of State Farm and the defense to adhere to the mandatory ADR rules are contained in the Record and speak for themselves. It is uncontested that:

1. The ADR rules require attendance by attorneys, parties, and parties with authority to settle the case;

2. The Respondent made a deal to get out default which included an agreement for State Farm to negotiate between the claim reserve and the policy limit and agree to mediation;

[6] For whatever reason, the trial transcript is riddled with transcription errors. Instead of "JNOV, Thirteenth Juror," the transcripts states "January 13, juror." If the Court of Appeals instructs, the undersigned will attempt to collect any audio recording of the trial that may exist. As an example of the many errors in the transcript, it also, on the same page, states a reference to Judge Powell instead of Judge Pyle, the judge referenced by the Court. (Tr. 548:7)

3. State Farm realized the benefit of being released from default;

4. State Farm and the Respondent violated the agreement by appearing at mediation without the insured, Andre Knox; and

5. State Farm offered at mediation less than half of the amount of the offer of judgment it caused to be filed before trial, when it agreed to negotiate above its reserve to get out of default.

V. The court improperly admitted irrelevant criminal history.

South Carolina Rule of Evidence 609 allows a party to attack a witness's character for truthfulness with evidence of a felony criminal conviction or conviction of a crime involving dishonesty or false statement within the last ten years ,"unless the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." *SCRE* 609(a)-(b). During trial, the Respondent sought to impeach the Appellant's character with evidence of criminal convictions for breaking and entering, obtaining goods under false pretenses, and shoplifting. (Tr. 306:7-20). Appellant's counsel pointed out that the information was completely irrelevant to Appellant being injured in a car wreck and that the probative value of the convictions was outweighed by the danger of unfair prejudice. (Tr. 308:1-24; 311:1-15).

The trial court allowed Respondent's counsel to impeach the Appellant with his prior criminal convictions, even though the Appellant was simply a passenger in a motor vehicle collision, reasoning that the case turned on the Appellant's credibility when giving the Respondent's estimated speed. (Tr. 306:21-307:13). By this reasoning, prior convictions would never be excluded under a Rule 403 analysis because credibility is always an issue for any witness testifying about any topic.

VI. The trial court improperly instructed the jury on the law.

The Appellant objected to the trial court charging on duties of non-parties. (Tr. 545:22-546:6, 401-402, 405, 422:11-15). Duties of non-parties had nothing to do with the case, and the

charge violated the rule in *Smith v. Tiffany*, 799 S.E.2d 479 (2017).[7] (Tr. 423:8-25). The Court rejected the Appellant's argument that charging the jury on duties of non-parties is very misleading. (426:24-427:9)

The Respondent argued sudden emergency, and the court gave the charge over the Appellant's objection and argument that the charge should not be given. (Tr. 414:10-415:10, 418:5-422:3). Sudden emergency applies when "the driver…is confronted with a sudden emergency brought about by the negligence of another…and is compelled to act instantly to avoid a collision." *Clark v. Cantrell*, 529 S.E.2d 528 (2000). A defendant being compelled to *act* is an essential element. The court erred in allowing the sudden emergency instruction because there was no evidence that the Respondent was compelled to act in any way. The only question was whether the Respondent caused or contributed to the collision by driving too fast. Either the Respondent was not speeding and Seely caused the wreck by turning in front of him, or he was speeding and he was negligent in hitting Seely. There was no additional act by Respondent other than driving down Tappan Drive. Notwithstanding, the defense was allowed to argue sudden emergency, which should have been excluded, as explained above. (Tr. 477:1-15)

CONCLUSION

The Appellant was not entitled to a perfect trial, but he was entitled to a fair trial. *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984). The Appellant was robbed of his right to a fair trial by the trial court's open and consistent bias against the Appellant and the court's refusal to allow the Appellant to impeach witnesses. The trial court should have

[7] The rule in *Smith v. Tiffany* was recently modified by statute, but the modification only applies to claims that accrued after January 1, 2026.

granted a directed verdict, a JNOV, or a new trial. For the foregoing reasons, the Appellant respectfully requests a new trial.

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